



BANKING ON A SOLID FOUNDATION

COMPLIANCE PIPELINE

Steve H. Powell & Company Annual Contract Updates

July 31, 2014

Volume VII, Issue II

Annual contracts were mailed to our clients the week of July 28, 2014. Each contract contains a matrix of the reviews performed or to be performed during 2014. Each matrix also includes the recommended reviews for 2015 based on the current year's review scope.

Significant changes have been made to our review process as we have added and consolidated some reviews. We will be contacting compliance officers at each of our banks after a signed contract is received to assist in planning the details of the review.

We've added a review specifically focusing on UDAAP, Loan Servicing, and

BSA Software validation. Please see the UDAAP and BSA validation articles for more details. The open-end credit review, escrow servicing review, mortgage department review, and loan compliance reviews (4 weeks of review) have been consolidated into the loan servicing and loan origination reviews for the majority of our clients. Consolidating the reviews will aid overall review efficiency and ultimately reduces annual costs to the bank.

We look forward to speaking with each of you and appreciate the relationship we've shared in 2014.

Regulation E Change in Terms for MasterCard Debit Cards

Effective October 17, 2014 MasterCard is making changes that will adversely affect consumers; therefore, advance notice will be required by section 1005.8 of Regulation E. Consumers with MasterCard branded ATM/debit cards must receive advance notice 21 days before the effective date of the change. It is important when completing change in terms notices, such as statement messages or statement stuffers, to ensure all statement cycles including savings accounts, if applicable, have statement drop dates in advance of the 21 day time frame.

MasterCard is expanding its \$0.00 card holder liability to now cover PIN based and POS transactions while still covering non-PIN transactions. However, MasterCard is implementing an adverse requirement that the consumer

must "promptly" report the theft or loss after becoming aware of it. Also adversely, if the consumer fails to meet the \$0.00 liability conditions (e.g. does not report the loss promptly) the current standard of \$50.00 consumer liability is replaced with the standard Regulation E liability.

This may seem like a minor change; however, institutions may want to seek help from its forms vendor as language explaining the standard Regulation E liability clearly can be cumbersome and lengthy. In addition, ensure that your bank's initial account opening Regulation E disclosures and separate debit card disclosures are updated as of the date you send notice to current customers.

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CFPB Proposes Changes to Amend Regulation P (Privacy)

The Bureau of Consumer Financial Protection (Bureau) has proposed to amend Regulation P, which requires, in part, that financial institutions provide an annual disclosure of their privacy policies to their customers. The amendment would create an alternative delivery method for this annual disclosure, which financial institutions would be able to use under certain circumstances. However, if a financial institution chooses to utilize the alternative delivery method, it is required to provide an annual statement to the customer announcing that the annual privacy notice is available on the financial institution's website. Also the notice is required to be mailed to customers who request it by calling a toll-free telephone number. Importantly, banks can only take advantage of this provision if the notice has not changed. Changes from the proposed rule are provided below.

The following is a list of conditions that must

OFAC's Sanctions List Search

As of June 9, 2014, OFAC's SDN search tool has been updated and renamed the Sanctions List Search. The improved search tool utilizes "fuzzy logic," to identify potential matches on the Specially Designated Nationals (SDN) list and the Foreign Sanctions Evaders (FSE) list. Therefore, the scope of the searches has been broadened to generate results for partial matches. This will reduce the risk of failing to identify a match due to an input error, and increase the tolerance level of searches. The OFAC's SDN search tool does not cover the Palestinian Legislative Council (PLC) List and banks should have processes to screen customer against the PLC just as the SDN & FSE lists.

The fuzzy logic employed in the new Sanctions List search utilizes character, string and phonetic matching to identify potential matches. However, the tool only uses fuzzy logic in the name field. Other search fields utilize character matching to generate results.

be met in order for a financial institution to utilize the proposed alternative delivery method for annual privacy notices:

- (1) The financial institution does not share the customer's nonpublic personal information with non-affiliated third parties in a manner that triggers GLBA opt-out rights;
- (2) The financial institution does not include on its annual privacy notice an opt-out notice under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA);
- (3) The financial institution's annual privacy notice is not the only notice provided to satisfy the requirements of section 624 of the FCRA;
- (4) The information included in the privacy notice has not changed since the customer received the previous notice; and
- (5) The financial institution uses the model form provided in the GLBA's implementing Regulation P.

When searches are conducted, the tool will generate a score based on the similarity between the name searched and the matches on the SDN and/or FSE list. The scores range from 0 – 100, with 100 being an exact match. Users can adjust the "minimum name score" field to limit the results of the search to their desired score threshold. For example, the minimum name score field could be set to 50 and the search would only display names deemed a 50% match based on the fuzzy logic of the search tool. Alternatively, the field could be set to 100 and the search would only display the results of exact matches.

Currently, OFAC does not recommend a minimum match score threshold. Banks should, however, identify the appropriate match score threshold based on their individual risk.

The Sanctions List Search is located at:

www.sdnsearch.ofac.treas.gov

CFPB Considering Guidance on Continuous Overdraft Fees

While the CFPB has yet to formally propose regulation on formal overdraft programs, one can start to see the increased attention to overdraft products and services by the agency. In June 2013, the CFPB issued their study of overdraft programs highlighting concerns of consumers' ability to anticipate and avoid overdrafts on their checking accounts. The report also found that consumers who opt in for overdraft coverage on debit card and ATM transactions end up with higher account fees and more involuntary account closures than consumers who don't opt in. In December 2013, the CFPB anticipated pre-rule activities concerning overdraft programs in July 2014.

Recent guidance put forth by regional FDIC offices on continuous overdraft fees may prove a hint as to what's to come from the CFPB. The guidance encourages bankers "to review the information provided to consumers concerning overdraft services, particularly any extended overdraft and negative balance fees, and conduct transactional testing to ensure that the bank is charging these fees as disclosed from a reasonable consumer's perspective."

Another OFAC List...

On July 17, 2014 the Department of the Treasury's Office of Foreign Asset Control (OFAC) announced sanctions against parties listed on the Sectorial Sanctions Identification (SSI) List. The SSI List aims to block transactions and financing related to financial services, energy, metals and mining, engineering and defense sectors of the Russian economy. The new list is separate from the Specially Designated Nations and Blocked Persons (SDN) List typically employed to block transactions with specified persons.

The new sanction prohibits transacting in, providing financing for, or otherwise dealing in debt with a maturity of longer than 90 days or equity if the debt or equity is issued on or after July 16, 2014 and is on behalf or for the benefit of persons operating in Russia's financial sector. In addition, the sanctions prohibit transacting in, providing financing for, or otherwise dealing in debt issued on or after July 16, 2014 with a maturity date of greater

The guidance emphasizes the necessity for clarity when describing these fees. For example, if a disclosure states that the fee will be assessed "after" three days, the institution should ensure that the fee is not charged until the fourth day.

The guidance also suggests that institutions review how overdrafts are processed over weekend and holiday weekends when deposits are not typically accepted. The guidance raises issue with assessing a continuous overdraft fee based on days that the consumer is unable to repay the negative balance. For instance, if a consumer overdraws his or her account on Thursday and the bank assesses the continuous overdraft fee after the third calendar day, the Bank is only allowing the customer one day to cure the balance before a fee is assessed. Additional items noted in the guidance to ensure clarity include disclosing if service charges can cause a continuous overdraft fee and the amount of time between when a customer receives notice of an overdraft and when the continuous fee is assessed.

than 90 days for persons operating in Russia's energy sector. Further, the prohibition applies to entities who are owned, 50 percent or more, by persons named on the list. The sanctions clearly suggest that the Treasury is attempting to curtail America's involvement in the long term financing of debt related to the core sectors of the Russian economy.

Banks should contact vendors to determine if solutions are in place to enable the bank to check new customers against the SSI list. The Bank should have processes in place to ensure loans are not originated to entities on this list. If the Bank encounters a match it must reject the transaction.

Further information and a copy of the current SSI List can be obtained at the Department of the Treasury's website:

http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx

Compliance Pipeline

Interagency Guidance on HELOCs Nearing the End-of-Draw Period

For many years community banks have offered home equity lines of credit (HELOCs) to consumers as a low cost way to take advantage of the equity in their homes while also receiving possible tax benefits. For many of such products, the HELOCs have a draw period where the customer can make advances and make interest only payments followed by a separate repayment period where no more advances can be made and the borrower must repay the principal balance incurred. Some banks have faced challenges as HELOCs near their end-of-draw period as some borrowers may have difficulty meeting higher payments resulting from principal amortization or an interest rate reset, or refinancing an existing loan due to changes in financial circumstances or declines in property values since the loan was originated. As a result, on July 1, 2014 the joint regulatory agencies released *Interagency Guidance on Home Equity Lines of Credit (HELOCs) Nearing Their End-of-Draw Period* (“the guidance”).

The guidance provides a suggested framework for managing HELOCs nearing their end-of draw period that includes communicating and working with HELOC borrowers experiencing financial difficulties and working with borrowers to avoid unnecessary defaults.

In part, the HELOC guidance:

- Provides core operating principles, including compliance with applicable laws and regulations, which should govern a financial institution's oversight of HELOCs nearing their end-of-draw period.
- Describes components of a risk management approach that promotes an understanding of potential exposures and consistent, effective responses to HELOC borrowers unable to meet their contractual obligations.
- Addresses appropriate accounting and reporting for HELOCs nearing their end-of-draw period.

In addition, it should be noted that FDIC previously issued supervisory guidance in June 26, 2008 (FIL-58-2008) entitled *Home Equity Lines of Credit Consumer Protection and Risk Management Considerations When Changing Credit Limits and Suggested Best Practices* to remind financial institutions that if, for risk management purposes, they decide to reduce or suspend home equity lines of credit, cer-

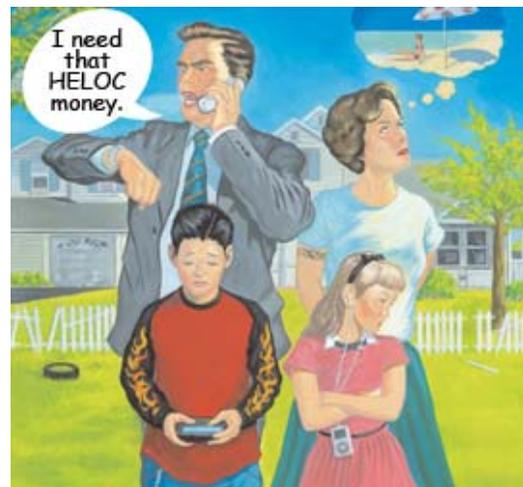
tain legal and compliance requirements designed to protect consumers must be followed. In addition, the FDIC urges institutions to work with borrowers to minimize hardships that may result from such reductions or suspensions.

Financial institutions should consider and apply the HELOC guidance in a manner commensurate with its size and the risk characteristics of its HELOC portfolio. For example, financial institutions with a significant volume of HELOCs, portfolio acquisitions, or exposures with higher risk characteristics generally should have comprehensive systems and procedures to monitor and assess their portfolio. Existing processes may be sufficient for community banks with a small portfolio of HELOCs or exposures with lower risk characteristics.

See the full guidance by the following the links below:

<http://www.fdic.gov/news/news/press/2014/pr14052a.pdf>

<http://www.fdic.gov/news/news/financial/2008/fil08058.pdf>



Compliance Pipeline

Flood Insurance Update

The FDIC's Atlanta Regional Quarterly Newsletter highlighted some of the significant changes by the Homeowner Flood Insurance Affordability Act. See below:

The escrowing of flood insurance premiums will be tied to the origination, extension, increase, or renewal of a loan on or after January 1, 2016. Additional exceptions were also created so that the escrow requirements will not apply to junior liens, condo loans, business loans, home equity lines of credit, nonperforming loans, and loans with a maturity of less than one year. Prior to this change, the Biggert-Waters Act would have required escrows for flood insurance premiums for all loans outstanding on July 6, 2014, with no required "tripwire" and only a small bank exception. Please note that the small bank exception under the Biggert-Waters Act still applies. Specifically, except as may be required under applicable State law, a regulated lending institution would not be required to escrow if it has total assets of less than \$1 billion and, on or before July 6, 2012, was not required by Federal or State law

to escrow for taxes or insurance for the term of the loan and did not have a policy of requiring escrow for taxes or insurance. The escrow provisions will become effective when implementing regulations are finalized by the federal regulatory agencies.

Certain detached structures are excluded from the mandatory flood insurance purchase requirements. Flood insurance is not required for any structure that is part of a residential property but is detached from the primary residence and does not serve as a residence.

FEMA recently implemented a change in the maximum coverage for other residential buildings. The maximum limit of building coverage available for non-condominium residential buildings designed for use for five or more families, classified as "Other Residential Buildings" by NFIP has increased from \$250,000 to \$500,000 effective June 1, 2014. Refer to [Financial Institution Letter \(FIL\)-28-2014](#) for the interagency statement concerning the increase in flood insurance coverage and expectations for financial institutions.

State of Georgia MSB Registration Requirements Change

Georgia House Bill 982 was signed into law on April 29, 2014 which modernized and revised the current regulation related to sellers of checks, money transmitters, and check cashers. The bill was introduced at the request of the Department of Banking and Finance and went into effect on July 1, 2014. The final DBF rule can be accessed at:

http://dbf.georgia.gov/sites/dbf.georgia.gov/files/related_files/document/DBFFinalRules_6-10-2014.pdf

As part of the minimum due diligence guidelines outlined by the FFIEC, banks must confirm compliance with state or local licensing requirements for federally defined Money Service Businesses. With Georgia changing its laws relative to licensing of MSBs, banks should be aware of the following changes:

- The DBF removed the dual standards of registration and licensing. If a business cashes checks for a fee, they are now required to be licensed.
- The law will no longer require a check casher registration. All check cashers registrants have been converted to licensees, as of July 1, 2014, and all check casher licenses were extended through December 31, 2014.
- Check casher licenses will now extend through De-

ember 31, 2014. The annual license period will now be on a calendar year basis instead of expiring on September 30th. All licenses will expire on December 31 of each year, and the application for renewal should be applied for between November 1 and December 31. If the renewal application is not submitted during this time frame, the application will be deemed late and a fee will be assessed. Furthermore, the applicant will be required to file a reinstatement application in order to conduct business as a check casher, money transmitter, or payment instrument seller in the state.

- All Georgia check casher licensees will transition to the Nationwide Multistate Licensing System (NMLS) in the fall of 2014. The NMLS is a secured web-based system created by state regulators to provide efficiencies in the processing of state licenses and to improve supervision of state-regulated industries. Each check casher is responsible for maintaining current information on the NMLSR to ensure compliance with the requirements established to obtain a license.

Credit Reports, Employment, and the Fair Credit Reporting Act

Many community banks obtain credit reports as part of the employment interview process to help mitigate risk due to the nature of most banking jobs. These processes may be handled in your Human Resources department or by other staff members based on the complexity of your bank's structure. Nonetheless compliance officers need to understand what is mandated by the Fair Credit Reporting Act relative to employment.

Ensure your Credit Reporting Agency has a credit report product for employment purposes. This is not a standard credit report as some information (e.g. credit score) is not provided on reports for employment purposes. Some Credit Reporting Agencies require the bank to have a separate agreement in place to obtain credit reports for employment purposes. Before obtaining the credit report make sure you have the applicant's written authorization to pull credit for employment purposes. This authorization should be a separate form from any other employment documents and requires the applicant's signature.

If an employment application is to be denied due to information obtained from the credit report, the bank is responsible for the following:

- Providing a copy of the credit report before taking adverse action, and
- Providing the applicant with the Summary of your Rights Under the FCRA before taking adverse action and

- Subsequently providing an adverse action notice after the prospective employee has had time to review the credit report and notice (generally five 5 days). The name, address, and telephone number of the consumer reporting agency used should be included on the form and the notice should include a statement that the decision was made based in whole or part on information obtained from the consumer reporting agency.

A good practice to have in place is to provide the credit report and Summary of your Rights Under the FCRA when the credit report is obtained. Whether your Summary of your Rights Under the FCRA disclosure comes from the credit report vendor or otherwise make sure it is the most updated version as is noted here:

http://files.consumerfinance.gov/f/022014_cfpb_summary-rights-FCRA.pdf

Lastly, the Bank should consider periodic monitoring of this area to ensure compliance with the FCRA.

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CREDIT HISTORY

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you

Email us at compliancenewsletter@shpco.net with any questions or comments.

Visit our website at www.shpco.net to register your email for the Compliance Pipeline!

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