



BANKING ON A SOLID FOUNDATION

# COMPLIANCE PIPELINE

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## Loan Originator Compensation and Anti-Steering Rules

Effective April 1, 2011 new rules will be in place under Regulation Z Section 226.36 to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices. These new rules apply to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders. These rules will drastically impact how a financial institution acting as a mortgage broker will be able to earn income and will also affect how all individual loan originators may be compensated including new anti-steering requirements. The following is a breakdown of the key points of this new rule to assist a Bank in its compliance preparation.

First, a few terms should be defined to better map out these new require-

ments. For purposes of this section, the term “loan originator” means with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. It is important to note that the term “loan originator” includes an employee of the creditor if the employee meets this definition. The term “loan originator” also includes the creditor only if the creditor does not provide the funds (table funding) for the transaction at consummation out of the creditor’s own resources. For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor...(Continued on Page 4)

## Regulation Z Valuation Independence Rules Effective 12/27/2010

New rules have been implemented for appraising properties securing a consumer purpose loan where the security is the consumer’s principal dwelling. These requirements are covered under Section 226.42 of Truth In Lending and are effective December 27, 2010. The mandatory date for compliance is April 1, 2011.

The new rules provide specific details of what lenders can and can’t do when obtaining and evaluating valuations on consumer purpose

loans secured by the principal dwellings. The definition of valuation under Truth in Lending specifically excludes valuations that are conducted by an automated model or system. The new rules prevent banks from engaging in the coercion of independent appraisers and the mischaracterization of value on a consumer’s primary dwelling. In addition, rules have been implemented to define prohibited conflicts of interest for persons conducting valuations...(Continued on Page 6)

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## Truth in Lending Update

The Federal Reserve Board announced in a press release December 22, 2010 that it had approved another interim rule amending Regulation Z, Truth in Lending. The Board issued this interim rule to clarify certain aspects of the previously related September 24, 2010 interim rule and was in response to public comments received. Under the Board's September interim rule, Fed Box 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 as well as a "worst case" example showing the maximum rate and payment possible over the life of the loan.

This new interim rule clarifies that the disclosures should reflect the first rate adjustment for a "5/1 ARM" loan because the new rate typically becomes effective within 5 years after the first regular payment due date. The new interim rule also corrects the requirements for interest-only loans to clarify that the 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. Finally, the rule clarifies which mortgage transactions are covered by the special disclosure requirements for loans that allow minimum payments that cause the loan balance to increase.

The January 30, 2011 compliance deadline is still in effect for implementing these changes. Banks have the option of complying with either the Board's September 2010 interim rule as originally published or as revised by this new interim rule until October 1, 2011. After the October 2011 deadline, compliance with the new interim rule will become mandatory.

## HMDA Exemption Threshold

The Federal Reserve Board recently published its annual notice of the asset-size exemption threshold for depository institutions under Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The adjustment was effective January 1, 2011.

The asset-size exemption for depository institutions will increase to \$40 million based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the twelve-month period ending in November 2010. Depository institutions with assets of \$40 million or less as of December 31, 2010, are exempt from collecting data in 2011. An institution's exemption from collecting data in 2011 does not affect its responsibility to report the data it was required to collect in 2010.

## Safe Act Update

The joint banking agencies released notification that they will begin to accept registrations for the Nationwide Mortgage Licensing System and Registry (Registry) on January 31, 2011 as required by the SAFE Act. In light of this announcement, depository institutions should ensure that applicable mortgage loan originators are registered by July 29, 2011. After this deadline, any mortgage loan originators not registered will be prohibited from originating residential mortgage loans until registration is complete.



### **Important Changes to the Temporary FDIC Insurance Coverage for Transaction Accounts**

The FDIC has issued a final rule on January 18, 2011 revising the Federal Deposit Insurance Act regarding IOLTA (Interest on Lawyers Trust Accounts) accounts, which are now considered to be within the definition of a "noninterest-bearing transaction account". As a result, the temporary unlimited insurance coverage authorized by section 343 of the Dodd-Frank Act is now expanded to include IOLTA accounts.

The final rule requires that no later than February 28, 2011, each individual depository institution that offers non-interest-bearing transaction accounts must post an amended notice prominently in each of its office lobbies and on its website if they offer depository services. The notice must explain the recently updated ruling that IOLTAs will now be fully insured through December 31, 2012.

Institutions that have already notified IOLTA depositors that additional coverage will not be available under the prior rule may provide a revised notice advising that IOLTAs will receive unlimited insurance coverage as noninterest-bearing transaction accounts for two years ending December 31, 2012. Banks should also reflect the amended treatment of IOLTAs in year-end 2010 regulatory reports relative to noninterest-bearing transaction accounts of more than \$250,000 and, if applicable, estimated uninsured deposits.

Refer below for a sample customer notice to meet these new requirements:

#### **NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS**

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It also includes Interest on Lawyers Trust Accounts ("IOLTAs"). It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, and money-market deposit accounts.

For more information about temporary FDIC coverage of transaction accounts, visit [www.fdic.gov](http://www.fdic.gov).

### **New Permanent Increase for FDIC Insurance**

The FDIC's deposit insurance rules (12 CFR Part 330) were revised on July 22, 2010 to permanently increase the standard maximum deposit insurance amount to \$250,000. Insured depository institutions should promptly obtain the new official signs and display them not later than January 3, 2011, the date for mandatory compliance with the final rule.

The FDIC has made hard copies and an electronic file of the new official sign available free of charge to insured depository institutions. Institutions may order the decals and counter signs through the FDIC Online Catalog under "For Banks Only". Individuals placing orders will need to register to order through the catalog and will need to enter detailed information about the bank. Per the FDIC, the new signage will take between six to eight weeks for delivery.

# Compliance Pipeline

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## Loan Originator Compensation and Anti-Steering Rules...(Continued from Page 1)

The new requirements will apply to all consumer mortgage loans that are secured by a dwelling; however, open-end lines of credit are exempt. The final rules on loan originator compensation apply to transactions for which the creditor receives an application on or after April 1, 2011. Historically, many bank mortgage department lenders have commonly paid loan originators more compensation if the borrower accepts an interest rate higher than the rate required by the lender, which is commonly referred to as a "yield spread premium". However, under this new rule, a loan originator may not receive compensation that is based on the interest rate or other loan terms. Per the Board, the intent of this new rule is to prevent loan originators from increasing their own compensation by raising consumers' loan costs, such as by increasing the interest rate or points.

Loan originators may be paid a percentage of the loan amount which is not considered based on terms and conditions for these rules, provided the percentage is fixed and does not vary with the amount of credit extended. Compensation that is based on a fixed percentage of the amount of credit extended may be subject to a minimum and/or maximum dollar amount, as long as the minimum and maximum dollar amounts do not vary with each credit transaction. Compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. Compensation includes amounts the loan originator retains, but does not include amounts the originator receives as payment for bona fide and reasonable third-party charges, such as title insurance or appraisals. On the other hand, if the originator "up-charges" third-party fees and the originator retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for these purposes.

The rule also prohibits compensation based on a factor that is a proxy for a transaction's terms or conditions. For example, a consumer's credit score or similar representation of credit risk, such as the consumer's debt-to-income ratio, is not one of the

transaction's terms or conditions. However, if a loan originator's compensation varies in whole or in part with a factor that serves as a proxy for loan terms or conditions, then the originator's compensation is based on a transaction's terms or conditions.

The following are only illustrative examples from the Staff Commentary to the regulation of compensation methods that are permissible (unless otherwise prohibited by applicable law), and is not an exhaustive list. Compensation is not based on the transaction's terms or conditions if it is based on, for example:

- The loan originator's overall loan volume (i.e., total dollar amount of credit extended or total number of loans originated), delivered to the creditor
- The long-term performance of the originator's loans
- An hourly rate of pay to compensate the originator for the actual number of hours worked.
- Whether the consumer is an existing customer of the creditor or a new customer
- A payment that is fixed in advance for every loan the originator arranges for the creditor (e.g., \$600 for every loan arranged for the creditor, or \$1,000 for the first 1,000 loans arranged and \$500 for each additional loan arranged)
- The percentage of applications submitted by the loan originator to the creditor that result in consummated transactions
- The quality of the loan originator's loan files (e.g., accuracy and completeness of the loan documentation) submitted to the creditor
- A legitimate business expense, such as fixed overhead costs
- Compensation that is based on the amount of credit extended, as permitted by the regulation

The regulation does not limit a creditor's ability to offer a higher interest rate in a transaction as a means for the consumer to finance the payment of the loan originator's compensation or other costs that the consumer would otherwise be required to pay directly either in cash or out of the loan proceeds. Therefore, a creditor may charge a higher

### Loan Originator Compensation and Anti-Steering Rules...(Continued from Previous page)

interest rate to a consumer who will pay fewer of the costs of the transaction directly, or it may offer the consumer a lower rate if the consumer pays more of the costs directly.

The final rule also prohibits a loan originator that receives compensation directly from the consumer from also receiving compensation from the lender or another party. In other words, if the borrower pays the loan originator a fee based on a percentage of the loan amount, the loan originator may not receive additional compensation by the investing creditor. Payments to a loan originator made out of loan proceeds are considered compensation received directly from the consumer, while payments derived from an increased interest rate are not considered compensation received directly from the consumer. However, points paid on the loan by the consumer to the creditor are not considered payments received directly from the consumer whether they are paid in cash or out of the loan proceeds. For example, if the consumer pays origination points to the creditor and the creditor compensates the loan originator, the loan originator may not also receive compensation directly from the consumer. This part intends to ensure that consumers who agree to pay the originator directly do not also pay the originator indirectly through a higher interest rate, thereby paying more in total compensation than they realize.

Additionally, the final rule prohibits loan originators from directing or "steering" a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the originator's compensation. The rule intends to preserve consumer choice by ensuring that consumers can choose from loan options that include the loan with the lowest rate and the loan with the least amount of points and origination fees, rather than the loans that maximize the originator's compensation. In order to comply with this section, the loan originator must present required loan options that the borrower will likely qualify for which meets the following conditions expressed in the regulation. The loan originator must obtain loan options from a significant number of the creditors with which the

originator regularly does business and, for each type of transaction in which the consumer expressed an interest.

The required loan options presented must include:

- The loan with the lowest interest rate;
- The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and
- The loan with the lowest total dollar amount for origination points or fees and discount points.

If the loan originator presents to the consumer more than three loans, it must highlight the loans that satisfy the criteria specified above. The loan originator can present fewer than three loans and be in compliance if the loan(s) presented to the consumer satisfy the criteria provided above. The Staff Commentary to the regulation provides a good example to illustrate this part. Assume a loan originator determines that a consumer likely qualifies for a loan from Creditor A that has a fixed interest rate of 7 percent, but the loan originator directs the consumer to a loan from Creditor B having a rate of 7.5 percent. If the loan originator receives more in compensation from Creditor B than the amount that would have been paid by Creditor A, the prohibition is violated unless the higher-rate loan is in the consumer's interest. For example, a higher-rate loan might be in the consumer's interest if the lower-rate loan has a prepayment penalty, or if the lower-rate loan requires the consumer to pay more in up-front charges that the consumer is unable or unwilling to pay or finance as part of the loan amount.

# Compliance Pipeline

## Regulation Z Valuation Independence Rules Effective 12/27/2010...(Continued from Page 1)

A bank may not attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

The regulation provides the following examples as acts of coercion:

- Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;
- Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;
- Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;
- Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and
- Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

When the Bank relies on a valuation of a consumer's dwelling that is conducted in-house, the regulation states that no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling. It states that no person shall falsify and no person other than a person that prepares valuations shall materially alter a valuation. An alteration is material for if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

The following examples are provided by the regulation as actions that do not violate the aforementioned items:

- Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;
- Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;
- Asking a person that prepares a valuation to correct errors in the valuation;
- Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;
- Withholding compensation due to breach of contract or substandard performance of services; and
- Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

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### Regulation Z Valuation Independence Rules Effective 12/27/2010...(Continued from Previous page)

The regulation provides specific guidelines to prevent conflicts of interest in valuations. It states that no person preparing a valuation or performing valuation management functions may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed. A conflict of interest is not solely based on the fact that a person is an employee or affiliate of the bank or the person provides a settlement service in addition to preparing valuations or performing valuation management functions. However, a conflict of interest does exist in the following instances:

*Employees and affiliates of creditors with assets of more than \$250 million for both of the past two calendar years...*

- The compensation of the person preparing a valuation or performing valuation management functions is based on the value arrived at in any valuation;
- The person preparing a valuation or performing valuation management functions reports to a person who is part of the creditor's loan production function or whose compensation is based on the closing of the transaction to which the valuation relates; or
- The employee, officer or director in the creditor's loan production function is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

*Employees and affiliates of creditors with assets of \$250 million or less for either of the past two calendar years...*

- The compensation of the person preparing a valuation or performing valuation management functions is based on the value arrived at in any valuation; or
- The bank does not require that any employee, officer or director of the creditor who orders, performs, or reviews a valuation abstain from par-

ticipating in any decision to approve, not approve, or set the terms of that transaction.

If the aforementioned requirements are met, the regulation states that a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest as a result of the person or the person's affiliate performing another settlement service for the transaction.

The final parts of the new regulatory requirements under this section require that appraisers only receive customary and reasonable compensation for services performed and require lenders to report questionable or unethical activity of appraisers to the appropriate state board. The regulation states that a bank that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal statutes or regulations shall refer the matter to the appropriate state agency if the failure to comply is material. A failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

Compliance officers should take time to familiarize themselves with the new requirements and provide training to executive management to ensure prohibited acts in the valuation of a consumer's principal dwelling do not occur.

### RESPA Roundup

A recent RESPA ROUNDUP was published in December of 2010 and can be reviewed at: <http://www.hud.gov/offices/hsg/rmra/res/roundupdecember.pdf>. The RESPA Roundup is published periodically by HUD and is a valuable resource for guidance on completing RESPA documents such as the good faith estimate and settlement statement. Compliance officers can register to receive the RESPA Roundup at each update by contacting [hsg-respa@hud.gov](mailto:hsg-respa@hud.gov).

# Compliance Pipeline

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## New Guidance for SAR Confidentiality & Sharing

FinCEN issued new guidance in November of 2010 which helps to clarify SAR sharing with affiliates which also reiterates the importance of confidentiality. The Bank Secrecy Act was amended effective January 3, 2011 to reflect these changes. We all know that the BSA strictly forbids banks from notifying any person involved in suspicious activity that a SAR has been filed or sharing information that would reveal the existence of a SAR. However, this section of the regulation has been broadened to specifically state that SARs and any information that would reveal the existence of a SAR shall not be disclosed except as described therein.

FinCEN recommends that banks implement safeguarding measures such as keeping the information on a “need to know” basis, restricting areas for reviewing SARs, logging of access to SARs, the use of cover sheets for SARs or supporting documentation that indicates the filing of a SAR, or electronic notices that highlight confidentiality concerns before a person may access or disseminate the information. Implementing some or all of these practices will help ensure that SARs and relative information is kept out of the wrong hands.

Keeping SARs and their existence confidential is important because sharing of such information with unauthorized parties erodes the bank’s safe harbor from civil liability and steep civil and criminal penalties may also apply. Civil money penalties of up to \$100,000 for each violation may be levied and criminal penalties of up to \$250,000 and/or imprisonment not to exceed five years could also apply, in addition to other possible civil money penalties relative to inadequate BSA/AML controls.

There are certain parties that the bank may share SARs with, as long as they are not persons involved in the suspicious transaction being reported. Those parties include: FinCEN; any Federal, state, or local law enforcement agency; any Federal regulatory agency that examines the depository institution for compliance with the BSA; or any state regulatory authority that examines the depository institution for compliance with state laws requiring compliance with the BSA.

The regulation also provides that the SAR sharing prohibition does not apply to: (i) the disclosure of the underlying facts, transactions, and documents upon which a SAR is based, including, but not limited to, disclosures related to filing a joint SAR and in connection with certain employment references or termination notices; and (ii) the sharing of a SAR, or any information that would reveal the existence of a SAR, within a depository institution’s corporate or organizational structure for purposes consistent with Title II of the BSA, as determined by regulation or in guidance.

The regulation was amended to enable SAR sharing with affiliates to ensure an effective enterprise wide BSA/AML monitoring program and to enable banks to adequately identify risk. FinCEN defines an affiliate as any company under common control with, or controlled by, the depository institution. The new rule does not allow banks to share with all affiliates, but only those that are subject to SAR regulation and have a primary Federal functional regulator (e.g. depository institutions, securities and futures industry, etc.). Further, banks cannot share SARs or information that would reveal the existence of a SAR with foreign affiliates or branches. An affiliate that has received a SAR from a bank that has filed the SAR cannot further share that SAR, or any information that would reveal the existence of that SAR with an affiliate of its own, even if that affiliate is subject to a SAR rule.

For complete information on this updated regulation reference FinCEN’s website at the following link: [http://www.fincen.gov/news\\_room/nr/pdf/20101122.pdf](http://www.fincen.gov/news_room/nr/pdf/20101122.pdf)



## ODP Final Guidance

The FDIC released FIL -81-2010 on November 24, 2010 which was comprised of the final Overdraft Payment Supervisory Guidance. The guidance provided in this FIL was almost identical to the guidance from FIL-47-2010 where the FDIC solicited comments on overdraft payment programs. However, the FDIC added an additional recommendation that Banks should consider eliminating overdraft fees for transactions that overdraw an account by a minimal amount.

## CRA Threshold Adjustments

Regulatory agencies recently announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank and intermediate small savings association under the Community Reinvestment Act (CRA) regulations. The annual adjustments for banks are required by the CRA rules. Annual adjustments to these asset-size thresholds are based on the change in the average of the Consumer Price Index (CPI) for urban wage earners and clerical workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

As a result of the 2.21 percent increase in the CPI index for the period ending in November 2010, the definitions of small and intermediate small institutions for CRA examinations will change as follows:

- "Small bank" or "small savings association" means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.122 billion.
- "Intermediate small bank" or "intermediate small savings association" means a small institution with assets of at least \$280 million as of December 31 of both of the prior two calendar years, and less than \$1.122 billion as of December 31 of either of the prior two calendar years.

Each bank should check its assets for the prior two calendar years to ensure future compliance with the Community Reinvestment Act. These asset-size threshold adjustments are effective January 1, 2011. In addition, the agencies will post a list of the current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council (<http://www.ffiec.gov/cra>).

Overdraft Payment Supervisory Guidance and FIL-47-2010 were discussed in detail in the third quarter Compliance Pipeline and can be referenced on our company's website at <http://shpco.net/newsletters/3rd%20Quarter%202010.pdf>. If your Bank has an overdraft protection program, the compliance officer should be familiar with the above mentioned FILs and recommend that management implement the guidance as reasonably practical.

## Servicemembers Civil Relief Act Notice Update

The U.S. Department of Housing and Urban Development (HUD) recently published a new SCRA Notice on January 26, 2011. This was necessary due to changes in Sections 527 and 533 of the *Servicemembers Civil Relief Act*. The new notice is an update of the previous version and requirements issued under *Mortgagee Letter 2006-28* on November 20, 2006 by the U.S. Department of Housing and Urban Development (HUD).



All mortgage loans, including conventional mortgages and mortgages insured by HUD are subject to the notification requirement that became effective June 5, 2006. The notice must be sent to all homeowners who are in default on a residential mortgage, include the toll-free military one-source number to call if servicemembers or their dependents require further assistance (1-800-342-9647), and be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period. Don't let the name fool you, the notice should be sent to all homeowners whether they are in the service or not, when they are in default. Absent other instructions, we recommend use of the new form immediately as it reflects the requirements of the current laws.

# Compliance Pipeline

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## Gift Card Compliance Rules

New rules have been released by the Federal Reserve regarding gift cards under Regulation E that may require action to be taken by financial institutions. A final ruling on November 29, 2010 has postponed the deadline of certain disclosures of the Credit Card Act (CARD) Act of 2009 to provide ample time for compliance after the 2010 holiday season. The final rule permits any sale of card stock that was produced prior to the gift card amendment of April 1, 2010 to be sold until January 31, 2011 as long as specific disclosures describing the new rules listed below are provided to consumers at the time of purchase.

Moreover, the fee limitations and expiration date protections implemented by the Credit Card Act continue to apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010 or provided to a consumer as a replacement for such certificate or card.

Disclosures under the new rules are generally required to be electronic or in writing via in-store signage, messages during customer service calls, Web sites, and general advertising. These disclosure requirements are implemented through the final Regulation E Section 205.20(h)(2).

This ruling applies to retail gift cards, which can be used to buy goods or services and network branded gift cards. The final rule does not apply to other types of prepaid cards that include reloadable prepaid cards that are not marketed or labeled as a gift card or gift certificate, and prepaid cards received through a loyalty, award or promotional program.

These new rules place several restrictions on fees imposed by dormancy, inactivity, or general service. These types of fees may only be assessed for a certificate or card if there has been at least one year of inactivity on the certificate or card and no more than one such fee may be charged per month. The consumer must be given clear and conspicuous disclosures about the fees to be imposed. Monthly maintenance or service fees, balance inquiry fees, and transaction-based fees, such as reload fees, ATM fees, and point-of-sale fees are all restricted by these amendments to Regulation E.

In addition, restrictions have been placed regarding certain expiration dates. The final rule prohibits the sale or issuance of a gift certificate, store gift card, or general-use prepaid card that has an expiration date of less than five years after the date a certificate or card is issued or the date funds are last loaded. It is important to note that this rule applies to the actual expiration date of a consumer's funds, and not to the certificate or card itself. The final rule also includes provisions to require issuers to provide consumers a reasonable opportunity to purchase a certificate or card with at least five years before the certificate or card expiration date. Fees for replacing an expired certificate or card, or for refunding the remaining balance, if the underlying funds remain valid are prohibited in this final rule.

A Bank should make sure that gift cards sold to consumers at any location after January 31, 2011 include the appropriate disclosures and stipulations to ensure compliance with these new rules.

**Email us at [compliancnewsletter@shpco.net](mailto:compliancnewsletter@shpco.net) with any questions or comments.**

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