

2010 Lending Laws and Regulations Planning and Outlook Michigan Credit Union League



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About the Presenter...

R. Todd Shery is a founding partner in the law firm of Shery & Jones, P.A. The firm is dedicated to serving all legal needs of Credit Unions; and provides day-to-day compliance, compliance auditing, training and consulting services to Credit Unions throughout the United States. Todd dedicates a large portion of his time to teaching Credit Unions, having made presentations in 43 States and participating as an instructor through CUNA & Affiliates Regulatory Compliance, Collections and Credit Counseling, Marketing, Consumer Loan Officer and Economics and Investments Schools and Conferences. Todd authored CUNA's **RegTrac Compliance Modules on Consumer, Real Estate Lending, and Member Business Lending**; CUNA's **White Paper on Privacy**; CUNA's **Guide to Compliance with Revised Article Nine**; CSG's Volunteers Achievement Program on **Directors' Liability**, and many other Credit Union resources. Todd is General Counsel to the South Carolina and consults with several other Credit Leagues on a regular basis.

CURES and SimpliLend™: 1992 Todd developed **CURES, LLC.**, (Credit Union Resources and Educational Services) and **SimpliLend™** to serve the compliance/regulatory needs of Credit Unions. CURES includes the "**Compliance Community Plan**" under which Credit Unions are offered audit and/or continuing compliance services at a significant saving through cooperative participation in a plan serving the common needs of many Credit Union. Under the Plan, the firm and/or CURES now works with approximately 500 Credit Unions in 27 States. Under this plan, CURES provides participants with secure web access to all electronic policies, procedures, notices, updates, explanations, internal training guides, as well as many forms from simple collection and bankruptcy documentation to full member account services guides and other forms and day-to-day resources.

Todd serves on the Credit Union Sub-committee of the American Bar Association, the Operations and Supervisory Committee's of the Credit Union Committee; and chaired the Consumer Law Section for the South Carolina Bar. Todd, whose family has a tradition of working with and supporting Credit Unions, then began his current practice. Todd is married to the Executive Officer at a Large Georgia Credit Union. Todd has two daughters, Caroline and Catherine who he absolutely adores.

The Largest Credit Unions to whom we provided in the last year include:

Boeing West Employees Credit Union	Mountain America Credit Union	Founders Federal Credit Union
Langley Federal Credit Union	State Farm Credit Union	Black Hills Federal Credit Union
Arizona Federal Credit Union	Robins Federal Credit Union	Elevations Federal Credit Union
Bankfund Staff Federal Credit Union	Sharonview Federal Credit Union	SC Federal Credit Union
Addison Avenue Federal Credit Union	66 Federal Credit Union	Centris Federal Credit Union
Tinker Federal Credit Union	American Airlines Federal Credit Union	Piedmont Aviation Federal Credit Union
Lake Michigan Credit Union	POPA Federal Credit Union	Aberdeen Proving Ground Federal Credit Union
Day Met Credit Union	Pearl Harbor Federal Credit Union	Leaders Federal Credit Union
SPC Cooperative Credit Union	Mid-America Credit Union Association	TruChoice Federal Credit Union
Memphis Area Teachers Credit Union	Credit Union of Colorado	Atlantic Regional Federal Credit Union

Smaller Credit Unions to whom we provided in the last year include:

GHS Federal Credit Union	Aberdeen Federal Credit Union	Ball State Federal Credit Union
Bangor Federal Credit Union	Bay Gulf Federal Credit Union	Central Sunbelt Federal Credit Union
Community United Federal Credit Union	Delaware First Federal Credit Union	Family Advantage Federal Credit Union
Fort Campbell Federal Credit Union	Jefferson Financial Credit Union	Leaders CU Credit Union
ListerHill Federal Credit Union	Maui Teachers Federal Credit Union	Kahului Federal Credit Union
New Orleans Firefighters Federal Credit Union	Penobscot County Federal Credit Union	PortAlliance Federal Credit Union
Savannah Postal Federal Credit Union	Strategic FCU	Tuscaloosa County Credit Union

We provide or have provided in the last year services to the following non-Credit Union entities:

CUNA Mutual Insurance, CUNA CPD or other affiliated companies	Minnesota Mutual Insurance Company, Inc.	Securian, Inc
South Carolina Credit Union League	North Carolina Credit Union League	Hawaii Credit Union League
Indiana Credit Union League	Missouri Credit Union League	Maine Credit Union League
Michigan Credit Union League	Florida Credit Union League	Virginia Credit Union League
SD-ND Credit Union League	Georgia Credit Union Affiliates	The Financial Forms Company, LLC

Introductory Notes:

Basic Obligations, Standards and Liability Issues

Compliance Dates 2010 and Beyond

Compliance Date	New Requirement	Regulation
December 1, 2009 – Delayed till June 2010	<p>Unlawful Internet Gambling Enforcement Act</p> <p>The Act prohibits gambling businesses from knowingly accepting payments in connection with unlawful Internet gambling, including payments made through credit cards, electronic funds transfers, and checks. <i>The law primarily targets commercial accounts. However, ALL Financial institutions must adopt methods to detect and block such transactions. See Steps per the Resources noted below</i></p>	UIGEA
<p>CUPP Resources:</p> <p>CUPP Section T: Subfolder - Unlawful Internet Gambling Enforcement Act</p> <p>1- Guide and FAQs - UIGEA 2009</p> <p>2- UIGEA Act Risk Assessment – 2009</p> <p>3- UIGEA Policy-Procedures – 2009</p> <p>4- Board Minutes - Approval of UIGEA Policies – 2009</p> <p>5- Notice UIGEA – 2009</p> <p>6- UIGEA Annual Compliance Assessment - 2009</p>		
January 1, 2010	<p>Good Faith Estimate Forms</p> <p>New GFE Forms for all CE Mortgage Loans</p> <p>Required w/in 3-Days from Date Application Received</p> <p>Cannot delete or change anything on the form except in listing services in boxes 3-6</p>	RESPA and Regulation X
January 1, 2010	<p>Settlement Statement</p> <p>New Uniform HUD-1 or HUD-1A must be provided on CE mortgage loans – cross references the new GFE</p> <p>Fee Restrictions – e.g. loan origination fee cannot change from GFE to closing; other fees cannot vary more than 10%, etc.</p>	RESPA and Regulation X

<p>CUPP Resources:</p> <p>CUPP Section G – E-Subfolder RESPA 2009-2010</p> <p>A- RESPA – GFE Compliance GUIDE B- HUD GFE Form C-Guide to GFE Form D1 HUD 1 Form D2 HUD-1A Form E1- Guide to HUD-1 E2- Guide to HUD-1A</p>			
January 1, 2010	TISA Revisions		TISA and 12 CFR 707
		New Periodic Statement Disclosures Covering Overdraft Fees – Model Form	
		Changes to Electronic Disclosure Options – Limitations	
<p>CUPP Resources:</p> <p>CUPP Section O – Subfolder: Truth in Savings Act Revisions 2010</p> <p>A- Overview of Changes B- Model Periodic Statement Disclosures</p> <p>CUPP Section K – E-Banking</p> <p>I1- Guide to Assessing Electronic Signatures Disclosures</p>			
February 14, 2010	Private Education Loans		Higher Education Opportunity Act and Reg Z // 226.46 through 226.48
		New Application Disclosures	
		New Approval Disclosures	
		New Final Disclosures	
		Three-Day Right to Cancel	
	Substantive Limitations such as co-branding, right to accept, self-certification forms		
<p>CUPP Resources:</p> <p>CUPP Section G – F-Subfolder Private Education Loans</p> <p>A- PE Loans Compliance GUIDE B- New Application Disclosures C New Approval Disclosures D New Final Disclosures E- Three-Day Right to Cancel F Right to Cancel Form G. Self Cert. Form</p>			

February 22, 2009	Credit Cards and OE Loans - Round II	CARD Act
	Bulk of the remaining CARD Act provisions go into effect:: Limits on increasing rates or fees on existing balances and opt-outs; payment allocations; opt-in for OL Fees; minimum Payment warnings; Calculation Methods, etc. and Advertising Changes	
	Applies Also to HELOCs and OE Loans <ul style="list-style-type: none"> ➤ Required 5 PM Cut-off time ➤ Penalty APR in Proximity to Due Date on Statements ➤ Minimum Payment Warning 	
<p>CUPP Resources:</p> <p>CUPP Section G – Subfolder D:</p> <p>A- CARD Act - FRB Regulation Analysis and Guide (August 13, 2009) Revised</p> <p>B- Due Diligence Checklist for CARD Act (August 13, 2009) Revised</p> <p>H- Opt Out Form Options</p> <p>CUPP Section B – Advertising Guide and Resources Revised</p>		
February 26, 2010	New Funds Availability Rules	Regulation CC
<p>CUPP Resources:</p> <p>Not Yet Assigned:</p> <p>(1) Provide revised disclosures for case-by-case and statutory holds Credit Unions within the next two weeks.</p> <p>(2) Provide sample change in terms language for your CIT notifications.</p> <p>(3) Provide an update to the Funds Availability Policy – Procedures in CUPP IX</p> <p>(4) Updated Lobby Posters</p> <p>(5) Update in-house Training to be sure that front and back-office personnel are prepared for the changes by the effective date.</p> <p>(6) Such other resources will be made available as needed.</p>		
July 1, 2010	New FCRA Policies on CRA Practices	FCRA and 12 CFR 717
<p>CUPP Resources:</p> <p>CUPP Section X</p> <p>B1- FACT - Basic Fair Credit Reporting Act Policy (11-2009)</p> <p>B2- FCRA Dispute Checklist (11-2009)</p>		
July 1, 2010	New Schumer Box Disclosures	TILA / Reg Z
<p>CUPP Resources:</p> <p>CUPP Section I:</p> <p>D- Credit Card - Sample Schumer Box Disclosure Revised</p> <p>CUPP Section B – Advertising Guide and Resources Revised</p>		

July 1, 2010	New Periodic State Requirements for Credit Cards and OE Loans	TILA / Reg Z
CUPP Resources: CUPP Section G – Subfolder D: H- Model Periodic Statement and Guidance on Terms		
July 1, 2010	New OE / MF Lending Plans and LOCs	TILA / Reg Z
CUPP Resources: CUPP Section G – Subfolder F: SimpliLend 2010 See Forms Packages in F Due Diligence Assessment Checklist for Forms Decisions for Credit Unions		
August 22, 2010	CARD Act Reviews and Assessments	CARD Act / Reg Z
January 1, 2011	New FCRA Rules on Risk Based Lending	FCRA and 12 CFR 717
CUPP Resources: Not Yet Assigned: Revised Policies / Procedures Forms for Disclosures Guidance Updated Training Materials		

77-2009 Community Notice // ECOA – Fair Lending Concerns Rising

Previously we have written regarding “Get Out of Jail Free Cards” and policies and training considerations. Now we address a reason – a new substantive basis for addressing this as a higher priority matter. The American Bar Association Journal for April 2009 features an article on the increasing number of “national origin” lawsuits being filed by Hispanics. The article states “[many] immigrants have not filed or pursued claims because they do not know their rights; or they cannot afford to hire an attorney.” However, that trend is changing as immigrants are “acclimated” to our system of justice. Further, there has been a proliferation of bi-lingual attorneys who are educating and appealing to immigrants with regard to these matters. In these economic times where consumers are more likely to consider such rights/actions – this is a recipe for disaster for those who have not prepared.

As I continue to say – be aware of current events and evolutions in the legal environment. With this in mind I encourage:

1. **Adoption of the Full Five Page Fair Lending Policy in CUPP VIII**
2. **Insure Proper Training of Staff, Management and Volunteers with regard to Fair Lending Laws**
3. **Re-consider Hispanic Disclosures and consider our ongoing recommendations for an additional disclosure whereby the parties agree that the English Version will govern interpretation, disputes, enforcement of rights, etc.**

105-2009 Community Notice // Revision to Procedures for Lien Filing – CUPP IX Loan Procedures

In over-hauling CUPP Loan Policies and Procedures to fit SimpliLend™ (so your turn-key loan forms will also have matching loan policies and procedures) I have made the following revisions to the Lien Filing Procedures for watercraft, “coast guard watercraft,” and FAA lien filing on airplanes and/or engines:

<p>***Small Boats and Motors</p>	<p>Revise Per State Laws – may require UCC – may be special filing Certificate of Title(s) [Separate Title for Boat and Motor(s)]</p> <p>Appears to be UCC-1 only in:</p> <p>Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii Kansas, Louisiana, Maine, New Hampshire, North Dakota, Tennessee, Wyoming</p>	<p>Revise Per State Laws – may require UCC – may be special filing (In some state it is filed with the States Wildlife & Marine Resources Dept.</p>
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10-2010 Community Notice // Updated SAFE Mortgage Licensing Guide

Lots of questions on this one from y'all, but not a lot of answers on specifics just yet. I have updated the SAFE Mortgage Guide in CUPP;

+ Section T – Misc and Operations

- Subfolder “SAFE Mortgage Licensing Act Summary and Guide”



The Guide contains the following. Likely the most important item at this time is noted via the STOP sign below **[Read it First! – bottom of this page]:**
SAFE Mortgage Licensing Act

Topic		Page Reference
?? -- Compliance Date for Federal and State Credit Unions:		Page One
Summary of Scope of Act/Registration Based on NCUA Opinion Letter (which is consistent with the "Draft Rules")		Page Two
HUD's Summary of the SAFE Act:		Page Three
State-by-State Regulation for Licensing and/or Registration:		Page Nine

?? -- Compliance Date for Federal and State Credit Unions:

Although the S.A.F.E. Mortgage Licensing Act was signed in 2008, the deadlines for compliance are varied. States whose legislatures meet annually are required to have their licensing and registration systems in place by July 31, 2009. States whose legislatures meet biennially must have their system in place by July 31, 2010. The United States Department of Housing and Urban Development ("HUD") may, at its discretion, extend these deadlines for 24 months, if it determines that a state is making a good faith effort to establish a state licensing law. NCUA has yet to adopt its final regulations, though FDIC did so in November 2009. The NCUA's failure to act to date creates some question as to required compliance for state and federal Credit Unions as they are generally exempt from state law requirements if subject to federal regulation per the SAFE Act and Federal Regulations thereunder. National Registration is via the following site:

<http://mortgage.nationwidelicensingsystem.org/fedreg/Pages/default.aspx>

However: If you visit this site at the present time you will be advised:

	At this time there is no action required in the Nationwide Mortgage Licensing System (NMLS) of any mortgage loan originator who is an employee of a federally insured depository institution or an owned and controlled subsidiary of such a depository institution that is federally regulated.
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Recommitted to Working With You in 2010,

6-2010 Community Notice // RESPA FAQs Revised – Again

On December 30, 2009, HUD issued a revised FAQ on RESPA. As noted – with the “train wreck” HUD created, I expect these revisions to be ongoing. You may access the most recent FAQ’s via CUPP:

CUPP Access

Click on the “+” Consumer Loan Forms
Click on “+” Section G
Click on E-RESPA Guidance and Forms

The FAQ is Item A1

You can also access the FAQ via:

<http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs.pdf>

What changes from the November FAQ? Here is an excerpt of the provisions changed:

8) Q: In some cases, law or local custom may require, or consumers may prefer, to have one provider conduct the settlement and another provider perform the remainder of the services included within the “Title Services and Lender’s Title Insurance” category on the GFE (Block 4 on page 2). How should the fees and providers for these services be listed on the GFE, the Written List of Service Providers, and the comparison table on page 3 of the HUD-1 (page 2 of the HUD-1A)?

A: The preferred method of disclosing the GFE Block 4 charges on the Written List of Service Providers is to list a set of single providers where each is capable of coordinating or performing all of the services provided within the “Title Services and lender’s title insurance” category. Due to a wide variety of practices across the country, an alternate option is explained below that allows for the separate identification of providers to conduct settlement (or closing) and providers of lender’s title insurance and the related services on the Written List of Providers and the HUD-1/1A.

GFE

In all cases, the GFE shall be completed with the total estimated fees for “Title Services and Lender’s Title Insurance” combined in Block 4. Provider names are not listed on the GFE.

Written List of Providers

For Block 4, the loan originator may separate the services in the Written List of Providers to show providers that conduct settlements (or closings) separately from providers of lender’s title insurance and the related services

If Block 4 services are separated on the Written List of Providers, the associated estimated fee for the component service must be listed next to the header for the list of providers of that service
The sum of the estimated fees for the two services must equal the amount in Block 4
Only two (2) categories of service providers may be listed: providers that conduct settlements (or closings) and providers of lender's title insurance and the related services

HUD-1 page 3, HUD-1A page 2

If the consumer chooses neither service provider from the list:

o The lump sum of Block 4 would be placed in "Charges that Can Change"

§ Both service providers should be listed in the blank for service provider names, for example:
XYZ Settlement Services/ABC Title Agency

If the consumer chooses a provider of one of the services from the list:

o The service provider that was chosen from the Written List would be included in "Charges That in Total Cannot Increase More than 10%" with the associated estimated fee from the Written List of Providers in the GFE column and the actual fees for that service from that provider in the HUD-1 column. The service performed by the provider not chosen from the Written List of Providers would be listed in the "Charges that can Change Section" with the associated estimated and actual fees.

§ The total of the estimated fees in the GFE column (from both tolerance sections) must equal the amount in Block 4 of the GFE

§ The total of the actual fees in the HUD-1 column (from both tolerance sections) must equal the total of all "Title services and lender's title insurance" actual charges

If the consumer chooses the providers of both services from the Written List:

o The Block 4 total is listed in the "Charges That in Total Cannot Increase More than 10%" column.

§ Both service providers should be listed in the blank for service provider names, for example:
XYZ Settlement Services/ABC Title Agency

§ The total estimated and actual fees for both providers would be listed in the respective GFE and HUD-1 columns.

Settlement cost booklet

1) **Q:** When will the Settlement Cost Booklet be revised?

A: The revised settlement cost booklet, entitled "Shopping for Your Loan, HUD's Settlement Cost Booklet" has been posted on our website at www.hud.gov/respa

1-2010 Community Notice // HUD Settlement Costs Booklet and CUPP RESPA Resources Updated

HUD Issues New Settlement-Cost Booklet:

Over the Holiday Period HUD released the New Settlement Cost Booklet. Beginning January 1, 2010, Credit Unions and other lenders are required to comply with the changes to the Real Estate Settlement Procedures Act (RESPA) implementing rules, which include this form. As addressed in the RESPA compliance Guide in CUPP Section G, this booklet must be provided within three-days from the date an application is received by the Credit Union. This form can be accessed via the following links:

http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm

April Compliance Enforcement Date will Not Excuse Use of Wrong Forms:

On December 17th, Federal Housing Administration Commissioner David Stevens made it expressly clear that HUD's restraint in enforcement (announced for the time period through April 2010) does not mean there is any flexibility in which forms can be used starting on January 1. Thus, you need to insure you are using accurate forms.

CUPP IX Resources Updated to Include the Above:

- A- Guide to RESPA and Revisions 2009-2010 (1-4-2010)
- A1 - New RESPA FAQs from HUD (November 17, 2009)
- A2 - Joint Letter
- B- Good Faith Estimate
- C- Guide to GFE 9-2009
- D1- HUD-1 Form
- D2- HUD-1A Form
- E1- HUD-1 Instructions
- E2- HUD-1A Instructions
- F - Settlement Costs Booklet 2010

Recommitted to Working With You in 2010,

160-2009 Community Notice // “Other” Agencies Issue Final Rules on Risk-Based Pricing Notices – Expect NCUA to Follow

The Federal Reserve Board and the Federal Trade Commission announced on December 22 final rules that generally require a creditor to provide a consumer with a

notice when, based on the consumer's credit report, the creditor provides credit to the consumer on less favorable terms than it provides to other consumers. Consumers who receive this "risk-based pricing" notice will be able to obtain a free credit report to check the accuracy of the report. We expect NCUA will eventually issue some rules on this and many other items to catch up with the other agencies; and that the NCUA rules will virtually mirror the other agencies. We will begin preparations for the new rules accordingly.

Reminder: Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit provided to a particular consumer based on the consumer's creditworthiness. The final rules provide creditors with several methods for determining which consumers must receive risk-based pricing notices. Generally – the Credit Union practice of “credit pricing” is included in the concept of risk-based lending as conceived in these rules.

The rule will offer options: As an alternative to providing risk-based pricing notices, the final rules permit creditors to provide consumers who apply for credit with a free credit score and information about their score. Today, most consumers must pay a fee to obtain their credit score. We will assess these and provide tools for either – as the Credit Union deems most operationally feasible. You will likely wish to discuss these matters with your qualified compliance advisor.

The *Federal Register* notice is attached. **The final rules are effective January 1, 2011.**

158-2009 Community Notice // NCUA Rule Modification on Limited 20-Year Mortgage Loan Limitations

On 12-17-2009 NCUA is amended its lending rules to create a limited exception to the 20-year maturity limit on second mortgage loans. The amendment will permit federal credit unions participating in the Department of the Treasury’s Making Home Affordable Program to modify a second mortgage loan, beyond 20 years, to match the term of a modified first mortgage loan. The modification is only applicable to loans via a federal Credit Union’s participation in The Department of the Treasury’s Making Home Affordable Program; and the new rules reads:

§ 701.21 Loans to Members and Lines of Credit to Members.

* * * * *

(f) * * *

(3) Notwithstanding the general 20-year maturity limit on second mortgage loans, a federal credit union **participating in the Department of the Treasury’s Making Home Affordable Program** may extend the term of a modified second mortgage to match the term of a modified first mortgage, in accordance with applicable program guidelines.

You may access the rule and NCUA Commentary at:

[http://www.ncua.gov/Resources/RegulationsOpinionsLaws/final/701%2021\(f\)_Second%20Lien_FINAL_FINAL_web.pdf](http://www.ncua.gov/Resources/RegulationsOpinionsLaws/final/701%2021(f)_Second%20Lien_FINAL_FINAL_web.pdf)

The rules is effective retroactively to: June 24, 2009

155-2009 Community Notice // Loan Modification Policies and Legal Review

As you assess your Loan Modification policies-- note all “suggestions” in NCUA’s Supervisory Letter. There are several due diligence items in the Letter such as documenting assessment by legal counsel not only in regard to the policy, but also to *“[i]nsure that loan modification documents comply with applicable NCUA and state regulations and consumer protection laws (e.g., Truth-in-Lending, Equal Credit Opportunity, Fair Lending, Real Estate Settlement Procedures Act, etc.). The legal review should address state laws applicable to foreclosure and other debt collection options.”* See Page 5 of the Supervisory Letter. It has been conveyed to me that this was recently noted at a Credit Union in Georgia per their regular NCUA Examination; and I wanted to pass this on as an FYI-CYA. Remember my compliance mantra – “give ‘em what they wish to see so they will hush and go away!”

Read the entire Supervisory Letter and address the various areas / matters noted if you wish to have a clean compliance review should they (NCUA or state examiners) look into this.

A Very Merry Christmas and a Happy New Year!

154-2009 Community Notice // Revisions -- Problem Assess – Loan Modification Policies

In light of input from several recent NCUA examinations I have updated and enhanced the guidance in the Loan Modification Policy submitted back in August. This items addresses all considerations and provides guidance per NCUA Letter 09-FCU-19 as well as OCC Bulletin 2009-28: 08/13/2009 and the OTS Letter Issued on September 2, 2009. Please review the following note and the Sample Policy and Procedures that follow. The Credit Union will need to make revisions to address the unique characteristic that apply to the Credit Union – assessing the following:

Excerpt from Policy: See CUPP IX // Section F // B- Problem Asset Policy and Procedures (12-2009)

DRAFTING NOTES:

This item provides several notes and resources to consider in preparing or updating policies to address the concerns regulators have expressed in the Regulatory

Resources referenced herein. Here you will find:

Item	Pages
Notes and Explanation	1-2
Sample Policy	2-12
NCUA Supervisory Letter	13-25

If drafting your own policy – please be sure to assess and consider the regulatory guides noted.

A Very Merry Christmas and a Happy New Year!

148-2009 Community Notice // Loan Checklists Updated to Conform to RESPA and Items Addressed in Notice 147

As addressed in Notice 147 we have revised the Loan Checklists in CUPP to provide options for RESPA Compliance. They are also updated as to Higher Priced Mortgage Loans and Other recent Changes. For example – as to the RESPA “Borrower’s Intent Rules” we added:

a. Initial Application: Proper and Complete Application Submitted on a Proper Form Per Credit Union Loan Procedures (Current Form 1003 From Fannie Mae or equivalent for Closed-end Firsts and Refinances; Closed-end Seconds are generally on a comparable form)		/ / Date the Credit Union accepted a complete application
i. Loan Officer Verification of Applicant’s Intent to Proceed with Loan Note Method of Verification (After GFE Provided to Applicant(s)): <input type="checkbox"/> An Applicant Confirmed this By Phone, Email or Fax <input type="checkbox"/> An Applicant Provided Verification / Underwriting Documentation <input type="checkbox"/> An Applicant Provided a Check for Some or All Costs Associated with the Application		/ /

4 Underwriting (Revise to address Credit Union Specific Policies / Procedures)

a. Application Completed – all information required by the Credit Union to process the loan requested per our policies, procedures and underwriting criteria were provided on or before this date:		/ /
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All Loan Checklists are Located In:

Real Estate – Section V
Consumer Loans – Section G / Subfolder B

Moving forward together to meet members' needs and to exceed expectations,

147-2009 Community Notice // RESPA – Applications – Initial Applications – Intent to Proceed (???)

To “attempt” to address issues relating to applications, charging fees, and “applicant's intention to proceed” under the January 1 RESPA fiasco; and at the same time to perhaps address other application related issues generally, we have written the following guidance to be used in connection with Credit Union Loan Procedures.

The full version of this is located in CUPP IX // Section N / Long Forms / 2-General Loan Procedures // Item XX

Loan Applications and Application Procedures:

In connection with the January 1, 2010 RESPA Changes, and to address other legal / compliance considerations we provide the following to consider in regard to loan procedures and the taking of credit applications:

Drafting Notes: RESPA's Section 3500.2 provides: Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application. There are many apparent inconsistencies here due to the numerous laws and regulations by various entities (all going in various directions). For example – under the Rules on Higher Priced Mortgages the Credit Union is required to obtain certain information in connection with a loan application – however – this information can be verified on the underwriting side of the application. There are also the adverse action obligations under ECOA and FCRA in connection with loan applications, etc. In an attempt to meet the obligations a Credit Union will face we have bifurcated this into the following two categories:

I. "Initial Applications": THIS APPLIES ONLY TO REAL ESTATE LOANS THAT ARE GOVERNED BY THE REAL ESTATE SETTLEMENT PROCEDURES ACT. The Credit Union will consider that a loan application has been accepted by for the sole purposes of "triggering" certain early disclosures when the following conditions have been met:

- A. A signed and complete loan application on a form the Credit Union accepts outlining all terms of the loan request by all applicants and necessary third parties such as guarantors has been received by the Credit Union. The loan application must include at a minimum the following:
1. All Borrower's and Third Parties Full Names;
 2. All Borrower's and Third Parties Monthly Income;
 3. All Borrower's and Third Parties Social Security Number to Obtain a Credit Report;
 4. The Property Address that is to Secure the Loan;
 5. An Estimate of the Value of the Property;
 6. The Loan/Mortgage Amount Sought;
 7. **Add here and below any additional information you or the originator of the loan requires in connection with an "initial loan application."**

Upon receipt of these items the Credit Union will provide the following early disclosures as applicable:

1. Early Truth in Lending Disclosure
2. Reg X Good Faith Estimate of Closing Costs and Special Information Booklet on Closing Costs
3. Mortgage Servicing Disclosure
4. CHARM Booklet

These items will be provided to the applicants in the following form in order to document the applicants' intent to proceed which is required before the Credit Union can charge fees and request any "verification documents / information" per Section II of this procedure:

These items will be provided to the applicants in the following form in order to document the applicants' intent to proceed which is required before the Credit Union can charge fees (other than a credit report fee) and request any "verification documents / information" per Section II of this procedure:

YOU WILL NEED TO COMPLETE THIS BASED ON THE FOLLOWING SUMMARY

Drafting Notes:

REGULATION X is clear (well as clear as mud can be) that you must have delivered the GFE AND received intent from an applicant (consumer loans subject to RESPA/X) before the Credit Union can charge the applicants any fees (other than a credit report fee) *and* before you ask them for any verification documents. It appears that HUD's intent is that they want disclosures to the applicant quickly, but they want borrower's to be able to slow down the process to shop. This "intention" is in addition to the providing of the GFE (and merely providing the GFE is not sufficient per HUD to express the intent). Thus, the Credit Union has to consider whether to require consumers to sign a written affirmation of intent after receipt of a GFE – or consider other possible options. We believe you can (1) send a cover letter with the Early Disclosures Noted above and inform the borrower what you need to proceed. If they provide it, they are expressing their intent to proceed. There is no need for a signature or disclosure; or (2) You might also have a checklist that the Loan Officer completes that indicates they talked to the borrower who expressed this intent. This will be something we'll have to wait and see how the examiners interpret. We do not encourage you require a signed acknowledgement – though this is an option. It's already tough enough to comply without adding any more documentation you will then have to keep up with. A mere cover letter stating that if they do not respond is an option, but there are possible concerns with this which we do not here address.

Recommendation -- YOU MAY WISH TO DISCUSS THIS WITH YOUR COMPETENT LEGAL/COMPLIANCE ADVISER AND HAVE THEM REVIEW OR ASSIST YOU WITH ANY FORMS YOU MAY USE IN CONNECTION WITH THIS. We have added possible solutions for this via the real estate loan checklists in CUPP IX // Section V // Items B2 and C2.

- II. **Complete Application for Credit Union Underwriting: The Credit Union will consider that a loan application has been accepted by it when the following information and/or conditions are provided / met:**

Drafting Note: Consider these items carefully and make revisions as you feel to be necessary / appropriate to your Credit Union's operations / needs. Keep in mind any secondary market considerations as applicable together with any other contractual obligations the Credit Union may have with regard to third party loan relationships that may affect these considerations.

Other Expected Matters 2010: