



COMPLIANCE WEBINAR SERIES

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Presented by:

William Pitt, Partner

Greg Jones, Director of Regulatory Compliance



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BSA



Preparing for Your Next BSA/AML Examination

- Test elements examiners will be looking at and correct any deficiencies prior to exam start
- Review previous exam/3rd party reports and verify all issues have been addressed and corrected
- Verify your BSA/OFAC risk assessments have been updated and approved within the past 12 months
- Review your written BSA program and ensure it's updated and approved after any major changes
- Review all BSA-related training records

Preparing for Your Next BSA/AML Examination

- Review your 314(a) log and make sure there are no gaps in your entries
- Determine the types of noncustomer transactions that your financial institution may have and whether the OFAC list is being checked on such transactions
- Review reports that include CIP data, sort by key fields such as DOB, TIN, and driver's license number searching for missing data or false information such as numbers with all nines or zeros

Preparing for Your Next BSA/AML Examination

- Review accounts opened with CIP exceptions and clear outstanding exceptions past the deadline
- Review higher-risk customers and make sure enhanced due diligence has been conducted within your financial institution's monitoring time frames
- Review RDC customer files
- Review suspects named in recent SAR filings
- Make sure all higher-risk customer types have been identified

Preparing for Your Next BSA/AML Examination

- Review list of higher-risk customers and make sure enhanced due diligence has been conducted within your financial institution's monitoring time frames
- Review files maintained for your remote deposit capture (RDC) customers
- Review the suspects named in recent suspicious activity report (SAR) filings
- Scan monetary instrument logs that capture data about cash sales of between \$3,000 and \$10,000

FIN-2016-G002 Prepaid Access

- FIN-2016-G002 issued March 24, 2016
- Subject: Frequently Asked Questions regarding Prepaid Access
- These FAQs are in addition to, and supplement, the FAQs entitled “Final Rule – Definitions and Other Regulations Relating to Prepaid Access,” which were issued on November 2, 2011. The 2011 FAQs are found at http://www.fincen.gov/news_room/nr/pdf/20111102.pdf

FinCEN CMP Assessment on MSB

- FinCEN recently assessed a CMP against an MSB and its owner pursuant to BSA regulations
- MSB performs check cashing services and sells money orders. MSB cashed about \$1 million of checks each month, and operated as a “financial institution” and a “money services business” within the meaning of BSA regulations. MSB owned and operated as a sole proprietorship by individual who also served as MSB’s compliance officer.
- The IRS examines MSBs for BSA compliance

FinCEN CMP Assessment on MSB

- MSB was subject of a prior FinCEN investigation based on a 2009 IRS SB/SE examination that found systemic AML program violations, recordkeeping violations, and reporting violations. At that time, FinCEN issued a warning letter. Follow-up IRS SB/SE conducted in 2013

FinCEN CMP Assessment on MSB

- FinCEN determined owner willfully violated BSA's program and reporting requirements. MSB failed to establish and implement an effective written AML program by failing to implement policies, procedures, and internal controls reasonably designed to assure ongoing compliance, failing to designate an adequate compliance officer, failing to provide adequate training, and failing to conduct independent testing of its compliance program.

FinCEN CMP Assessment on MSB

- MSB also failed to file accurate and timely CTRs. Owner was designated AML compliance officer and responsible for MSB's BSA compliance obligations.
- The 2009 examination found MSB had never conducted an independent BSA/AML review, and instructed MSB to conduct such a review. The AML program, developed after the 2009 examination, states that annual independent reviews would be conducted, and would be documented by a signed, dated checklist.

FinCEN CMP Assessment on MSB

- Despite these promises, and despite FinCEN's warning letter, MSB did not conduct the review until March 2013, after IRS's follow-up examination.
- MSB filed 43 CTRs for transactions conducted during the examination period. However, over one-third of the CTRs (15 of the 43) were filed late (16-56 days late), and 95% of the CTRs were filed with incomplete or inaccurate information.

FinCEN CMP Assessment on MSB

- Most incomplete or inaccurate CTRs failed to include critical identification information such as DOB, TIN, and type of identification reviewed.
- FinCEN imposed a \$10,000 CMP against the MSB owner in this case
- Numerous lessons to be learned from this case for bank's with MSB customers

Polling Question #1

Does your Bank have procedures for testing MSB customers for compliance with BSA requirements?

Yes

No

Unsure



FinCEN on Real Estate Money Laundering

- Criminal organizations based outside of the U.S. have been laundering funds through the U.S. financial system through the suspected purchase of personal residences with criminal proceeds.
- The purchase of real estate worth more than \$10,000 with criminal proceeds is often sufficient to constitute a violation of U.S. AML laws without any further aggravating conduct.

FinCEN on Real Estate Money Laundering

- In late 1990s/early 2000s, members of transnational criminal organizations purchased personal residences in large U.S. cities in the name of a shell company or a nominee, many of which remained vacant.
- Since 2010, U.S. Attorneys' Offices in San Antonio, Houston, New York City, Miami and other cities have brought major cases producing forfeiture of tens of millions of dollars of real estate purchased with the proceeds of illicit activity.

FinCEN on Real Estate Money Laundering

- FinCEN identified many AML risks in the mortgage industry, some exacerbated due to the non-bank sector of the mortgage industry not having the same AML protections as the banking industry.
- FinCEN established AML program requirements for non-bank mortgage lenders, brokers, originators and GSEs. FinCEN has incrementally implemented such new rules, with initial regulations covering non-bank residential mortgage lenders and originators.

FinCEN on Real Estate Money Laundering

- These rules, in conjunction with the long-standing existing AML rules for depository institutions, now allow more comprehensive AML coverage of the U.S. residential mortgage market. Based on August 2015 existing home sales statistics from the National Association of Realtors, the current regulatory structure covers about 78% of real estate purchases nationwide.
- The remaining 22% is the “all-cash” market

FinCEN on Real Estate Money Laundering

- FinCEN still has catching up to do in the “all-cash” market. *The Miami Herald* recently noted that “cash deals” accounted for 53% of all Miami-Dade home sales in 2015 — more than double the national average — and 90% of new construction sales, according to the Miami Association of Realtors.
- GTOs will play key role in helping FinCEN catch up. While rules in the standard mortgage market have made it more inhospitable for fraudsters and money launderers, cash purchases are a conspicuous gap.

Customer Due Diligence Requirements

- Covered financial institutions (FIs) are not presently required to know the identity of the individuals who own or control their legal entity customers (also known as beneficial owners).
- Covered FIs must comply with the new CDD “beneficial owners” rule by May 11, 2018
- FinCEN just published FAQs on this subject

[https://www.fincen.gov/statutes_regs/guidance/pdf/FAQs_for_CDD_Final_Rule_\(7_15_16\).pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/FAQs_for_CDD_Final_Rule_(7_15_16).pdf)

Customer Due Diligence Requirements

- Currently, criminals, kleptocrats, and others looking to hide ill-gotten proceeds to access the financial system anonymously can easily circumvent existing BSA rules. The beneficial ownership requirement addresses this weakness and provides information to assist law enforcement in financial investigations, help prevent evasion of targeted financial sanctions, improve the ability of FIs to assess risk, facilitate tax compliance, and advance U.S. compliance with international standards.

Customer Due Diligence Requirements

- In general, covered FIs are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their AML compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

Customer Due Diligence Requirements

- This new requirement should allow covered FIs to:
 - Identify the beneficial owner(s) of each legal entity customer at the time a new account is opened
 - Verify the identity of each beneficial owner identified to the covered FI, according to risk-based procedures to the extent reasonable and practicable
 - If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner shall mean the trustee

Customer Due Diligence Requirements

- **Beneficial owner** and **legal entity** customer are key terms defined in the new guidance
- **Beneficial owner** means each of the following:
 - Each individual who, directly or indirectly, owns 25 percent or more of the equity interests of a legal entity customer; and
 - A single individual with significant responsibility to control, manage, or direct a legal entity customer.

Customer Due Diligence Requirements

- **Legal entity customer** means a corporation, LLC, or other entity created by filing a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

Customer Due Diligence Requirements

- Your BSA CDD beneficial owner procedures should, at a minimum, include:
 - An internal control system to ensure ongoing compliance;
 - Independent testing for compliance to be conducted by bank personnel or by an outside party;
 - Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;
 - Training for appropriate bank personnel; and,
 - Appropriate risk-based procedures for conducting ongoing CDD.

BSA to do list

- Keep the slides in this relating to the BSA exam in the BSA exam planning folder as a checklist for your next exam
- Share the MSB slides with your MSB customers and with employees working with MSB customers
- Begin comparing your present CDD beneficial ownership procedures to the new regulation

BSA to do list

- Begin comparing your present customer due diligence procedures to the new regulation
- Set up timelines for implementing any necessary BSA beneficial ownership and customer due diligence program changes including the addition of the new fifth pillar

LOANS



Fair Credit Reporting Act

- Many lenders contract with a third party to obtain a credit report from the big three.
- Preparation of the adverse action notice becomes challenging depending on what type of report is obtained.
- If your vendor is a reseller, the vendor should be listed on the adverse action notice as the CRA.
- If your vendor acts as a pass-through, the actual originating CRA must be listed.

Fair Credit Reporting Act

- Example 1. Lender uses a reseller (LOAN CRA R Us) through its document vendor, and the lender orders a tri-merge and purge mortgage report. The application is denied, and the credit score used was from Trans Union.
- The adverse action notice would list in the FCRA CRA section LOAN CRA R Us as the CRA. The credit score section would list LOAN CRA R Us and the credit score.

Fair Credit Reporting Act

- Example 2. Lender uses a vendor to obtain a Trans Union credit report, and the loan is denied based on information from the credit report. A credit score was also used.
- The adverse action notice would list Trans Union in the FCRA section as well as in the credit score section.

2016 CRA Guide

- New Metropolitan Statistical Area (MSA):
 - Enid, Oklahoma (MSA 21420, consisting of Garfield County (047)).
- Name Change:
 - Macon, GA, changed to Macon-Bibb County, GA (MSA 31420, consisting of Bibb County (021), Crawford County (079), Jones County (169), Monroe County (207), and Twiggs County (289)).

Servicemembers Civil Relief Act

- Effective March 31, 2016, mortgage foreclosure and eviction protections for service members extended one
- Current extension is until December 31, 2017.

CFPB Submission-of-credit-card-agreements

- Truth in Lending Act (TILA) and Regulation Z require credit card issuers to submit their currently-offered credit card agreements to the Bureau of Consumer Financial Protection (Bureau), to be posted on the Bureau's website.
- In April 2015, the Bureau suspended that submission obligation for a period of one year.
- Suspension has expired, and the next submission was due on the first business day on May 2, 2016.

CFPB Submission-of-credit-card-agreements

- De minimis exception.
- A card issuer is not required to submit any credit card agreements to the Bureau if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.
- If not subject to de minimis exception, issuer should visit the Bureau's website for instructions on submitting credit card agreements.

CFPB Fair Lending Report

- Dodd-Frank established Office of Fair Lending and Equal Opportunity within CFPB
- April 2016 - Fair Lending Report of the Consumer Financial Protection Bureau
- Hudson City Savings Bank (since acquired by M&T Bank), will pay nearly \$33 million in direct loan subsidies, funding for community programs and outreach, and a civil penalty.

CFPB Fair Lending Report

- Synchrony Bank (formerly GE Capital Retail Bank) completed payments of over \$200 million to consumers who were excluded from debt relief offers because of their national origin.
- Worked with PNC Bank (successor to National City Bank) to complete payments of over \$35 million to African-American and Hispanic borrowers who were charged higher prices on their mortgage loans.

CFPB Fair Lending Report

- Focus Areas
 - Mortgage lending
 - Indirect auto lending
 - Credit cards
 - Other product areas
- Equal Credit Opportunity Act referrals to the Department of Justice

CFPB Fair Lending Report

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2015

FFIEC Agencies Reporting	Regulation B Violations 2015
	12 C.F.R. § 1002.4(a): Discrimination on a prohibited basis in a credit transaction
CFPB, FDIC, FRB, NCUA, OCC	12 C.F.R. §§ 1002.5(b), (d): Improperly requesting information about an applicant's race, color, religion, national origin, sex, marital status or source of income.
	12 C.F.R. §§ 1002.6(b)(1), (b)(2), (b)(5), (b)(9):

CFPB Fair Lending Report

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2015

FFIEC Agencies Reporting	Regulation B Violations 2015
	Improperly considering age, receipt of public assistance, certain other income, or another prohibited basis in a system of evaluating applicant creditworthiness.
	12 C.F.R. §§ 1002.7(a), (d)(1): Refusing to grant an individual account to a creditworthy applicant on a prohibit basis; improperly requiring the signature of an applicant's spouse or other person.

CFPB Fair Lending Report

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2015

FFIEC Agencies Reporting	Regulation B Violations 2015
	12 C.F.R. §§ 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c): Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied; failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete.
	12 C.F.R. §§ 1002.12(b)(1), (b)(3): Failure to preserve records on actions taken on an application or of incompleteness, and on adverse actions regarding existing accounts.

CFPB Fair Lending Report

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2015

FFIEC Agencies Reporting	Regulation B Violations 2015
	12 C.F.R. §§ 1002.13(a) and (b): Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans.
	12 C.F.R. §14(a): Failure to provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, and/or failure to provide an applicant with a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

Polling Question 2

Out of the violations listed, which of the areas have been most frequently cited at your last fair lending exam/internal review?

- Adverse Action
- Appraisal
- Monitoring Information
- None of the above



CFPB Supervisory-highlights March 2016

- March 2016
- Supervisory Highlights
- Issue 10, Winter 2016

CFPB Supervisory-highlights March 2016

- Consumer reporting to Consumer Report Agencies
 - Nationwide Specialty Consumer Reporting Agencies (NSCRAs)
 - Deposit account information
 - Automated systems of providing information monitoring
 - Rejected information

CFPB Supervisory-highlights March 2016

- Mortgage origination
 - Failure to maintain written policies and procedures required by the loan originator rule.
- Deficiencies in compliance management systems
 - Reason for violations identified during examination

ABA letter Force Placed Flood Insurance

- April 22, 2016
- The Force-Placement of Flood Insurance as a MIRE Event
- New interpretation and inconsistent with industry practice and contractual obligations under standard mortgage loan agreements.
- It is unclear whether this interpretation reflects the position of all of the banking agencies

FDIC CMP for RESPA and HMDA

- The FDIC determined that Proficio Bank, Cottonwood Heights, Utah engaged in:
- Violations of RESPA by agreeing to pay fees for the referral of mortgage loan business; and
- Violations of HMDA due to significant home mortgage data accuracy errors in both 2012 and 2013.
- The Bank has consented, without admitting or denying any charges to pay a \$250,000 fine.

Loans to do list

- Check your credit bureau report sources and credit score use and test against the adverse action forms.
- Verify the adequacy of your processes for NSCRA and CRA accuracy
- Make sure your foreclosure notices say “one year” for the servicemembers’ protection

Loans to do list

- Use the CFPB fair lending report or slides for board and internal training
- If you don't have written loan originator policies and procedures, get them done soon

DEPOSITS



Regulation E versus Regulation Z Error Resolution

- What are the card issuer's compliance obligations under federal law for merchant disputes?
- Depends on whether the consumer paid the merchant with a debit or credit card.
 - Credit card issuers have two separate legal obligations that could apply to merchant disputes
 - Debit card issuers only have obligations if a consumer alleges an error with the fund transfer underlying the purchase.

Regulation E versus Regulation Z Error Resolution

- Regulation Z - issuers must investigate and resolve certain billing errors, including a transaction reflected on a periodic statement involving goods or services that the consumer (or representative) did not accept or was not delivered or was not delivered as agreed.
- Comment 13(a)(3)-1 of the Commentary provides these examples for this type of billing error:

Regulation E versus Regulation Z Error Resolution

- The appearance on a periodic statement of a purchase when the consumer refused to take delivery of the goods because the goods did not comply with the contract;
- delivery of property or services different from that agreed upon;
- delivery of the wrong quantity;
- late delivery; or
- delivery to the wrong location.

Regulation E versus Regulation Z Error Resolution

- Commentary clarifies that the error does not apply to a dispute relating to the quality of goods or services that the consumer accepts.
- The consumer is not required to notify the merchant and attempt to resolve the dispute, assuming the consumer did not accept the goods.

Regulation E versus Regulation Z Error Resolution

- Card issuer must provide a written acknowledgment to the consumer within 30 days of receiving the billing error notice and investigate and resolve the alleged error within two complete billing cycles (but in no event later than 90 days) of receiving the billing error notice.

Regulation E versus Regulation Z Error Resolution

- Second consumer protection in a merchant dispute permits a consumer to assert against the card issuer any defenses and claims (except tort claims) arising out of a transaction paid with a credit card.
- Only applies if the cardholder attempted in good faith to resolve the dispute with the merchant and the transaction exceeds \$50 and occurred in the same state as the cardholder's designated address or within 100 miles of that address.

Regulation E versus Regulation Z Error Resolution

- The amount of the claim is limited by the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer of the claim or defense.
- For example, a consumer uses a credit card to purchase a product for \$200 from a merchant in the same state as the consumer (based on the cardholder's address), and the product is delivered damaged to the consumer. If the merchant refuses to take it back, the cardholder could dispute the transaction with the card issuer based on the defense that the merchant sent a damaged item.

Regulation E versus Regulation Z Error Resolution

- Regulation E does not define an error to include the right to dispute a transaction with a merchant because of a problem with goods or services.
- Regulation E does apply to an error in the amount a merchant charged the consumer's card. For example, if a consumer disputed a transaction because the merchant inadvertently charged the consumer's card twice, the card issuer would have to investigate the alleged additional charge.

Polling Question 3

Under which of the following regulations have you had more complaints?

Regulation E (debit cards)

Regulation Z (credit cards)

About the Same

No Complaints



Deposit to do list

- Do a refresher training on error resolutions

UDAAP



Interagency Guidance Regarding Deposit Reconciliation Practices

- When a customer makes a deposit to an account, the amount that the financial institution credits to that account may differ from the total of the items deposited.

Interagency Guidance Regarding Deposit Reconciliation Practices

- This kind of discrepancy arises in a variety of situations, including:
 - inaccuracies on the deposit slip,
 - encoding errors, or
 - poor image capture.

For example, the customer may deposit \$110 to an account, but may indicate on the deposit slip that only \$100 has been tendered. In this case, the financial institution may credit \$100 to the customer's account as indicated on the deposit slip without reconciling the \$10 discrepancy. This discrepancy is referred to as a "credit discrepancy." It is a detriment to the customer and benefits the financial institution, if not appropriately reconciled.

Interagency Guidance Regarding Deposit Reconciliation Practices

- The Agencies have observed that financial institutions use a variety of approaches to handle credit discrepancies. In some instances, financial institutions do not research or correct all variances between the dollar value of items deposited to the customer's account and the dollar amount that is credited to that account, resulting in the customer not receiving the full amount of the actual deposit.

Interagency Guidance Regarding Deposit Reconciliation Practices

- **Applicable Laws**

- Financial institutions' policies or practices that do not appropriately reconcile credit discrepancies within the prescribed time frames may raise Regulation CC concerns if such discrepancies leave customers without timely access to the correct amount of funds.
- A financial institution's deposit reconciliation practices for transaction and non-transaction accounts may, depending on the facts and circumstances, violate the FTC Act or Dodd-Frank Act when practices result in credit discrepancies.

Interagency Guidance Regarding Deposit Reconciliation Practices

- **Supervisory Expectations**

- The Agencies expect financial institutions to adopt deposit reconciliation policies and practices that are designed to avoid or reconcile discrepancies, or designed to resolve discrepancies such that customers are not disadvantaged.
- Financial institutions should implement effective compliance management systems that include appropriate policies, procedures, internal controls, training, and oversight and review processes to ensure compliance with applicable laws and regulations, and fair treatment of customers.

CFPB Complaints received from Servicemembers

- Servicemembers 2015: A Year in Review
 - Complaint volume has steadily risen since July 2011
 - In 2014, more than 17,000 complaints from Servicemembers, veterans, and their family members and over 19,000 in 2015, a 12% increase
 - Throughout 2015, debt collection complaints continued to be the most numerous, totaling over 46% of all complaints received from the military community
 - The CFPB was involved in many enforcement actions in 2015, four of which particularly impacted Servicemembers

Complaint Report April 2016

- April 2016 Monthly Complaint Report Product spotlight: Mortgage Lending
 - CFPB has handled about 223,100 mortgage complaints since July 21, 2011, making mortgages the second most complained about product after debt collection, representing 26% of total complaints.
 - The most common issues identified by consumers are ‘Problems when you are unable to pay’ (51%) and ‘Making payments’ (31%).

Complaint Report April 2016

- Consumers continue to complain about a loss mitigation review process that is prolonged by repeated requests to submit the same documentation and a lack of responsiveness from the consumer's single point of contact.

Complaint Report April 2016

- Consumers also reported receiving conflicting and confusing foreclosure notifications while undergoing loss mitigation assistance review. Some consumers complained about denial of their modification applications, while others stated that the terms of the modification offered to them were unaffordable.
- Consumers expressed frustration they were not properly informed of the transfer of their loan to another servicer, or that payments made to either the prior or current servicer around the time of the transfer were not applied to their account.

Complaint Report April 2016

- Consumers also mentioned their attempts to communicate with their servicers were met with difficulty and resulted in confusing and contradictory information.
- In managing escrow accounts, instances of over-collection, unexplained shortages, and untimely tax and insurance disbursements are all common issues that consumers encounter.

Complaint Report April 2016

- Some consumers reported that after experiencing property damage, they filed insurance claims, received claims benefit checks, and forwarded those checks to their servicers. However, the servicers delayed releasing funds needed to make necessary repairs to their homes despite the consumer having provided all required documentation.
- Consumers complained about prolonged and confusing experiences with the loan origination process. Some consumers described unresponsive loan representatives and said they had to submit multiple applications.

Complaint Report April 2016

- Mortgage complaints by consumer age - From July 2011 through March 2016, CFPB handled about 223,100 mortgage complaints. Consumers provided self-identified age information in about 86,500 mortgage complaints of which 79% were ages 42 and above.

UDAAP to do list

- Investigate your deposit reconciliation practices and implement corrective action as needed
- Re-train debt collectors about Servicemembers' protections
- Adjust your monitoring and training for focuses on the more frequent complaints received by the CFPB

MISCELLANEOUS



Proposed Changes to the FLSA Overtime Regulations

- Proposed Changes to FLSA Overtime Regulations and Actions Financial Institutions Should Take
- On June 30, 2015, the DOL announced proposed changes to salary levels required for exemption status under Section 541 of the FLSA.
- The DOL reviewed and incorporated changes in an effort to finalize regulatory changes to take effect in 2016. It is estimated that approximately 5 million workers will be impacted by these changes.

Proposed Changes to the FLSA Overtime Regulations

- Actions to Take:
- Review all position descriptions to ensure they accurately represent roles and responsibilities. Resolve any titles that may be over or understated.
- Apply the executive, administrative, and professional exemption duties tests to determine or verify the exemption status. (See: http://www.dol.gov/whd/overtime/fs17a_overview.htm.)

Proposed Changes to the FLSA Overtime Regulations

- Pay particular attention to the exemption status of the FI's mortgage loan originators.
- Conduct a compensation analysis on all exempt employees to determine which positions and individuals may fail the new salary test. Consider base and nondiscretionary bonuses separately to determine total annual cash compensation.
- Evaluate the financial impact of adjusting compensation to the new minimum salary level.

Proposed Changes to the FLSA Overtime Regulations

- Discuss the FI's compensation philosophy and actions to be taken to address salary compression issues that may surface for impacted positions.
- Alert executive and senior leadership of the proposed changes and the potential impact on the financial institution.

Proposed Changes to the FLSA Overtime Regulations

- Think through communications to employees to ensure they understand the changes to their compensation structure, and anticipate employee reactions so you can best tailor your message regarding the required changes.

FINAL Rule Changes to Fair Labor Standards Act Overtime Regulations

- Changes to the FLSA overtime regulations were released May 18, 2016. It is anticipated that approximately four million workers will now be extended overtime pay within the first year of implementation.
- Minimum salary level to be considered exempt as an executive, administrative, or professional (“white collar”) worker will increase to \$913 per week, or when annualized, to \$47,476 per year.

FINAL Rule Changes to Fair Labor Standards Act Overtime Regulations

- The total annual compensation threshold for highly compensated employees will increase to \$134,004.
- A mechanism for automatically updating the salary and compensation levels every three years has been established.
- Nondiscretionary bonuses and incentive compensation (including commissions) can be used to satisfy up to 10% of the new standard salary test level.
- The duties test remains unchanged.
- Effective date of rule changes: December 1, 2016.

CFPB Spring 2016 Agenda

Payday, auto title, and similar lending products

- In the next several weeks the Bureau expects to release a Notice of Proposed Rulemaking to address consumer harms from practices related to payday loans, auto title loans, and other similar credit products, including failure to determine whether consumers have the ability to repay without default or reborrowing and certain payment collection practices.

CFPB Spring 2016 Agenda

Prepaid accounts

- The Bureau also expects to issue a final rule this summer to create a comprehensive set of consumer protections for prepaid financial products, such as general purpose reloadable cards and other similar products, which are increasingly being used by consumers in place of traditional checking accounts.

CFPB Spring 2016 Agenda

Mortgage servicing

- The Bureau expects to issue a final rule this summer to amend a proposal we published in December 2014 to amend certain aspects of mortgage servicing rules that took effect in 2013.

CFPB Spring 2016 Agenda

Know Before You Owe mortgage disclosure rule

- This summer the Bureau expects to release a Notice of Proposed Rulemaking to make small clarifications and provide further regulatory guidance concerning its rule combining several federal mortgage disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).

CFPB Spring 2016 Agenda

Overdraft

- The Bureau is engaged in pre-rule making activities to consider potential regulation of overdraft services on checking accounts.
- Debt collection
- The Bureau is engaged in developing proposed rules to regulate debt collection practices. The federal government for many years has received more consumer complaints about debt collectors than about any other single industry.

CFPB Spring 2016 Agenda

Women-owned, minority-owned, and small businesses data collection

- The Bureau is also in the very early stages of starting work to implement section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses.

FFIEC Booklet Appendix E Mobile Financial Services

FFIEC IT Examination Handbook

Appendix E: Mobile Financial Services

AppE.3.c Compliance Risk

- Financial institution management should identify the compliance risks as it determines which MFS to offer and continue to monitor these risks as the technology for MFS evolves. Consumer laws, regulations, and supervisory guidance that apply to a given financial product or payment method generally apply regardless of the technology used to provide the products and services.

FFIEC Booklet Appendix E Mobile Financial Services

One of the challenges in providing MFS is that a significant portion of the innovation in the industry is driven by entities outside of the traditional financial services sector. These entities may be unfamiliar with regulatory requirements and supervisory expectations that apply to regulated financial institutions and their service providers. Management should understand how the institution's risk profile changes when it uses any third party, but particularly a third-party service provider that is unfamiliar with the regulation and supervision of the financial services sector, to design applications.

FFIEC Booklet Appendix E Mobile Financial Services

Compliance Risk Mitigation

The compliance officer should take the following steps:

- Determine whether applicable disclosure requirements are fully accessible on the mobile device.
- Review the institution's existing compliance management system and ability to make appropriate modifications to policies and procedures to address the products, services, and operating features of the MFS technology.

FFIEC Booklet Appendix E Mobile Financial Services

- Monitor for any legal and regulatory changes that may be applicable to MFS on an ongoing basis.
- Train institution staff regarding compliance implications of MFS.

Polling Question 4

Have you performed a risk assessment of all financial services provider(s) that your bank is using?

Yes

No

Some of them

Unsure



Revised Regulation P Examination Procedures

- The interagency examination procedures for Regulation P – Privacy of Consumer Financial Information have been revised.
- http://www.federalreserve.gov/bankinfo/reg/caletters/CA_15-7_Letter_Regulation_P_Privacy_Examination_Procedures.pdf

Revised Regulation P Examination Procedures

- Applies to any financial institution that:
 - (1) solely shares nonpublic personal information in accordance with the provisions of GLBA sections 502(b)(2) or 502(e) or regulations prescribed under GLBA section 504; and
 - (2) has not changed its policies and practices with regard to disclosing nonpublic personal information since its most recent disclosure to its customers.

Revised Regulation P Examination Procedures

- Beginning on December 4, 2015, if a financial institution meets these conditions, it is not required to provide an annual privacy notice to its customers and, accordingly, should not be cited either for failing to provide an annual privacy notice or for providing an annual privacy notice using an improper delivery method.

Proposed Changes Consumer Compliance Rating System

- On May 3, 2016, the Federal Financial Institutions Examination Council (FFIEC) published in the Federal Register proposed changes to the Uniform Interagency Consumer Compliance Rating System, more commonly known as the CC Rating System.
- The current CC Rating System was adopted in 1980.

Proposed Changes Consumer Compliance Rating System

- The CC Rating System is based on a scale of “1” through “5”, in increasing order of supervisory concern. Thus, “1” represents the highest rating and consequently the lowest level of supervisory concern, and “5” represents the lowest rating and consequently the most critically deficient level of performance and the highest degree of supervisory concern.

Proposed Changes Consumer Compliance Rating System

- As the agencies drafted the proposed rating system definitions, one objective was to develop a rating system appropriate for evaluating institutions of all sizes. Therefore, the first principle discussed within the CC Rating System conveys that the system is risk-based to recognize and communicate clearly that compliance management programs vary based on the size, complexity, and risk profile of supervised institutions.
- The full text of the proposal is available at www.gpo.gov/fdsys/pkg/FR-2016-05-03/pdf/2016-10289.pdf. The comment period closes on July 5, 2016.

Miscellaneous to do list

- Determine if your HR department is taking steps for overtime regulation changes
- Share the slides in this presentation with HR
- Revisit your mobile financial services risk assessment and monitoring for accuracy and adequacy



Questions?



William Pitt, Partner
wpitt@pkm.com
404-420-5641



Greg Jones, Director of
Regulatory Compliance
gjones@pkm.com
404-420-5997

Keep an Eye out for our Next Webinar!

Tuesday, November 1

2:00pm – 3:30pm (EST)