

MEMORANDUM

To: Subscribers to *Federal Fair Lending and Credit Practices Manual*

From: A.S. Pratt & Sons

Subject: Highlights

The enclosed update includes compliance guidance for recent changes in a wide range of fair lending laws and regulations.

New material in this update includes the following:

Home Mortgage Disclosure Act

- **Higher-priced loans—rule effective October 1, 2009.** On July 30, 2008, the Federal Reserve Board published a proposed rule to amend Regulation C to revise the rules for reporting price information on higher-priced loans. The FRB adopted the rule in final form on October 24, 2008, effective October 1, 2009. Compliance is mandatory for loan applications taken on and after that date and for loans that close on and after January 1, 2010 (regardless of their application dates). The revision conformed these rules to the definition of “higher-priced mortgage loan” adopted by the FRB under Regulation Z (Truth in Lending) contemporaneously with the Regulation C proposal. (See ¶ 1.01[4][e].)
- **HMDA Plus.** Comptroller of the Currency John Dugan proposed expanding the amount of data that larger institutions must collect under Regulation C. Dugan said the OCC is considering requiring the largest national banks to compile and report such data as loan-to-value ratios, credit scores, and debt service ratios—data that Dugan says are needed “to do a more targeted analysis of each lender’s underwriting and pricing decisions.” (See ¶ 1.01[4][f].)
- **Asset-size exemption.** On December 23, 2008, the Federal Reserve Board published a final rule amending the Regulation C staff commentary to increase the asset-size exemption threshold, from \$37 million to \$39 million, for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. (See ¶ 1.04[2][b] and Supplement I to Part 203 at section 203.2.)

Community Reinvestment Act

- **Revised CRA Questions and Answers.** New and revised Community Reinvestment Act Questions and Answers published by federal bank regulators on January 6, 2009, make a number of important clarifications to the agencies’ CRA guidance, including expressly encouraging financial institutions to take steps to help prevent home mortgage foreclosures. The agencies finalized nine new Q&As and made substantive changes to 14 existing Q&As. (See Appendix B5.)
- **HERA revision to public welfare test.** Section 2503 of the Housing and Economic Recovery Act of 2008 (HERA) revised 12 USC 24 (Eleventh) to broaden the public welfare investment test. The Office of the Comptroller of the Currency (OCC) has issued an interim final rule that implemented HERA’s changes to national banks’ public welfare investment authority. (See ¶ 2.01[6][j].)

- **Small banks and intermediate small banks.** On December 17, 2008, the federal bank regulatory agencies announced the annual adjustment to the asset-size thresholds used to define “small bank,” “small savings association,” “intermediate small bank,” and “intermediate small savings association” under the Community Reinvestment Act (CRA) regulations. (See ¶ 2.03[4][u] and Appendix B3 at section 345.12(u).)

Fair Housing Act

- **HELOC guidance.** Federal financial institution regulators have expressed concern about compliance with the Fair Housing Act and other consumer protection laws and regulations with regard to a lender’s curtailment, suspension, or termination of a home equity line of credit (HELOC). (See ¶ 3.01[j].)

Equal Credit Opportunity Act

- **HELOC guidance.** Federal financial institution regulators have expressed concern about compliance with the Equal Credit Opportunity Act and other consumer protection laws and regulations with regard to a lender’s curtailment, suspension, or termination of a home equity line of credit (HELOC). (See ¶ 4.01[3] and ¶ 8.01[4].)

Fair Credit Reporting Act

- **FCRA legislation.** The Credit and Debit Card Receipt Clarification Act of 2007 (Pub. Law 110-241) added Section 616(d) (15 USC § 1681n(d)) to the FCRA to “ensure that consumers suffering from any actual harm to their credit or identity are protected while simultaneously limiting abusive lawsuits that do not protect consumers but only result in increased cost to business and potentially increased prices to consumers.” The bill makes a technical correction to the FACT Act with regard to businesses liability for failing to redact the expiration date from receipts. (See ¶ 11.12.)
- **Risk-based pricing notice regulations.** The Federal Reserve Board and Federal Trade Commission have published proposed risk-based pricing notice regulations that generally require a creditor to provide a risk-based pricing notice to a consumer if that creditor both: (1) uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and (2) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. (See ¶ 12.07[4].)
- **FCRA study on the complaint referral program.** On December 29, 2008, the FTC issued a report to Congress on the complaint referral program required by FCRA section 611(e). Section 611(e) of the FCRA, which was added by Congress in the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), requires the Commission to establish a program to refer certain consumer complaints to the three nationwide consumer reporting agencies—TransUnion, Equifax, and Experian—and to report to Congress on the information gathered in the program. (See ¶ 11.08.)
- **Nationwide study of credit reporting accuracy.** On December 23, 2008, the FTC issued its third interim report to Congress under section 319 of the FACT Act, which required the FTC to study the accuracy and completeness of information in consumers’ credit reports and to consider methods for improving the accuracy and completeness of such information. The requirement includes five interim reports (every two years from December 2004) and a final report in 2014. According to the current report, FTC staff plans to submit a proposal in 2009 for a nationwide study assessing credit report accuracy.

Unfair or Deceptive Acts or Practices

- **Regulation Z revision.** The Federal Reserve Board has approved a Regulation Z revision that targets unfair, abusive, or deceptive lending and servicing practices in the mortgage market. Although much of the revision focuses on practices in the subprime market, the Regulation Z amendment also includes a number of important changes that apply beyond the subprime market. While some provisions apply only to a new category of “higher-priced mortgages,” others apply to all closed-end mortgages secured by a consumer’s principal dwelling. The revision also includes new advertising provisions, which apply even more broadly, to all mortgages. (See ¶ 15.09[3].)
- **Rules prohibiting unfair credit card and overdraft practices.** In December 2008, the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration adopted several regulatory provisions intended to protect consumers against unfair acts or practices with respect to consumer credit card accounts. The FRB amended Regulations AA, Z, and DD. It also proposed amendments to Regulation E. (See ¶ 15.11.)