

Carl Pry
June 5, 2007

A TTS Production

Common Compliance Violations: What to Watch For

Regulation DD: Truth in Savings

Carl Pry
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- ❑ Lack of uniformity in fee disclosures
 - Make sure the amounts and names of fees are consistent on initial disclosures and periodic statements
- ❑ CD renewal notices incomplete
 - For time accounts having terms of over 1 year, upon renewal a new account disclosure (not just the renewal notice) must be provided
 - By the way, post-maturity notices are NOT required
- ❑ Account servicing done incorrectly
 - Make sure you are calculating interest correctly
 - Daily balance or average daily balance are the only allowed methods
 - For interest calculation, don't net negative balances
 - Treat them as zero

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Marketing and Promotions

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- ❑ Inaccurate deposit account advertising
 - Be careful when stating “free” or “no cost”
 - The must be free as to cost or condition – if a maintenance or activity fee could be assessed, the account is not “free”
 - If using APY, spell out “annual percentage yield” at least once in the ad
 - You don’t have to do that for APR in lending ads
 - FTC’s UDAP standards are viewed more strictly now
 - Unfair or Deceptive Acts or Practices
- ❑ Illegal contests, drawings, etc. are offered
 - Make sure there is no cost to entry – “giving money or credit”
- ❑ Not enough clarity between insured and non-insured products
 - Don’t accept deposits in the same locations for both types of products



**NOT FDIC INSURED
MAY LOSE VALUE
NO BANK GUARANTEE**

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Regulation D: Savings and MMDA Accounts

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- ❑ Allowing excessive transactions
 - No more than 6 per month (or statement cycle, if longer)
 - ACH, overdraft coverage transfers, sweep transfers, transactions conducted over telephone lines
 - Internet banking transactions count here
 - 3 per month (which count as part of the 6, by the way)
 - Third-party items such as checks, drafts, and POS debits (even if they go through ACH)
- ❑ Lack of monitoring for these types of transactions and not limiting the “more than occasional” violation
 - What is “occasional”? More than twice in a 6-month period would do it
 - What to do then?
 - 3 strikes and you’re out: send 2 letters and then either take away interest-paying capability or close account

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Reg. Q and NOW Accounts

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June 5, 2007

- Providing excessive premiums to checking account customers
 - \$10 for less than \$5,000; \$20 for \$5,000 or more, or unlimited if not dependent on balance or time
- Giving NOW accounts to ineligible parties
 - Simple step: look at the account title
 - Who is eligible?
 - Individuals
 - Sole proprietorships are eligible
 - Charitable organizations
 - Ask to see the 501c letter
 - Political organizations, homeowner associations, government units
 - Trust funds
 - As long as all beneficiaries would be individually eligible
 - Family business – is it a sole proprietorship or a partnership?

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Regulation E (EFT): Error Resolution and Liability

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June 5, 2007

- Taking too long to resolve errors
 - Notice of error from the customer must come within 60 days of when periodic statement was *delivered*
 - Unauthorized transfers are treated as errors until proven otherwise
 - Must resolve the dispute or credit the account within 10 business days (20 for new accounts)
 - *Final* resolution within 45 calendar days (90 for POS, foreign ATM and new accounts)
 - If you take too long, you bought the transaction
 - Cannot require a written affidavit or other documentation before beginning the process, but it can be part of the process

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Regulation CC (Funds Availability): Exceptions

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- ❑ Using an improper reason to delay availability
 - New account
 - Large deposits (> \$5,000)
 - Checks that are redeposited
 - Customers who repeatedly overdraft their account
 - Emergency conditions
 - Reasonable cause
 - You have a reasonable suspicion as to the validity of the check
- ❑ Placing holds on classes of checks
- ❑ Hold notices given too late
 - Must give a notice to the customer *at the time the hold is taken* with reason for the hold

Form C-12

Notice of Hold

Account number: *(number)*

Date of deposit: *(date)*

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.

We are taking this action because:

- A check you deposited was previously returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- The checks you deposited on this day exceed \$5,000.
- An emergency, such as failure of computer or communications equipment, has occurred.
- We believe a check you deposited will not be paid for the following reasons [*]:

[*If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

Regulation CC (Funds Availability): Holding Funds

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June 5, 2007

- ❑ Misuse of the case-by-case hold
 - This is for banks that makes funds available sooner than the statutory limits
 - Notice to the customer is still required
 - But no reason need be given on the notice
 - Can you use the exception form notice?
 - You can only hold the funds to statutory time limits
 - The first \$100 *must be made available*

Form C-16

Notice of Hold

Account number: *(number)*

Date of deposit: *(date)*

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit [*subject to our cash withdrawal limitation policy*].

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

Bank Secrecy Act: Currency Transaction Reporting

Carl Pry
June 5, 2007

- ❑ Improper filing of CTRs
 - Cash-in *or* cash-out (don't net these against each other)
 - By *or* for the same person
 - Means the same person conducts multiple transactions *or* different persons conduct transactions on behalf of the same person or entity
 - You have the duty to track this to the best of your systems' ability
 - **More than** \$10,000 on any one business day
- ❑ Lack of dual control – make sure different personnel complete the form and file it

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Bank Secrecy Act: Exemptions

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- ❑ Getting Phase I and Phase II exemptions mixed up
 - Phase I requires little action on your part – one-time filing of FinCEN Form 110
 - Other banks, government agencies, *listed* companies
 - Be careful of franchisees
 - Phase II requires more
 - Non-listed businesses
 - Must have a transaction account for 12 months before they are eligible
 - They must have frequent reportable transactions – 8 in a 12-month period
 - File the exemption form within 30 days of a reportable transaction, then re-file every other year thereafter
 - You must also certify that you have a system in place to monitor these customers for continuing eligibility and for suspicious transactions (and that the system has been applied at least annually)



Common Compliance Violations

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Suspicious Activity Reporting

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- ❑ Not knowing when to file
 - If there is a “reasonable suspicion” that a violation of law or regulation has occurred
 - What is reasonable? What a normal person might think is suspicious
 - Within 30 days if there is a suspect; 60 days if there is not
- ❑ Informing the suspect that a SAR has been filed
- ❑ Not filing properly when there is continuing suspicious activity
 - File supplemental SARs once every 90 days, and describe the continuing nature of the activity
- ❑ Monitoring systems are not up to date
 - What happens when suspicious activity is detected?
 - Activity that does not result in a SAR

Suspicious Activity Report
July 2003
Previous editions will not be accepted after December 31, 2003

ALWAYS COMPLETE THIS REPORT (see instructions)

1 Check box below only if entering a new report.
 Corrects Prior Report (see instruction #1 under "How to Make a Report")

Part I Reporting Financial Institution Information

2 Name of Financial Institution
3 EIN

4 Address of Financial Institution
5 Primary Federal Regulator
 Federal Reserve OCC
 FDIC OTS
 NCUA

6 City
7 State
8 Zip Code

9 Address of Branch (City only where activity occurred) Multiple branches (include information in narrative, Part V)

10 Date
11 Month
12 Zip Code
13 If institution closed, date closed

14 Account number(s) affected, if any
 Yes No
 Yes No

Part II Suspect Information Suspect Information Unavailable

16 Last Name or Name of Entity
17 Initials

18 Address
19 SSN, EIN or TIN

20 City
21 State
22 Zip Code
23 Country

24 Phone Number - Residential (include area code)
25 Phone Number - Work (include area code)

26 Occupation/Type of Business
27 Date of Birth
28 Admission/Conversion?
 Yes No

29 Form of Identification for Suspect
 Driver's License/State ID Passport Alien Registration Other
Number Issuing Authority

30 Relationship to Financial Institution:
a Accountant Attorney Customer Other
b Agent Broker/Dealer Director Manufacturer
c Appraiser Broker Employee Other

31 Is the relationship an insider relationship?
a Yes No
b Not employed at financial institution Terminated
 Suspended Resigned

32 Date of Suspension, Termination, Reassignment
mm dd yyyy

BSA and OFAC

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- ❑ Inadequate risk analysis and rating
 - Written BSA/AML risk assessment of products, services, customers, and geographic locations
 - Customer due diligence and enhanced due diligence
 - Do you monitor your high-risk customers? Do you even know who they are?
- ❑ OFAC programs are lacking
 - Know the sanctions programs
 - Zero tolerance: Make sure no transactions slip through
 - Severe penalties
 - Must we have software to do it?
 - No, but be sure to have a mechanism to have screening
 - Have the most current lists (“timely updating”)

**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,
Individuals' Credit Union Administration, Office of the Comptroller of the Currency,
and Office of Thrift Supervision

2006

Other Topics

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- ❑ Inadequate USA Patriot Act customer identification program (CIP)
 - Make sure your policy matches what you are doing
 - No need to overdo it – risk
 - Have policies and procedures for what to do when you cannot verify identity
 - Make sure you collect physical address, not just PO Box
- ❑ Appraisals are not independent
 - The appraisal function must be truly independent from the lending function
 - Make sure the customer cannot choose the appraiser from any sort of list
 - “Readdressed appraisals” are not permitted
 - You can use one originally done for another financial institution, however
 - Therefore, the appraiser will be a required provider on the GFE
- ❑ Appraisal notice not provided on commercial deals secured by 1- to 4-family dwellings

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Reg. B: Joint Intent

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- ❑ No evidence that joint applicants actually intend to apply jointly
 - Submission of a joint financial statement (or other evidence of jointly-held assets) by itself does *not* allow the creditor to presume that the application is for joint credit
 - Evidence of intent must be gathered at application, not later (i.e. two parties signing the note would not evidence the intent to have joint credit)
 - What do you have to evidence this sort of intent?
 - Something more may be needed (like a separate joint application) – language such as this:

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

Appropriate If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

Box

We intend to apply for joint credit: _____

Applicant: _____ Co-Applicant: _____

If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

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Government Monitoring Info on a Written Application

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June 5, 2007

- ❑ Overuse of the URLA/Fannie Mae 1003 form
 - When must monitoring information collected?
 - Purchase or refinance of the applicant’s primary residence and the loan is secured by the primary residence
 - You can use this for HMDA loans also, but written app form is not required
 - Bottom line: be sure not to use the URLA when not absolutely required

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES			
<small>The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)</small>			
BORROWER <input type="checkbox"/> I do not wish to furnish this information.		CO-BORROWER <input type="checkbox"/> I do not wish to furnish this information.	
Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino			
Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White			
Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male			
<small>To be Completed by interviewer Interviewer's Name (print or type)</small>		<small>Name and Address of Interviewer's Employer</small>	

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Requiring Signatures

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- ❑ Requiring signatures that are not permitted
 - Requiring cosigners for unmarried applicants
 - Secured credit - co-owners of property securing the loan
 - Can we require their signatures? Look at what you need
 - Community property states: AZ, CA, ID, LA, NV, NM, TX, WA, WI
 - Guarantors – excessive requirements
 - Personal guarantees of commercial debt
 - Again, what do you need?

The screenshot shows the FDIC website interface. At the top left is the FDIC logo with the text 'FEDERAL DEPOSIT INSURANCE CORPORATION' and 'INSURING AMERICA'S FUTURE'. To the right are search and navigation links: 'QUICK LINKS FOR' with a dropdown menu set to 'Bankers' and a 'Go' button, and 'SEARCH THE SITE' with an input field and a 'Go' button. Below these are navigation tabs: 'DEPOSIT INSURANCE', 'CONSUMER PROTECTION', 'INDUSTRY ANALYSIS', 'REGULATION & EXAMINATIONS', 'ASSET SALES', 'NEWS & EVENTS', and 'ABOUT FDIC'. The 'NEWS & EVENTS' tab is highlighted. The main content area shows a breadcrumb trail: 'Home > News & Events > Press > Financial Institution Letters'. Below this is the heading 'Financial Institution Letters' followed by a sub-heading 'Guidance On Regulation B Spousal Signature Requirements'. A short paragraph of text begins: 'This guidance provides information on the rules governing spousal signatures as they relate to extensions'.

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Reg. B/ECOA: Adverse Action Notice Timing

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- ❑ Not providing a notice within 30 days of receipt of the “completed application,” if the decision is a denial
 - When do you “receive” the application?
 - Use Reg. B’s definition of “application”: established procedures for considering whether to grant credit
 - Suggestion: define for yourself what the minimum data elements you would need to pass judgment on the application, then rubber-stamp the date all the data is received – make it clear what that date is
- ❑ Not resolving incomplete applications
 - Use sample form C-6; put a time restriction on it

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower" information must also be provided (and the appropriate box checked) when the income or assets of a person other than the Borrower (or spouse) will be used as a basis for loan qualification or the income or assets of the Borrower's spouse will not be used as a basis for loan qualification because the Borrower resides in a community property state, the security property is located in a community property state, or the security property is located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: VA Commercial Other (explain): _____
 FHA USDA/Rural Housing Service

Agency Case Number: _____ Lender Case Number: CM132549

Amount: \$ 210,000.00 Interest Rate: 6.50 % No. of Months: 360 Amortization Type: _____
 Fixed Rate Other (explain): _____
 GPM AFM (type): _____

Received: 11/15/05

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Reg. B: Adverse Action Notices

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June 5, 2007

- ❑ Reason(s) for denial are not clear
 - Be consistent and accurate – define them for your institution
 - Is it a violation to list more than 4 reasons on the form?
- ❑ Not using sample version of the forms provided
 - Safe harbor

FORM C-1 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

Applicant's Name: _____ Date: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit: _____

Description of Action Taken: _____

PART I - PRINCIPAL REASONS FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.
 This section must be completed in all instances.

<input type="checkbox"/> Credit application incomplete	<input type="checkbox"/> Length of residence
<input type="checkbox"/> Insufficient number of credit references provided	<input type="checkbox"/> Temporary residence
<input type="checkbox"/> Unacceptable type of credit references provided	<input type="checkbox"/> Unable to verify residence
<input type="checkbox"/> Unable to verify credit references	<input type="checkbox"/> No credit file
<input type="checkbox"/> Temporary or irregular employment	<input type="checkbox"/> Limited credit experience
<input type="checkbox"/> Unable to verify employment	<input type="checkbox"/> Poor credit performance with us
<input type="checkbox"/> Length of employment	<input type="checkbox"/> Delinquent past or present credit obligations with others
<input type="checkbox"/> Income insufficient for amount of credit requested	<input type="checkbox"/> Garnishment, attachment, foreclosure, repossession, collection action, or judgment
<input type="checkbox"/> Excessive obligations in relation to income	<input type="checkbox"/> Bankruptcy
<input type="checkbox"/> Unable to verify income	<input type="checkbox"/> Value or type of collateral not sufficient
<input type="checkbox"/> Other, specify: _____	

Common Compliance Violations

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FCRA: Obtaining a Credit Report

Carl Pry
June 5, 2007

- ❑ Pulling a credit report without a “permissible purpose”
 - Credit – be careful of the purpose of pulling the report
 - Existing borrowers – are they current? Why do you want the information?
 - Using existing credit report information to market new products to your borrowers
 - Pulling reports for deposit accounts, debit cards, etc.
 - Must be initiated by the consumer
 - Make sure that the consumer is a party to the transaction before pulling the report
 - Don’t pull reports on guarantors/co-signers or supporting ex-spouses without prior permission
- ❑ Improperly offering prescreened offers of credit
 - Make sure there is no post-screening occurring, except for original criteria
 - Include all elements of a firm offer of credit
 - Make sure the solicitation includes both the short and long-form notices



Common Compliance Violations

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Reg. B/ECOA and FCRA: Adverse Action Notices and Forms

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June 5, 2007

- ❑ Not completing the form correctly, and over-completing it
 - For Reg. B portion (Part I – with the reasons, and ECOA Notice)
 - Anyone on whom the adverse *credit* decision was made regardless of whether a credit report was obtained or not
 - This section is not applicable to deposit products decisions

Form C-1 – SAMPLE ADVISE OF ACTION TAKEN AND STATEMENT OF REASONS
Reasons of Credit Denial, Termination, or Change

Applicant's Name: _____ Date: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____
Description of Action Taken: _____

PART I – PRINCIPAL REASONS FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

___ Credit application incomplete	___ Length of residence
___ Insufficient number of credit references provided	___ Temporary residence
___ Unacceptable type of credit references provided	___ Unable to verify residence
___ Unable to verify credit references	___ No credit file
___ Temporary or irregular employment	___ Limited credit experience
___ Unable to verify employment	___ Poor credit performance with us
___ Length of employment	___ Delinquent past or present credit obligations with others
___ Income insufficient for amount of credit requested	___ Delinquency, attachment, foreclosures, repossession, collection action, or judgment
___ Excessive obligations in relation to income	___ Bankruptcy
___ Unable to verify income	___ Value or type of collateral not sufficient

Other, specify: _____

- For FCRA portion (Part II)
 - Anyone whose consumer report information contributed to the adverse decision
 - Applies to both credit and deposit products decisions

Form C-1, page 2

Part II (INCLUDING USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE). This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. This reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____
Address: _____
[EEO-4(a)] Telephone number: _____

___ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Common Compliance Violations

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Reg. O: Loans to Executive Officers

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June 5, 2007

- Allowing improper payment of insider overdrafts
 - Exception: you can pay them, but look to time and amount of overdraft
- Allowing too much borrowing
 - Total of all loans to an executive officer cannot exceed the lesser of 2.5% of the bank's capital or \$100,000, whichever is lower
 - Exception: if the loan is properly secured (cash, Treasury security)
 - Exception: loan to finance a (meaning one) residence, secured by a first lien
 - Exception: loans to finance children's education
- Forgetting to include the call provision in all insider deals
 - The loans must be made callable at bank's option, if the officer becomes indebted to other banks in an amount greater than he/she could borrow from his/her own bank
- Not having all insiders' credit lines re-approved by the Board at least once every 14 months
 - Else each draw must be approved in advance by the Board (which is obviously impractical)

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Flood Insurance Regulations

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- Not having the proper documentation
 - Have the Standard Flood Hazard Determination Form (SFHDF) completed for each loan covered
 - Doesn't have to be given to customer
 - May be stored electronically
- Allowing waivers of insurance
 - If customer disputes determination, only flood map changes (LOMA/LOMR) can justify no insurance

FEDERAL EMERGENCY MANAGEMENT AGENCY STANDARD FLOOD HAZARD DETERMINATION FORM		See the attached instructions	OMB No. 0607-0004 Expires October 31, 2006
1. LENDER NAME AND ADDRESS		2. COLLATERAL (Building Name/Address/Property) PROPERTY ADDRESS (apartment may be omitted)	
3. LENDER E. NO.		4. LOAN NUMBER	
5. AMOUNT OF FLOOD INSURANCE REQUIRED		6.	
SECTION I			
A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY PARTICIPATION			
1. NFIP Community	2. County/State	3. State	4. NFIP Community Rating
B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) PARTICIPATION BY SPECIAL FLOOD SOURCE CODE			
1. FEMA Flood Community/Zone	2. NFIP Special Flood Hazard Zone Code	3. LOMA/LOMR	4. Flood Zone
5. NFIP Map			
C. FEDERAL FLOOD INSURANCE ELIGIBILITY (Check either apply)			
<input type="checkbox"/> Federal Flood Insurance is available because community participates in NFIP Regular Program <input type="checkbox"/> Regular Program <input type="checkbox"/> Emergency Program of NFIP <input type="checkbox"/> Federal Flood Insurance is not available because community is not participating in the NFIP			
<input type="checkbox"/> Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA), Federal Flood Insurance may not be available. <small>CBRA/OPA designation date: _____</small>			
D. DETERMINATION			
IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? <input type="checkbox"/> YES <input type="checkbox"/> NO <small>If no, flood insurance is required by the Flood Disaster Protection Act of 1973. If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.</small>			
E. COMMENTS (Optional)			
<small>This determination is based on examining the NFIP map, any Federal Emergency Management Agency notices to it, and any other information needed to locate the building/mobile home on the NFIP map.</small>			
LENDER - BUSINESS TELEPHONE NUMBER (If other than Lender)		DATE OF DETERMINATION	
<small>FD-558 Form 01-93, OCT 02 This form may be locally reproduced.</small>			

Common Compliance Violations

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Flood Insurance Regulations

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- ❑ Forgetting the flood notice
 - This must be provided when customer must obtain insurance
 - Provided a reasonable time before the loan closes
 - 10 days, but may be less
 - Have it signed or otherwise acknowledged by the customer
- ❑ Not requiring enough insurance
 - At a minimum, cover:
 - The outstanding amount of the loan (look to other liens, too),
 - The value of the structure (value of the total real estate minus the value of the land), or
 - \$250,000 for a residential structure; \$500,000 for a commercial structure
- ❑ No proof of insurance in file

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

❑ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make your loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, federal law requires us to require us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover the lesser of:

- (1) The outstanding principal amount of the loan; or
- (2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the original value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damage incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

❑ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if non-participating communities have been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

[I acknowledge receipt of a copy of this notice.]

Signature of borrower _____ Date _____

Common Compliance Violations

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Reg. Z: Disclosures

Carl Pry
June 5, 2007

- ❑ Misapplication of the rule
 - For owner-occupied rental property (more than 14 days/year), if the purpose of the loan is to improve the property, Reg. Z applies if the property contains 1 to 4 units (this runs counter to primary purpose)
- ❑ Disclosures not provided timely
 - In a residential mortgage transaction, 3 days for the Early TIL disclosure
 - Again, the best solution is to define for your institution what an application is, then make sure it is clear when it is received
- ❑ Home equity line of credit (HELOC) disclosures not provided timely
 - Disclosures and the "When Your Home Is On the Line" booklet must be provided with the application, if taken in-person
- ❑ Adjustable rate mortgage (ARM) disclosures not provided timely
 - Variable rate disclosures and Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet) must be provided at the time an application is provided (more strict rule than even HELOCs)
 - Click-through (cannot bypass – give print capability) if on the web

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Common Compliance Violations

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Reg. Z: Truth in Lending

Carl Pry
June 5, 2007

- Not disclosing when there is a refinancing
 - If you're changing a fixed-rate loan to a variable-rate loan, you must redisclose even if using a modification agreement
- Charges assessed by third parties are finance charges if
 - If creditor requires the type of service the third party provides, even if the consumer can choose the particular provider, or
 - The creditor retains a portion of the charge that is assessed
 - So, for example, closing agent fees are finance charges if the creditor
 - Requires the service, requires the charge, or retains a portion of the charge that is assessed

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Common Compliance Violations

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Reg. Z: What if Mistakes Were Made?

Carl Pry
June 5, 2007

- Not knowing when a real estate loan is out of tolerance
 - Closed-end loans secured by dwellings or real estate - \$100
 - Means you OK as long as you don't underdisclose finance charges by more than \$100
 - Overdisclosure in any amount is OK (is to the borrower's advantage)
 - How do you know if you're out of tolerance?
 - Get the OCC's APRWIN program from the OCC website
- Not fixing errors timely
 - TILA Section 130(b)
 - 60-day window to correct errors
 - Send letter and refund

TTS

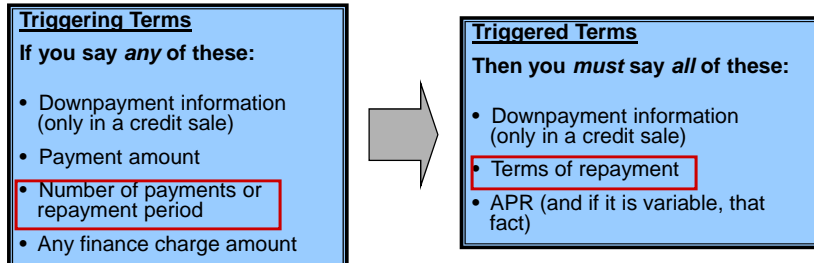
Common Compliance Violations

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Reg. Z: Advertising – Closed End Credit

Carl Pry
June 5, 2007

- ❑ Not disclosing necessary terms



- ❑ Advertising the interest rate more conspicuously than the APR
- ❑ Not including date information if disclosing rates or fees
- ❑ Online ads: having disclosed terms more than one click away

TIS

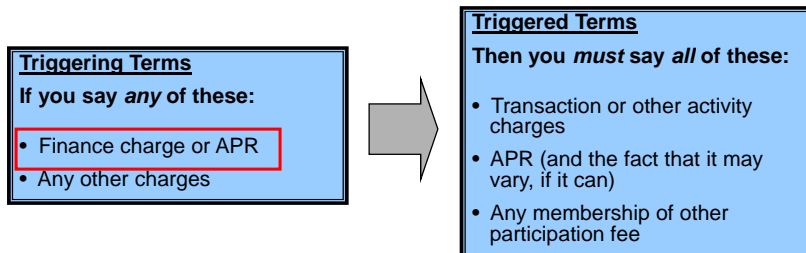
Common Compliance Violations

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Reg. Z: Advertising – Open End Credit

Carl Pry
June 5, 2007

- ❑ Again not disclosing required terms



- ❑ Again not having date information if disclosing rates or fees
- ❑ Forgetting the HELOC special rule
 - Triggering terms can be stated affirmatively *or negatively* (the absence of the term)
 - Stating the absence of a triggering term nonetheless means you must include all triggered terms in your ad

TIS

Common Compliance Violations

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Reg. Z: Right of Rescission – Who Gets It?

Carl Pry
June 5, 2007

- Misunderstanding who is entitled to the ROR
 - It is not necessarily just borrowers who are entitled
- 1. Giving the ROR when you don't have to: exemptions:
 - Residential mortgage transactions (purchase money)
 - Refinance of a loan from the original lender, with no new money advanced
 - If there was new money, there would be the right to rescind on the new funds
- 2. Giving the ROR to persons not entitled to it
 - Each party to which *both* of the following apply
 - His/her principal dwelling is taken as security for the loan
 - The party has an ownership interest in the dwelling taken as security
 - You may have to check with counsel to be sure (contingent interests, remainderships, etc.)

TIS

Common Compliance Violations

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Right of Rescission

Carl Pry
June 5, 2007

- Not counting the rescission period properly
 - Runs until the end of the 3rd business day
 - Make sure you count Saturdays – these are business days for rescission purposes
 - Don't extend the rescission period longer than necessary – expires 3 business days after the *last* of the following:
 - Consummation of the loan (this is what you want)
 - Delivery of 2 *copies* of the notice of the right to rescind to each eligible party (note that these persons aren't necessarily borrowers)
 - Delivery of the material disclosures (final TIL) to each eligible party
 - It extends 3 years if you don't do everything properly

TIS

Common Compliance Violations

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RESPA

Carl Pry
June 5, 2007

- ❑ Coverage issues
 - Personal purpose loans secured by rental property are covered
 - If the proceeds of the loan will be used to build a residence on vacant land within 2 years, RESPA covers it
 - If you issue a commitment to do takeout financing on a construction loan, you must also disclose the construction loan
 - If the proceeds transfer the title to land to first user, you must disclose an otherwise temporary loan
- ❑ Servicing disclosure statement (SDS) not disclosed timely
 - Provide it at the time of application if taken face-to-face
 - Have it signed by each applicant
- ❑ Timeliness of disclosures
 - GFE, special info booklet, SDS (if app not in person) must be provided within 3 days of when the application is received
 - Again, define for yourself what an application is, and be consistent
- ❑ Make sure all required providers are listed (if borrower pays for service)
 - Appraiser will be a required provider

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Common Compliance Violations

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RESPA: Good Faith Estimate

Carl Pry
June 5, 2007

- ❑ Not enough fees are disclosed on the GFE
 - The costs shown on the GFE are not limited to just costs the borrower pays for directly
 - Borrowers are paying for these somewhere, probably in the rate if they're not directly paid
 - This may include insurance, for example, even though the insurance is not being "imposed" by the lender
 - Would you make the loan without insurance?
 - Bottom line is put all costs inherent in the transaction on the GFE, no matter who is paying or getting paid
- ❑ Costs that are "Paid Outside Closing," or POC are not disclosed
 - This is what is put on the GFE when the cost is not paid directly to the lender

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Common Compliance Violations

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RESPA: HUD-1 or -1A Settlement Statement

Carl Pry
June 5, 2007

- Make sure disclosure of fees is similar to that on GFE
 - Make sure there is a reasonable relationship between fees on the GFE and those on the HUD-1 (does not have to be exact, however)

A. Settlement Statement		U.S. Department of Housing and Urban Development		OMB Approval No. 2502-0265	
B. Type of Loan					
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing. They are shown here for informational purposes and are not included in the totals.					
D. Name & Address of Borrower:		E. Name & Address of Seller:		F. Name & Address of Lender:	
G. Property Location:			H. Settlement Agent:		
			Place of Settlement:		I. Settlement Date:

Common Compliance Violations

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Illegal Kickbacks - Section 8

Carl Pry
June 5, 2007

- Providing illegal kickbacks under section 8
 - Giving or receiving a fee or anything of value pursuant to any agreement or understanding for the *referral* of a settlement service other than for services actually performed.
 - You can't pay a broker or other third party, or be paid by another party simply for referring business to someone else or being sent business by someone else
 - A referral is not a compensable event
- The fees that are paid don't meet the exception
 - You *may* pay or get paid a reasonable fee for *work actually done*
 - To be paid a legal fee, you must
 1. Take the loan application, *and*
Perform at least 5 of 14 compensable services (from HUD's Statements of Policy)
 2. The fee must be *reasonably related* to the services performed
 - This is the hard one to meet
 - Can you say percentage-based fees are related to work done or to the loan amount?
 - Improperly paying yield spread premiums

TTS

Common Compliance Violations

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Reg. C/HMDA: Make Sure the Correct Applications Are Reported

Carl Pry
June 5, 2007

- ❑ Not reporting commercial home purchase, home improvement, and refinancing applications
- ❑ If you have a formalized preapproval program, not reporting them
 - Comprehensive underwriting + commitment letter = required reporting
- ❑ Not reporting all dwelling-secured home improvement loans
 - Previously you only reported them if you had a category for “home improvement loans”
 - Unsecured home improvement loans are only reported if you categorize them
- ❑ Getting refi definitions confused
 - “Coverage” definition vs. “reporting” definition
 - Now report as refis loans where you have a new note that satisfies and replaces an existing note, and both the old and new loans are secured by a lien on a dwelling
 - Note there is no purpose (home purchase or home improvement) requirement here

Common Compliance Violations

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Reg. C/HMDA: Reporting Issues

Carl Pry
June 5, 2007

- ❑ Not reporting when you make the credit decision
 - It is simple: Whoever makes the credit decision reports on their LAR
 - It does not matter whose criteria are used in making the decision – yours, investor’s, other lender’s, or anyone else’s
 - If you make the final credit decision, then you report (even if you used an investor’s criteria to make the call)
 - If you do not make the final credit decision, you do not report, even if your lending criteria was used by someone else to make the decision
 - Even if the loan is closed in your name
- ❑ Neglecting the co-applicant column
 - Don’t leave it blank

Common Compliance Violations

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Reg. C/HMDA: Reporting Issues

Carl Pry
June 5, 2007

- ❑ When the applicant is not a natural person, not using “NA” for ethnicity, race, sex, and income
 - This applies when the applicant is a partnership, corporation, etc.
 - This makes sense, but be careful of commercial lenders
- ❑ Reporting rate spread incorrectly
 - Make sure the difference between the APR and comparable Treasury rate is reported, not the APR
 - Not reported for unsecured home improvement loans
- ❑ Reference Treasury rate rules for rate spread and HOEPA status are different
 - Some rate spread loans won't show up as HOEPA loans



Common Compliance Violations

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Contact Information

Carl Pry
June 5, 2007

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Microsoft Word 2007: What's New – June 12

Lending Compliance: From App to Closing –
June 14

Legal Liabilities When Check Fraud Occurs –
June 26

Financial Auditing for Internal Auditors – June
28

Notary Public – July 11



Common Compliance Violations

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