

## ***Conmarsystems***

## **Update:**

### *Open-End and Regulation Z Effective July, 2010*

Date Issued: October 14, 2009

The House passed (Oct 13) H.R.3606 which would make a technical correction to The Credit Card Act that would clarify that the 21-day notice requirement only applies to credit card statements and not all open-end lending. The measure must now be approved by the Senate and signed into legislation in order for the Fed to amend the rules enacting The Act. It appears that relief will be forthcoming from the burdensome and costly challenges for credit union compliance with the non-credit card aspects of The Act. So, let's get back to addressing Regulation Z, July 2010 compliance changes for Open-End multi-featured lending.

#### **Multi-Featured Open-End Lending**

Open-End has been a preferred method for Credit Union consumer loans for the last twenty plus years. The July 2010 changes to Regulation Z allow Credit Unions to continue using Open-End lending plans for various types of consumer loans.

Open-End requires a plan agreement between the Credit Union and member/borrower that reasonably anticipates repeated advances under the plan. Some features such as loan types with different rates may be accessed infrequently. Other features such as revolving lines of credit or overdraft protection by loan may be accessed more frequently. Extensions of credit under the plan need not be an absolute right for the plan to qualify as replenishing. However, the revision to the Commentary does change the concept of verification of information as a condition of approving a particular advance. *To meet the definition of Open-End credit, such verification of information may not be done as a condition of granting a request for a particular advance under the plan.* Obviously, the ability of a Credit Union to verify credit information is critical so a clarification of definitions and an understanding of the concept of "occasionally and routinely" as used in the Commentary are necessary.

The revised Commentary uses "occasionally" and "routinely" when referring to verifying credit information. It follows that since verification of information cannot be done as a condition of granting a specific advance, then "occasionally" or "routinely" implies from time to time in accordance with written Credit Union procedure. In simple terms verification may still occur, just not all the time and when it does occur, verification must be consistent with established lending policy and procedure.

Words do have meaning, so it is appropriate to assume that if verification for a particular advance can't be done, then verification can be done for certain types or classifications of advances if we follow the concept of "occasional or routine" as stated in the Commentary. For example, a Credit Union may not verify information for a specific advance request, but could do so based on policy for a particular class of transactions, such as advances over a certain amount, or requests made by internet. The logic is that if a borrower has an Open-End plan, the borrower should not have to apply for an advance... borrower should simply put in motion a request for an advance. This brings us back to definitions of words in order to determine what is permissible or not to verify continuing creditworthiness. Thus, "apply" implies a lack of existing relationship, whereas verification means a relationship already exists; "verify" means a separate credit decision whereas verification means an intention to lend unless creditworthiness has changed; "apply" means a one-time decision whereas verification indicates a process to lend additional funds.

Even though the most important "non-change" is that the provisions of the Commentary that support Open-End multi-featured lending remain intact, the definition of Open-End lending has been expanded. Consequently, Credit Unions must review loan types and policy in the context of determining when to update and when to verify credit information based on other than verifying credit information for a single particular advance. And clearly distinguish the process used to evaluate "applications" and "requests."

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