FROM BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

QUARTERLYREPORT

MISSISSIPPI REGULATORY COMPLIANCE GROUP

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S.A.F.E. ACT REGISTRATION PERIOD TO BEGIN JANUARY 31, 2011

The S.A.F.E. Act is intended to improve the accountability and tracking of residential Mortgage Loan Originators (MLOs), enhance consumer protection, reduce fraud, and provide consumers with easily accessible information regarding MLOs and their professional background.

The various federal agencies announced the publication of final rules implementing the S.A.F.E. Act on July 28, 2010. (See Article in the August, 2010 Quarterly Report).

In that joint release, the agencies advised that advance notice would be provided for the date that the Nationwide Mortgage Licensing System and Registry (the Registry) would begin accepting registrations. In a Financial Institution Letter dated January 4, 2011, the FDIC, along with other federal regulatory agencies, announced that the federal registration process will begin January 31, 2011.

Once that registration period begins, MLOs employed by agency-regulated institutions will have 180 days in order to complete initial registration. The agencies have said that they expect the initial registration period to expire on July 29, 2011.

After the initial registration period expires, MLOs will be prohibited from originating residential mortgage loans until they successfully complete the federal registration process. An official announcement is expected to be published in the Federal Register confirming the actual registration start date.

The NMLS has published a "Getting Started" instruction manual to help institutions with the registration process. (See http://mortgage.nationwidelicensingsystem.org/federalPages/defaualt.aspx). This set of instructions contains a 10-step process for effecting the necessary registrations.

Step 1: Determine if your institution is required to register. Of course it is.

Step 2: Get prepared. Your registration of the bank will require submitting a Form MU1R. Two individuals will need to be designated as Account Administrators. These individuals will have primary responsibility for administering the bank's NMLS Registry account.

Step 3: Determine those MLOs that need to be registered. Previous Quarterly Report articles have detailed the guidance available to determine which employees (and how many) you may need to designate and register. Remember that employees not registered after July 29, 2011 will not be permitted to perform the functions of an MLO until they are registered. Registration of MLOs will be accomplished by preparing a Form MU4R.

Step 4: Choose a workflow. Three different workflows have been developed. The bank can choose the one that suits its needs best.

- Workflow 1 -- MLO completes the MU4R form and bank pays the fee;
- Workflow 2 -- bank completes the MU4R form and pays the fee; or
- Workflow 3 -- MLO completes the MU4R form and pays the fee.

Step 5: Obtain two-factor authentication for all persons using the bank's NMLS account. All Account Administrators will need to have a second authentication factor, in addition to their User Name and password, in order to log in to the bank's NMLS account. This additional authentication factor will be a security credential obtained through VeriSign at the VeriSign website.

Step 6: Gather necessary MLO data. MLO information can be batched and uploaded to NMLS compiling basic identifying and contact information on each MLO. Specifications for batch upload and a template are available on the NMLS website.

Step 7: Request an institution account on NMLS. The Company Account Request Form will need to be completed. Once approved, the account will be created and user names and passwords will be issued to the Account Administrators. This approval process is anticipated to take two to three days. (See the Quick Guide: Requesting an Account on the NMLS website).

Step 8: Complete and submit the Form MU1R. Once you receive your VeriSign token, user name and password, click on the "log into NMLS" button, complete the form and pay the fee.

Step 9: Complete the process above for any subsidiaries that must register.

Step 10: Begin registering MLOs. Follow the steps of the workflow you choose.

Every MLO will need to be fingerprinted. The NMLS has designated vendor(s) to help with the digital submission of fingerprints as part of the background check process for MLOs. Regional sites will be designated, and large groups can arrange separate, individual sessions. (See the Quick Guide: Scheduling Your Fingerprint Appointment on the NMLS website).

It is only reasonable to anticipate that this process will see its delays and bottlenecks. Everyone would be well-advised to start this process immediately and to be vigilant in pursuing it to a conclusion. July 29, 2011 is fast approaching.

(Ed Wilmesherr)

AGENCIES ISSUE FINAL APPRAISAL AND EVALUATION GUIDELINES

On December 2, 2010, the federal bank regulatory agencies jointly issued final supervisory guidance on sound practices for real estate appraisals and evaluations. These Guidelines provide very specific recommendations by the agencies on virtually all aspects of appraisals and the integrity of the appraisal process. The *Interagency Appraisal and Evaluation Guidelines* replace the existing Guidelines issued in 1994 and explain the agencies' minimum regulatory standards for appraisals. The Guidelines incorporate the agencies' recent supervisory issuances and appraisal practices, address advancements in information technology used in collateral valuations and clarify standards for appropriate use of analytical methods and technological tools in developing evaluations. The Guidelines supplement the agencies' existing appraisal regulations which set forth, among other requirements, minimum standards for the performance of real estate appraisals and requirements for evaluations of real estate collateral in transactions that do not require an appraisal.

Organization of Guidelines

The Guidelines are divided in segments dealing with requirements for establishing an appropriate appraisal and evaluation program, independence of the appraisal and evaluation program, selection of appraisers and persons performing evaluations, discussion of transactions that require appraisals, minimum appraisal standards, appraisal reports, transactions that require evaluations, evaluation development and content, use of existing appraisals and evaluations, reviewing appraisals and evaluations, use of third party arrangements such as appraisal management companies and program compliance.

The Guidelines contain four appendices that clarify current regulatory requirements. Appendix A provides further clarification on real estate related transactions that are exempt from the appraisal regulations. Appendix B addresses an institution's use of analytical methods and technological tools in development of an evaluation. Appendix C clarifies the minimum appraisal standards required by the appraisal regulations for analyzing and reporting appropriate deductions and discounts and appraisals. Appendix D provides a glossary of terms.

Objectives of Appraisal and Evaluation Program

The Guidelines make it clear that each institution is responsible for establishing an appraisal and evaluation program which should include board approved policies and procedures. The program should:

- provide for independence of the persons ordering, performing and reviewing appraisals or evaluations;
- establish selection criteria and procedures for evaluating and monitoring the performance of appraisers and persons performing evaluations;
- insure that those appraisals comply with regulatory requirements and contain sufficient information to support a credit decision;
- establish criteria for the content and appropriate use of evaluations; provide for receipt and review of the appraisal or evaluation in a timely manner to facilitate the credit decision;
- develop criteria to assess whether an existing appraisal or evaluation may be used in a subsequent transaction;
- include appropriate internal controls;
- establish criteria for monitoring collateral values; and
- establish criteria for obtaining appraisals or evaluations for transactions not covered by the appraisal regulations.

Selection of Appraisers, Independence

The Guidelines emphasize that financial institutions are responsible for selecting appraisers and persons performing evaluations based on their competence, experience, and knowledge of the market and type of property. Institutions should be able to demonstrate the independence of their processes for obtaining property values and adopt standards for appropriate communications and information sharing with appraisers and persons performing evaluations under the Guidelines.

With respect to independence, reporting lines for loan production staff should be independent from personnel who administer the appraisal/evaluation program including those who order, review and accept appraisals/evaluations. Appraisers have to be independent of loan production and should have no direct, indirect or prospective interest in the property or the transaction. The Guidelines recognize that for a small or rural bank or branch, it's not always possible to separate the collateral valuation program from loan production. If that's the case, the institution should be able to demonstrate that it has prudent safeguards to isolate the valuation program from any influence or interference from loan production. For example, it may be necessary for a different loan officer to review and analyze the appraisal/evaluation. Any lending officer or employee involved in ordering, performing and reviewing the appraisal/evaluation should abstain from any vote or approval of the loan itself.

The Guidelines recognize the importance of communication between a bank's collateral evaluation staff and the appraiser, and recognize that a bank may exchange information with appraisers which may include a copy of a sales contract for a purchase transaction. The Guidelines go on to say, however, that a bank should not directly or indirectly coerce, influence or encourage an appraiser to misstate or misrepresent the value of the property and refer to the new Regulation Z rules on that subject for consumer mortgage loans.

Continuing Evaluation
and Standards for Appraisers

An institution's valuation program should establish the criteria to select, evaluate and monitor the performance of appraisers and other persons performing evaluations. That criteria should ensure that the person selected has the necessary education, expertise and experience to complete the assignment. Work performed by appraisers and persons providing evaluations should be periodically reviewed by the bank. Appraisers and persons providing evaluations must be capable of rendering an unbiased opinion, be independent and have no direct, indirect or prospective interest in the property or the transaction. Any appraiser selected must have the appropriate state certification or license. Persons performing evaluations should possess the appropriate appraisal or collateral valuation education, expertise and experience relevant to the type of property. Those persons may include appraisers, real estate lending professionals, agricultural extension agents or foresters, depending on the property type.

A financial institution or its agent must directly select and engage an appraiser or person performing an evaluation. If the institution establishes an approved appraiser list, it should also have appropriate procedures for the development and maintenance of that list including a process for qualifying an appraiser for initial listing as well as periodic monitoring of the appraiser's performance and credentials. Generally, an institution should use written engagement letters when ordering appraisals, particularly, for large, complex or out of area commercial properties. Any engagement letter should be included in the loan credit file.

Standards for Property Evaluations

In situations where an evaluation is permitted in lieu of an appraisal, the Guidelines indicate that the evaluation must provide an estimate of the market value and sufficient information and analysis to support the value conclusion. Generally, broker price opinions cannot be used as an evaluation because they typically relate to listing prices and do not provide a property's market value. Likewise, information on local housing conditions and trends, such as a competitive market analysis, does not contain sufficient information about the specific property and would not be acceptable as evaluation. A bank's policies and procedures should include appropriate methods for collateral evaluation and should address the process for selecting the appropriate evaluation method rather than simply using the method that renders the highest value, lowest cost or fastest turn around time. Any evaluation method used should address the properties' actual physical condition and characteristics as well as economic and market conditions. It's generally not acceptable for an institution to base an evaluation on unsupported assumptions such as the property is in average condition and generally shall require a physical inspection of the property. If an inspection is not performed, an institution should be able to demonstrate how the condition of the property and market factors were determined.

At a minimum, an evaluation should contain sufficient information detailing the analysis assumptions and conclusions to support the credit decision. An evaluation should identify the location of the property, provide a description of the property and its current and projected use, provide an estimate of market value in its actual condition, describe the methods used to confirm the condition of the property and whether or not an inspection was performed, describe the analysis and any supporting information used in valuing the property, describe any supplemental information that was considered when using an analytical method or technological tool, indicate all sources of information used in the analysis including external sources such as market sales data bases and public tax records, property specific data such as previous sales data and comparable sales information, evidence of a property inspection, photos, description of the neighborhood or local market conditions and include information on the preparer, such as name, contact information and signature.

Testing for Compliance

In order to have a compliant appraisal and evaluation program, an institution's policies and procedures must maintain strong internal controls to ensure reliable appraisals and evaluations. The compliance process must:

- maintain a system of internal controls and testing to ensure appraisals and evaluations provide credible market values;
- testing for compliance should be independent from influence by loan production staff;
- ensure the institution's practices result in selection of qualified and competent appraisers;
- include procedures for testing the quality of the appraisal and evaluation review process;
- use the results of the review process as a basis for considering a person for future appraisal/evaluation work;
- report deficiencies to appropriate internal parties and external authorities, if applicable.

Institutions are also responsible for monitoring collateral risk on a portfolio as well as an individual basis, so policies and procedures should address the need for obtaining current collateral valuation information to understand the collateral position of the life of a loan and effectively manage the portfolio risk. This may include periodically updating valuations of collateral for existing real estate loans and for transactions such as loan modifications and workouts. Portfolio monitoring practices should include criteria for determining when to obtain an updated appraisal/evaluation which should include consideration of changes in market conditions

(Virginia Wilson)

MORTGAGE LOAN PAYMENT SCHEDULE DISCLOSURES CHANGE

Remember the Mortgage Disclosure Improvement Act (MDIA)? That is the 2008 law that first required early TIL disclosures on consumer mortgage loans. That law also contained a section requiring the Federal Reserve to write regulations providing for better explanations and examples of how mortgage loan interest rates and payment amounts can change over the life of the loan. On September 24, 2010, the Fed published an Interim Rule amending Regulation Z to implement those requirements. The Interim Rule requires creditors extending consumer credit secured by real property or a dwelling to disclose certain summary information about interest rates and payment amounts and changes, in a tabular format. Disclosures will also include a warning that consumers are not guaranteed to be able to refinance their transactions in the future. The interest rate and payment summary tables will replace the payment schedule disclosures currently required in the Fed box disclosures. The regular payment schedule disclosures continue to be required on non-mortgage, closed-end consumer credit.

Compliance with the Interim Rule is mandatory for transactions where the credit application is received on or after January 30, 2011, which is the compliance date set by the MDIA. In response to comments it received, the Fed amended the Interim Rule in December to clarify a couple of things. Creditors have the option of complying with either the September, 2010 Interim Rule as originally published or the Interim Rule as revised until October 1, 2011 at which time compliance with the revised Interim Rule becomes mandatory.

The MDIA seeks to alert borrowers to the risk of payment increases before they take out a mortgage loan with variable rates or payments. The Interim Rule, however, applies to all dwelling secured loans whether or not the loan terms provide for variable rates or payment amounts. Under the Interim Rule, disclosures must include a payment summary in the form of a table stating the initial rate and corresponding periodic payment, and for adjustable rate loans, the maximum rate and payment that can occur during the first five years of the loan, as well as a worst case example showing the maximum rate and payment possible over the life of the loan.

The revised Interim Rule clarifies that when disclosing the maximum rate and payment amount that can occur during the first 5 years of the loan where the loan is a "5/1 ARM", the disclosure should reflect the first rate adjustment which typically becomes effective five years after the first regular payment due date, not five years from the loan origination date. The revised Interim Rule also corrects the requirements for interest only loans to clarify that disclosures should show the earliest date the consumer's interest rate can change rather than the due date for making the first payment under the new rate. The rule also clarifies which mortgage transactions are covered by the special disclosure requirements for loans that allow minimum payments that permit negative amortization and that may cause the loan balance to increase.

Under the Interim Rules, all closed end transactions secured by real property or a dwelling, other than an interest in a time share plan, must include specified information about the interest rate and payment amounts in the form of a table with no more than five columns and with headings and in a format substantially similar to the model disclosures provided in the Regulation. The information in the table must be in a prominent location and in a minimum ten point font size.

Interest Rates. The requirements for disclosure of interest rates vary depending on whether the loan is for a fixed rate or has an adjustable rate or step rate and on whether the loan is an amortizing loan or a non-amortizing loan. For a fixed rate mortgage that is an amortizing loan, the disclosures must include the interest rate at consummation. For an adjustable rate or step rate amortizing mortgage, the disclosures would include: the interest rate at consummation and the period of time until the first interest rate adjustment, labeled as the "introductory rate and monthly payment"; the maximum interest rate that may apply during the first five years after the first payment due date and the earliest date that rate may apply, labeled as "maximum during first five years"; and the maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may be reached, labeled as "maximum ever."

If the loan provides for payment increases without regard to a rate increase (for example, a loan that begins with interest only payments for a period of time), the interest rate in effect at the time the first payment increase is scheduled to occur and the date on which the increase will occur, labeled as "first adjustment" if the loan is an adjustable rate loan or labeled as "first increase" on other loans.

For an ARM loan with an introductory rate lower than the fully indexed rate, additional information would be placed in a box directly beneath the table which would include: the interest rate that applies at consummation and the period of time it remains in effect; a statement that even if market rates do not change, the interest rate on the loan will increase at the first adjustment; a designation of when that change will occur; and the fully indexed rate.

Payments. Payment amounts must also be disclosed in the table. If all payments are to be applied to accrued interest and principal, then for each interest rate that is required to be disclosed, the table must also include the corresponding periodic principal and interest payment labeled as "principal and interest." If the payment amount can increase without regard to an interest rate adjustment, then the table would also include the payment that corresponds to the first such payment increase and the earliest date on which the increase could occur. If an escrow account is to be established, the payment disclosures must include an estimate of the amount of taxes and insurance (including any mortgage insurance) and then the sum of principal, interest and escrows, labeled as "total estimated monthly payment."

The Fed revised the commentary to the Interim Rule to clarify that when estimating escrows for future changes in payment amounts, creditors are not expected to make projections about future tax rates or insurance premiums. However, creditors might be aware of changes in mortgage insurance premiums based on loan amount. When escrow payments are required to be disclosed in multiple columns, each column should contain the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums that are known to the creditor at the time of making the disclosure that are based on the declining principal balance of the loan.

If the loan provides for interest only payments for some period of time, then for each interest rate disclosed, the table would include the amount of the interest payment, the amount of the principal payment (if any), the estimated escrow amounts, if applicable, and then the sum of the total estimated monthly payment.

If the transaction requires a balloon payment (defined as a payment that is more than two times the amount of a regular periodic payment), the balloon payment is disclosed outside and below the table in a manner substantially similar to the model clauses provided. If the balloon payment is due at the same time as another payment required to be disclosed in the table, then the balloon payment must be disclosed in the table itself.

<u>No guarantee to refinance</u>. Creditors are also required to disclose that there is no guarantee the consumer can refinance the transaction in the future to lower the interest rate or periodic payment amounts. This disclosure would appear just below the rate/payment table.

If you offer loans that have the possibility of negative amortization, pay close attention to the requirements for those loans. Special rules are provided for loans that carry the possibility of negative amortization.

While the tabular disclosures replace the normal payment schedule disclosure on dwelling secured loans, the total of payments must still be calculated and disclosed in the same fashion as before. The revised Interim Rule clarifies that the total of payments is computed in the same manner as before using the existing rules for determining the number and amounts of payments and the total of payments for both fixed rate and adjustable rate loans. Where the loan is payable in other than monthly payments, appropriate changes in the terminology should be used, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to an applicable interest rate at various times during the term of the loan and the corresponding payment amounts are shown in horizontal rows.

Take a close look at the Interim Rule, as revised, and the model disclosures. These disclosures become mandatory for all new transactions for which an application is taken on or after January 30, 2011, affecting both early mortgage loan disclosures as well as disclosures given at loan consummation and will require substantial changes in disclosure forms. All lenders will want to take steps to make sure their forms vendors are making the necessary changes in order to remain in compliance once the new rules become effective.

(Cliff Harrison)

ATM REQUIREMENTS UNDER ADA

On September 15, 2010, the Department of Justice issued final revisions to the accessibility standards of the Americans with Disabilities Act (the "ADA"). The final rule sets forth new requirements for ATMs and all banks should pay particular attention to the new requirements, although whether a bank may be required to comply immediately will depend on factors specific to the bank. The effective date of the final rule is March 15, 2011, but a safe harbor is in place for existing ATMs until March 15, 2012. New ATMs must conform to the new rules. During the eighteen months between September 15, 2010 and March 15, 2012, banks have the option of complying with either the 1991 ADA accessibility standards or the 2010 accessibility standards; however, all banks should have a compliance plan in place on or before March 15, 2011.

The new requirements address both physical access requirements and communication requirements. Existing ATMs *that are currently in compliance with the 1991 ADA standards* do not have to conform to the new height and reach requirements unless they are altered after the compliance date for the new rule. New ATMs must conform to all 2010 requirements. Existing ATMs may have to be altered to conform to the 2010 requirements if such compliance does not create an undue burden on the institution. This is a determination that will be made on a case by case basis. Only one ATM at each location is required to be in compliance with the new requirements; however, it should be noted that if a bank has both interior ATMs and an exterior ATM, then the exterior ATM and interior ATMs are considered to be separate locations.

The rule defines an undue burden as a "significant difficulty or expense." Some of the factors that should be considered when making the determination are: the nature and cost of alteration, the number of employees, the bank's overall financial resources, the location's overall financial resources, safety requirements, and geographic locations. These factors should also be included in the compliance plan which will aid in determining whether compliance is an undue burden for a particular bank.

Under the new rule, ATMs are required to be speech enabled meaning that all information provided should be easily accessible to the visually impaired through a speech output method such as a telephone handset or other standard connector. It is important to note that any private information should be protected. All ATMs are required to provide the same degree of privacy for all users. For example, audible tones may be required for personal information just as asterisks are currently used for items such as PIN input. Additionally, instructions for speech output must be easily accessible and provided in Braille. ATM keys or other input devices must be raised. Complete compliance requirements are set forth in the 2010 guidance.

(Memrie Fortenberry)

RESPA – HELP!!

I'm sure by now, everyone knows all about the RESPA requirements and how to complete the GFE and HUD-1's…..NOT! In the 32 years that I have been in banking, this has got to the most difficult Act to comply with! With that said, we will be walking through the RESPA documents at our February meeting.

Here's what we are planning. We will first go through each section of the Good Faith Estimate and discuss what items go where. We will try to address as many common fees as we can, based on exceptions we have noted as we have performed compliance reviews. We will then look at the HUD-1 and look at where the fees we have disclosed on the GFE go on the HUD-1. We will address changed circumstances, credits, and tolerances. We will also look at how to review your Good Faith Estimates, Truth-in-Lending disclosures and HUD-1's to ensure they have been accurately completed. We are also planning to use this same training as a future webinar so you can have all employees that need to hear the information, trained. More information on this will follow.

Another area that has generated a lot of questions is higher priced mortgage loans. We are also planning to go over the requirements and the options for higher priced mortgage loans.

Now here is what we need from you. If you have specific questions on RESPA or hpml's, please email them to Liz at liz.crabtree@butlersnow.com. She will compile those and give them to me prior to the meeting.

We will try and address as many questions as we can. Hopefully by the time we leave the quarterly meeting, you will have a better understanding of what is required!

(Patsy Parkin)

BCFP AND STATE REGULATORS SIGN MOU

As everyone is fully aware, the clock is ticking down to the July 21, 2011 deadline for implementation of the power and authority of the Bureau of Consumer Financial Protection (BCFP) created under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act which was enacted last year.

Although the BCFP currently lacks a confirmed head of that agency, Elizabeth Warren, the person appointed by President Obama to "stand up" that agency, has been very active in her efforts to lay the groundwork for the BCFP to begin operations.

In previous discussions of the Dodd-Frank Act, we have mentioned that it contains something of a legislative Memorandum of Understanding between the BCFP and the other functional bank regulatory agencies. There are clear directives that require the FDIC, the OCC, the Federal Reserve Board and other federal regulators to share with the BCFP their exam procedures, their exam results, and information regarding any violation of consumer protection laws and regulations that they detect in the course of a bank examination. Missing from this legislative MOU was a clear reference to a similar obligation on the part of state bank commissioners and the state bank regulatory agencies they administer. That was rectified by a formal MOU entered by the BCFP, the Conference of State Bank Supervisors and each of the state bank regulators on January 4, 2011.

In this formal MOU, state regulators commit to exchange "confidential supervisory information" to enable the BCFP and the state regulators to carry out their "respective duties under applicable law." Among those duties listed are:

- promotion of consistent standards for compliance examinations;
- development of an efficient framework for coordinating supervisory activities;
- promotion of information sharing between the state regulators and the BCFP; and
- the effective enforcement of state and federal consumer protection laws.

While most of the publicity surrounding this development has focused on state regulators sharing information with the BCFP regarding the so-called "shadow banking industry" (i.e., mortgage brokers, check cashers, finance companies, etc.), it is clear that state regulators are under the same obligation to share information about the state-chartered banks that they regulate as well.

The effective date for the commencement of the BCFP enforcement authority is July 21, 2011. We can anticipate a flurry of activity as that date approaches and a steady drumbeat of regulatory developments after that date.

(Ed Wilmesherr)

FDIC ISSUES FINAL GUIDANCE ON OVERDRAFT PAYMENT PROGRAMS

The FDIC issued its final guidance with respect to automated overdraft payment programs on November 24, 2010. This final guidance incorporates the best practices outlined in the Joint Guidance on Overdraft Protection Programs issued by the bank regulatory agencies in 2005.

In the final guidance, the FDIC expressed its expectation that both a bank's board of directors and its management would ensure that the bank mitigates risks associated with offering automated overdraft payment programs and that the bank complies with all consumer protection laws and regulations. In addition, the FDIC listed the following expectations:

- The bank will promptly honor a customer's request to decline coverage of overdrafts (an opt-out) resulting from non-electronic transactions;

- The bank will give customers the opportunity to affirmatively choose the overdraft payment product that best meets their needs;
- The bank will monitor accounts and take meaningful and effective action to limit use by customers by, for instance, giving customers who overdraw their accounts on more than six occasions where a fee is charged in a rolling 12-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage;
- The bank will institute appropriate daily limits on overdraft fees, and consider eliminating overdraft fees for transactions that overdraw an account by only a minimal amount; and
- The bank will not process transactions in a manner designed to maximize the cost to consumers (e.g., high-to-low).

Those banks using a third-party vendor to administer their overdraft payment programs must exercise careful oversight of the third party's activities. Reference should be made to the FDIC's 2008 Guidance for Managing Third-Party Risks.

In related explanatory material, the FDIC elaborated on some of its concerns. Banks are reminded to ensure that customer communications such as deposit account agreements or marketing materials are updated to reflect the final guidance and to present information that is both accurate and not misleading.

Particular concern was expressed about the use of <u>automated</u> overdraft payment programs. The FDIC explicitly pointed out that ad hoc overdraft payments involving irregular and infrequent instances where a bank employee exercises discretion about whether to pay an item or not are not the focus of this guidance. However, the FDIC expressed its expectation that banks would take the following actions regarding <u>automated</u> overdraft protection programs:

- Ensure that the bank's board of director provides appropriate oversight of overdraft programs and that on an ongoing and regular basis management provides oversight of program features and operation. An annual review of an overdraft program's key features should be conducted.
- Review marketing, disclosure and implementation of such programs to minimize potential consumer confusion and promote responsible use.
- Train staff to explain program features and other choices.
- Prominently distinguish account balances from any available overdraft coverage amounts.
- Monitor programs for excessive or chronic customer use, and if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling 12-month period, undertake meaningful and effective follow-up action such as contacting the customer to discuss less costly alternatives such as a linked savings account or reasonably priced line of credit, giving the customer a reasonable opportunity to decide whether to continue fee-based overdraft coverage.
- Institute appropriate daily limits on customer costs by, for example, limiting the number of transactions that will be subject to a fee or providing a limit on total fees that will be imposed per day.
- Consider eliminating overdraft fees for transactions that overdraw an account by a de minimis amount.
- Consider employing cost-effective technology to alert customers when their account balance is at risk of creating an overdraft that will generate a fee.
- Consider providing information to consumers about how to access free or low-cost financial educational workshops or individualized counseling.

- Review check-clearing procedures to ensure that they avoid maximizing customer overdrafts and related fees through the clearing order. Approved examples for clearing order include clearing items in the order received or by check number.
- Monitor and, where necessary, mitigate credit, legal, reputational, safety and soundness and other risks, as appropriate.

Banks are reminded of new Regulation E requirements that took effect on July 1, 2010 requiring them to provide notice and a reasonable opportunity for customers to opt-in to the payment of ATM and POS overdrafts for a fee. Banks are cautioned against attempts to steer frequent users of fee-based overdraft products to opt-in to these programs while obscuring the availability of alternatives. Steering activities raise potential legal issues, including fair lending, and concerns about unfair or deceptive acts or practices. Banks should also remind their customers, especially chronic or excessive users of overdraft programs, that they have a continuing right to choose to opt-out of ATM and POS overdraft programs.

Not surprisingly, the guidance states that overdraft payment programs will be reviewed at each examination and that appropriate corrective action will be taken where necessary.

Finally, the Joint Guidance stresses that under the Equal Credit Opportunity Act and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction. This prohibition applies to overdraft protection programs. Activities such as targeting certain customers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit will raise concerns under ECOA. Inconsistent applications of waivers of overdraft fees will be evaluated in light of all applicable fair lending statutes and regulations.

In order to allow sufficient time for banks to review, consider and respond to the expectations in the final guidance, the FDIC designated July 1, 2011 as a deadline for having processes and procedures in place to mitigate the risks associated with overdraft protection programs.

(Ed Wilmesherr)

UNLIMITED DEPOSIT INSURANCE COVERAGE FOR IOLTAS

The Dodd-Frank reform legislation included a temporary expansion of unlimited deposit insurance coverage for non-interest bearing transaction accounts. The FDIC on November 15, 2010 published a final rule to implement that provision. The new rule was to take effect December 31, 2010 upon expiration of the FDIC's former Transaction Account Guarantee Program ("TAGP") which provided unlimited coverage for transaction accounts including low rate NOW accounts. Unlike the TAGP, the new coverage is not optional. Also, unlike the TAGP, noninterest bearing transaction accounts were defined under the November rule to exclude all NOW accounts regardless of the interest rate on the account. The November rule required all insured depository institutions (IDIs) to post notices in each branch lobby and on their website. IDIs that participated in the voluntary TAGP were also required to send a notice to NOW account depositors, including depositors with Interest on Lawyers Trust Accounts (IOLTAs), that as of January 1, 2011, those accounts would no longer be eligible for unlimited coverage but would be insured under the general deposit insurance rules.

On December 29, 2010, the President signed an amendment to the law which redefined non-interest bearing transaction accounts for purposes of the temporary unlimited coverage to explicitly include IOLTAs. As a result, the FDIC has now amended its November rule. The amendment changes the form of the lobby and website notice. IDIs must post the revised notice no later than February 28, 2011. Also, the amended rule eliminates the requirement that IDIs that participated in the TAGP notify IOLTA depositors that IOLTAs will no longer be eligible for unlimited protection. IDIs that have already sent the notice required by the

November rule to IOLTA depositors are encouraged, but not required, to send a revised notice to those IOLTA depositors that their funds will be fully insured from December 31, 2010 through December 31, 2012, which is the date the temporary unlimited coverage for transaction accounts ends. The revised form of the lobby/website notice can be found at: http://www.fdic.gov/deposit/deposits/changes2.html

(Patsy Parkin)

MRCG QUARTERLY MEETING TO BE HELD ON FEBRUARY 17, 2011

The MRCG will hold its Quarterly Meeting on February 17, 2011, at the Mississippi Sports Hall of Fame & Museum Conference Center, 1152 Lakeland Drive, Jackson, Mississippi. Registration will begin at 9:00 a.m. with the Quarterly Meeting to begin at 9:30 a.m..

During the February Meeting, we will discuss on-going issues with RESPA and Truth-in-Lending, the new S.A.F.E. Act registration process, new appraisal guidelines, and a new compliance training initiative.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration form attached with this copy of the *Quarterly Report* to Liz Crabtree no later than **Friday, February 11, 2011** so that arrangements for lunch can be finalized. We look forward to seeing you there.

(Ed Wilmesherr)

MRCG COMPLIANCE CALENDAR

10/01/08 – Electronic Disclosure Regulation effective	**06/01/10** – Unlawful internet gambling enforcement regulation compliance date.
11/01/08 – Red Flag Guidelines compliance mandatory	**07/01/10 –**Reg. E changes for ATM and debit card overdrafts
01/16/09 – RESPA Servicing Transfer Disclosure revised	**07/01/10** – FFIEC Accuracy and Integrity Guidelines effective
07/30/09 – Reg. Z early disclosures for dwelling secured loans effective	**08/22/10** – Reg. E rules on gift certificates and gift cards effective
08/20/09 – Reg. Z changes on time to make payments on open-end accounts effective	**10/01/10** – Escrow requirements effective for mobile homes
08/20/09 – Reg. Z changes on notices of changes in terms on credit card accounts effective	**10/01/10** – S.A.F.E. Act regulations effective
10/01/09 – Reg. Z higher priced mortgage loan regulations effective	**01/01/11** – Risk-based pricing rules effective
10/01/09 – Reg. Z servicing practices regulations effective	**01/31/11** – S.A.F.E. Act Registration Begins
10/01/09 – Reg. dwelling secured advertising disclosures changes effective	**02/17/11** – MRCG February Quarterly Meeting
10/01/09 – HMDA changes for reporting rate spreads on higher priced mortgage loans effective	**02/28/11** – Post Revised Notice to IOLTA Customers
10/01/09 – Reg. Z HOEPA changes on verification of repayment ability effective	**04/01/11** – Appraisal Independence Final Rule Effective
11/20/09 – Reg. Z disclosures on transfer of mortgage loans effective	**04/21/11 –** MRCG Steering Committee Meeting
01/01/10 – RESPA GFE and HUD-1 disclosure changes effective	**05/26/11 –** MRCG May Quarterly Meeting
01/01/10 – Reg. DD changes on disclosure of OD fees and providing balance information effective	**07/21/11 –** MRCG Steering Committee Meeting
02/14/10 – Reg. Z disclosures on private education loans effective	**07/29/11** - S.A.F.E. Act Registration Expires
02/22/10 – Reg. Z implementing changes to open-end credit and credit card accounts under Credit Card Act effective	**08/25/11 –** MRCG August Quarterly Meeting
02/27/10 – Reg. CC disclosure changes effective	**09/15-11 –** MRCG Steering Committee Meeting
04/01/10 – Escrow requirements effective for site-built homes	**11/17/11 –** MRCG Annual Meeting