

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. To make *Federal Fair Lending and Credit Practices Manual* even more useful for you, we have added a free, fully searchable CD that contains the entire text and appendixes.

New material in this update includes the following:

Home Mortgage Disclosure Act

- Effective January 1, 2008, the FRB revised the staff commentary interpreting Regulation C to increase the asset-size exemption threshold for depository institutions from \$36 million to \$37 million. Under the revision, depository institutions with assets of \$37 million or less as of December 31, 2007, are exempt from data collection in 2008. (See ¶ 1.04[2][b] and Appendix A2, Supplement I, Section 203.2 at 2(e).)

Community Reinvestment Act

- **Small and intermediate small institutions.** The agencies revised Sections 25.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make the annual adjustment in the asset-size threshold used to define “small bank” and “intermediate small bank.” Beginning January 1, 2008, banks that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.061 billion are “small banks.” Small banks with assets of at least \$265 million as of December 31 of both of the prior two calendar years and less than \$1.061 billion as of December 31 of either of the prior two calendar years are “intermediate small banks.” (See ¶ 2.03[u] and Appendix B3 at Section 345.12(u)(1)).
- **VITA.** The Federal Deposit Insurance Corporation reminded bankers in FIL-5-2007 that their participation in the Internal Revenue Service’s Volunteer Income Tax Assistance (VITA) program offers the potential for favorable consideration under Community Reinvestment Act (CRA) rules and opportunities to provide financial education and open new accounts for underserved individuals. The VITA program offers free preparation of income tax returns for low- and moderate-income individuals. Under CRA regulations, financial institutions can receive favorable consideration in the investment test (12 CFR 345.12(t) & 345.23) or service test (12 CFR 345.12(i) & 345.24) for qualifying VITA-related activities. (See ¶ 2.03[7][b].)

Fair Housing Act

- **Sexual harassment.** On November 6, 2007, the U.S. Department of Justice announced that it had agreed to a \$350,000 settlement with First National Bank of Pontotoc in Mississippi and its former vice president to resolve allegations of sexual harassment of female borrowers and loan applicants by

the former vice president. The DOJ lawsuit was also brought under the FHA and ECOA. (See ¶ 3.04[3].)

Equal Credit Opportunity Act

- **Sexual harassment.** The Department of Justice's settlement with First National Bank of Pontotoc in Mississippi and the bank's former vice president (see above) was the first sexual harassment case brought by DOJ under the ECOA. (See ¶ 9.01[4].)

Fair Credit Reporting Act

- **Final regulations on Identity Theft Red Flags and address discrepancies.** The federal bank agencies, NCUA, and FTC published joint final rules and guidelines on Identity Theft Red Flags and Address Discrepancies on November 9, 2007 (72 Fed. Reg. 63718) to implement FACT Act sections 114 and 315. The agencies established a January 1, 2008, effective date but delayed mandatory compliance until November 1, 2008. (See ¶ 12.07[1][a].)
- **Affiliate marketing opt-out notices.** The federal financial institution agencies published final rules implementing the affiliate marketing requirements established by FACT Act section 214. The agencies adopted a January 1, 2008, effective date but delayed mandatory compliance until October 1, 2008. (See ¶ 12.07[6] and Appendix E9.)
- **Furnisher regulations and guidelines.** The federal financial institution agencies and the FTC published proposed regulations and guidelines in the Federal Register (72 Fed. Reg. 70944, December 13, 2007) to implement the accuracy and integrity provisions in FACT Act Section 312. The proposed regulations and guidelines include three components: (1) the proposed accuracy and integrity regulations, (2) the proposed accuracy and integrity guidelines, and (3) the proposed direct dispute regulations. (See ¶ 11.13[4] and Appendix E10.)

Fair Debt Collection Practices Act

- **FTC advisory opinion.** On October 5, 2007, the FTC issued an advisory opinion clarifying that a debt collector informing a consumer that its collection efforts have ceased would not violate FDCPA Section 809(b). The issue arose with regard to debt collection trade association ACA International's plan to amend its Ethics Code. (See ¶ 14.11[2][c].)
- **FTC advisory opinion.** On March 19, 2008, the FTC issued an advisory opinion stating that Sections 807 and 809(a) of the FDCPA do not prohibit a debt collector in the foreclosure context from communicating with consumers regarding possible settlement options that may assist consumers to avoid foreclosure. (See ¶ 14.11[2][d].)

Unfair or Deceptive Acts or Practices

- **OTS ANPR.** The Office of Thrift Supervision published an advance notice of proposed rulemaking (ANPR) in the August 6, 2007, Federal Register that set forth a wide range of potentially targeted practices that could be covered by future UDAP regulations. (See ¶ 15.01.)
- **Regulation Z proposal.** On December 18, 2007, the Federal Reserve Board issued proposed Regulation Z (Truth in Lending Act) rules intended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. The proposed rules appeared in the January 9, 2008, Federal Register. (See ¶ 15.01 and ¶ 15.03[7][c].)

- **Mortgage advertising.** On September 11, 2007, the Federal Trade Commission announced that it was sending warning letters advising more than 200 advertisers and media outlets that some mortgage ads are potentially deceptive or in violation of the Truth in Lending Act. The ads were identified in June during a nationwide review focused on claims for very low monthly payment amounts or interest rates, without adequate disclosure of other important loan terms. (See ¶ 15.03[7][d].)
- **Refund anticipation loans.** On January 3, 2007, California Attorney General Bill Lockyer announced that Jackson Hewitt, Inc. will pay \$5 million, including \$4 million in consumer restitution, to settle a lawsuit filed by Lockyer that alleged the nation's second-largest tax preparation firm violated state and federal laws in marketing high-cost refund anticipation loans (RALs) mainly to low-income customers. (See ¶ 15.02.)
- **Mortgage trigger leads.** Connecticut enacted legislation (HB 7073), which, effective October 1, 2007, prohibits lenders and brokers of first and second mortgages from engaging in any unfair or deceptive act or practice when soliciting a mortgage secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. (See ¶ 10.07 and ¶ 15.02.)
- **Exam procedures.** On November 6, 2007, the Federal Reserve Board issued consumer compliance examination procedures for detecting unfair or deceptive acts or practices (UDAPs) under Section 5 of the FTC Act. (See ¶ 15.02.)