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MEMORANDUM FOR: **CHIEF EXECUTIVE OFFICERS**

FROM: Thomas A. Barnes, Deputy Director
Examinations, Supervision, and Consumer Protection

SUBJECT: Revised TILA Examination Procedures

The Truth in Lending Act (TILA) requires creditors to provide consumers with information about the cost of credit that they can use to make choices in the marketplace. As a result of recent Federal Reserve Board (the Board) revisions to Regulation Z which implements the TILA, OTS has revised its examination procedures for closed-end loans.[1]

Specifically, the revised procedures cover: (1) the prohibition on payments to loan originators, including mortgage brokers and loan officers employed by depository institutions, based on the terms of the transaction, other than the loan amount;[2] (2) required disclosure of payment examples if the loan's interest rate or payments can change and a statement that a consumer is not guaranteed to be able to refinance the transaction in the future;[3] (3) requirements for appraiser independence for consumer credit transactions secured by a consumer's principal dwelling, whether a closed-end loan or a home equity line of credit;[4] and (4) requirements that consumers receive notice when their mortgage loan has been sold or transferred.[5] Examiners will be required to evaluate whether savings associations meet the following requirements.

[1] TILA examination procedures are being revised in several phases to address recent statutory and regulatory changes. This is the fourth set of revisions to the TILA examination procedures and follows revisions to the mortgage disclosure requirements resulting from the Mortgage Disclosure Improvement Act that took effect in 2009; revisions to the open-end credit disclosure requirements resulting from the Credit Card Accountability Responsibility and Disclosure Act of 2009; and revisions to closed-end and open-end mortgage loans resulting from the Home Ownership and Equity Protection Act.

[2] See Truth in Lending Final Rule, 75 Fed. Reg. 58509 (Sept. 24, 2010).

[3] See Truth in Lending Interim Rule, 75 Fed. Reg. 58470 (Sept. 24, 2010).

[4] See Truth in Lending Interim Final Rule, 75 Fed. Reg. 66554 (Oct. 28, 2010).

[5] See Truth in Lending Final Rule, 75 Fed. Reg. 58489 (Sept. 24, 2010).

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Loan Originator Compensation Rule

- A loan originator, including mortgage brokers and mortgage loan officers employed by depository institutions, may not receive compensation that is based on the interest rate of the loan (commonly referred to as a "yield spread premium") or other loan terms. Loan originators can continue to receive compensation that is based on a percentage of loan amount.

- A loan originator that receives compensation directly from the consumer may not receive compensation from the lender or another party.

- A loan originator may not direct or "steer" a consumer to a mortgage loan that is not in the consumer's interest in order to increase the loan originator's compensation.

- A loan originator can obtain a "safe harbor" for compliance with the anti-steering requirement by presenting the consumer with loan options that include: 1) the loan with the lowest interest rate; 2) the loan with the lowest interest rate without any risky features (such as prepayment penalties, negative amortization or a balloon payment in the first seven years); and 3) the loan with the lowest total dollar amount for origination points or fees and discount points.

Mortgage Disclosure Improvement Act

The Mortgage Disclosure Improvement Act (MDIA) of 2008 amended the TILA to require that borrowers are alerted to the risk of payment increases before they take out mortgages with variable rates or payments.[6] This amendment requires that lenders' cost disclosures include a payment summary in the form of a table, stating the following:

- The initial interest rate and the corresponding monthly payment;

- For adjustable-rate or step-rate loans, the maximum interest rate and payment that can occur during the first five years and a "worst case" example showing the maximum rate and payment possible over the life of the loan; and

- The fact that consumers might not be able to avoid increased payments by refinancing their loans.

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[6] Other provisions of the MDIA took effect in 2009. (See CEO Memo #316, Aug. 28, 2009.)

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Appraiser Independence

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the TILA to include several provisions that protect the integrity of the appraisal process when the consumer's home secures the loan, whether a closed-end loan or a home equity line of credit. Specifically, the appraisal independence provisions:

- Prohibit coercion, bribery and other similar actions designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment;
- Prohibit appraisers and appraisal management companies from having a financial or other interest in the property or the credit transaction;
- Prohibit a creditor from extending credit, if it knows, before consummation, of coercion or a conflict of interest;
- Require that creditors or settlement service providers that have information about appraiser misconduct file reports with the appropriate state licensing authorities; and
- Require the payment of reasonable and customary compensation to appraisers who are not employees of the creditors or of the appraisal management company hired by the creditors.

Helping Families Save Their Homes Act

The Helping Families Save Their Homes Act amended the TILA to require that consumers be notified of the sale or transfer of their mortgage loan. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan.

These procedures were developed on an interagency basis. The revised Examination Handbook Section 1305 is available through the link provided below. For more information, please contact Rhonda L. Daniels, Director, Consumer Regulations, at (202) 906-7158.

Link: Examination Handbook Section 1305