



Recent Consumer Protection  
Regulatory Changes  
& Best Practices  
for Overseeing Changes

**Maine Directors College**  
**Augusta, Maine**  
**October 21, 2011**



# TODAY'S OBJECTIVES

- Summarize new or modified Consumer Protection regulatory requirements from January 2011 to present.
- Provide best practices for Director oversight considering new or modified regulatory requirements.



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation CC – Expedited Funds Availability

- Dodd-Frank amended EFA by requiring banks to make the first \$200 of funds deposited into an account by certain checks available for withdrawal on the business day after the banking day the deposit is received.
- Effective: EFA has not yet been finalized yet, but institutions are expected to comply with applicable statutory requirements as of July 21, 2011.
- Reference: Federal Register (dated March 25, 2011)



# **YTD 2011 - CONSUMER PROTECTION REQUIREMENTS**

- **CFPB List of Enforceable Rules and Orders  
(Notice for Comment)**

- Provides a list of regulations (currently enforced by other Federal agencies) for which CFPB asserts it will have enforcement authority beginning July 21, 2011.
- Effective: July 21, 2011
- Reference: Federal Register (dated May 31, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Part 345 – Community Reinvestment Act

- The CRA definition of community development was revised to include loans, services and investments to support, enable or facilitate Neighborhood Stabilization Program (NSP) eligible activities in areas with HUD-approved NSP plans.
- Effective: January 19, 2011
- Reference: FIL-92-2010 (dated December 29, 2010)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

- **FDIC's Consumer Response Center (CRC)**
  - Requires banks to change the notice on the adverse action form and posters to reflect the new CRC address for the FDIC in Kansas City. Such change should be made "as soon as practicable."
  - Effective: March 25, 2011
  - Reference: FIL-18-2011 (dated March 25, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Part 330 - Deposit Insurance

- Eliminates the requirement that banks participating in the TAGP notify IOLTA holders that, as of January 1, 2011, such accounts will no longer be eligible for unlimited protection.
- Effective: January 1, 2011
- Reference: FIL-2-2011 (dated January 21, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Part 330 – Deposit Insurance (Continued)

- Banks that offer noninterest bearing transaction accounts must post an amended notice in their office lobbies and websites. This notice must explain that IOLTAS will be fully insured through December 31, 2012.
- Effective: February 28, 2011
- Reference: FIL-2-2011 (dated January 21, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Payment of Interest on Demand Deposit Accounts

- Banks are now able, but are not required, to pay interest on demand deposit accounts. If a bank decides to pay interest on some or all of its demand deposit accounts after July 21, 2011, it will need to notify affected customers that the account is no longer eligible for full (unlimited) deposit insurance coverage as a noninterest-bearing transaction account.
- Effective: July 21, 2011
- Reference: FIL-38-2011 (dated May 25, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation E – EFT: Delayed Effective Date

- Delays the effective date for required disclosures for gift certificates, store gift cards, and general-use prepaid cards. The effective date is now January 31, 2011, instead of August 22, 2010, for gift certificates, store gift cards, and general-use prepaid cards issued prior to April 1, 2010, provided that several specific conditions are met.
- Effective: January 31, 2011
- Reference: FRB Press Release (dated October 19, 2010)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

- **Part 339 – Loans in Areas Having Special Flood Hazards – Agencies release revised Q&As**
  - Finalizes two Q&As on insurable value and force placement; withdraws a Q&A on insurable value; and, requests comment on three proposed revisions to Q&As on force placement.
  - Effective: Comments due 45 days following issuance of Federal Register.
  - Reference: FDIC Press Release 163-2011 (dated October 14, 2011).



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ **FDIC Overdraft Guidance**

- Reaffirms existing supervisory expectations with respect to overdraft payment programs generally and provides specific guidance with respect to automated overdraft payment programs.
- Effective: July 1, 2011
- Reference: FIL-81-2010 (dated November 24, 2010) and Industry Conference Call - Overdraft FAQs (on FDIC website).



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Part 332 – Privacy

- Eliminates the safe harbor for banks that use sample disclosure clauses previously contained in Part 332. As of January 1, 2011, in order to obtain a safe harbor, a state nonmember bank must use the new model privacy notice that became effective December 31, 2009.
- Effective: January 1, 2011
- Reference: FIL-60-2010 (dated September 27, 2010) and FIL-65-2009 (dated November 17, 2009).



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ SAFE Act

- Employees prohibited from originating residential mortgage loans without first meeting SAFE requirements. The rules include an exception for mortgage loan originators that originated five or fewer mortgage loans during the previous 12 months and who have never been registered.
- Effective: July 29, 2011
- Reference: Interagency Press Release (dated January 31, 2011); FIL-1-2011 (dated January 4, 2011); and FFIEC FAQs.



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Servicemembers Civil Relief Act

- The foreclosure protections for servicemembers that were due to sunset on December 31, 2010, were extended to December 31, 2012 (by law signed by President Obama on December 29, 2010). HUD issued revised SCRA notice to reflect these extensions. This revised notice from HUD was dated January 18, 2011.
- Effective: January 18, 2011
- Reference: HUD SCRA Notice 1-18-2011



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Servicemembers Civil Relief Act (Continued)

- HUD issued a revised Notice of Disclosure form that emphasizes the rights of the active duty military and their dependents who are protected under the SCRA.
- The notice must be sent to all homeowners who are in default on a mortgage. Lenders should seek to adopt the revised notice as soon as reasonably practicable.
- Effective: June 30, 2011
- Reference: HUD Press Release 11-134 (dated June 30, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z – Truth In Lending

### Payment Disclosures (Interim Rule)

- Requires lenders to disclose how mortgage payments can change over time. Such disclosures should include a payment summary in the form of a table as well as additional information regarding interest rates and monthly payments.
- Effective: January 30, 2011
- Reference: FRB Press Release (dated August 16, 2010)



# **YTD 2011 - CONSUMER PROTECTION REQUIREMENTS**

## **■ Regulation Z – TIL (Continued)**

### **Loan Originator Compensation**

- Prohibits a creditor or other person from paying compensation to a mortgage broker or any other loan originator based on a mortgage transaction's terms or conditions, except the amount of credit extended. The rule also has other prohibitions regarding compensation and record retention requirements.
- Effective: April 1, 2011
- Reference: FRB Press Release (dated August 16, 2010) and FRB Compliance Guide for Small Entities)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z – TIL (Continued)

### Appraiser Independence (Interim Rule)

- Establishes rules to ensure real estate appraisers are free to use independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. Also seeks to ensure that appraisers receive customary and reasonable payments.
- Effective: April 1, 2011
- Reference: FRB Press Release (dated October 18, 2010) and Federal Register Technical Correction (dated December 23, 2010)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z – TIL: Jumbo Escrows

- Requires lenders to establish escrow accounts for first-lien jumbo loans only if the APR is 2.5 percentage points or more above the average prime offer rate.
- Effective: April 1, 2011
- Reference: FRB Press Release (dated February 23, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z - TIL (Continued)

### Regulation M – Leases: Increased Exemption Threshold

- Expands the consumer protections of Regulation Z and Regulation M to cover most consumer loans and leases up to \$50,000 (as opposed to prior limitation of \$25,000).
- This exemption threshold will be adjusted annually based on changes in the consumer price index.
- Effective: July 21, 2011
- Reference: FRB Press Release (dated March 25, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z – TIL Credit Card Rules

- Makes the following clarifications to the credit card rules:
  - (a) lenders must generally request individual income as opposed to household income; (b) promotional programs that waive interest charges are subject to the same protections as promotional programs that involve a reduced rate; and (c) application and similar pre-account opening fees are included in the limitations that can be charged during the first year after an account is opened.
- Effective: October 1, 2011
- Reference: FRB Press Release (dated March 18, 2011) and Federal Register – Technical corrections (dated May 31, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation Z – TIL (Continued)

### Payment Disclosures

- Corrects the requirements for interest-only loans to clarify that creditors' 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 cause the loan balance to increase.



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

- **Regulation Z - TIL**

- Payment Disclosures (Continued)**

- Creditors have the option of complying with either the Board's September 2010 interim rule as originally published or as revised by this interim rule until October 1, 2011, at which time compliance with the interim rule becomes mandatory.
    - Effective: October 1, 2011
    - Reference: Federal Register (June 1, 2011)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

- **Regulation V – Fair Credit Reporting  
Risk-Based Pricing Notice**

- Requires a creditor to provide a consumer with a notice when, based on the consumer's credit report, the creditor provides credit to the consumer on less favorable terms than it provides to other consumers.
- Effective: January 1, 2011
- Reference: FRB Press Release (dated December 22, 2009)



# YTD 2011 - CONSUMER PROTECTION REQUIREMENTS

## ■ Regulation V - Fair Credit Reporting (Continued) and Regulation B: Risk-Based Pricing Notice

- Revises the content requirements for risk-based pricing notices to add related model forms to reflect the new credit score disclosure requirements.
- Amends certain model notices in Regulation B, which combine the adverse action notice requirements for both Regulation B and the FCRA. The amendments would revise the model notices to incorporate the new credit score disclosure requirements.
- Effective: August 15, 2011
- Reference: FRB Press Release (dated March 1, 2011) and FRB Press Release (dated July 6, 2011)



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

- **The “Ultimate” Best Practice when dealing with regulatory changes...**
  - Proactively oversee consumer protection using the following tools:
    - Periodic reports from Compliance staff;
    - Compliance Program; and,
    - Consumer Protection audits.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

- **Updates by the Compliance Officer or Compliance Committee.**
  - Consider quarterly updates to the full Board.
- **Best Practices for Compliance Updates:**
  - Includes information about bank meeting its consumer protection training, monitoring, and auditing schedules.
  - Summarizes significant exam or audit findings.
  - Explains significant regulatory changes or key issues facing financial institution from a consumer protection standpoint.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

- **Written Compliance Policy or Program**
  - Consider a written Compliance Program or Policy.
- **Best Practice Examples for the Compliance Program**
  - Annual review and approval by Board.
  - Takes into consideration changes impacting bank during the year.
  - Takes into consideration changes impacting bank in upcoming year.
  - Takes into consideration audit and exam findings.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

## **■ Consumer Protection Policies and Procedures**

- Ensure mechanisms in place to update formal or informal procedures and policies when regulatory changes occur.

## **■ Best Practice Examples for Policies and Procedures**

- Consumer protection-related policies and procedures reduced to writing.
- Annual review and approval by Board.
- Mechanisms in place to capture changes impacting procedures and policies.
- Mechanisms in place to capture new requirements so new policies and procedures are formulated.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

## **■ Monitoring**

- Ensure mechanisms in place to update formal or informal monitoring when regulatory changes occur.

## **■ Best Practice Examples for Monitoring**

- Formalized review and sign-off by compliance personnel.
- Testing of monitoring program by third-party auditor to ensure robustness and effectiveness of monitoring procedures.
- Periodic reviews of monitoring procedures by compliance personnel to ensure up-to-date.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

## **■ Training**

- Ensure training program is up-to-date and detailed enough for employees to understand how to comply with new or modified regulatory requirements at your bank.

## **■ Best Practice Examples for Training**

- Personalized to train for technical requirements and how they are implemented at the bank.
- Combine in-house and outside training.
- Tests employee knowledge after training is provided to ensure effectiveness and comprehension.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

## **■ Consumer Complaint Response**

- Ensure system in place to review complaints from a higher level perspective to pick up on trends.

## **■ Best Practice Examples for Consumer Complaint Response**

- Verbal and written complaints or inquiries are captured.
- Review by higher level management to ensure trends are identified.
- Summary of complaint trends provided to Board or committee of the Board.



# **DIRECTOR OVERSIGHT: BEST PRACTICES FOR IMPLEMENTING REGULATORY CHANGES**

## **■ Consumer Protection Audit**

- Plan includes new or modified regulations and guidance applicable to the bank.

## **■ Examples of Best Practices for Audits:**

- Audit confirms applicability of new or modified regulations or guidance.
- Audit Plan considers new or modified regulations or guidance higher risk.
- Audit summaries include scope of the audit, including number of transactions reviewed and results of the reviews, including error rates.



**WHAT QUESTIONS MAY  
I ANSWER FOR YOU?**