

AuditOne Regulatory Advisory

From Bud Genovese, Chairman

In our ongoing effort to keep you abreast of changes and news in the regulatory environment, we periodically issue AuditOne Regulatory Advisories. Here is the latest field report from Stan Mattice, AuditOne's Compliance Practice Director.

AuditOne's View from the Field

Developments observed from our audit associates working in the field inform us that regulators are closely scrutinizing two areas pertaining to the Flood Disaster Protection Act. They have extended their testing to ensure that banks maintain documented evidence (signed acknowledgement) that the borrower was notified that the loan collateral was in a flood zone and that the flood zone indicated on the Flood Hazard Determination form is the same as show on the flood insurance policy.

Also, regulators are comparing the interest methodology stated in the open-end (such as HELOC) periodic statement to the Disclosure (Regulation 12 CFR 226.7). Further, they are recalculating the interest charged to validate the accuracy.

Banks can identify and resolve any associated risks by conducting an independent audit of open-end disclosures and periodic statements, including the flood related requirements, such as when any changes are made to the disclosures, periodic statements or flood program.

S.A.F.E. Act

The Final Rule for Registration of Mortgage Loan Originators (better known as S.A.F.E. -- Secure and Fair Enforcement for Mortgage Licensing Act) is effective on October 1, 2010. Basically the new rule requires an employee of a financial institution who acts as a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain this registration.

At a minimum, policies and procedures must establish a process for: (i) identifying which employees are required to register, (ii) communicating the registration requirements to employees, (iii) complying with the rule's unique identifier requirements, (iv) confirming the adequacy and accuracy of employee registrations through comparisons with bank records, (v) monitoring employee compliance with the rule, (vi) independent compliance testing, (vii) taking appropriate actions with respect to employees who fail to comply with the registration requirements, (viii) reviewing employee criminal history background checks received pursuant to this rule, and (ix) monitoring third party compliance with the S.A.F.E. Act.

Further, there is a disclosure issue. Section 34.105(b) requires the mortgage loan originator to provide the unique identifier to a consumer: (1) upon request; (2) before acting as a mortgage loan originator; and (3) through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

Regulation E: Electronic Fund Transfer Act (EFTA) (overdraft rules)

The Fed proposed and finalized amendments to Regulation E that became effective July 1, 2010. The final rule limits the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions.

Institutions that currently assess overdraft charges for ATM and one-time debit card transactions will have to discontinue the practice unless they provide disclosures and the consumers opt in prior to August 15, 2010. Some banks have dropped this part of their overdraft program altogether in order to avoid charging fees where the consumer has not opted-in. The new rules do not cover checks or recurring debit card charges such as automatic bill payments.

We at AuditOne are happy to talk with you about any of these Compliance updates and how to best implement recommended action steps. Please contact Jeremy Taylor (jeremy.taylor@audit-one.com) or Kevin Watson (kevin.watson@audit-one.com) at 562-802-3581 for additional information.

*Bud Genovese is Chairman of AuditOne LLC, a California-based internal audit firm that focuses only on banks and their service providers. Mr. Genovese pioneered the concept of providing comprehensive, affordable, independent internal audit and credit review services by gathering wide-ranging, extraordinary expertise within one firm. AuditOne now serves over 160 clients throughout the Western United States, and **nationally**. Contact Bud Genovese at 408-980-8099 or bud.genovese@audit-one.com*