



Some Upcoming Bank Compliance Deadlines

Client Advisories

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With the year end fast approaching, deadlines for some compliance requirements are looming.

On June 1, 2010 regulations jointly issued by the Federal Reserve and Department of the Treasury pursuant to the Unlawful Internet Gambling Enforcement Act of 2006 become effective. Banks are required to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prohibit restricted transactions. The requirements apply only to commercial customers. The regulations provide non-exclusive examples of acceptable policies and procedures.

On December 31st, banks with assets of \$500 million or more must have established written criteria for determining whether a director who is to serve on an audit committee is an outside director and independent of management. This requirement was included in FDIC regulations addressing Annual Independent Audits And Reporting Requirements, that became effective in August, 2009.

January 1, 2010 is the effective date for Federal Reserve Regulations under the Truth in Savings Act that address overdraft protection services. Previously, certain disclosures were required only if a bank advertised such services. These requirements have now been extended to all banks, not just those that advertise overdraft protection services. Periodic statements must separately disclose the total dollar amount for all fees or charges imposed on an account when there are insufficient or unavailable funds to cover overdrafts, and the total dollar amount of all fees or charges for returning items unpaid. Totals must be provided for the statement period and for the calendar year to date. There is a prescribed formatting requirement for the disclosures. In addition, if balance information is disclosed through an automated system, it may not include additional amounts that the bank may provide to cover overdrafts., whether under a service provided in its discretion, an overdraft line of credit, or a service to transfer funds from another account.

Looking forward to 2010, the Federal Reserve issued final Rules under the Electronic Fund Transfer Act that also address overdraft protection plans. They prohibit banks from charging customers fees for paying overdrafts on ATM and one time debit transactions, unless a consumer consents or opts in to the overdraft service for those

types of transactions. Model consent forms are provided. The Federal Reserve's issuance announcing the final rule was 92 pages in length and, as one might expect, covers a lot of ground. The Rules become effective 60 days after they are published in the Federal Register, with a mandatory compliance date of July 1, 2010.

In another weighty issuance, this one 102 pages in length, the federal banking agencies, along with the Farm Credit Administration and National Credit Union Administration, jointly issued final rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act, commonly referred to as the SAFE Act. Bank employees who act as a residential mortgage loan originator must register with the Nationwide Mortgage Licensing and Registry. Banks must adopt and follow written procedures designed to insure compliance with the SAFE Act and implementing regulations. As part of the registration process, employees must provide personal information, including: name and any other name used; home address and contact information; social security number; gender; date and place of birth; financial services related employment for the past 10 years; convictions of any criminal offense involving dishonesty, breach of trust or money laundering; civil judicial actions in connection with financial services activities; and certain actions or orders by a State or Federal Regulatory Agency. The employee's bank is also required to provide certain information to the Registry. The requirements must be implemented 180 days after the system is available to accept federal registrations. It does not yet have this capability, but is expected to have it in 2010.

On November 17, 2009, the federal banking agencies, along with the NCUA, FTC, CFTC, and SEC published a final Rule setting forth a new Model Privacy form. It doesn't seem like this should be a complicated matter, but the release was 202 pages in length. The Rule becomes effective 30 days after its publication in the Federal Register, although certain of its provisions become effective on January 1, 2012. The purpose of the rule is "to make it easier for consumers to understand how financial institutions collect and share their personal information."

On December 24, 2009, comments are due on the Federal Reserve's proposed Rule which would amend Regulation Z as it relates to home equity lines of credit. This proposal consumed 185 pages in the Federal Register. No doubt the Rule will be finalized some time in 2010.

The compliance burden upon banks today is staggering. Amazingly, some members of Congress think there needs to be more regulation of banks. Perhaps bankers should invite their members of Congress to spend one day at their bank and interview its compliance officers, who are stretched to the breaking point as a result of the layers upon layers of compliance requirements Congress has imposed upon banks, and which affect every facet of their operations.

If you have any questions, please contact Gary L. Green, Esq., Chair of Archer's Banking Law & Finance Group, at (856) 354-3087.

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Related People



Gary L. Green

Partner

✉ ggreen@archerlaw.com

☎ 856.354.3047

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