



Call the Fed
“Consumer Compliance Hot Topics”
 July 22, 2009
APPENDIX – Additional Information



Exam Tips from Your Examiners



Federal Reserve System Newsletter

Consumer Compliance Outlook



Don't leave your exam to chance! Manage your examiners! Don't wait for them to tell you what your performance is; tell them how you think you did and why. Know your performance strengths and weaknesses and proactively present them to and discuss them with your examiners.

Have all requested info (and any other information you think they might need) ready and organized for examiners when they arrive.

When implementing corrective actions for identified deficiencies, focus on curing the existing problem as well as addressing the underlying causal factors.

Think about the big picture. What does that mean? When a problem surfaces in one area, make sure that it's not impacting other areas of operation, as well. Remember, with a risk-focused exam, examiners are not reviewing every product or every element of your operations, so problems can lurk in areas that were not reviewed during the exam even though you may have received a satisfactory rating.

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First Anniversary Issue in June 2009!



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Commonly Encountered Violations or Issues

Flood Insurance



Flood insurance compliance continues to be a concern. The majority of examinations performed in the last two years have identified substantive violations of the flood insurance provisions of Regulation H. Civil money penalties (CMPs) have been assessed in instances where examiners identified a pattern or practice of violations.

Commonly encountered violations include:

- Failure to have insurance in place at closing.
- Failure to obtain the proper amount of insurance, particularly when multiple buildings secure the loan.
- Failure to require contents coverage when the contents of the building also secure the loan.
- Failure to ensure that insurance is maintained for the life of the loan and/or to force place insurance in the event of a lapse.
- Force placing insurance using master insurance policies that protect the lender versus policies that protect the borrower and continue to protect the borrower upon sale of the loan.

What can you do?

- Review your policies and procedures for flood insurance
- Ensure that your bank has an adequate monitoring system to alert staff to lapses in coverage
- Sample loans periodically to ensure adequate and timely coverage
- Some banks use separate vendors for determinations and monitoring. Periodically ask for a listing of loans in SFHAs from both vendors. Differences in those listings can alert you to potential problems.
- Train your staff
- Create “cheat sheets” or other reference tools to guide staff
- Manage vendors
- Keep senior management and the board of directors informed with appropriate MIS

On March 21, 2008, the FFIEC Agencies released proposed revisions to the existing *Interagency Questions and Answers Regarding Flood Insurance*, be sure to check it out. It’s available on the Federal Reserve Board of Governors website at www.federalreserve.gov/newsevents/press/bcreg/20080321a.htm

Also, look for article in our inaugural issue of *Outlook*.



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Fair Lending

- Disparate treatment in indirect auto lending – Is your bank the creditor? Are you sure?
- Disparate treatment on the basis of marital status. Do you treat joint applicants who are not married to each other the same as joint applicants who are?
- Spousal signature rules – are you establishing and documenting intent at the time of application? Do you otherwise have a legal basis for obtaining signatures on a note?

See circular letter entitled *Regulation B Signature Rules* issued in September 2008 and *Consumer Compliance Outlook Article* in the 4th Quarter 2008 edition.

Letter available at:

<http://www.frbsf.org/banking/letters/2008/index.html>.

- Club/senior deposit accounts. If you have credit features with favorable terms attached to your senior accounts, you may be inadvertently violating Reg. B.

See circular letter dated January 24, 2006, entitled *Credit Features Associated with Senior Citizen Club Account Programs*.

Available at:

<http://www.frbsf.org/banking/letters/2006/index.html>

Regulation Z

- Accuracy of TILA disclosures for construction loans (Don't forget Appendix D!)

- Periodic billing statements for open-end credit with billing periods that differ from statement periods
- Home Equity Lines of Credit
 - Advancing fees and other finance charges from line – initial periodic statement does not classify as a finance charge
 - Freezing or reducing lines

See article in Q3-2008 *Outlook*.

RESPA

- Accuracy of escrow statements and escrow adjustments on HUD-1 settlement statement. Often driven by misunderstanding the escrow accounting rules and a desire to not show negative adjustments on HUD-1. Domino effect of these errors can result in incorrect impound amounts that require customer reimbursements. Look for article in June 2009 *Outlook* on this topic.
- Unearned fees and illegal kickbacks – we're seeing more and more situations where compensation is paid for referrals where no or insufficient services are performed to warrant the fee. Often the arrangement is also an affiliated business relationship as defined by RESPA and bank management is not aware of that fact either.

HMDA

Accuracy of collected and reported data. Errors are most common in the following fields:

- Income
- Census tract/geocoding
- Race/ethnicity/gender



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Don't forget new HMDA rate spread reporting rules that go into effect October 2009. Aligns the HMDA definition for rate spread with that of higher priced loan under Regulation Z.

Lender to report spread between APR and average prime offer rate if spread meets or exceeds 150 bps for a first-lien or 350 bps for subordinate liens. Average prime offer rate derived by Fed and published on FFIEC website along with a new rate spread calculator. Change effective for applications taken on or after October 1, 2009 or for all loans consummated on or after January 1, 2010, regardless of application date.

<http://www.ffiec.gov/ratespread/newcalchelp.aspx>
<http://www.ffiec.gov/ratespread/newcalc.aspx>

CRA

- Accuracy of data – same as above with HMDA. Continue to see revenue and geocode errors in small business loans. We're also seeing a growing number of CALL reporting errors that are resulting in the incorrect universe of small business loans.
- Accurately qualifying and sufficiently documenting community development lending, investment, and service activities. Know what qualifies and why – don't give all to your examiner and hope they'll figure it out for you.
- In this environment, knowing your performance context is more important than ever. Don't just assume that every market has declining opportunity and use that as a basis for a lack of activity. Be able to show the examiner what the opportunities are, what

your constraints are and how that resulted in the decisions you made regarding performance.

Examination/Supervisory Guidance

- Examination Manuals
www.federalreserve.gov/boarddocs/supmanual/
- Consumer Affairs (CA) Letters
www.federalreserve.gov/boarddocs/caletters/
- Supervision & Regulation (SR) Letters
www.federalreserve.gov/boarddocs/srletters/
- Federal Reserve Press Releases – Banking and Consumer Regulatory Policy
www.federalreserve.gov/boarddocs/press/bcreg/

Recent Legislation and Rulemakings

Compliance is a hot topic that shows no signs of cooling! Recent legislation along with final and proposed compliance rulemakings include:

- July 15, 2009: Board approves interim final rule amending Regulation Z. These revisions are the first stage in the Board's implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090715a.htm>
Compliance mandatory August 20, 2009
- July 2, 2009: Agencies publish final rules and guidelines that address accuracy and integrity of consumer report information and rules to allow direct disputes
<http://www.federalreserve.gov/newsevents/press/bcreg/20090702a.htm>
Compliance mandatory July 1, 2010



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- June 24, 2009: Agencies announce notice of proposed rulemaking to consider low-cost education loans provided to low-income borrowers when assessing an institution's record of meeting community credit needs
<http://www.federalreserve.gov/newsevents/press/bcreg/20090624a.htm>
- June 11, 2009: Agencies issue frequently asked questions on identity theft rules
<http://www.federalreserve.gov/newsevents/press/bcreg/20090611a.htm>
- June 1, 2009: Agencies propose rules to implement S.A.F.E. Act mortgage loan originator registration requirements
<http://www.federalreserve.gov/newsevents/press/bcreg/20090601a.htm>
- May 22, 2009: President Obama signs The Credit Card Accountability Responsibility and Disclosure Act of 2009. Supersedes Board's credit card rules and proposals.
Various effective dates – 90 days, 9 months, 15 months.
- May 21, 2009: Helping Families Save Their Homes Act of 2009 – amends Truth in Lending Act to require borrower notification when a loan is sold or transferred. **Effective June 21, 2009; no rule writing required.**
- May 20, 2009: Board announces approval of final amendments to Regulation D pertaining to transfers from savings deposits and the establishment of excess balance accounts at Federal Reserve Banks
<http://www.federalreserve.gov/newsevents/press/money/20090520b.htm>
Effective July 2, 2009
- May 8, 2009: Board approves final rules revising disclosure requirements for mortgage loans under Regulation Z to implement the Mortgage Disclosure Improvement Act
<http://www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm>
Compliance mandatory July 30, 2009
- May 1, 2009 - The Home Valuation Code of Conduct to enhance the independence and accuracy of the appraisal process, and provide added protections for homebuyers, mortgage investors and the housing market.
http://www.freddiemac.com/singlefamily/home_valuation.html
<https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/appcode>
Effective May 1, 2009
- April 21, 2009: Agencies propose clarifications to credit card rules
<http://www.federalreserve.gov/newsevents/press/bcreg/20090421a.htm>
- March 11, 2009: Federal Reserve proposes amendments to Regulation Z to revise disclosure requirements for private education loans
<http://www.federalreserve.gov/newsevents/press/bcreg/20090311a.htm>
- January 6, 2009: Agencies issue final questions and answers on Community Reinvestment
<http://www.federalreserve.gov/newsevents/press/bcreg/20090106a.htm>
- December 18, 2008: Credit cards and overdraft protection rules finalized and additional overdraft protection rules proposed.



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The Board approved rules that will better protect credit card users. The Board also adopted final rules to revise the disclosures consumers receive in connection with credit card accounts and other revolving credit plans. All had effective dates of July 1, 2010 but have been substantially superseded by the aforementioned credit card legislation.

The Board also adopted final amendments to Regulation DD (Truth in Savings) to address depository institutions' disclosure practices related to overdraft services. *The effective date for the final rules adopted under Regulation DD is January 1, 2010.*

The Board is separately proposed rules to protect consumers that use overdraft services offered by their bank. The rule solicits public comment on proposed amendments to Regulation E (Electronic Fund Transfers) intended to provide consumers a choice regarding their institution's payment of overdrafts for automated teller machine withdrawals and one-time debit card transactions. The comment period is now closed.

All notices for these four rulemakings are at: <http://www.federalreserve.gov/newsevents/press/bcreg/20081218a.htm>

- November 17, 2008: HUD issues final RESPA rules to simplify and improve the process of obtaining mortgages and reduce consumer settlement costs. <http://www.hud.gov/offices/hsg/sfh/res/finalrule.pdf>
Technical amendments effective January 16, 2009; all other provisions are effective January 1, 2010.

- July 14, 2008: Board issues final rules for home mortgage loans to better protect consumers and facilitate responsible lending. <http://www.federalreserve.gov/newsevents/press/bcreg/20080714a.htm>
Compliance mandatory October 1, 2009
- May 8, 2008: Proposed rules on risk-based pricing notices. <http://www.federalreserve.gov/newsevents/press/bcreg/20080508a.htm>
- March 21, 2008: Proposed revisions to interagency questions and answers regarding flood insurance. <http://www.federalreserve.gov/newsevents/press/bcreg/20080321a.htm>
- November 1, 2007: Board announces amendments to five regulations to clarify requirements for providing consumer disclosures in electronic form. <http://www.federalreserve.gov/newsevents/press/bcreg/20071101a.htm>
- October 31, 2007: Agencies issue final rules on identity theft red flags and notices of address discrepancy. <http://www.federalreserve.gov/newsevents/press/bcreg/20071031a.htm>
Compliance mandatory November 1, 2008.
- October 25, 2007: Agencies issue final rules on affiliate marketing. <http://www.federalreserve.gov/newsevents/press/bcreg/20071025a.htm>
Compliance mandatory October 1, 2008.