sections, should be retained, eliminated, or modified. Comments are due **06/30/2010**. Copies of the notice may be obtained from WBA or viewed at: http://edocket.access.gpo.gov/2010/pdf/2010-7549.pdf. *Federal Register*, Vol. 75, No. 64, 04/05/2010, 17089-17093.

NCUA Issues Proposed Rule on Fixed Assets, Member Business Loans and Regulatory Flexibility Program.

The National Credit Union Administration (NCUA) has proposed to revise certain provisions of its Regulatory Flexibility Program (RegFlex) to enhance safety and soundness for credit unions. Those provisions pertain to fixed assets, member business loans (MBL), stress testing of investments, and discretionary control of investments. Some of these revisions will require conforming amendments to NCUA's fixed assets and MBL rules. The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those federal credit unions (FCUs) that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. Specifically, an FCU automatically qualifies when it has received a composite CAMEL rating of "1" or "2" for the two preceding examinations and has maintained a net worth classification of "well capitalized" under Part 702 of NCUA's rules for six consecutive preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under Part 702, has remained "well capitalized" for six consecutive preceding quarters after applying the applicable RBNW requirement. An FCU that does not automatically qualify may apply for a RegFlex designation with the appropriate regional director. An FCU's RegFlex authority can be lost or revoked. Comments are due **05/24/2010**. Copies of the proposed rule may be obtained from WBA or viewed at: http://edocket.access.gpo.gov/2010/pdf/2010-6391.pdf. *Federal Register*, Vol. 75, No. 57, 03/25/2010, 14372-14375.

NCUA Issues Proposed Rule on Fiduciary Duties at Federal Credit Unions; and Mergers and Conversions of Insured Credit Unions.

NCUA has issued a proposed rule covering several related subjects. The proposal documents and clarifies the fiduciary duties and responsibilities of federal credit union directors. The proposal adds new provisions establishing the procedures for insured credit unions merging into banks. The proposal also amends some of the existing regulatory procedures applicable to insured credit union mergers with other credit unions and conversions to banks. In January 2008, the NCUA Board issued an Advance Notice of Proposed Rulemaking (ANPR) asking whether it should adopt rules governing the merger of a federally insured credit union (FICU) into, or a FICU's conversion to, a financial institution other than a mutual savings bank (MSB). The ANPR also sought comments about whether NCUA should amend its existing regulations regarding mergers, charter conversions, and changes in account insurance. In particular, NCUA sought comments about how these transactions affect member rights and ownership interests, and whether regulatory changes are necessary to better protect member interests. A particular focus of the ANPR was whether existing rules adequately protect member interests. NCUA has now proposed rules it believes are designed to better protect the members. Comments are due **05/28/2010**. NCUA has also issued a separate notice to announce a correction to its proposal because the proposed rule contained an incorrect address for website comments and an incorrect subject line for e-mail comments in the "address" section of the preamble to the proposed rule. The correction notice includes the correct contact information. Copies of the proposed rule may be obtained from WBA or viewed at: http://edocket.access.gpo.gov/2010/pdf/2010-6439.pdf. *Federal Register*, Vol. 75, No. 59, 03/29/2010, 15574-15596. Copies of the correction may be obtained from WBA or viewed at: http://edocket.access.gpo.gov/2010/pdf/2010-7655.pdf. *Federal Register*, Vol. 75, No. 64, 04/05/2010, 17083-17084.■

COMPLIANCE NOTES

◆ Lenders and underwriting staff are reminded to take particular care when imposing charges for consumer credit reports. At issue is the practice of charging only one fee for a joint credit report ordered for an application between married joint applicants, but charging higher fees for separate individual credit reports ordered for "similarly situated" unmarried joint applicants. Regulators have taken the position that such a practice is a fair lending violation based on "marital status" under the Equal Credit Opportunity Act (ECOA).[1]

[1] Regulation B, which implements ECOA, specifies that "a creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction." The purpose of Regulation B is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, age (provided the applicant has the capacity to contract), and marital status.

The fact that the difference in charge between a joint credit report and separate individual credit reports may be a small amount does not matter; rather, the mere fact that the credit report charge is a different amount for married joint applicants versus the credit report charge for similarly situated non-married joint applicants is the cause of the violation.

It is our understanding that joint credit reports may be ordered from credit bureaus for any applicants who share a common residential address. Thus, non-married joint applicants sharing a common residential address arguably are similarly situated to married joint applicants who share the same address.

Banks are encouraged to: (1) review their underwriting practices to identify how consumer credit reports are ordered from credit reporting agencies in connection with an application; (2) review the charges involved; and (3) contact their credit report vendors to discuss product options.

◆ The US Department of Labor (DOL) has recently issued Administrator's Interpretation No. 2010-1 regarding the application of the administrative exemption under Section 13(a)(1) of the Fair Labor Standards Act (FLSA) as it relates to the duties of a mortgage loan officer. Based upon the analysis outlined in the interpretation, it is DOL's interpretation that employees who perform the typical job duties of a mortgage loan officer do not qualify as bona fide administrative employees exempt under section 13(a)(1) of FLSA. The DOL interpretation outlines the typical job duties of mortgage loan officers; and factors under the FLSA used to determine whether an employee is exempt.

Financial institutions, together with their own legal counsel, should review the DOL interpretation as applied to their own employees' compensation and primary duties to further determine how the DOL interpretation may impact the institution. For a copy of the DOL interpretation, please contact WBA's Jodi Zieske at 608/441-1207 or jzieske@wisbank.com. The DOL interpretation may also be may found at: www.dol.gov/WHD/opinion/adminIntrprtn/FLSA/2010/FLSAAI2010_1.pdf.

◆ The WBA's Overview of Various Government Mortgage Loan Programs chart has been updated. The revisions include updated information on the recently announced Treasury enhancements to the HAMP program which go into effect this fall. The revised chart also includes information related to short sales and deeds-in-lieu of foreclosure under HAFA which went into effect **04/05/2010**. The chart may be found on the WBA website at: www.wisbank.com.

◆ Federal regulators have made available the Model Consumer Privacy Notice Online Form Builder for financial institutions to download and use to develop and print customized versions of a model privacy notice. The Online Form Builder (OFB), based on the model form regulation published in the *Federal Register* on 12/01/2009, under the GLBA, is available with several options. To obtain a legal "safe harbor" and so satisfy the law's disclosure requirements, institutions must follow the instructions in the model form regulation when using the OFB. However, institutions are reminded that the current safe harbor remains in effect for notices that contain clauses from Appendix B of the regulation (formerly Appendix A), so long as such notice is provided on or before **12/31/2010**. This gives institutions time to make the transition from their existing notice to a notice based on the new models. The OFB may be found at: www.federalreserve.gov/newsevents/press/bcreg/20100415a.htm.

◆ OCC has adopted as guidance the FRB Consumer Affairs letter CA 09-12 regarding amendments to Regulation Z, which implements the Truth in Lending Act. FRB's CA letter provided guidance in the form of answers to frequently asked questions regarding Regulation Z's repayment ability for higher-priced balloon mortgage loans with terms of less than seven years. The letter was outlined in the November 2009 edition of the *WBA's Compliance Journal*. The Bulletin may be found at: www.occ.treas.gov/ftp/bulletin/2010-14.html.

◆ FEMA, OTS and FRB have issued guidance regarding the recent lapses in authorization of National Flood Insurance Program (NFIP). The most recent Congressional authorization of NFIP expired at midnight on **03/28/2010**. While awaiting further Congressional action on this issue, lenders should consult the guidance documents. FEMA guidance may be found at: www.aba.com/aba/documents/news/FEMAfaq.pdf. OTS guidance may be found at: http://files.ots.treas.gov/25038.pdf. FRB guidance may be found in Consumer Affairs CA letter 10-3: www.federalreserve.gov/boarddocs/caletters/2010/1003/caltr1003.htm.

◆ Consumer Affairs letter CA 10-4 regarding submission of consumer credit card agreements and CA 10-5 regarding interagency examination procedures regarding the duties of furnishers of information have been issued by FRB.

The purpose of **CA 10-4** is to reiterate and highlight Regulation Z (Truth in Lending) requirements related to the submission of consumer credit card agreements. Under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), credit card issuers must submit their consumer credit card agreements to FRB for posting on FRB's website. The final rule which amended Regulation Z, adopted by FRB on 01/12/2010, required issuers to send their initial submissions to FRB by 02/22/2010. Subsequent submissions are due on 08/02/2010, and on a quarterly basis thereafter. FRB has also published technical specifications for the submission of consumer credit card agreements, which were included as Attachment I to the final rule.

The FRB final rule also adopted certain exceptions to the submission requirements. Issuers with fewer than 10,000 open credit card accounts are exempt. Card issuers are not required to submit agreements for private label plans offered on behalf of a single merchant or a group of affiliated merchants if each of these plans has fewer than 10,000 open accounts. Also, issuers are not required to submit agreements for plans offered in order to test a new credit card product provided that the plan involves no more than 10,000 accounts. Agreements that are not currently offered to the public are also excepted from the rule. Issuers should refer to 12 CFR 226.58 and accompanying staff commentary for further information. **CA 10-4** may be found