

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: December 2002 **NO:** 02-RA-13

TO: All Federal Credit Unions

SUBJECT: Regulation Z Implementation of Home Ownership and Equity Protection Act

The Federal Reserve Board (FRB) recently published a final rule adopting amendments to Regulation Z that implement the Home Ownership and Equity Protection Act (HOEPA). HOEPA places restrictions on and requires disclosures regarding certain high-cost mortgage loans. Compliance with the rule is mandatory beginning October 1, 2002.

Summary of Regulation Z Amendments

- Broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage. The rate-based trigger is lowered by 2 percentage points for first-lien mortgage loans. The fee-based trigger is revised to include the cost of optional credit insurance and similar debt protection products paid at closing.
- Restrict certain acts and practices in connection with HOEPA loans. For example, creditors may not engage in repeated refinancings of HOEPA loans over a short period of time when the transactions are not in the borrower's interest.
- Strengthen HOEPA's prohibition against extending credit without regard to consumer's repayment ability.

HOEPA's Coverage

The provisions of HOEPA apply to any closed-end loan, excluding home purchase loans, secured by the consumer's principal dwelling where:

- The APR is greater than 8 percentage points above the rate for Treasury securities having a comparable maturity (for first lien loans);

- The APR is greater than 10 percentage points above the rate for Treasury securities having a comparable maturity (for subordinate-lien loans); or
- The total points and fees¹ payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount or \$480 (this dollar amount, effective during calendar year 2002, is adjusted annually based on changes in the Consumer Price Index).

Loans which satisfy one or more of these three criteria are “HOEPA loans.”

Restrictions

HOEPA prohibits a creditor who originates a HOEPA loan, during the 12-month period following origination, from refinancing that loan into another HOEPA loan unless the refinancing is “in the borrower’s interest.” The staff commentary to Regulation Z provides a discussion on determining whether the refinancing is in the borrower’s interest.

Creditors may not accelerate the payment of HOEPA loans by using a “payable on demand” or “call” provisions in HOEPA loans unless the provisions are used in connection with the borrower’s default. Additionally, creditors are prohibited from structuring a mortgage loan to appear to be an open-end credit line if it does not meet Regulation Z’s definition of open-end credit. For example, a high-cost mortgage may not be structured as a home-secured line of credit if there is no reasonable expectation that repeat transactions will occur under the line of credit.

Creditors may not engage in a pattern or practice of granting HOEPA loans based on the homeowner’s equity without regard to repayment ability. HOEPA presumes a violation if the creditor engages in a pattern or practice of making HOEPA loans without verifying and documenting consumer’s ability to repay (i.e., documenting current or expected income, current obligations, and employment to the extent possible).

Disclosures

Creditors offering HOEPA loans must give special disclosures to borrowers at least three days before closing. The new rule adds additional disclosure requirements for HOEPA loans. For example, when refinancing, creditors must disclose the total amount of money borrowed and whether the amount includes optional credit insurance or debt-cancellation coverage.

¹ Points and fees are defined in Regulation Z §226.32(b)(1).

Credit unions may access the rule and staff interpretation on the final rule at:
<http://www.federalreserve.gov/boarddocs/press/boardacts/2001/200112142/attachment.pdf>

Sincerely,

/S/

Dennis Dollar
Chairman