



BANKING ON A SOLID FOUNDATION

COMPLIANCE PIPELINE

Steve H. Powell & Company Integrated Disclosure Training

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On August 1, 2015, the long awaited TILA-RESPA Integrated Disclosure rule will go into effect. The Integrated Disclosure rule is clearly a game changer for community banks and time is of the essence when implementing the steps necessary to ensure a financial institution is prepared by the effective date. The Integrated Disclosure rule consolidates the existing early disclosures and closing disclosures required by TILA and RESPA into two new forms – the Loan Estimate and the Closing disclosure. In consolidating the disclosures, the CFPB borrowed some concepts from the existing regulations, added some new twists, and created new requirements based upon its consumer focused research.

We are excited to announce training opportunities that we are offering to cover the TILA-RESPA Integrated disclosure rules. The first opportunity will be an introductory webinar on March 19th 2015. This session will provide a first look overview of the final rules by not only focusing on significant new requirements, but also highlighting aspects of existing rules that have transitioned into the new rules. More details about the cost and how to register for the webinar will be forthcoming through our newsletter email contact list.

We are also planning on offering day long in depth classroom style training sessions to cover the TILA-RESPA Integrated disclosure

rules. These seminars will break down the new rules, guidance, and instructions line by line, as well as include a guided tour to completion of the new forms. We have already scheduled a few of these day long seminars to be completed onsite at some of our clients which have grouped with other local banks to share the costs of the seminar. Depending on the interest level, we will also be hosting a day-long seminar in Statesboro from our Board room or other location.

If you are interested in hosting a day-long seminar at your institution or if you would be interested in sending one or more delegates to a training seminar in Statesboro please contact Harriett Price at hprice@shpco.net for additional details.

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Compliance Pipeline

Privacy Update

There has been an update to the initial article on the recent changes to the annual privacy notice requirements in the third quarter issue of the *Compliance Pipeline*. Based on comments industry professionals have received from the CFPB, the requirements for compliance relative to the alternative annual privacy notice appears to be a little more rigorous than expected.

The question at hand is how examiners will treat the delivery of the notice required to be provided if a bank intends to utilize the alternative annual privacy notice delivery method. The regulation states, in part, that banks must “Convey in a clear and conspicuous manner not less than annually on an account statement, coupon book, or a notice or disclosure you are required or expressly and specifically permitted to issue to the customer under any other provision of law that your privacy notice is available on your Web site and will be mailed to the customer upon request by telephone.” The restrictive language in the above regulation quote is “on an account statement, coupon book, or a notice” and “notice or disclosure you are required or expressly

and specifically permitted to issue to the customer under any other provision of law”. Purportedly, some CFPB staff have been enforcing extremely literal interpretations, noting that “with” an account statement or coupon book is not the same as “on” an account statement or coupon book. Also, noting that simply providing the alternative delivery notice in a mailer is not a “notice or disclosure you are required or expressly and specifically permitted to issue to the customer under any other provision of law” as the mailer is not specifically required under other provisions of law.

It is recommended that banks, if possible, place the alternative delivery notice “on” periodic statements or as an addendum to the periodic statement that is referred to in the message section as part of the periodic statement. If the consumer does not receive an account statement, coupon book, or a legally required notice simply send the annual notice as previously required. A financial institution may want to contact its federal regulator for guidance on this issue to ensure clarity.

Servicemembers Civil Relief Act Notice

On December 18, 2014, President Obama signed a bill extending foreclosure protections to one-year after active duty. The foreclosure protections were set to expire and revert to the original 90 day time frame on November 30, 2014.

The bill signed by the President extends servicemembers’s legal protections to one year until December 31, 2015. HUD has updated the SCRA notice disclosure (Form 92070) to reflect the time frame extension. However, HUD did not update the notice available online until January 12, 2015. Therefore, it is important to ensure that the correct notice is being sent and does not include the 90 day language. See HUDs updated model form at: <http://portal.hud.gov/hudportal/documents/huddoc?id=92070.pdf>

As a reminder the notice must:

- Be sent to all homeowners who are in default on a residential mortgage;

- Include the toll-free military one-source number to call if servicemembers or their dependents require further assistance (1-800-342-9647); and
- Be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period.



CFPB Proposes New Prepaid Card Rules

The CFPB continues to exercise its regulatory mandate with new proposals for regulation. The CFPB published a new regulatory proposal on November 14, 2014 to mitigate risk exposure to consumers in the prepaid market. The proposal would require prepaid companies to limit consumers' losses when funds are stolen or cards are lost, investigate and resolve errors, provide easy and free access to account information, and adhere to credit card protections if a credit product is offered in connection with a prepaid account. The proposal, if adopted, would require changes to both Regulation E - Electronic Funds Transfers and Regulation Z - Truth in Lending.

The Regulation E proposal is aimed at ensuring consumers have easy and free access to account information, create new error resolution rights, and provide for new fraud and lost-card protection. The proposal goes far enough to require financial institutions to provide free website access to track spending transactions or send periodic account statements. A standardized disclosure would also

be required in relation to prepaid fees and companies would be required to provide publically accessible card agreements.

The new Regulation Z proposal would also implement several protections for the credit side of the prepaid market. Many prepaid providers have implemented credit terms to allow consumers to overdraw their prepaid cards as a form of credit. These protections largely stem from the Truth in Lending Act and the Credit Card Accountability Responsibility and Disclosure Act of 2009. The protections that would also apply to prepaid credit products include ability to repay, monthly credit billing statements, reasonable time to pay and limits on late fees, and limited fee and interest charges.

The entire proposal may be reviewed at:

<https://www.federalregister.gov/articles/2014/12/23/2014-27286/prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth-in-lending-act>

New Cure Procedure for Qualified Mortgages That Exceed Points & Fee Limits

Since the Ability to Repay (ATR) rules went into effect, many lenders have expressed concern about originating and purchasing loans that appear to satisfy the Qualified Mortgage points and fees limit at consummation, but in reality, are ineligible for the safe harbor because one or more fees were omitted causing the total points and fees charged to exceed the triggering threshold. As a result of these concerns, the CFPB has issued a final rule to allow lenders, with limited conditions, to cure excess amounts over the points and fees limit to maintain a loan's QM status after consummation.

The final rule allows a creditor or assignee to refund to the borrower any amount exceeding the points and fees limit within 210 days of consummation if three conditions are met:

- The loan must have been originated to be a QM and the lender must maintain specific policies
- The creditor or assignee must have procedures for review of loans after consummation to en-

sure compliance with QM conditions, including points and fees

- The creditors or assignees must pay interest on any excess amount refunded

The final rule also specifies certain instances that eliminate the ability for a creditor or assignee to cure points and fees overages, such as when a consumer institutes legal action in connection with the loan. The final rule is effective for transactions consummated on or after November 3, 2014, and sunsets after January 10, 2021. Management and business line leaders should consider updating the Bank's in-house mortgage lending and secondary market mortgage department processes and procedures to take advantage of this new rule.



Compliance Pipeline

Your 2015 Compliance Update Reminders

One more year has passed, and we are faced with the new challenges of 2015. Anyone with a compliance background understands there is no such thing as a fresh start for a new year. The following is a list of reminders and updates to make sure you are heading in the right direction for the New Year.

Deposit Compliance:

- ◇ Regulation CC training should have been provided during 2014 and make plans to provide Reg. CC training during 2015.
- ◇ Annual privacy training should have been provided for 2014 to all Bank personnel and make sure annual privacy training is scheduled for 2015. Furthermore, ensure that the Board of Directors has received privacy training.
- ◇ Determine whether or not the annual privacy disclosures (actual notice or alternate method) were mailed to all customers in 2014 and ensure annual privacy disclosures will be mailed during 2015.
- ◇ Determine the number of remittance transfers under Regulation E from the previous calendar year to ensure the institution has not exceeded the threshold for “normal course of business.”
- ◇ Ensure the ID Theft Program administrator has reported to the Board annually on the status of the ID Theft Program.



Loan Compliance:

- ◇ The 2014 HMDA LAR and CRA LAR for large institutions must be submitted by March 2, 2015 (March 1, 2015 is Sunday).
- ◇ Check the historic examples for HELOC and/or ARM initial disclosures to ensure the most recent 15 years are used in the examples.
- ◇ The CRA Public File should be updated by April 1, 2015.
- ◇ Check the accuracy of the affiliated business disclosures to ensure all affiliated businesses are disclosed along with the current range of fees and the current ownership interest of each affiliated business.
- ◇ The 2015 HOEPA points and fees test will use the following:
 - ◆ > 5% of loan amounts of 20,391 or more
 - ◆ > lesser of 8% of loan amounts under 20,391 or \$1,020
- ◇ The 2015 QM points and fees test will use the following:
 - ◆ For a loan amount greater than or equal to \$101,953: 3% of the total loan amount
 - ◆ For a loan amount greater than or equal to \$61,172 but less than \$101,953: \$3,059
 - ◆ For a loan amount greater than or equal to \$20,391 but less than \$61,172: 5% of the total loan amount
 - ◆ For a loan amount greater than or equal to \$12,744 but less than \$20,391: \$1,020
 - ◆ For a loan amount less than \$12,744: 8% of the total loan amount
- ◇ The 2015 Truth In Lending threshold is raised to \$54,600.
- ◇ The 2015 “small creditor” threshold is \$2.060 billion.
- ◇ The 2015 “small loan” exemption for HPML appraisal rules is \$25,500.

Your 2015 Compliance Update Reminders (Continued from previous page)

- ◇ Ensure that the list of qualified settlement service providers provided with the good faith estimate is updated.
- ◇ Ensure that Bank personnel have received fair lending and CRA training for 2014. Further, ensure that the Board of Directors has received annual fair lending and CRA training for 2014. Training should be planned for 2015.
- ◇ CRA asset size thresholds for 2015 are under \$305 million for small bank, \$305 million up to \$1.221 billion for intermediate small bank, and \$1.221 billion and over for large bank.
- ◇ The HMDA asset size threshold for 2015 is \$44 million
- ◇ Ensure procedures are in place for performing escrow account analyses and that the Bank has implemented procedures for providing annual escrow account notices.
- ◇ Ensure loan officers complete S.A.F.E. Act license renewal procedures.
- ◇ Ensure annual independent S.A.F.E. Act audit has been performed.
- ◇ Ensure lenders who receive compensation based off of insurance sales (credit life/disability) complete license renewal procedures.
- ◇ Ensure the bank has documented whether or not they meet the definition of a small servicer and that documentation of the determination is retained for record retention.
- ◇ Ensure the bank has documented whether or not they meet the definition of a small creditor and that documentation of the determination is retained for record retention.
- ◇ Review the final list of rural or underserved counties for 2015 and ensure the bank has documented whether or not they qualify for the rural / underserved TILA exemption and that documentation of the determination is retained for record retention.

BSA Compliance:

- ◇ Ensure annual training was conducted for all employees during 2014 and is scheduled for 2015. Furthermore, the Board of Directors should also be receiving annual BSA training which should be documented in the Board minutes.
- ◇ Annual reviews should be conducted of all exempt customers for suspicious activity and continued eligibility.
- ◇ Update procedures for monitoring high risk customers and reevaluate the risk levels of each customer designated as high risk.
- ◇ Ensure annual due diligence is completed for MSBs, remote deposit capture, private ATM customers, and deposit brokers in accordance with the Bank's BSA/AML program.

Finally, ensure that all risk assessments are updated to reflect the Bank's current risk profile (e.g. Regulatory Compliance Risk Assessment, Enterprise Wide BSA/AML Risk Assessment, OFAC Risk Assessment, Fair Lending Risk Assessment, etc.). Ensure all policies and written programs have annual Board of Directors approval.



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Updated BSA/AML FFIEC Examination Manual



Bank Secrecy Act/ Anti-Money Laundering Examination Manual

Federal Financial Institutions Examination Council
Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation,
National Credit Union Administration, Office of the Comptroller of the Currency,
Consumer Financial Protection Bureau and State Liaison Committee
2014

the OCC in an interagency statement released on December 2, 2014, the following items reflect the major changes:

- **Suspicious Activity Reporting (SAR)** – Incorporated new SAR E-Filing requirements; guidance on the extension of SAR filing for continuing activity; clarification of prohibitions on disclosing a SAR; and guidance on sharing SARs with affiliates.
- **Currency Transaction Reporting (CTR)** – Revised to incorporate new CTR E-Filing requirements and new guidance issued by FinCEN since 2010 related to currency transaction aggregation for businesses and exemptions.
- **Foreign Correspondent Account Record-keeping** – Included regulations relating to the Comprehensive Iran Sanctions, Accountability, and Divestment Act. Foreign Bank and Financial Accounts (FBAR) – Incorporated new FBAR filing requirements.
- **International Transportation of Currency or Monetary Instruments Reporting (CMIR)** – Clarified monitoring and reporting obligations under the BSA for international transportation of currency or monetary instruments.
- **Correspondent Accounts (Foreign)** – Included additional guidance in the section on risk mitigation.
- **Bulk Shipments of Currency** – Revised to incorporate FinCEN's CMIR guidance for common carriers of currency, including armored car services (August 1, 2014), and clarify monitoring and reporting obligations under the BSA.
- **Automated Clearing House Transactions (ACH)** – Incorporated National Automated Clearing House Association (NACHA)-The Electronic Payments Association modifications related to international ACH transactions and further defined third-party service providers.
- **Prepaid Access** – Replaced Electronic Cash section and included an expanded discussion of risk factors and risk mitigation related to prepaid access.
- **Embassy, Foreign Consulate, and Foreign Mission Accounts** – Updated to incorporate the interagency guidance on accepting accounts from foreign embassies, consulates, and missions.
- **Nonbank Financial Institutions** – Incorporated new FinCEN regulations for Money Services Businesses (MSBs) related to certain foreign-located persons engaging in MSB activities; new regulations related to prepaid access programs; and guidance regarding virtual currency administrators and exchangers.

The most evident changes in the new manual are the new procedures and clarifications to e-filing, enhanced monitoring for MSBs and the new section devoted to the Iran Sanctions. The manual expands and clarifies e-filing procedures, noting that providing an attachment with a SAR is not a valid substitute for the narrative. In addition, the manual reaffirms the FFIEC's commitment to remaining diligent when enforcing adherence to OFAC requirements.

To obtain more information related to the updates and revisions, visit:

www.ffiec.gov/bsa_aml_infobase/

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Proposed Mortgage Servicing Rule Changes

On November 20, 2014, the CFPB proposed changes to the mortgage servicing rules that went into effect on January 10, 2014. The proposal would require servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan, to put in place additional servicing transfer protections, and to take steps to protect borrowers from a wrongful foreclosure sale.

The proposal would also help ensure that individuals who inherit or receive property have the same protections under the CFPB's mortgage servicing rules as the original borrower. These changes include providing flexibility for servicers to comply

with certain force-placed insurance and periodic statement disclosure requirements. The changes would clarify several requirements, including early intervention, loss mitigation, information request, prompt crediting of payments, and small servicer exemption. The proposal would exempt servicers from providing periodic statements under certain circumstances when the servicer has charged off the mortgage.

Public comment on the proposal rule will be available for 90 days after publication in the Federal Register.

Flood Insurance Proposal

On October 24, 2014, the Joint Agencies proposed flood insurance rules that will implement provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) relative to escrowing flood insurance payments and the exemption of certain detached structures from the mandatory flood insurance purchase requirement. HFIAA amends the escrow provisions of the Biggert-Waters Flood Insurance Reform Act of 2012.

The proposed rule will require banks to escrow premiums and fees for flood insurance for loans secured by residential improved real estate or mobile homes that are made, increased, extended or renewed on or after January 1, 2016, unless the bank or a loan qualifies for a statutory exception. In addition, the proposed rule will require banks to provide borrowers of residential loans, outstanding on January 1, 2016, the option to escrow flood insurance premiums and fees. The proposal includes new and revised sample notice forms and clauses concerning the escrow requirement and the option to escrow.

The proposal will also eliminate the requirement to purchase flood insurance for a structure that is part of a residential property located in a special flood hazard area if that structure is detached from the primary residential structure and does not serve as a residence. However, at their discretion, banks

may require flood insurance on the detached structures to protect the collateral securing the mortgage.

In additional rulemakings, the agencies will address other provisions of the Biggert-Waters Act for which the agencies have jurisdiction that were not amended by HFIAA.

FDIC Issues Comment on Providing Banking Services

On January 28, 2015 the FDIC issued FIL-5-2015 which encourages financial institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers.

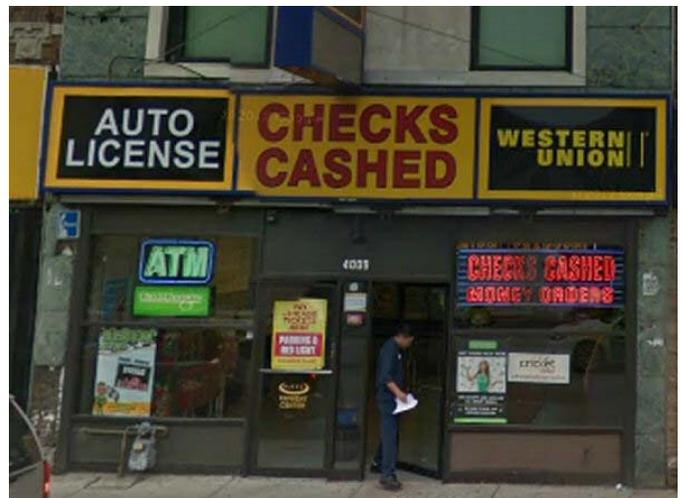
The FDIC is invoking that financial institutions need to serve their community and strongly encourages a customer assessment on a case by case basis. The FDIC states that institutions that can properly manage customer relationships and effectively mitigate risks are not discouraged from providing services to any category of customer accounts.

One banking service is clearly a target in this FIL, Money Service Businesses. Many institutions have taken the approach that they will not bank MSBs or will only provide account services for existing MSB clients. Much of that stance comes not only from the risks associated with MSB accounts but from the enhanced scrutiny examiners place on MSB relationships as well.

The FDIC addresses these concerns by specifically mentioning BSA compliance concerns. From the FIL, *“The FDIC and the other federal banking agencies recognize that as a practical matter, it is not possible for a financial institution to detect and report all potentially illicit transactions that flow through an institution. Isolated or technical violations, which are limited instances of noncompliance with the BSA that occur within an otherwise adequate system of policies, procedures, and processes, generally do not prompt serious regulatory concern or reflect negatively on management’s supervision or*

commitment to BSA compliance. When an institution follows existing guidance and establishes and maintains an appropriate risk-based program, the institution will be well-positioned to appropriately manage customer accounts, while generally detecting and deterring illicit financial transactions.”

It appears that the FDIC recognizes regulatory requirements and scrutiny from examiners have made some services, such as MSB accounts, an easy elimination for institutions. However, the FDIC expects institutions to look at each customer and the associated risk on a case by case basis and not to simply eliminate the service altogether.



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