New Hampshire

BANKING DEPARTMENT

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Issue 09-2

A brighter year ahead

Banking Commissioner Peter C. Hildreth

The old Chinese curse is said to be, "May you live in interesting times." 2009 certainly qualifies as "interesting times." We entered 2009 just after several large, multi-national financial institutions failed. Others were rescued by the Federal Government. While New Hampshire banks and credit unions are safe and sound, well over 100 banks nationwide have failed so far in 2009. Foreclosures continue at a much higher rate than normal. Unemployment is all too common.

But, there are positive signs out there. Economists are saying the recession is over. We see anecdotal evidence of an improved economy. The stock market went over 10,000 points and continues to hover in the vicinity. And there have been signs that our housing market has bottomed and is slowing starting to recover. While I foresee a long, slow recovery, the signs are there. Fortunately, New Hampshire and its financial institutions are well positioned to lead the recovery.

The other good news is that our state chartered Institutions are holding up well considering the pressures they face. We are truly fortunate to have many outstanding banks and credit unions ready to help our residents and businesses. Many of our institutions are having record years for loans.

Though this has been an interesting year, I hope that the New Year brings less interesting times and continued economic improvement.

INSIDE THIS ISSUE

Marketing Disclosures; Examination Reports; FinCEN Update 2
Referring Unacceptable Appraisal Reports to the New Hampshire Real Estate Appraiser Board 3
Institutions with Fiduciary and Related Services 4
Tradeoff Tables 5
Borrower's Ability to Repay 6
Changes to TILA, RESPA and NH RSA 97-A 7
Renewal Updates for Mortgage Licensees 8
Payments to the Department 9
Renewal Information for Debt Adjusters, Small Loan Companies, Money Transmitters, Sales Finance Companies and Retail Sellers 9
Safeguarding Customer Information 10

Escrow Rate

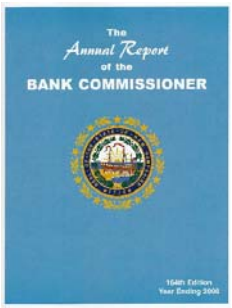
The escrow rate for the period August 1, 2009 through January 31, 2010 is 0.0%.

Public Notices

In accordance with RSA 91-A, the Right-to-Know law, notices of public meetings are posted in the Banking Department lobby and in the Legislative Office Building. In addition, the notices are posted to the Department's web site and will be emailed to recipients that opt in to a new list serve, also shown on this page. Please visit the Public Notice Page on the Department web site to sign up.

Annual Report

The 2008 Annual Report is now available for download from our web site.



Banking Division News

Marketing Disclosures

By Kristina Dore, Bank Examiner

Financial institutions need to ensure compliance not only with banking laws, but with applicable consumer protection laws, such as Section 5 of the Federal Trade Commission (FTC) Act as well. The Unfair and Deceptive Acts or Practices (UDAP) section, contained within Section 5 of the FTC Act, is the primary federal law that prohibits unfair or deceptive practices in the conduct of trade or commerce. A financial institution in violation of Section 5 of the FTC Act has also likely violated NH RSA 358-A:2, over which the Commissioner has jurisdiction and may order restitution under NH RSA 383:10-d.

Financial institutions need to be mindful of their responsibilities pertaining to these statutes - not only to protect consumers but also to minimize the risks to the institution as well. The costly process of resolving a consumer complaint of an unfair or deceptive practice can potentially be avoided by having the proper disclosures in marketing materials. If there is any reason a product/service may not be offered to a particular consumer (such as geographic location), this should be defined via proper disclosure.

For additional information on Section 5 of the FTC Act and how it may be applicable to financial institution operations, refer to FDIC FIL-26-2004.

Examination Reports

By Todd Wells, Chief Bank Examiner

Reminder: Reports of Examination (ROE) are confidential information as outlined in NH RSA 383:10-b. ROEs shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be subserved by the publication thereof. Institutions are reminded that the numeric ratings specified in ROEs should not be documented in the written Board meeting minutes. Further, ROEs should not be duplicated for inclusion in Board packages that either become part of, or complement, the Board meeting minutes/documents.

FinCEN Update

As outlined in NCUA Regulatory Alert (08-RA-11), the Financial Crimes Enforcement Network (FinCEN) recently issued a final rule (effective January 5, 2009) amending the Bank Secrecy Act regulations regarding Currency Transaction Report (CTR) exemptions. One of the changes involves the renewal process for Phase II exempt members. Specifically, in regards to Phase II exempt members, while credit unions must still file Form 110, Designation of Exempt Person (DOEP), at the time of initial designation of exempt status, the amended rule eliminated the requirement for credit unions to file a renewed DOEP form biennially (every two years) after the initial DOEP has been filed.

Banking Division News

Referring Unacceptable Appraisal Reports to the New Hampshire Real Estate Appraiser Board

By Kathy Hildreth, Bank Examiner

An appraisal is a vital part of home buying or refinancing. The appraiser is an independent third party delivering an unbiased opinion of value. Lenders are traditionally responsible for managing the property valuation and appraisal review process.

Should a lender identify potential appraisal deficiencies or concerns during their quality assurance efforts, then a referral to the state appraiser licensing board should be considered.

The New Hampshire Real Estate Appraiser Board is responsible for any investigation and, if appropriate, enforcement action.

About the Board

The purpose of the New Hampshire Real Estate Appraiser Board is to bring New Hampshire into compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The federal act's purpose is to protect federal financial and public policy interests in real estate related transactions by requiring that real estate appraisers used in connection with federally-related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. However, any real estate appraisal service performed by an individual licensed or certified under this chapter shall be subject to the supervision of the board.

The seven members of the New Hampshire Real Estate Appraiser Board are appointed by the Governor and the Executive Council. All members serve for a term of three years or until their successors are appointed and qualified. No member shall serve for more than 2 consecutive terms. By statute, the Board must include:

- Three real estate appraisers with a minimum of five years' experience, consisting of: one New Hampshire certified residential appraiser; one New Hampshire certified general appraiser; and one New Hampshire certified appraiser who is a broker licensed under RSA 331-A (provided that no two are members of the same private appraisal organization).
- One representative from a New Hampshire lending institution.
- The Banking Commissioner or his designee.
- Two members of the general public not associated directly or indirectly with banking, brokerage, real estate appraisal, insurance, or any other affected industry.

The members of the Board are not compensated for their service.

The Board meets once a month, typically on the second Friday of the month, to carry out the purpose of the Board.

NHREAB Contact Information:

State House Annex - Room 426
25 Capitol Street, Concord, NH 03301
Tel: (603) 271-6186
Fax: (603) 271-6513
TDD Access: Relay NH 1-800-735-2964
E-mail Board Office: nhreab@nh.gov

The Board office is open to the public from 8:00 am to 3:00 pm daily.

Banking Division News

Institutions with Fiduciary and Related Services

By Ellen Keniston, Bank Examiner

FFIEC has implemented Call Report changes taking effect December 31, 2009 for Schedule RC-T-Fiduciary and Related Services. This will affect both FFIEC 031 and 041 Reporting Forms. (This is the first revision of Schedule RC-T since it was implemented at the end of 2001).

The changes will provide greater detail as to the types of fiduciary and related assets held. On the related services income side, there will be a separate line for foundation and endowment trust and agency accounts.

The memoranda managed assets form will have a greater detail breakout in addition to now being slotted under three categories.

There will also be a new line for issues in default under corporate trusteeships.

Detailed information can be found at the following link.

http://www.ffiec.gov/forms031.htm

and click on:
FIL-7-2009 Revisions to the Consolidated Reports of Condition and Income for 2009.

Draft FFIEC 031 reporting form for December 2009 (updated September 10, 2009).

Draft Instructions for Proposed New and Revised Items for December 2009.

The above shows a draft of the changes in RC-T and there is an identical one for FFIEC 041.

CONSUMER CREDIT DIVISION NEWS

Tradeoff Tables

By Anna-Maria Tremblay, Bank Examiner

House Bill 610, which became effective July 31, 2009, amends New Hampshire RSA 397-A:15 to require the *immediate use* of the new Good Faith Estimate/Tradeoff Table by all New Hampshire originators (See page 6).

Following is an overview of the requirements of RSA 397-A:15, IX:

- Originators are now *required* to issue the Tradeoff Table whenever a yield spread premium is to be collected.
- If the loan originator utilizes the new GFE form, it is required that all fields of the form *must* be filled out.
- Copies of these forms must be maintained by the broker *and* the banker.

RSA 397-A:15, IX reads as follows:

(a) Every field on the United States Department of Housing and Urban Development's Good Faith Estimate (GFE) form shall be completed before it is given to a borrower. The mortgage originator shall complete the Tradeoff Table on the instruction page of the GFE where a yield spread premium is to be paid in connection with a mortgage transaction.

(b) At the time the interest rate is locked for a loan, the borrower shall be given a completed GFE Tradeoff Table for such loan; the intent is to allow the borrower to clearly see the loan options available to him or her that he or she did not elect.

(c) When completing the GFE Tradeoff Table, if a loan with a lower interest rate is not available to a borrower, an entry of "N/A" is acceptable and if a loan with lower settlement charges is not available, an entry of "N/A" is acceptable.

(d) A copy of each disclosure, including those required by IX (a)-(c), and its method and timing of delivery shall be kept by the mortgage broker and by the mortgage banker.

RSA 397-A:15, IX requires the Tradeoff Table be filled out when there is a Yield Spread Premium collected on a loan.

These instructions, along with all the new RESPA forms may be found by visiting http://www.HUD.gov.

Using the Tradeoff Table **(See page 6)**

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

CONSUMER CREDIT DIVISION NEWS

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	$	$	$
Your initial interest rate[1]	%	%	%
Your initial monthly amount owed	$	$	$
Change in the monthly amount owed from this GFE	No change	You will pay $ **more** every month	You will pay $ **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $	Your settlement charges will **increase** by $
How much your total estimated settlement charges will be	$	$	$

[1] For an adjustable rate loan, the comparisons above are for the initial rate before adjustments are made.

**Please note that if the borrower chooses another option, they are required to be issued a new GFE.

Borrower's Ability to Repay

By Anna-Maria Tremblay, Bank Examiner

House Bill 610, which became effective July 31, 2009, also amends New Hampshire RSA 397-A:15. This amendment places responsibility on the licensee, to implement an internal policy which effectively analyzes a borrower's ability to repay.

The following is an overview of the requirements of RSA 397-A:15, IX:

In order to be acceptable, a policy must include the following two elements:

1. The policy must be clearly documented (written)
2. The policy must be management approved.

Further, the licensee is required to maintain evidence of analysis for all originated loans.

RSA 397-A:15, X reads:

Mortgage bankers and mortgage brokers shall have a documented methodology, approved by a senior manager, that enables its employees, agents, and originators to make a reasonable determination that the borrower can repay a mortgage loan. The methodology shall reflect all relevant factors that have a bearing on the present and future capacity of the borrower to adequately service the debt. A mortgage banker, mortgage broker, and mortgage originator shall not offer or extend a mortgage loan to a borrower unless a reasonable lender would believe at the time the loan is made that the borrower will be able to make the scheduled payments associated with the loan. The loan file kept by the mortgage banker, mortgage broker, and mortgage originator shall document the analysis used to arrive at that conclusion.

CONSUMER CREDIT DIVISION NEWS

Changes to TILA, RESPA, and NH RSA 397-A

By Sarah Lobdell, Bank Examiner

All Mortgage Bankers and Mortgage Brokers should be aware that both the Truth-in-Lending Act and Real Estate Settlement Procedures Act have recently been amended as well as our state statute, NH RSA 397-A. Some of the new changes to disclosures required to be given to consumers have already taken effect and some will be effective January 1, 2010. The following is an overview of the changes and requirements that all licensees should know and have implemented.

The Truth-in-Lending Act still requires that licensees provide consumers with a disclosure ("TIL disclosure") that identifies among other items, the creditor, amount financed, itemization of amount financed, finance charge, annual percentage rate, certain information in regards to variable rate transactions, payment schedule, total of payments, whether the transaction has a demand feature, total sale price, any prepayment provisions, etc. The TIL disclosure is still required to be provided to consumers within 3 days of receipt of an application. New requirements have, however, been implemented and include:

- No fees (other than a credit report fee) may be imposed upon a consumer until after the consumer has received the TIL disclosure.
- The loan cannot close until 7 days after the TIL disclosure has been received by the consumer.
- In the event that the annual percentage rate is required to be re-disclosed, the licensee must wait an additional 3 days before closing the loan.
- The initial and final TIL disclosure must state "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."

A link to the revised Truth-in-Lending Act has been provided below:

http://www.fdic.gov/regulations/laws/rules/6500-1400.html

The Real Estate Settlement Procedures Act no longer requires the disclosure on the Servicing Disclosure Statement which indicated the percentages of loans originated by the lender in each calendar year for which servicing had been assigned, sold, or transferred. As of January 1, 2010, the Real Estate Settlement Procedures Act will require that all licensees use the revised good faith estimate and HUD-1 Settlement Statement forms. Along with the use of the revised forms, there will be new requirements regarding the collection of upfront fees and established tolerances for certain settlement costs. A link to the revised Real Estate Settlement Procedures Act has been provided below:

http://www.fdic.gov/regulations/laws/rules/6500-2520.html

New Hampshire law requires that any licensee that will collect a yield spread premium in connection with a mortgage transaction must complete the Tradeoff Table on the instruction page of the revised good faith estimate and provide to the consumers. While the revised good faith estimate is not yet required to be used, the New Hampshire Banking Department is requiring that as of July 31, 2009 the Tradeoff Table be completed. Licensees shall keep this Tradeoff Table with the transaction's loan file. More information on the use of the Tradeoff Table has been included in this newsletter. A link to the legislation that amended NH RSA 397-A has been provided below:

http://www.gencourt.state.nh.us/legislation/2009/HB0610.html

Consumer Credit Division News

Renewal Updates for Mortgage Licensees

By Celeste Couture, Licensing Supervisor

Last year was a year of many changes for mortgage company licensees as well as the Department, marked by the transition of companies to the electronic format for managing their licensing files through the Nationwide Mortgage Licensing System (NMLS) including their renewals. On April 1st of this year, the Department began licensing loan originators associated with mortgage bankers and brokers. This results in the addition of an entirely new group to the renewals that will be processed through the NMLS this year.

Renewals begin on November 1, and you should have already received a renewal bulletin that was sent to all company licensing contact persons directly from the NMLS. These bulletins provide an overview of the renewal process and the links to the NMLS website pertaining to renewals. As always, all licenses expire at midnight on December 31, 2009, and the only way to renew is through the NMLS. There will be no access to the Department's own electronic renewal system. That is now reserved for those who hold other types of licenses.

Because this is the first year of loan originator licensing and renewals, there are areas of confusion. We hope that the following will help to clarify any questions you may have in regard to loan originator renewals. All of these requirements must be met in order to be eligible for renewal.

All licensed loan originators must: 1) make sure that their individual record on the NMLS is correct and that all of the information contained in that record is current and up to date and attest to the filing. 2) take 20 hours of pre-license education through an NMLS-approved course. The course listing can be found in the Master Catalog on the NMLS website. 3) Take and pass the national test and the New Hampshire test administered through the NMLS. 4) Make sure to sign up for the course and testing in enough time prior to December 31 to allow the results to be posted to the NMLS and if necessary, to re-take the tests if you fail initially. 5) Hold an approved license in their home state (which is the state *from which* they work). These requirements apply to loan originators who became licensed from April 1, 2009 forward.

Although New Hampshire law and the federal S.A.F.E. Act require fingerprinting, a criminal record check and a credit check in order to be renewed for 2010, the NMLS does not have the facilities established at this time for handling this information; therefore, these requirements will not be put into effect for this renewal. There is no documentation that needs to be sent separately to the Department, and the renewal fee for all originators will be $100 plus the NMLS filing fee.

If you have technical difficulties with your filing, please contact the NMLS Call Center at (240) 386-4444. Please contact the Banking Department's Licensing Division at (603) 271-8675 or Licensing@banking.state.nh.us if you have any questions regarding state requirements.

Consumer Credit Division News

Payments to the Department

By Nicole Jeanson, Bank Examiner

All licensees are required to pay all examination expenses, fines, penalties, and other monies within 14 days of receipt of these notices to the Banking Department. This year House Bill 610 became effective on July 31, 2009, and House Bill 334 on September 13, 2009. With the passage of these bills, the amount of time that all licensees have to pay invoices received from the Banking Department has decreased from 60 days to 14 days. According to these bills:

"A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday. Examination expenses, fines, penalties, and other moneys obliged to be paid to the department shall be due and payable within 14 days of receipt of notice by the licensee or other person or at such later time determined by the commissioner."

If licensees fail to pay within the required time frame, it is possible that they could incur additional fines, denial of license renewal, denial of renewal for loan originator's license, and license revocation. Additionally, this could affect license renewal or approval in other states.

If you have any questions or would like further information on these bills go to http://www.gencourt.state.nh.us/legislation/2009/HB0610.html and http://www.gencourt.state.nh.us/legislation/2009/HB0334.html.

Renewal Information for Debt Adjusters, Small Loan Companies, Money Transmitters, Sales Finance Companies and Retail Sellers

By Celeste Couture, Licensing Supervisor

It is once again time to begin preparing for the renewal of your licenses held by your companies that are issued by the Banking Department.

As in years past, you will be able to file your renewals electronically through the Department's website. In the near future, you will be receiving an email from the Department providing you with the credentials you will need to access the electronic renewal system. We anticipate that this information will be sent to you in mid-November and that the system will be available at that time for you to process your renewals.

If you have any difficulties with your filing or have any questions, please contact the Banking Department's Licensing Division at (603) 271-8675 or Licensing@banking.state.nh.us.

Consumer Credit Division News

Safeguarding Customer Information

By Nicole Jeanson, Kathleen Sheehan, Bank Examiners

Retail Sellers need to be aware of the requirements of the Gramm-Leach-Bliley Act and Standards for Safeguarding Customer Information. If a Retail Seller receives customers personal confidential information in anticipation of arranging financing of automobiles that information needs to be secured, protected and remain confidential. Only individuals needing access to complete their job duties should be allowed access.

The Gramm-Leach-Bliley Act and Standards for Safeguarding Customer Information require financial institutions, and service providers that receive customer information and relay that information to other financial institutions, to "develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards…" The intent of the policy is to "Ensure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer."

Such policy was required to be implemented by May 23, 2003.

An Information Security Program should include the following items:

a. a designated employee to coordinate the program.
b. a risk assessment.
c. design, implement and regularly test safeguard controls.
d. monitor service providers and enter into contracts that require service providers to implement and maintain appropriate safeguards.
e. evaluations and adjustments of the program as necessary.

If you have any questions or would like further information on the Standards for Safeguarding Customer Information go to http://www.ftc.gov/os/2002/05/67fr36585.pdf.