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CREDIT UNION EXECUTIVE NEWS

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Inside this issue:

RESPA Changes Finalized	1
Expansion to CUSO Rule	4
Rewards Checking	5
New Credit Card Rules	5
New FMLA Regulations	8
Mortgage Loan Disclosure	9
FWW Announcement	10

SWEEPING CHANGES TO RESPA FINALIZED

Like bankruptcy reform, RESPA reform has been lurking in the shadows for years, with various proposals issued and withdrawn, work groups, studies, and reports, none of which produced any actual changes. HUD issued its most recent proposal last spring, in the midst of the mortgage crisis. But this time it's for real; HUD has acted on its proposal, issuing final changes to its Regulation X that will introduce some fairly dramatic reforms into the mortgage origination process.

The RESPA changes are the most sweeping revisions by HUD in 30 years. A few changes (use of average pricing, revised definition of "required use," and a simplified mortgage servicing notice) are effective January 16, 2009, but the major changes go into effect on January 1, 2010. So credit unions and other lenders (as well as title companies and other service providers) will have just over a year to prepare.

Goals of the New Rule

The final rule is built around a completely revised Good Faith Estimate of Settlement Costs (GFE) and a new, enhanced HUD-1/HUD-1A settlement statement. HUD seeks to change the application process to achieve several goals:

- Provide borrowers with a GFE that includes a simple summary of key loan terms and settlement costs so that borrowers can better understand and compare loan terms and settlement costs among competing providers
- Require lenders to make the GFE terms (except for interest rate/pricing terms) available for 10 business days after the GFE is provided to the borrower
- Set tolerances for the amounts by which actual settlement costs may differ from the GFE estimates
- Revise the HUD-1 and HUD-1A settlement statements to allow borrowers to more easily compare settlement costs to the estimates in the GFE

Cont. p 2

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SWEEPING RESPA CHANGES FINALIZED (CONT.)

Good Faith Estimate

The new good faith estimate form consists of 3 pages, each representing a separate part of the disclosure:

1. Key Loan Terms And Total Settlement Charges. The first page of the GFE includes critical loan terms such as the loan amount, term, initial interest rate, initial payment (principal, interest, plus mortgage insurance), whether the interest rate can rise, whether the balance can increase (negative amortization), prepayment penalty, balloon payment, and escrow information. This page also discloses total origination charges (i.e. origination fees, loan processing fees, etc.) and total settlement charges. This page also specifies the "good through" dates for the interest rate and other settlement charges.

2. Summary Of Settlement Charges. The second page of the GFE summarizes the settlement charges, divided into two categories: Adjusted Origination Charges and Charges for Other Settlement Services. Adjusted Origination Charges include all fees received and retained by the lender or broker, including application fees, processing fees, origination fees, and yield spread premium paid to a mortgage broker.

Yield spread premiums will be disclosed differently in mortgage broker transactions than under the current regulation. Rather than a single amount shown as "POC" (paid outside closing), the yield spread premium will be disclosed as part of the origination charges paid to the broker by the borrower, then also shown as a credit to the borrower from the lender (based on the interest rate) that is subtracted from the amount owed to the broker. HUD believes that this treatment provides consumers with a more accurate disclosure of the nature of a yield spread premium.

3. Instructions and Shopping Information. HUD added a new page to the GFE, which consists of instructions to the borrower and information on which charges must remain static, which charges can increase up to 10%, and which charges can change freely. This page also contains the "tradeoff table" designed to permit the borrower to compare (if the credit union chooses to complete the table) two other similar loans: one with higher rate and lower closing costs, and one with a lower rate and her closing costs.

Finally, there is a "shopping chart" for the borrower to complete in order to compare key terms of up to four loans.

Tolerance for Variance from GFE Costs

The final rule retains the proposed limitations on variances between costs listed in the GFE and actual costs charged to the borrower. Barring changed circumstances, the final charge for the following items may not exceed the charge shown on the GFE:

- Origination fees
- Discount points or YSP credit to borrower based on rate (if rate is locked)
- Transfer taxes

Changed circumstances include discovery that information relied on in providing the GFE was inaccurate, discovery of new information that affects the transaction, or other circumstances such as boundary disputes, environmental problems, property located in a flood zone, or similar matters.

The aggregate amount charged to the borrower for the following services may not exceed the aggregate amount listed in the GFE by more than 10%:

- Lender-required settlement services where the lender chooses the provider
- Lender-required settlement services (including lender's title insurance) if the borrower uses a company identified by the lender
- Recording charges

Charges in excess of these tolerances constitute a violation of RESPA Section 5. Such violations do not create a private right of action for the borrower, but they can result in regulatory sanctions.

In addition, such violations may also result in remedies under other laws (such as the Oregon Unlawful Trade Practices Act, Washington Consumer Protection Act, or other similar state laws.) Lenders will have a 30 day cure period in which to adjust accounts in order to cure tolerance violations on closing costs.

Cont. p 3

SWEEPING RESPA CHANGES FINALIZED (CONT.)

Availability of Terms

The lender must specify the time period for which the interest rate is available (but HUD has not mandated any particular minimum time period). All other terms must be available for 10 business days after the GFE is provided.

The lender may not deny the loan or revise the loan terms based on information that the lender relied on in producing the GFE, unless that information changes or the lender determines that the information was inaccurate. For instance, the lender may not deny the loan based on the borrower's income if the lender relied on the borrower's income in producing the GFE and there is no change to the borrower's income (and no discovery that the borrower's income was misstated).

Settlement Statement

The new settlement statement includes cross-references to the GFE for each settlement cost line item. In addition, a third page has been added. This page includes a chart for explicit side-by-side comparison of charges from the good faith estimate against actual charges on the HUD1, categorized by the applicable change tolerances (no change permitted, 10% tolerance, and unlimited changes). The revised statement also includes a section for a summary of the key loan terms.

Use of Average Pricing

Effective January 16, 2009, the new rule permits lenders (and other providers) to use average pricing for any third party service except those whose charge is based on the property value or loan amount. For example, if the credit union determines that the average notary fee for a transaction is $20.00, the lender may charge borrowers a uniform fee of $20.00 even though actual fees vary from that amount. In calculating average charges, the credit union must define one or more classes of transactions for a particular time, geographic area, and type of loan. The time period must be between 30 days and six months. The geographic area and type of loan can be as narrow or as broad as the credit union chooses, including all loan types and areas served by the credit union.

If the credit union uses average charges, the averages must be recalculated at least every six months. The total amount paid by borrowers based on average charges for the service during the calculation period may not exceed the actual total amounts paid to the service provider(s) during that period. The credit union must retain all documentation of its average charge calculations for at least three years after any transaction in which the average charge was used.

Definition of "Required Use"

Additional disclosures are currently necessary when use of a particular settlement service provider is "required" by the lender. Under the new rule, the definition of "required" is expanded to include situations in which either: a) the lender actually requires a particular provider; b) use of the provider is necessary in order to obtain an economic incentive (such as a discount or rebate); or c) use of the provider is necessary in order to avoid an economic disincentive. This change goes into effect on January 16, 2009.

Changes from Proposal

The proposed regulation included some features that were revised or eliminated in the final rule. For example:

- *Comparative Table*. The proposal required lenders to complete a table comparing the requested loan with two other hypothetical loans: one with a lower interest rate and one with lower settlement costs. The final rule retains the table as part of the GFE, but completion of the table is now optional.
- *GFE Application.* The proposal required lenders to provide a GFE as soon as they received six pieces of information that constituted a "GFE application." HUD did away with this concept in the final rule. Lenders and brokers are not required to provide a GFE until they have received all information they deem necessary to process the application.
- *No Closing Script*. In the proposed regulation, a "closing script" was included in the settlement statement, and the closing agent was required to read the closing script out loud to the borrower. This approach was deleted from the final rule.

Cont. p 4

SWEEPING RESPA CHANGES (CONT.)

Time to Get Ready

These RESPA changes will require mortgage lenders of every kind to reevaluate and rework some of their policies and procedures to meet the new requirements. You can bet that over the course of the next year some twists and unforeseen problems will develop. We will update clients on these issues as developments occur. In the meantime, you can download the new forms and instructions from our website at www.fwwlaw.com/Resources/Newsletters

Hal Scoggins

MAJOR EXPANSION TO CUSO RULE

On December 18, 2008, the NCUA Board adopted in final form a number of significant changes to the NCUA CUSO Rule (Part 712). The new CUSO Rule changes include a series of expanded CUSO activities and services along with a major extension of the regulatory reach of NCUA and state regulators over CUSO operations.

NCUA Regulatory Reach Over State CUSOs

NCUA's CUSO Rule has always only applied to CUSOs of federal credit unions. Thus state chartered credit union investments in CUSOs and their CUSO operations, that did not involve FCU owners, have been regulated solely by their applicable state credit union regulators. This is no longer the case. Through a new addition to NCUA's insurance regulation Section 714.222, NCUA has extended its regulatory reach over CUSOs of any federally insured credit union. While this regulatory reach does not give NCUA complete regulatory enforcement authority, the door is now open. NCUA's oversight of CUSOs of federally insured credit unions involves significant changes for state CUSOs in two areas:

EXPANSION CUSO RULE (CONT.)

NCUA Access to CUSO Books and Records. The NCUA will now have full and complete access to any books and records of any CUSO with which a federally insured credit union has invested, loaned to or even contracted for a CUSO product or service.

New CUSO Formation Requirements. Federally insured state credit unions must now satisfy two new requirements before forming a CUSO. Like federal credit unions, state credit unions must now obtain a legal opinion letter before investing in or loaning to a CUSO. The opinion letter must advise the credit union that their potential liability exposure is limited to the amount invested in and loaned to the CUSO. In addition, credit unions must ensure that the CUSO is formed and operated in a manner that demonstrates the separate corporate existence of the credit union and CUSO. While legal corporate separateness is generally a matter of good business practice, this is now a regulatory requirement.

New CUSO Activities and Services

NCUA expanded it categories of permissible activities and services for FCU CUSOs and provided new examples within existing categories. In total there are 11 new or clarified activities, some of which were informally approved by NCUA earlier in 2008.

The new CUSO activities include:

- Payroll processing services;
- Credit card origination;
- Real estate settlement services;
- Employee leasing services;
- Business counseling and consultant services;
- Buying and selling participation interests in business loans; consumer mortgage loans; and student loans;
- Stored value products;
- Purchasing and servicing of nonperforming loans; and
- Referral and processing of denied loan applications.

As you can note, the new CUSO Rule provides CUSO power to engage in a much broader range of loan activities than before.

Cont. p 5

EXPANSION CUSO RULE (CONT.)

Relaxed Customer-based Test

Historically, FCUs could only invest in or loan to a CUSO if the CUSO "primarily serves credit unions, its membership or membership of credit unions contracting with the CUSO." This fundamental service requirement known as the "customer-based test" has always been the barrier to keep a CUSO from simply serving the general public rather than members and credit unions. Incidentally, for LLC CUSOs of state chartered credit unions, the customer-based test has also provided one good guideline for determining what income is subject to UBIT. Under the revised CUSO Rule, for certain CUSO activities, the scope of the customer-based test is no longer confined to members and credit unions.

With respect to activities related to selling negotiable checks, traveler's checks, money orders, handling domestic and international electronic funds transfers and check cashing, NCUA has relaxed the customer base requirement to include "persons eligible for credit union membership." This relaxed standard will permit CUSOs to extend their nonmember business activities in these areas yet remain in full compliance with the customer-based test under Section 712.3(b).

CUSOs of state chartered credit unions should note however, that the increased business opportunities of serving nonmembers also brings increased exposure to UBIT for such nonmember income.

Brian Witt

THE PENALTIES OF REWARDS CHECKING

Many credit unions are now offering checking products that reward account holders with higher rates if specific transaction criteria are met. Unfortunately, rewards checking products must be carefully structured in order to avoid inadvertent Truth-in-Savings (TIS) violations.

REWARDS CHECKING (CONT.)

To the extent a credit union offers a rewards checking account but provides for no dividends or interest if the various service or transaction features are not satisfied, the credit union will have TIS violations.

For example, XYS Credit Union offers 4.50% APY on its Rewards Checking, provided the member signs up for online banking e-statements; and makes at least 10 debit card purchase transactions per month. If the member fails to make all 10 debit card purchases, then dividends are paid for the month. This type of account structure violates one of the fundamental requirements of TIS that dividends must be paid on the full balance in the account each day, provided minimum balance requirements are met. In the example above, payment of dividends was based on meeting transaction requirements, not a minimum balance requirement - this is a TIS no, no.

One solution to properly structuring a rewards checking account to avoid TIS violations is to price the account as a tiered rate account. And remember that 0% APY is not considered a rate by NCUA. Thus if a member fails to meet the reward checking requirements, the consequence is a much lower rate, but not a total loss of dividends.

Another common TIS violation in these accounts is the failure to properly disclose APY in the rate sheet/TIS disclosures. For a tiered rate account in which the rate for a tier applies to the portion of the balance in that tier, each tier other than the first must disclose a range of possible APYs. For example, on an account paying 5.00% APY on the first $25,000 and .25% APY on balances over $25,000, the APY for the first tier is disclosed as 5.00%. The APY on the second tier should be disclosed as a range from 5.00% (the APY for a balance of $25,000.01) to .25% (the APY that would apply for an extremely large balance—say more than $20 million). Oh, the rewards of reading our newsletter…

Brian Witt

NEW CREDIT CARD RULES—UNFAIR/DECEPTIVE PRACTICES AND REG. Z UPDATES

On December 18, 2008, the Federal Reserve Board (FRB), National Credit Union Administration (NCUA) and Office of Thrift Supervision (OTS) issued their final

Cont. p 6

NEW CREDIT CARD RULES AND REG Z UPDATES (CONT.)

rule on unfair or deceptive acts or practices with respect to credit cards. The new unfair or deceptive practices rule sets forth a series of prohibited credit card practices that are now considered unfair or deceptive for consumer members.

The federal agencies joined together in issuing the rule to provide uniformity among depository institutions issuing credit cards. However, NCUA's final rule applies only to federal credit unions. State chartered credit unions, within the jurisdiction of the FTC, are not covered by the rule. The agencies' proposal also included similar unfair practices related to overdraft protection programs, but the agencies deferred final action on those rules.

On the same day the FRB issued significant revisions to Regulation Z (Reg. Z) that also affect credit card provisions. Both sets of new rules become effective July 1, 2010. This article briefly outlines the various new rules affecting credit unions' credit card programs.

Prohibited Credit Card Practices

Under the new rule there five (5) credit card practices that are considered unfair or deceptive and thus prohibited.

Reasonable Time to Make Payments. Credit unions are prohibited from treating a payment as late unless members have been provided with a reasonable amount of time to make payment. The rule creates a safe harbor for credit unions that adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date. (The FRB also adopted 2 additional proposals under Reg. Z that ensure members receive a reasonable amount of time to make payments.)

Payment Allocation. When different APRs apply to different balances, credit unions would be prohibited from allocating any amounts paid in excess of the minimum payment in a manner that is less beneficial to members than one of two prescribed methods: applying the entire amount first to the balance with the highest APR or splitting the amount pro rata among the balances.

Interest Rate Increases on Outstanding Balances. Credit unions are prohibited from increasing the APR on an outstanding balance unless certain exceptions apply. Credit unions are permitted to increase a rate disclosed at account opening at the expiration of a specified period, provided the increased rate was also disclosed at account opening. After the first year following account opening, the credit union is permitted to conduct a periodic credit evaluation and increase the APR based on changes in creditworthiness, provided a 45-day advance notice is provided (see FRB Reg. Z change). However, except for this one-time change credit unions may not change the APR based on creditworthiness. This rate increase prohibition would not apply where a variable rate increases due to the operation of an index, where a promotional rate has expired or is lost, or where the minimum payment has not been received within 30 days after the due date.

Balance Computation Methods (Double Cycle Billing. Credit unions are prohibited from computing finance charges on outstanding balances based on balances in billing cycles preceding the most recent billing cycle. This rule prohibits credit unions from reaching back to the prior billing cycle when calculating the amount of interest charged in the current cycle.

Fees/Deposits Charged to the Account for the Issuance of Credit. Credit unions are prohibited from charging to the credit card account fees or security deposits for the issuance or availability of credit (such as account-opening fees or membership fees) if those fees or deposits use the majority of the available credit on the account. The rule also would require spreading over the first six (6) months of the account, fees or deposits that exceed 25% of the credit limit, rather than charging them as a lump sum at account opening. Credit unions would be allowed to issue credit cards that require a member to pay a security deposit if that deposit is not charged to the account.

NCUA Enforcement

The federal agencies, including NCUA have wide latitude to determine what remedy is necessary to prevent an unfair or deceptive act or practice so long at the remedy has a reasonable relation to the act or practice.

Cont. p 7

NEW CREDIT CARD RULES AND REG Z UPDATES (CONT.)

Also the final rule does not contain the definitive list of practices that might be considered unfair. Therefore the final rule does not limit the ability of NCUA to consider and determine other acts that are unfair.

FRB's Reg. Z. Credit Card Updates

As part of its comprehensive overhaul of the open-end credit rules under Reg. Z, the FRB implemented significant changes for credit cards. These changes impact certain credit card practices but mainly overhaul the disclosures credit unions provide members throughout the lifecycle of the credit card account, from advertising to changes in terms.

Advertising

Fixed Rates. Credit unions may advertise a rate as "fixed" only if a time period is specified for which the rate is fixed and the rate will not increase for any reason during that time, or if a time period is not specified, if the rate will not increase for any reason while the credit card plan is open.

Credit Card Applications and Solicitations

Updated Tabular Format. The FRB has updated the tabular format requirements for the summary of the key credit card account terms including the requirements related type size, the boldface type for certain key terms, and the placement of the disclosure information.

Disclosure Content Changes. Credit unions must disclose the duration for any penalty rates, disclosures for variable rates and grace period offerings are revised.

Account-Opening Credit Card Disclosures

The cost disclosures provided at the opening of a credit card have been revised to make the information more conspicuous. Similar to the credit card applications and solicitation disclosures, key credit card terms must be disclosed in a summary table at account opening.

Periodic Statement Disclosures

Effective APR. The requirement to disclose an "effective annual percentage rate" has been eliminated and replaced with new disclosures of interest and fee totals for the month and year-to-date.

Interest Charges and Fees. There are significant formatting changes for periodic statements including: separately grouping interest charges and fees, with a monthly total for each, and itemization according to the type of transaction. Separate year-to-date totals for fees and interest charges are also required.

Minimum Payment Disclosure. As required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a new disclosure of the effect of making only the minimum required payment on the time to repay balances must be made.

Changes in Terms

Notice for Changes in Terms. The requirements for providing written change in terms notices are expanded to include more instances when notices are required and the advance notice period is increased from 15 to 45 days.

Notice for Penalty Rate Increases. Credit unions must provide 45 days' prior notice before the credit union increases a rate due to the member's delinquency or default or as a penalty.

Summary Tabular Disclosure. When a change in terms or penalty-rate notice accompanies a periodic statement, the credit union must provide a tabular disclosure on the front side of the periodic statement showing the key terms being changed.

Reasonable Time to Make Payments

The FRB revised Reg. Z to ensure that credit unions do not set cut-off times for mailed payments earlier than 5 p.m. at the location specified by the credit union for receipt of such payments. In a similar rule, the FRB provided that if the due date for payment is a day on which the US Postal Service does not deliver mail or the credit union does not accept payment by mail, the credit union may not treat a payment received by mail the next business day as late for any purpose.

Fee Refunds

The FRB revised Reg. Z to require creditors, that collect or obtain a consumer's agreement to pay a fee before

Cont. p 8

NEW CREDIT CARD RULES (CONT.)

providing account-opening disclosures, to permit that consumer to reject the plan after receiving the disclosures and, if the consumer does so, to refund any fee collected or to take any other action necessary to ensure the consumer is not obligated to pay the fee.

Credit unions are now subject to some major changes in their credit card practices and disclosures, however, the FRB and NCUA rules are 18 months away, which should provide plenty of time to implement compliance changes.

Brian Witt

(Compliance Note – the FRB's changes to the Reg Z open-end rules will impact all areas of credit union open-end consumer lending (except HELOCs) bringing significant new disclosure and compliance requirements. For over 20 years, Farleigh Wada Witt has provided credit union clients with complete consumer loan programs (forms, agreements, compliance manuals, etc.) We are currently reviewing the FRB's changes and will be issuing soon a comprehensive compliance overview of the FRB's open-end credit changes. Prior to our release, we can leave you with one bright point. Contrary to many fears in the industry, the FRB did not kill open-end consumer lending. Open-end consumer lending for credit unions will continue with a fresh new look.)

NEW FMLA REGULATIONS: THE GOOD, THE BAD, AND THE UGLY

The Department of Labor's new regulations regarding the federal Family Medical Leave Act (FMLA) become effective January 16, 2009. FMLA is the federal law that provides eligible employees the right to take unpaid leave for: a serious health condition, the birth or care of a newborn or adoption or foster care placement of a child; to care for an immediate family member with a serious health condition; to care for servicemembers, or for a qualified exigency relating to a servicemember's active duty. The Department of Labor's final rule on FMLA implements the first-ever amendments to FMLA.

The new regulations, which are no less than 762 pages long, attempt to improve communication between employers, employees, and health care providers as well as address the recent passage of the military family leave provisions in the National Defense Authorization Act

NEW FMLA REGULATIONS (CONT.)

and recent U.S. Supreme Court cases on FMLA. We encourage employers to familiarize themselves with the new regulations and to update their policies.

Notice to Employees

The first step covered employers should take is to ensure they have provided their employees with the required general notice about FMLA. Employers can accomplish this by doing the following: posting an updated FMLA poster, including a FMLA policy in the employee handbook, providing a copy of the DOL's form notice available for free on the Department of Labor's website or at www.fwwlaw.com – (WHD Publication 1420 Revised January 2009).

Military Family Leave

Next, employers should take time to learn about the new military leave provisions under FMLA which attempt to help families of our military who are faced with the difficulty of caring for an injured servicemember or a family member departing for active duty. Under FMLA, there are two types of military leave.

First, eligible employees who are family members of covered servicemembers will be able to take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious illness or injury incurred in the line of duty on active duty.

Second, family members with a covered military member serving in the National Guard or Reserves will be eligible for 12 weeks of FMLA leave to use for any qualifying exigency arising out of the military member's active duty or call to active duty. Qualifying exigency is broadly defined to include: short notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling; rest and recuperation; post-deployment activities; and additional activities not encompassed in other categories but agreed to by the employer and employee. The DOL has created two new certification forms for employers to use for military family leave.

The DOL's final rule incorporates a number of additional changes. Below is a summary of those that will most likely impact employers.

Cont. p 9

NEW FMLA REGULATIONS (CONT.)

Employee Notice to Employer

Under FMLA, employees are still required to provide advance notice of the need for FMLA leave. Prior to the new rule, employees have been able to provide notice of the need for FMLA up to two full business days after an absence. In an attempt to curb unscheduled absences and disruption of the employers' business, employees who do not provide advance notice must now follow the employer's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

Medical Certification

The DOL's final rule acknowledges the need to comply with HIPAA's privacy rule, and restricts who can contact an employee's health care provider on behalf of the employer to the following: a health care provider, human resource professional, a leave administrator, or a management official, but in no case may the employee's direct supervisor contact the employee's health care provider. Also, the employer may not ask for information beyond the information requested in the federal medical verification form. The final rule updates the medical verification forms and the procedure for when an employee provides inadequate information.

Use of Paid Leave

While FMLA entitles eligible employees to unpaid leave, employers may require use of accrued paid vacation, personal, family or medical leave. In the past the different types of leave were subject to different procedural requirements. Now, all types of paid leave will be treated the same and the employee must follow the same terms and conditions of the employer's policy that apply to other employees for the use of the different types of paid leave.

As stated above, the 762 pages of regulations cover many aspects of FMLA and we encourage you to contact us to ensure compliance or to answer questions. If you would like further advice, please contact Kelly Tilden or Karen Saul.

Kelly Tilden

WASHINGTON MORTGAGE LOAN DISCLOSURE SUMMARY RULES FINALIZED

Adding to the drumbeat of new mortgage regulations, the Washington Department of Financial Institutions (DFI) has completed its rulemaking on mortgage loan disclosures required by Washington SHB 2770. Although the new law has been in effect since June 12, 2008, the final regulations clarify some of the questions and fill in some of the gaps left by the new law.

Clarifications of Disclosure Requirements

The new regulations clarify several questions left open by the disclosure statute. First, SHB 2770 left it up to DFI to determine the extent to which the new law applied to home equity lines of credit. The DFI's rules exclude home equity lines of credit from the requirement to provide the mortgage disclosure summary (though not from the substantive restrictions imposed by the statute).

Second, it was not clear whether the requirement for redisclosures after a change in terms would result in a delay in loan signing or funding (because the statute requires redisclosure by the earlier of three days after the change or three days before closing).

The DFI's rules resolve that problem by creating a definition of "closing." For non-rescindable (i.e. purchase money) transactions, "closing" means the signing of the loan documents. For such transactions, the redisclosure must be given 3 days before the documents are signed, which might delay closing in some cases.

This also raises the issue of whether the disclosure requirement applies to non-purchase transactions. The definition of "residential mortgage transaction" indicates that it includes purchase money transactions (although there is additional language in the definition that makes this less clear).

Moreover, there is no reason to refer to rescindable transactions in the definition of "closing" if only purchase transactions are covered. The DFI has confirmed that the disclosure requirement only applies to purchase transactions; equity loans and refinancings are not covered.

Cont. p 10

WA LOAN DISCLOSURE (CONT.)

Finally, DFI set the rules for what kind of changes in terms will require a redisclosure. Credit unions must redisclose if any of the following occur:

- Increase of 5% or more in principal amount
- Increase in interest rate by more than 0.125%
- Change from fixed to adjustable rate or vice versa
- Increase of $500 or more in loan origination fee, discount points, Yield Spread Premium, or any other fee treated as a finance charge under Regulation Z
- Adding or deleting a prepayment penalty
- Adding or deleting a balloon payment
- Changing whether taxes/insurance are collected with loan payment
- Adding or deleting cost based on reduced documentation

Model Forms

SHB 2770 requires DFI to create model forms, but does not mandate that creditors use the model forms. The DFI created two model disclosure summary forms: one for fixed rate transactions and one for variable rate transactions. These forms are a dramatic improvement from the originally proposed form. With that said, there are still some additional items that we believe should be included in order to minimize borrower confusion and disputes.

For example, we believe it is helpful to include a reminder that loan terms are subject to changes based on numerous factors, and that rates are not locked in unless a lock-in agreement is signed. Also, borrowers should be informed that other fees may be charged in addition to the fees disclosed on the form.

While the DFI created separate models for fixed and variable rate transactions, some credit unions will prefer to use a single form for all transactions. We have prepared a "unitary" disclosure summary that can be used for both fixed and variable rate transactions, and have also prepared separate fixed and variable rate forms. Please call or e-mail Hal Scoggins at hscoggins@fwwlaw.com if you would like us to provide you with the forms we have prepared.

Hal Scoggins

FARLEIGH WADA WITT NEWS

Kelly Tilden Joins Firm

We are pleased to announce that Kelly Tilden, formerly of Black Helterline LLP, has joined the firm as an associate and member of our Employment, Litigation, and Corporate practice groups.

Kelly's practice will continue to focus on all aspects of employment law and litigation, including the hiring, discipline, and termination of employees, family medical leave, wage and hour laws, and compliance with state and federal civil rights laws.

She advises clients on issues of discrimination, workplace harassment, employee misconduct, and provides in-house training on these and related employment issues. In addition, Kelly counsels clients on policies and policy updates and develops employee policy manuals.

In her litigation practice, Kelly represents individuals and businesses in a broad range of employment and business litigation matters including the enforcement of non-competition agreements, wage and hour issues, and business disputes such as construction law claims, real estate issues, contact disputes, debt collection, and product liability claims.

"We are thrilled to have Kelly join us," said Dean Sandow, president and managing shareholder of the firm. "She has extensive experience in employment law and litigation and also provides in-house training that is highly valued by our clients. Kelly is a great addition to our employment practice and our firm."

Kelly earned her J. D. from Willamette University College of Law in 2001, and her A.B. in French and Art History, *cum laude*, from Muhlenberg College in Allentown, PA in 1993. In addition, Kelly studied at the Universite de Paris IV, Le Sorbonne in Paris, France from 1990-1991, and is fluent in French.

"She has extensive experience in employment law and litigation and also provides in-house training that is highly valued by our clients."

CREDIT UNION NEWS & UPCOMING EVENTS ...

Current Issues in Credit Unions (CIICU) Podcast: Episode 32 of Current Issues in Credit Unions is now assessable through direct download at www.ciicu.libsyn.com. CIICU is a monthly podcast hosted by Brian Witt and three other attorneys involved in the credit union movement regarding credit unions and the legal issues they face in the course of business. Topics for this podcast include new credit card rules, final CUSO changes, social media tools, and national branding programs.

January 20 - WCUL Bank Secrecy Act Webinar: Hal will present a Bank Secrecy Act Webinar for the Washington Credit Union League on January 20, 2009, from 10:00 - 11:30 am PST. Credit union managers, frontline staff, and compliance professionals will benefit from this program. For more information, please visit WCUL's website.

February 11 and 12 - WCUL Vendor Management Seminars: Brian will present a comprehensive session on the requirements for developing and maintaining a credit union vendor management program, including NCUA guidelines and practical issues for effective vendor relations. February 11 in Federal Way and February 12 in Vancouver, Washington. For more information, please visit WCUL's website.

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Who stands behind your credit union compliance?

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