



BANKING ON A SOLID FOUNDATION

COMPLIANCE PIPELINE

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So Long Regulation AA...but not so fast?

The Federal Reserve proposed a rule on August 22, 2014 to repeal Regulation AA, Unfair or Deceptive Acts or Practices. The Federal Reserve is repealing the regulation to make room for the CFPB to administer its own oversight. The comment period for the proposal was only 60 days and has since closed.

In response, the Joint Agencies developed guidance to inform the industry that this repeal in no way means that the acts prohibited in Regulation AA are now permissible. The Joint Agencies did not clearly indicate that a new regulation would replace Regulation AA. The Agencies stated that acting in

contravention of the provisions of Regulation AA could result in violations of the FTC Act and the Dodd-Frank Act UDAAP provisions in the absence of Regulation AA. Institutions should make sure they stay in compliance with the repealed Regulation AA provisions (notice to co-signer, no pyramiding of late fees, & certain contract prohibitions). The former Regulation AA prohibitions should be stated in the bank's UDAAP policy. See the Federal Reserve's website for more details: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140822a.htm>

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Treasury Department Released A Combined Sanction List

The U.S. Treasury Department has recently expanded the number of lists the financial industry is expected to monitor to include the Foreign Sanctions Evaders (FSE) list and the Sectoral Sanctions Identification (SSI) list. To facilitate compliance with these requirements, the Treasury has recently released a Combined Sanctions list that contains the FSE, SSI, and several other lists that banks should be utilizing to screen customers and transactions.

The Combined Sanctions list doesn't contain the SDN list. Institutions should continue to monitor the SDN list independent of the Combined Sanctions list. The SDN list is commonly

referred to as the "OFAC list." The Treasury has expanded what was previous entitled as the SDN List Search system on its website to include the non-SDN lists as well. The Treasury also renamed the tool to reflect a more accurate name for the combined search function. The Sanctions List Search which can be found at: <https://sdnsearch.ofac.treas.gov/>.

For more information of the Combined Sanctions list see the Treasury's website at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/consolidated.aspx>

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Revised Annual Privacy Notice Requirements

The CFPB finalized a new rule to lessen the compliance burden for certain banks that will now give institutions a reprieve from mailing out the annual Privacy notice. Not all institutions will be eligible for the exemption. The following 5 conditions must be met to exempt an institution from the annual privacy notice requirements:

1. The bank doesn't disclose the customer's nonpublic personal information to nonaffiliated third parties other than for purposes under §§ 1016.13 (service providers and joint marketing), 1016.14 (processing and servicing transactions), and 1016.15 (with consent, to protect confidentiality, etc.).
2. The bank doesn't include an opt out under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)).
3. The requirements of section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s-3) and subpart C of part 1022 of this chapter, if applicable, have been satisfied previously or the annual privacy notice is not the only notice provided to satisfy such requirements.
4. The information required to convey on annual privacy notice pursuant to § 1016.6(a)(1) through (5), (8), and (9) has not changed since providing the immediately previous privacy notice (whether initial, annual, or revised) to the customer, other than to eliminate categories of information disclosed or categories of third parties the institution discloses information.
5. The institution uses the model privacy form in the appendix to the regulation for the annual privacy notice.

Institutions that qualify for the alternative method must take additional steps to be in compliance. The bank must convey in a clear and conspicuous manner not less than annually on an account statement, coupon book, or a notice or disclosure it is required or expressly and specifically permitted to issue to the customer under any other provision of law that your privacy notice is available on the bank's website and will be mailed to the customer upon request by telephone. The statement must provide that the privacy notice has not changed and must include a specific website address that takes the customer directly to the page where the privacy notice is posted and a telephone

number for the customer to request that it be mailed. The bank must also post the current privacy notice continuously and in clear and conspicuous manner on a page of the website on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the page. Finally, the bank must mail the current privacy notice to those customers who request it by telephone within ten days of the request.

The regulation also provides the following guidance as to how the notice mentioned above should read:

"Privacy Notice—Federal law requires us to tell you how we collect, share, and protect your personal information. Our privacy policy has not changed and you may review our policy and practices with respect to your personal information at [Web address] or we will mail you a free copy upon request if you call us at [telephone number]"

The institution must still send an annual privacy disclosure to customers it cannot reach by statement message like CD only or loan only customers or can send the alternative method notice (paragraph above). The alternate notice must be provided annually if a standard privacy notice is not provided.

For more information see the CFPB's website at: <http://www.consumerfinance.gov/newsroom/cfpb-finalizes-rule-to-promote-more-effective-privacy-disclosures/>



Human Trafficking Guidance from FinCEN

In an effort to thwart the rise of human smuggling and human trafficking, FinCEN published guidance on September 11, 2014 to help banks identify financial transactions related to these activities. The guidance outlines various “red flags” that may indicate a customer is engaged in human trafficking.

The most common “red flag” transactions involved wire transfers and money flows inconsistent with an individual or businesses' normal remittance pattern. For example, the guidance noted one technique utilized by individuals or businesses involved in illicit activities was to send multiple wire transfers, below the \$3,000 reporting threshold, from various locations in the United States to a common

beneficiary located near the Southwest Border. In addition, FinCEN is asking financial institutions to include “ADVISORY HUMAN SMUGGLING” and/or “ADVISORY HUMAN TRAFFICKING” in the narrative of Suspicious Activity Reports. Providing the above key terms in the narrative of a SAR will assist law enforcement in detecting and targeting cases of human smuggling and trafficking. FinCEN notes that a bank should monitor for transactions related to human trafficking while performing their normal suspicious activity detection procedures. To read the full report outlining the various stages of human trafficking and the financial “red flags,” visit http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A008.pdf.

Reviewing Statement Stock for Deposit Compliance

Because most financial institutions order statement paper in bulk for deposit accounts, it is important to ensure the statements include all required information to prevent regulatory criticism and costly reorders. When reviewing deposit statement stock, there are two key elements to look for: the abbreviated error resolution notice, which includes an address and telephone number to be used for inquiries, and a telephone number for preauthorized transfers.

Unless the financial institution chooses to send an annual error resolution notice, all consumer periodic statements should include the abbreviated error resolution notice as set forth by Model Form A-3 of Regulation E. The abbreviated error resolution notice is as follows:

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error,

so that you will have the use of the money during the time it takes us to complete our investigation.

It is important to note the error resolution notice applies only to consumer accounts. If the financial institution uses the same statement paper for consumer and commercial accounts, it is recommended that a reference statement is included prior to the error resolution notice denoting the notice applies to consumer accounts only. The notice should also include the current telephone number or address by which the consumer may submit an inquiry or notice of error.

The statement stock should also include a telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred. Section 1005.10(a)(1)(iii) of Regulation E requires financial institutions to provide a readily available telephone line that the consumer may call to determine whether the transfer occurred if a consumer initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days. A single telephone number preceded by the language “direct inquiries to” will satisfy this requirement.

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2013 HMDA Data is Available!

The 2013 HMDA data was released on September 22, 2014 and includes disclosure statements for each financial institution, aggregate data for each metropolitan statistical area (MSA), nationwide summary statistics regarding lending patterns, and Loan/Application Registers (LARs) for each financial institution (LARs are modified to protect borrower privacy). The FFIEC prepares and distributes this information on behalf of its member agencies. The information is useful for seeing the distribution of loans within a Bank's market area and reviewing rate spreads to determine which institutions are making and marketing higher priced mortgage loans. The bank should ensure that the 2013 HMDA data is included in the bank's CRA public file.

The HMDA data shows the disposition of loan applications and includes information on:

- loan amount

- loan type (such as conventional, Federal Housing Administration (FHA) or Veterans Administration (VA))
- purpose (home purchase, home improvement, or refinancing)
- property type (one- to four-family, multifamily, or manufactured housing)
- property location (MSA, state, county, and census tract)
- applicant characteristics (race, ethnicity, sex, and income)
- pricing-related data.

The data also shows whether a loan is subject to the Home Ownership and Equity Protection Act (HOEPA) and whether a loan is secured by a first or subordinate lien, or is unsecured.

The FFIEC press release can be found here:

<http://www.ffiec.gov/press/pr092214.htm>

CFPB Proposes Updates to Integrated Disclosures

The CFPB has issued a proposal to update Truth in Lending and RESPA in reference to the new integrated disclosure rule to take effect on August 1, 2015. The proposed rule was issued on October 10, 2014 and is open to comment until November 10, 2014. The proposal makes minimal changes to the new rules and is primarily to provide more flexibility for lenders and to update citations within the final rule. The most significant proposed changes are as follows:

- An adjustment to the timing requirement for revised disclosures when the consumer locks a rate or extends a rate lock after the initial disclosures are provided (the proposal allows next business day disclosure)

- An amendment to permit language related to new construction loans to be included on the Loan Estimate form
- Provide for placement of the NMLSR ID on the integrated disclosures
- Technical corrections, including citation and cross-reference updates, and wording changes for clarification purposes to various provisions of Regulations X and Z as amended or adopted by the TILA

The proposal and procedures for providing comment can be found at: http://files.consumerfinance.gov/f/201410_cfpb_final-proposal_trid-amends-and-corrections.pdf

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

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