



COMPLIANCE UPDATE

OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC) ISSUES GUIDANCE TO BANKS REGARDING FORECLOSURE PRACTICES – JUNE 30, 2011

On July 28, 2011, the OCC clarified expectations for the oversight and management of mortgage foreclosure activities by national banks.

While the interagency reviews of 14 large mortgage servicers conducted in the fourth quarter of 2010 and subsequent enforcement actions address the majority of the mortgage servicing market, the guidance issued today is intended to ensure that all mortgage servicers under OCC supervision adhere to appropriate foreclosure management standards.

OCC Bulletin 2011-29 stresses that banks engaged in mortgage servicing must ensure compliance with foreclosure laws, conduct foreclosures in a safe and sound manner, and establish responsible business practices that provide accountability and appropriate treatment of borrowers. The bulletin provides additional clarification on expectations regarding governance of the foreclosure process to include adequate staffing and training, dual-track processing, management of affidavit and notary practices, documentation, oversight of third-party service providers, and adherence to all laws and regulations related to mortgage foreclosure.

The bulletin also *directs all national banks* to conduct a self-assessment of foreclosure management practices no later than **September 30, 2011**, and correct any

weaknesses identified. National bank examiners will review the self-assessments and corrective actions in the next quarterly review or examination of the bank.

FEDERAL RESERVE CUTS DEBIT CARD BANK FEES

Fees paid by retailers to banks for debit card purchases, a \$20 billion annual expense that has been the subject of a furious political battle over the last year, will be cut in half after the Federal Reserve voted on June 29 to cap the charges. The cap was mandated last year in the Dodd-Frank financial regulation law, but the Federal Reserve action was far less draconian than bankers had feared. The new cap of 21 to 24 cents a transaction, down from an average of 44 cents before the law passed, is roughly double the 12 cents tentatively proposed by the Federal Reserve last December. The new rules will go into effect on October 1, 2011, and are now mandated under Regulation II. The rules are available with the Federal Reserve Bank's press release

<http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>.

Consumers are unlikely to see any immediate change at the register because they do not pay the fees directly. But merchants have complained that as the cost of debit fees for processing payments rise, they have had to add it to the prices they charge. But banks said the caps would not pay for the cost of operating their electronic debit card networks, and they have warned that their customers can expect higher fees for other banking services as a result.

In approving the lower fees, the Federal Reserve's Board of Governors said there was no way of knowing what the effect of the new rules would be, although they will be watching the results closely. An exemption is built into the law that gives smaller banks with less than \$10 billion in assets a pass on the fee cap. These smaller institutions could charge retailers a higher transaction fee for debit card purchases. The board agreed to monitor the interchange fees to see how the revenues of small banks were affected, and whether merchants appeared to be rejecting cards that they knew would require them to pay a higher processing fee.

The new fee schedule includes three parts: a maximum interchange fee of 21 cents; a 1 cent addition that is allowed if the bank issuing the debit card develops a fraud-prevention program; and a variable charge of 5 basis points, or five one-hundredths of a percentage point, of the value of the transaction to recover a portion of fraud losses. For the average debit card transaction of about \$38, that variable fee would be roughly 2 cents, which would produce an upper limit, on average, of 24 cents a transaction.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)'S FINAL RULE TO END INTEREST BAN

The FDIC published a Final Rule on July 13, 2011, to implement §627 of the Dodd-Frank Act (DFA), which repeals the prohibition in the FDI Act prohibiting the payment of interest on demand deposits, by removing and reserving 12 CFR Part 329. However, the portions of Part 329 that define "interest" and exceptions to that definition for "premiums" are being transferred into Part 330 for purposes of implementing the temporary, unlimited deposit insurance coverage mandated by §343 of the DFA. The rule, which will affect insured non-member banks and state savings associations, will be effective on the DFA Transfer Date, July 21, 2011.

REGULATION E AUTOMATED TELLER MACHINE (ATM) FEE NOTICE REMINDER

Under the regulations, two forms of notice are required. The first, which most banks handle without a problem, is the "screen" or "paper" notice. This is the notice that pops up on the ATM screen, or appears on a slip of paper during the transaction that alerts a customer that a specific amount will be charged for the pending transaction, allowing the consumer to cancel the transaction request to avoid the fee.

The second form of disclosure, known as the "on machine" notice, requires a bank to post a notice in a "prominent and conspicuous location" on the ATM that a fee may be imposed. The provisions of Regulation E governing ATM disclosures have been interpreted by the Federal Reserve as requiring both "on machine" and "screen/paper" notices.

In the past few years attorneys began filing suits for violation of the ATM disclosure rules. In each of these lawsuits, it is alleged that the institution operating the ATM allegedly failed to provide a proper "on machine" notice. Class action lawsuits seeking damages have been filed in Michigan, Ohio, Pennsylvania, Texas, and other jurisdictions.

The Electronic Funds Transfer Association caps class action damages at the lesser of \$500,000 or 1 percent of the net worth of a defendant, plus attorney fees and costs. The statute also provides defendants with excellent grounds to respond to the suit, should they choose to defend rather than settle. For example, ATM operations are not liable for damages if the required notice was removed as a result of vandalism or other acts by third parties; the alleged violation was not intentional and resulted from a bona fide error; or the bank can demonstrate a good faith attempt at compliance with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve Board.

Of course, defending or agreeing to settle a suit can be costly. A good practice would be for your branch personnel to periodically inspect the ATM for the required signage when they settle the ATM. Documenting this on your monthly branch security or operational control checklist will show your good faith attempt at compliance and, hopefully, avoid putting you in the litigation spotlight.

FINAL REGULATIONS B AND V CREDIT SCORE RULES ANNOUNCED

The Federal Trade Commission and Federal Reserve Board announced final rules on July 7, 2011, to implement new Fair Credit Reporting Act (FCRA) credit score disclosure requirements added by the DFA. The changes to Regulation V, issued in coordination with the FTC, revise the content requirements for risk-based pricing notices and add related model forms that reflect the new credit score disclosure requirements. The FRB is also amending Regulation B to modify model forms (C-1 through C-5) that combine Equal Credit Opportunity Act and FCRA notices. The amendments will be effective 30 days after publication in the Federal Register. The Dodd-Frank amendments to the Fair Credit Reporting Act are effective 7/21/2011.

To simplify things for you;

- If you use the credit score in taking an adverse action, the FCRA credit score disclosure is required in your adverse action notice.
- If you use a consumer credit report for granting credit and, based on the report, you give materially less favorable material terms, a risk-based pricing notice is to be provided. Depending on which notice you use, and if you use a credit score in setting the material terms for the credit, you may have to add the credit score disclosure.
- If the loan is for a consumer purpose and secured by a one-to-four-family residential property, the notice is to be sent to the home loan applicant. If you also used a credit score in making your decision, the credit score notice in FACT Act is also to be sent.

The Second Quarter 2011 issue of the Federal Reserve Bank *Consumer Compliance Outlook* was issued on June 30, 2011, on the *Outlook* website (<http://www.consumercomplianceoutlook.org>). This issue contains the following articles and features:

- Compliance Requirements for the Servicemembers Civil Relief Act
- HMDA and CRA Data Reporting: Questions and Answers
- Compliance Requirements for Young Consumers
- On the Docket: Recent Federal Court Decisions
- News from Washington: Regulatory Update
- Regulatory Calendar
- Compliance Resources
- Calendar of Events

Questions?

If you wish to discuss these matters in detail, please contact Bob Kline, Debbie Masters, Tim Schofer, or Matt Presto at (724) 934-0344 or (800) 580-7738, or email bkline@srsnodgrass.com, dmasters@srsnodgrass.com, tschofer@srsnodgrass.com, or mpresto@srsnodgrass.com.