

National Association of Federal Credit Unions Compliance Update

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Agenda

- Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)
- Credit Card Accountability Responsibility And Disclosure Act Of 2009 (Credit CARD Act)
- Other Compliance Items
 - Unfair and Deceptive Acts and Practices (UDAP)
 - Reverse Mortgages
 - Fair and Accurate Credit Transactions Act (FACTA)



Agenda

- Truth in Lending - Closed End Real Estate
- Truth in Lending - Open End Home Equity Line Of Credit



Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)



SAFE Act

- Act versus Rule
- NMLS versus NMLSR
- Registration versus License



SAFE Act

Housing and Economic Recovery Act of 2008

Division A, Title V

Purpose

Increase Uniformity

Reduce Regulatory Burden

Enhance Consumer Protection

Reduce Fraud

Timing



1503 - Key Definitions

Depository Institution

Loan Originator

Takes residential mortgage loan application

Offers or negotiates terms of residential mortgage loan for compensation or gain

Nationwide Mortgage Licensing System and Registry (NMLSR)



1503 - Key Definitions

- Registered Loan Originator
- Residential Mortgage Loan
- State Licensed Loan Originator
- Unique Identifier



1504 - License or Registration Required

Requirements of Loan Originator

Obtaining and Annually Maintaining

- Registration; or
- State License and Registration

Unique Identifier

Independent Contractors

State Licensed Loan Originator



1505 - State License & Registration

Background Check – Applicant Must Furnish:

- Fingerprints
- Personal History and Experience
- Authorization
 - Credit Report
 - Administrative, Civil, or Criminal Findings



1505 - State License & Registration

- License Issuance Standards
- License Revocation
- Felony Conviction, Guilty Plea, or Nolo Contendere
- Financially Responsible and of Good Character
- Pre-License Education



1505 - State License & Registration

- License Issuance Standards
 - Testing
 - Reports of Condition



1506 - State License Renewal

- License Issue Standards
 - Renewals
- Continuing Education Requirements
 - Annual requirement
 - Courses approved by NMLS
 - Courses must rotate



1507 - Federal Registration

- Registered Loan Originator
 - Employee Must Furnish:
 - Fingerprints
 - Personal History and Experience
 - Authorization
 - Administrative, Civil, or Criminal Findings
- Unique Identifier Required
- De Minimis



Other Sections

- 1508 – Housing and Urban Development
- 1509 – HUD Backup Authority
- 1510 – Fees
- 1511 – Background Checks
- 1512 – Confidentiality
- 1513 – Liability Provisions



Other Sections

- 1514 – HUD Enforcement Authority
- 1515 – State Examination Authority
- 1516 – Congressional Reports
- 1517 – Default and Foreclosure Study and Reports



SAFE Act

- How It Works
 - Loan Originator Enters Information
 - Credit Union Enters Information
 - Credit Union Verifies Loan Originator Information and Employment Status

<http://www.stateregulatoryregistry.org>



What's Next?

- Proposed Rule:
 - Federal Register (June 9, 2009)
 - <http://edocket.access.gpo.gov/2009/pdf/E9-13058.pdf>
 - Public Comments
- Final Rule and Preamble
 - NCUA Rules & Regulations Part 761
- Examination Guidelines
 - AIREs Questionnaire
 - Letter to Credit Unions or Regulatory Alert



Credit Union Implementation

Policies & Procedures:

- Employee Registration
- Employee Registration Maintenance
- Program Oversight (Audit)
- Employee Information Verification
- Employee Disciplinary Action
- Unique Identifier Disclosure



Credit Card Accountability Responsibility And Disclosure Act Of 2009 (Credit CARD Act)



Credit CARD Act

- 5 Titles
 - Title I – Consumer Protection
 - Title II – Enhanced Consumer Disclosures
 - Title III – Protection of Young Consumers
 - Title IV – Gift Cards
 - Title V – Miscellaneous Provisions



Section Applicability

Section	Credit Cards	Open End	Section	Credit Cards	Open End
101	X	X*	202	X	X*
102	X		203	X	
103	X		204	X	X*
104	X		205	X	X
105	X		301	X	
106(a)	X		302	X	X
106(b)	X	X	303	X	
107	X	X	304	X	X*
109	X		305	X	
201	X	X	504	X	

*One or more requirements may apply only to credit cards or only to open end credit. Lesser # of the requirements.
401-403: Gift cards, gift certificates, store gift cards.



Requirements-Aug 20, 2009

- 101(a): Requires a creditor to provide written notice not later than 45 days prior to the effective date of:
 - any increase in an annual percentage rate (APR); and
 - any significant change in the terms of the cardholder agreement (including an increase in fees or finance charges).
- 106(b): Requires each periodic statement of payment due to be mailed at least 21 days before the payment due date or grace period expiration date.



Requirements-Feb 22, 2010

- 101(b):
 - Prohibits a creditor from increasing any annual percentage rate (APR) of interest, fee, or finance charge applicable to the existing balance on an open end consumer credit card account unless specified conditions are met.
 - Prohibits a creditor from changing the terms governing repayment of an outstanding balance, but permits the creditor to provide the obligor with specified repayment methods.



Requirements-Feb 22, 2010

101(d):

Declares that no increase in any APR, fee, or finance charge, with certain exceptions, shall be effective before the end of the one-year period beginning on the date on which the account is opened.

States that, in the case of a promotional rate, no written notice of an increase in the APR shall be effective before the end of a six-month period beginning from the date the promotional rate takes effect.



Requirements-Feb 22, 2010

102(a):

Prohibits imposition of a finance charge, with certain exceptions, upon a credit card account balance that is based on balances for days in billing cycles preceding the most recent billing cycle (double billing cycle) as a result of the loss of any grace period. Prohibits penalties for on-time payments.

Prohibits the charge of an over-the-limit fee unless the consumer expressly permits the creditor to complete the relevant transaction (opt-in).



Requirements-Feb 22, 2010

102(a):

Allows imposition of an over-the-limit fee only once during a billing cycle. Prohibits its imposition more than once in two subsequent billing cycles with respect to such excess credit.

Prohibits a creditor from imposing a separate fee related to the method of payment (by mail, electronic transfer, telephone authorization, or other means), unless the payment involves an expedited service by the creditor's service representative.



Requirements-Feb 22, 2010

- 103: Limits the use of the term "fixed," in conjunction with an APR or applicable interest rate, to a rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account.



Requirements-Feb 22, 2010

- 104:
 - Requires a creditor to promptly credit a consumer's payment if received by 5:00 pm on the due date.
 - Requires a card issuer, upon receipt of payment, to apply amounts in excess of the minimum payment amount first to the balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.



Requirements-Feb 22, 2010

- 104:
 - Requires a creditor to allocate the entire amount paid in excess of the minimum payment to a balance on which interest is deferred during the last two billing cycles immediately preceding the expiration of the period during which interest is deferred.
 - Prohibits a card issuer from imposing any late fee or finance charge for a late payment under certain conditions.



Requirements-Feb 22, 2010

- 105:
 - Prescribes a standard for the initial issuance of subprime or "fee harvester" cards.
 - Prohibits payment of any fee from the credit made available by the card (other than any late fee, over-the-limit fee, or any fee for a payment returned for insufficient funds).



Requirements-Feb 22, 2010

- 106(a): Requires the payment due date to be the same day each month, or the next business day if such date falls on a weekend or holiday.
- 107: Revises civil penalties for creditor noncompliance with TILA.
- 109: Requires a card issuer to consider the ability of the consumer to make required payments as a prerequisite to opening any consumer credit card account, or increasing any credit limit.



Requirements-Feb 22, 2010

- 201:
 - Revises and expands requirements for mandatory minimum payment disclosures a creditor must furnish.
 - Directs the Federal Reserve Board to issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for providing information about accessing credit counseling and debt management services.



Requirements-Feb 22, 2010

- 202:
 - Revises requirements relating to late payment deadlines.
 - Requires specified disclosures relating to increases in interest rates for late payments.
 - States that the date on which the obligor makes a payment at the local branch or office of a creditor financial institution shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.



Requirements-Feb 22, 2010

- 203: Requires a card issuer that has changed or amended any term of the account since the last renewal, that has not been previously disclosed, to make such a disclosure to the consumer by a certain deadline.
- 204: Requires creditors to post on an Internet site the written agreement between the creditor and the consumer for each open-end consumer credit plan.



Requirements-Feb 22, 2010

- 205: Amends the Fair Credit Reporting Act to require any advertisement for a free credit report to disclose prominently that free credit reports are available under federal law at AnnualCreditReport.com (or other authorized source).



Requirements-Feb 22, 2010

301:

Prohibits extensions of credit to consumers under age 21, unless the consumer has submitted a written application that meets specified requirements:

requires any such application to be signed by a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account; or

requires submission, by the consumer, of financial information indicating an independent means of repaying the proposed extension of credit.



Requirements-Feb 22, 2010

302: Amends the Fair Credit Reporting Act to permit a consumer reporting agency to furnish a consumer report regarding credit or insurance transactions that are not initiated by the consumer only if:

the report does not contain a date of birth that shows that the consumer has not attained the age of 21 or,

if the date of birth on the consumer report shows that the consumer has not attained the age of 21, the consumer consents to the furnishing of such report.



Requirements-Feb 22, 2010

303: Requires approval by the jointly liable party to increase credit lines for accounts for which a parent, legal guardian, spouse of the consumer, or any other individual is jointly liable.

304:

Requires an institution of higher education to publicly disclose any agreement made with a card issuer or creditor for the purpose of marketing a credit card.

Prohibits a card issuer or creditor from offering to a student any tangible item as inducement.



Requirements-Feb 22, 2010

- 305: Requires each creditor to submit an annual report to the Federal Reserve Board containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with respect to any college student credit card issued to a college student at such institution.



Requirements-Aug 22, 2010

101(c): Requires a creditor that increases the APR based upon factors including the obligor's credit risk, market conditions, or other factors to, at least once every six months:

- consider changes in such factors in subsequently determining whether to reduce the APR for such obligor; and
- reduce the APR when a review indicates a reduction.



Requirements-Aug 22, 2010

102(b): Requires any penalty fee or charge to be reasonable and proportional to the omission or violation involved.

401: Amends the Electronic Fund Transfer Act to declare unlawful:

- the imposition of a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card; and
- the sale or issuance of a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.



Credit CARD Act Guidance

- Regulatory Alerts
 - 09-RA-07 Amendments to Regulation Z, Truth in Lending
 - 09-RA-10 Amendments to Regulation Z, Truth in Lending



Other Compliance Items



Other Compliance Items

- Regulation AA – Unfair or Deceptive Acts or Practices
- Reverse Mortgages
- Fair and Accurate Credit Transactions Act (FACTA)
- Regulation Z – Truth in Lending
 - Home Equity Line of Credit
 - Closed End Real Estate Lending



Examination Program

- Upcoming Revised NCUA Exam Procedures
 - Mortgage Disclosure Improvement Act of 2008
 - Higher Education Opportunity Act (HEOA)
 - TILA and Home Ownership and Equity Protection Act (HOEPA)
 - TILA open end revisions - Prohibition of Certain Unfair Credit Card Practices
 - FACTA Furnishers Rule (312)
 - FACTA Affiliate Marketing Exam Procedures (624)


