Federal Financial Institutions Examination Council

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FFIEC STATEMENT ON REVISED UCC ARTICLE 9

February 28, 2001

PURPOSE

This statement is intended to alert financial institutions to major revisions to Article 9 of the Uniform Commercial Code (UCC) that were drafted and endorsed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Article 9 governs transactions involving the granting of credit secured by personal property and the sale of accounts and chattel paper. Many states have adopted revised Article 9 into legislation and others have introduced legislation to do so.[1] Revised Article 9 was drafted with a uniform effective date of July 1, 2001, although it does not become law within a particular state until it is adopted by state legislature.[2]

EFFECT ON FINANCIAL INSTITUTION

Revised Article 9 contains a number of new or revised rules for secured transactions that affect a financial institution's procedures, systems, documentation, and the enforceability of security interests. Financial institutions and their legal counsel should consider carefully the changes in state law brought about by revised Article 9 in order to ensure the attachment and perfection of their existing and future security interests.

While the basic concepts of existing Article 9 have been retained, the scope has been expanded to cover new types of collateral (e.g., deposit accounts as collateral for commercial loans) and new types of transactions (e.g., sales of payment intangibles and sales of promissory notes). In addition, the rules concerning attachment[3] and perfection[4] of security interests, security

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[1] The web site for the National Conference of Commissioners on Uniform State Laws, http://www.nccusl.org, provides a list of states that have adopted revised Article 9 or introduced legislation to do so.

[2] If one or more states do not adopt the revised Article 9 or adopt it with an effective date later than July 1, 2001, prudent lenders will need to consider whether they need to comply with the rules of both existing Article 9 and revised Article 9. Even in a state in which revised Article 9 is not adopted, a bank may find that the revised rules apply by way of choice of law provisions in former Article 9. Conversely, in a state in which revised Article 9 is adopted, a bank may find that the rules of former Article 9 in another state's law apply by way of choice of law provisions in revised Article 9.

[3] Although revised Article 9 does not require a security agreement in order for security interests to attach in certain cases (e.g., when the lender takes physical possession of tangible chattel paper), prudent lenders will continue to document security interests as a matter of safe and sound practices.

[4] While some assignments of receivables are not subject to revised Article 9, and others are subject to revised Article 9 but are automatically perfected upon attachment, prudent lenders will file financing statements with respect to receivables taken as collateral, as a matter of safe and sound practices.

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agreements, financing statements[5], place of filing financing statements[6], changes in name and identity of debtors, rights and duties in connection with default and enforcement, and other important features have all been amended. Revised Article 9 affects loan documentation and filing of security interests at origination and renewal, required notifications to debtors and creditors, and the identification of the interests of other creditors. Financial institutions' procedures, systems, and documentation will need to account for the changes.

Revised Article 9 governs collateral for loans made both before and after the law's effective date, in each state. Part 7 of revised Article 9 contains transition rules that lenders must follow to ensure that their rights to collateral on existing loans continue after the effective date of the revision. Time periods are established for the transition from existing Article 9 during which secured parties should take steps to prevent losing their rights to existing collateral. In addition, since filings recorded prior to the revised Article's effective date of July 1, 2001 can continue to be valid for some time thereafter (in some cases filings may remain valid until June 30, 2006), lenders will need to conduct UCC searches both under the current and the revised rules until all of the pre-revision filings have expired. Financial institutions and their legal counsel will need to understand and comply with the requirements of the new law (as well as former Article 9 requirements) in order to protect security interests on new transactions and to ensure that existing rights are not lost.

PREPARING FOR THE REVISIONS

To properly prepare for the revised Article 9, all financial institutions are expected to:

- Become fully aware of the changes to Article 9 and determine the effect the changes will have on the institution;
- Determine the need for revised policies, procedures, systems, and documentation (e.g., security agreement) and implement the revisions as necessary;
- Review secured transactions entered into under existing Article 9 to ensure that existing rights are protected under revised Article 9 and make changes as necessary; and
- Provide adequate training to ensure the staff understands the revisions to Article 9 and can effectively implement revisions to existing policies and procedures.

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[5] Consistent with the development of electronic documentation, revised Article 9 requires the security agreement to be a record authenticated (i.e., adopted by signature or by some manner other than signature) by the debtor. The language of existing Article 9 refers to writing signed by the debtor. This change is one of many to the requirements relating to security agreements.

[6] Under revised Article 9, the state in which to file financing statements for both tangible and intangible collateral is generally the state in which the debtor is located rather than the location of the collateral, subject to exceptions. In addition, the rules for determining the location of the debtor have been changed. For example, a corporation organized under the laws of a state is located in that state and not at its place of business.

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If you have any questions about the contents of this issuance please contact: Credit Risk Division at the Office of the Comptroller of the Currency (202-874-5170) (Barbara.Grunkemeyer@occ.treas.gov), Robert Vilim at the Federal Deposit Insurance Corporation (202-898-6511)(rvilim@fdic.gov), David Adkins at the Board of Governors of the Federal Reserve System (202-452-5259)(David.Adkins@frb.gov), Department of Supervision Office of Examination and Insurance at the National Credit Union Administration (703-518-6360) (E&I Mail@ncua.gov), or William Magrini at the Office of Thrift Supervision (202-906-5744) (William.Magrini@ots.treas.gov).

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