



The Oak Tree *Advantage*

► AVAILABILITY OF FUNDS REQUIREMENTS TO CHANGE THIS JULY

Genelle Rich, President



Normally, I would write something in my own words about what's happening in the industry, but I thought it would be appropriate to share with you the press release from The Federal Reserve Board regarding their recent request for public comment on proposed amendments to Regulation CC (Availability of Funds and Collection of Checks). If you haven't already seen the press release, here it is:

Proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) will encourage banks and credit unions to clear and return checks electronically, add provisions that govern electronic items cleared through the check-collection system, and

shorten the "exception" hold periods on deposited funds. To encourage electronic collection and return of checks between banks, the proposal provides that a depository bank would be entitled to the expeditious return of a check only if it agrees to receive returned checks electronically. In addition, the proposal would permit the bank responsible for paying a check to require that checks presented to it for same-day settlement be presented electronically. More generally, the proposal would apply Regulation CC's collection and return provisions, including warranties, to electronic check images that meet certain requirements.

Additionally, due to the faster collection and return timeframes that result from electronic collection and return, the proposal would shorten the safe-harbor period for an exception hold to four business days, which should enable the depository bank to learn of the return of virtually all unpaid checks before being required to make these deposits available for withdrawal. The proposal also eliminates the references in Regulation CC to "nonlocal" checks. The distinction between local and nonlocal checks is tied to Federal Reserve Bank check processing regions. As of February 2010, the Reserve Banks have ceased operations in all but one of their check processing offices, such that there is now only one check processing region, and all checks are local to each other. Local checks are generally subject to a two-business-day hold period.

While Regulation CC will implement that section of the Dodd-Frank Act, the Board expects the increase to take effect on July 21, 2011, regardless of whether the proposed rule is finalized.

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► COMMERCIAL LENDING AND YOUR CREDIT UNION

Michael A. Kus

Credit unions that routinely process complex consumer loan transactions are sometimes daunted by the prospect of doing a business or commercial loan for their members. The unfamiliar nature of business transactions can make a commercial loan seem complex and fraught with unknown challenges. In reality, consumer loans are often more complicated than a comparable commercial loan. If your credit union rarely – or never – makes business loans to your members, you may wish to consider the benefits offered by the Oak Tree Business Systems line of commercial documents.

Why are business loans often less complex than consumer loans? Simple. The myriad consumer lending regulations that require extensive disclosures and place strict timing requirements on a transaction generally don't apply. With very limited exceptions, the Truth In Lending, Equal Credit Opportunity, RESPA, and similar regulations are not adding layers of complexity to a commercial loan. Because commercial loans are, by definition, not for personal, family or household purposes, the raft of protections that has evolved to carry consumers safely through their dealings with lenders are irrelevant; business owners are presumed to be sophisticated enough to know what is in their best interest.

What this means is that a carefully crafted set of commercial loan forms can expand the credit union's loan product offering without the worry of wondering whether all of the bases have been covered. Oak Tree Business Systems' line of commercial lending products take the transaction from application through closing, providing a clear and concise set of forms that follow Oak Tree's long-standing practice of using clear, easy to understand language, just like our consumer lending forms.

Because business loans are typically made to an entity instead of a natural person (with the exception of loans to a Sole Proprietorship), the first step in processing a commercial loan transaction is to identify and establish the nature of the entity or business to which the loan will be made. The Oak Tree Business Systems commercial loan forms set includes specialized documents designed to collect the necessary information. The Business Services Application gathers information about the type of business (e.g., Sole Proprietorship, Partnership, LLP, LLC, Corporation, etc.), the identity of the principals/owners, and information about the business' banking relationships and trade references, as well as detailed information about the credit requested. Several useful document checklists are included to help ensure

that all aspects of the transaction are considered. The Business Services Account Agreement establishes the business entity as a member of the credit union and sets the ground rules for managing the entity's deposit accounts. The Personal Financial Statement is useful for gathering detailed financial information about the principals of the business, an essential component in properly underwriting any commercial loan.

After a business entity's application for credit has been approved, it's necessary to establish just who is authorized to conduct business with the credit union.

The type of business will dictate whether a Corporate Resolution to Borrow, a Partnership Borrowing Authorization, a Resolution of Limited Liability Company or an Affidavit of Loan Purpose will be needed. Each of the Resolutions

and the Authorization are designed to specifically identify the individuals who are authorized on behalf of the business entity to conduct loan transactions with the credit union. Each form is designed to be processed and adopted as part of the entity's official business, and serves as a legally binding representation to the credit union that the individuals identified on the form are authorized and empowered to obligate the entity on a loan transaction, and to pledge the entity's assets as security for a loan. The Affidavit is for use by Sole Proprietorships ("d/b/a's") to establish the business-purpose nature of the loan. Because sole proprietors are individuals, this sworn statement serves the necessary function of establishing that the credit being granted is not for personal, family or household purposes, thereby clearly establishing that consumer lending regulations are not applicable.


The Oak Tree Business Systems business loan documents can handle both closed-end and open-end credit. Fixed- or variable-rate transactions can be documented using either the Promissory Note and Business Loan Agreement or the Business Line of Credit Agreement. Both documents include loan agreement provisions that establish basic ground rules for loan, including the interest rate provisions, fees and charges, whether security will be required, and the circumstances of default. There is considerable flexibility built into the documents, so that a wide variety of transactions may be evidenced using just these two forms. The signatures and representations contained on the Disbursement Request and Authorization form provide additional protection to the credit union when advances are requested, creating a solid paper trail.

Transactions that require collateral or guaranties are easily handled with the commercial lending

A CAREFULLY CRAFTED SET OF COMMERCIAL LOAN FORMS CAN EXPAND THE CREDIT UNION'S LOAN PRODUCT OFFERING...

document set. The Security Agreement is used to obtain the collateral owner's pledge of collateral, and is suitable for use as an "all assets" pledge as well as for a pledge of a specific item of collateral. A state-specific Commercial Credit Line Mortgage or Commercial Credit Line Deed of Trust may be used when the collateral is real property. Designed to secure commercial loans, these documents are specifically designed for use in the state where the real property is located. The Agreement to Furnish Insurance expressly authorizes the credit union to obtain force-placed collateral protection insurance in the event that the borrower fails to maintain required coverage on any

collateral. For those transactions where additional security is deemed appropriate, the Continuing Guaranty form may be used to obligate a third-party guarantor for repayment of the loan.

Together with documents that are routinely used in both consumer and commercial transactions, such as UCC Financing Statements, Flood Hazard and Flood Insurance Notices, and Stock pledges, the Oak Tree Business Systems line of commercial lending documents provides credit unions with a structured and straightforward means of documenting a wide variety of business loans, dispelling the mystery that sometimes shrouds commercial lending. 

▶ ESCROW REQUIREMENTS CHANGE: THE GOOD, THE BAD AND THE UGLY

Rod G. Terry, Director Of Product Management

The Good: The Board of Governors of the Federal Reserve System ("Board") published a final rule that will amend Regulation Z effective April 1, 2011. The revisions to the regulation were made pursuant to Section 1461 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which required a separate, higher rate threshold for determining when the escrow requirement applies to higher-priced mortgage loans that exceed the maximum principal obligation eligible for purchase by Freddie Mac.

Specifically, the final rule revised § 226.35(b)(3) to provide a higher APR threshold for "jumbo" mortgage loans secured by a first lien on a consumer's principal dwelling when determining whether such loans are considered to be higher-priced mortgage loans for which an escrow account must be established. The newly revised threshold for coverage of the escrow requirement for "jumbo" loans is 2.5 percentage points (rather than the previous 1.5 percentage points) in excess of the average prime offer rate for a comparable transaction. Raising the APR threshold applicable to "jumbo" loans eliminates the mandatory escrow requirement for loans with an APR above the existing 1.5 percentage point threshold but below the new threshold. At present, a "jumbo" mortgage loan is defined as a principal obligation that exceeds \$417,000 for a single-family property that is not located in a designated "high-cost" area. Higher limits apply for mortgage loans secured by a property with two to four residential units. These amounts may be adjusted each year by the Federal Housing Finance Agency. The escrow requirements for non-jumbo loans remain unchanged.

In conjunction with the above final rule and in accordance with the Dodd-Frank Act, the Board also proposed amendments to Regulation Z's escrow requirement for higher-priced mortgage loans. The

proposed rule, if finalized exactly as proposed, would create an exemption from such escrow requirement for any creditor that: (i) operates predominantly in rural or underserved areas; (ii) together with its affiliates during either of the preceding two calendar years must have originated and retained the servicing rights to 100 or fewer loans secured by a first lien on real property or a dwelling; (iii) together with its affiliates must not maintain an escrow account for any mortgage loan they currently service; or (iv) meets any asset-size threshold and/or any other criteria the Board may later establish.

The Bad: The above-proposed rule would also expand the minimum period for mandatory escrow accounts from the current one year to five years and, under certain circumstances, longer. Additionally, the Board proposed to establish two new disclosure requirements relating to escrow accounts for all closed-end loans secured by a first-lien on real property or a dwelling. One disclosure would be required three business days before consummation of a mortgage transaction for which an escrow account will be established. The Dodd-Frank Act requires such disclosures for higher-priced mortgage loans for which such an escrow account is required, and the Board is proposing to require the same disclosure for all mortgage loans for which an escrow account is established. The disclosure would explain what an escrow account is and how it works. It would state the risk of not having an escrow account. The disclosure would also state the estimated amount of the first year's disbursements, the amount to be paid at consummation to fund the escrow account initially, and the amount of the consumer's regular mortgage payments to be paid into the escrow account. Finally, the disclosure would state that the amount of the regular escrow payment may change in the future.

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Maximize the possibilities.

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► ADVERSE ACTION FORMS FACE REFORM

Rod G. Terry, Director Of Product Management

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") was signed into law. Section 1100F of the Dodd-Frank Act amends: (i) section 615(a) of the Fair Credit Reporting Act ("FCRA") to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score; and (ii) section 615(h) of the FCRA to require creditors to disclose in risk based pricing notices the credit score and information relating to that credit score, whenever a consumer's credit score is used in setting the material terms of credit. The effective date of these amendments is July 21, 2011.

Consistent with the Dodd-Frank Act, the Board of Governors of the Federal Reserve System ("Board") recently issued a notice of proposed rulemaking that when finalized will amend the model adverse action notices in Regulation B to include the disclosure of credit scores and information relating to credit scores when a credit score is used in taking adverse action. Additionally, both the Board and the Federal Trade Commission ("Agencies") issued an additional notice of proposed rulemaking citing the importance of having implementing regulations and revised model forms in place that addressed the amendments to section 615(h) of the FCRA. The Agencies actions are intended to ensure that consumers receive consistent disclosures of credit scores and information relating to credit scores in the risk based pricing notices they receive, while also helping to facilitate uniform compliance when section 1100F of the Dodd-Frank Act becomes effective on July 21st.

Oak Tree Business Systems, Inc. is poised to begin modification of their clients' electronically supplied adverse action notices, pending finalization of the rule changes to Regulation B. In addition, once the changes to Regulation V are finalized, it can be determined whether an optional section can be inserted into the existing general and account review risk based pricing notices, or whether separate notices will be required. Oak Tree Business Systems, Inc. offers the entire suite of risk based pricing notices in addition to an adverse action notice. For additional information on these products please contact Margaret Bennett in the Client Services Department. 

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The Ugly: Also pursuant to the Dodd-Frank Act, the Board proposed a second disclosure that would be given when a mortgage transaction is entered into without an escrow account or when an escrow account on an existing mortgage loan will be cancelled. The disclosure would be required to be delivered at least three business days before consummation or cancellation of the existing escrow account, as applicable. This disclosure would explain what an escrow account is, how it works, and the risk of not having an escrow account. It also would state the potential consequences of failing to pay home-related costs such as taxes and insurance in the absence of an escrow account. In addition, it would state why there will be no escrow account or why it is being cancelled, as applicable, the amount of any fee imposed for not having an escrow account, and how the consumer can request that an escrow account be established or left in place, along with any deadline for such requests. 