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This document and any attachments are superseded by (OCC 2010-14).

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Montrice Godard Yakimov *Montrice Godard Yakimov*
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SUBJECT: Truth in Lending Act (TILA) Update

Time to Pay: Open End Credit

Through the Credit Card Accountability Responsibility and Disclosure (Credit CARD) Act of 2009, TILA was expanded to address the time consumers receive to repay open end credit. However, these provisions were themselves amended on November 6, 2009, through the Credit CARD Technical Corrections Act of 2009.¹ As a result, § 163(a) of TILA now states that a creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement is mailed or delivered to the consumer at least 21 days before the payment due date. This correction was effective November 6, 2009.

As originally enacted, § 163(a) of TILA applied not only to credit cards, but to all open end credit, including home equity lines of credit (HELOCs). Because HELOCs are home-secured, savings associations that offer them must also comply with an OTS rule that prohibits assessing a late fee if the borrower's payment is received within 15 days after it is due.² To accommodate this rule, many thrifts have drafted their HELOC agreements to require payment by the 15th of the month, but defer charging a late fee until the 30th day. Since contract terms are not easily changed, it has been difficult for associations to adjust their practices to comply with the requirement that consumers be given 21 days to remit payment. The correction discussed above means that this requirement will only apply to credit card accounts.

However, thrifts should note that TILA § 163(b) remains unchanged. Pursuant to § 163(b), when an open end creditor provides a grace period permitting consumers to repay without incurring a finance charge for a period of time after payment is due, the grace period must last at least 21 days. Moreover, the creditor must transmit periodic statements to consumers at least 21 days before their payment is due. Although HELOCs are not typically structured to include a grace period, thrifts should be aware that if they provide one, the requirements of TILA § 163(b) will apply.

¹ Public Law No. 111-93.

² See 12 CFR § 560.33.

Repayment Ability Requirement for Higher-Priced Mortgage Loans: Application to Short Term Balloon Loans

Regulation Z implements TILA and the Home Ownership and Equity Protection Act. In 2008, the Federal Reserve Board (the Board) revised Regulation Z to prohibit creditors from making “higher-priced” mortgage loans³ “based on the value of the consumer’s collateral without regard to the consumer’s repayment ability as of consummation.”⁴ This rule and other protections for consumers took effect for mortgage applications received on or after October 1, 2009.

Under the rule, a creditor has a presumption of compliance if the creditor follows certain procedures, including verifying the borrower’s income.⁵ Creditors extending balloon loans with terms of seven years or more can have the presumption of compliance if the procedures are followed. As a practical matter, this means that such creditors are not required to consider the borrower’s ability to repay the balloon payment in order to be presumed compliant with Regulation Z “repayment ability” requirements for higher priced mortgages.

However, for balloon loans with terms of less than seven years (short-term balloon loans), there is no presumption of compliance. For such loans, compliance with the repayment ability rule is determined based on the facts and circumstances that relate to a particular loan. On November 9, 2009, the Board issued guidance reminding creditors that they have an affirmative duty to use prudent underwriting standards, including for short-term balloon loans. The guidance further explains that after considering the consumer’s income, employment, obligations, and assets other than the collateral, the creditor should determine that the value of the collateral is not the basis for repaying the obligation, including the balloon payment. OTS supervised institutions should take this guidance into consideration as part of their effort to comply with Regulation Z. A copy of the guidance is available at:

<http://www.federalreserve.gov/boarddocs/caletters/2009/0912/caltr0912.htm>.

In addition, thrift institutions remain responsible for managing credit risk and making loans in a safe and sound manner. For guidance on these matters, thrifts should continue to refer to the OTS Examination Handbook and related supervisory issuances.

For more information on the recent amendment to the payment timing rules, please contact Suzanne McQueen, Consumer Regulations Analyst at (202) 906-6459 or Suzanne.mcqueen@ots.treas.gov. For more information on the repayment ability requirements for higher priced mortgages, please contact Rhonda L. Daniels, Sr. Compliance Program Analyst, at (202) 906-7158 or Rhonda.daniels@ots.treas.gov.

³ A closed-end loan is a “higher-priced mortgage loan” if it is secured by a first lien on the consumer’s principal dwelling and has an annual percentage rate that exceeds the average prime offer rate by 1.5 percentage points for first lien loans, or by 3.5 or more percentage points for subordinate lien loans. 12 CFR § 226.35(a)(1).

⁴ 12 CFR § 226.34(a)(4).

⁵ 12 CFR § 226.34(a)(4)(iii).