



**Dallas Region
Regulatory Conference Call**

March 20, 2014

*Consumer Protection
Hot Topics*



OBJECTIVES

Provide information regarding the following

- Flood Insurance (Part 339)
- Spousal Signatures and Joint Intent
- Third Party Risk
- Add on Products
- Mobile Financial Services



Flood Insurance



Flood Insurance

- Problematic Areas
 - Force placement of flood insurance
 - Map changes
 - Flood zone discrepancies
 - Other
- Biggert-Waters Flood Insurance Reform Act of 2012





Flood Insurance Problematic Areas (cont.)

Force Placement of Flood Insurance

- Notify borrower of requirement to obtain coverage
- Force place coverage if borrower does not obtain policy within 45 days of notification
- Renewing/Refinancing a loan with force placed coverage





Flood Insurance Problematic Areas (cont.)

Map Changes

- Life of loan monitoring
- Notifying the borrower of map changes
- Preferred Risk Policies



Flood Insurance Problematic Areas (cont.)

Flood Zone Discrepancies

- Policy vs. Standard Flood Hazard Determination Form
- Use of more hazardous flood zone
- Effect of grandfathering





Flood Insurance Problematic Areas (cont.)

Other areas

- Notice to borrower (Q &A # 79)
- Proof of coverage
- Construction loans (Q&A's 21 and 22)



Flood Insurance Biggert-Waters Reform Act

- Signed into law on July 6, 2012
- Extends the NFIP to September 30, 2017
- Two provisions effective immediately
 - Civil Money Penalties (CMPs)
 - Force placement provisions

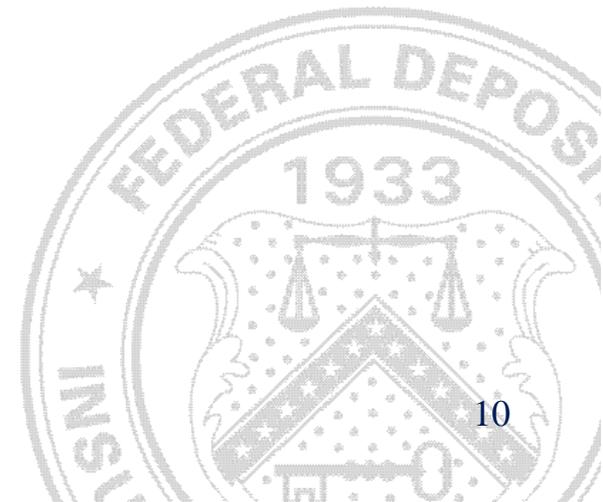


Flood Insurance

Biggert-Waters Reform Act (cont.)

Provisions Requiring Regulations or Other Action to Become Effective

- Coverage for residential multifamily properties
- Escrow of Flood Insurance payments
- Private Flood Insurance
- New and revised notice/forms





Flood Insurance

Biggert-Waters Reform Act (cont.)

Section 205 Subsidies

- Phase out subsidies for certain older properties and elimination of subsidized premium rates for new flood insurance policies
- Primary residence properties can keep until certain triggering events occur

Section 207 Premium Adjustments due to maps

- The Consolidated Appropriations Act, 2014
 - Signed into law on January 17, 2014
- Halts further premium increases relating to the implementation of Section 207 until after September 30, 2014



Spousal Signatures and Joint Intent





Spousal Signatures and Joint Intent

Objectives

- Explain the spousal signature requirements of Regulation B, which implements the Equal Credit Opportunity Act (ECOA)
- Discuss the “Joint Intent” requirements of Regulation B
- Identify the fair lending implications of violations related to spousal signatures and joint intent



Spousal Signatures and Joint Intent (cont.)

Section 1002.7(d) of Regulation B

- A creditor shall not require the signature or guarantee of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.
- A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.



Spousal Signatures

- A creditor may request a cosigner, guarantor, endorser, or similar party if an additional party is necessary to support credit request.
- The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

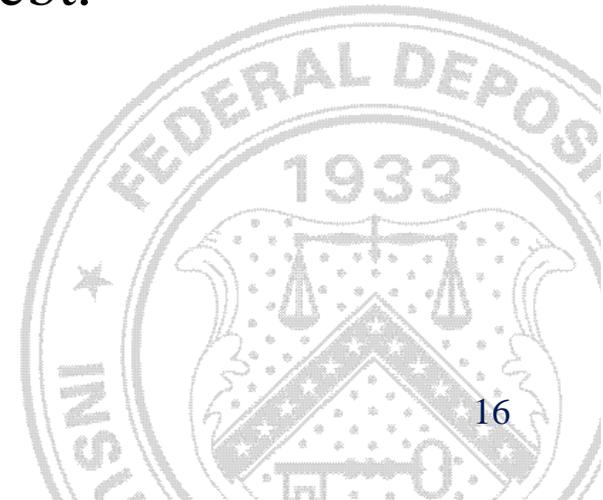




Spousal Signatures (cont.)

Secured Credit

A creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to secure interest in the property securing the debt.





Spousal Signatures (cont.)

Unsecured Credit

If applicant relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.



Spousal Signatures (cont.)

Business Lending Exception

- Can require personal guarantee of partners, directors or officers of business, and shareholders of closely-held businesses, even if business is creditworthy.
- Cannot require signature of guarantor's spouse.

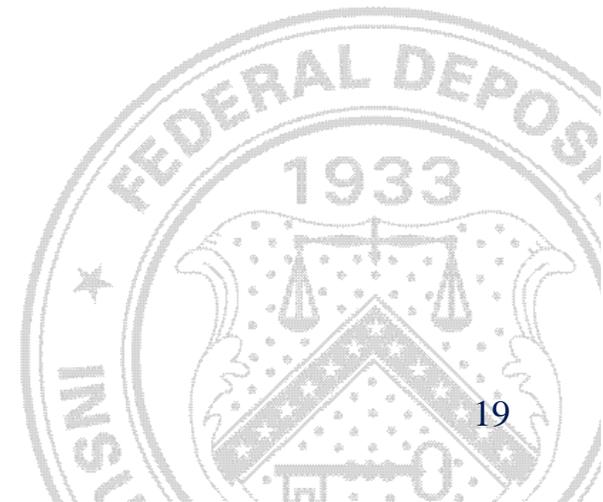




Joint Intent

Joint Applicant

- Someone who applies contemporaneously with the applicant for shared or joint credit.
- Does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

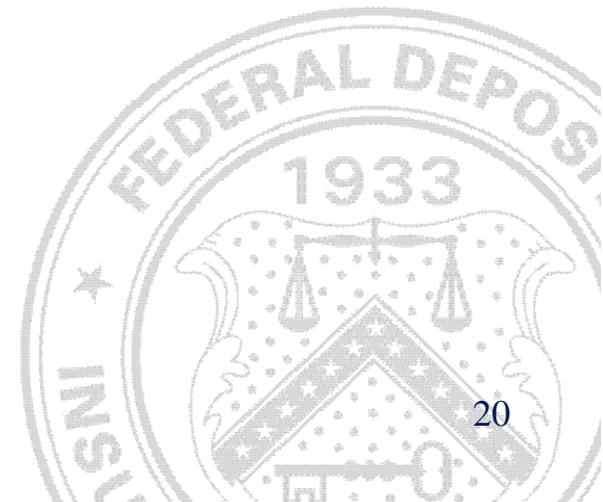




Joint Intent (cont.)

Joint Application

- Must be evidenced at the time of application.
- Signatures on a promissory note may not be used to show intent to apply for joint credit.
- Signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit.





Guaranties

When a business entity, such as a partnership, limited liability company or corporation (LLC), or closely-held corporation, applies for credit, a creditor may require the partners, officers, directors, members of the entity, and shareholders of a closely held corporation, (persons having a “qualifying relationship” with the entity) to personally guarantee loans to that entity, even if the entity is individually creditworthy.



Guaranties (cont.)

- Creditors should exercise due diligence in determining whether guarantors have a qualifying relationship with the entity and include supporting documentation in the loan file.
- The principals of the business may be determined through
 - Operating agreements
 - Partnership agreements
 - Member agreements
 - Tax returns,
 - Secretary of State Records, or
 - Through other means.





Guaranties (cont.)

Emerging Issue

- Spouses without a qualifying relationship to a business have voluntarily offered to guarantee the debts of that business before the creditworthiness of that business has been evaluated.



Guaranties (cont.)

Voluntary Guaranties

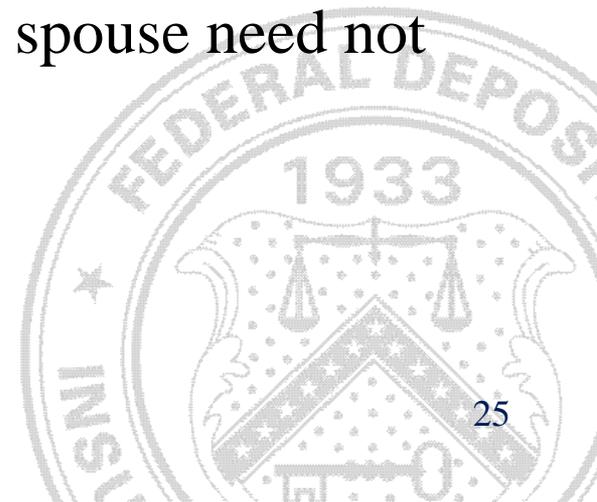
- Not prohibited by Regulation B
- A bank accepting a voluntary guaranty should
 - Have documentation in the loan file demonstrating that the bank has analyzed the creditworthiness of the applicant
 - Determine whether a guarantor was necessary, and if not necessary, that the spouse's decision to offer the guaranty was, in fact, voluntary and a choice exercised after being fully informed of the options.



Guaranties (cont.)

When a business does not qualify for credit within established underwriting standards

- Creditor may request additional support
 - Collateral or
 - Capacity (such as a guarantor)
- The selection of the additional support should be left up to the applicant
 - Creditor should make clear the spouse need not be the guarantor.





Spousal Signatures and Joint Intent Best Practices

- Review your loan policies and procedures to ensure they do not violate Regulation B
- Ensure lenders receive appropriate training regarding Regulation B requirements and applicable state law



Spousal Signatures and Joint Intent Best Practices

- Document the process and include in the loan file the documents used to determine who has a “qualifying relationship” with the business applicant.
- Determine whether the business applicant qualifies for credit, and document in the loan file the analysis of the applicant’s creditworthiness, before accepting voluntary guaranties from outside parties.





Third Party Risk



Third Party Risk

- Overview
- Third Party Arrangements
- Examination Findings
- Expectations and Best Practices



Third Party Risk (cont.)

Overview

- A third party is broadly defined to include all entities that have a business relationship with the bank
- Board and senior management are ultimately responsible for managing third party activity
- Reliance on third-party relationships can significantly increase your institution's risk profile



Third Party Risk (cont.)

Third Party Arrangements

- Incentive programs
- Prepaid cards
- Third party payment processors
- Add-on Products



Third Party Risk (cont.)

Examination Findings

- Not implementing a third party risk management process
 - Risk assessment
 - Due diligence
 - Written contract
 - Oversight
- Over-reliance on endorsements
- Over-reliance on contract indemnification provisions
- Not providing ongoing due diligence



Third Party Risk (cont.)

Expectations and Best Practices

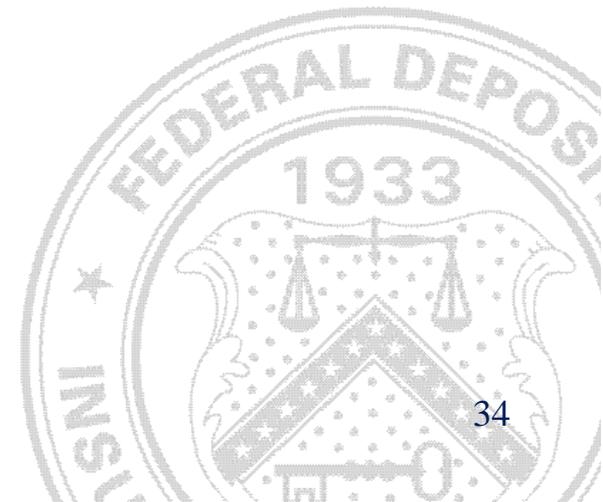
- Risk assessment
 - Ensure that the proposed relationship is consistent with the institution's strategic plan and overall business strategy
- Due diligence
 - Focus on the third party's financial condition, relevant experience, reputation, and the scope and effectiveness of its operations controls



Third Party Risk (cont.)

Expectations and Best Practices (cont.)

- Contract structuring & review
 - Ensure that the specific expectations, obligations, and liability of both the bank and the third party are outlined and formalized.
- Oversight
 - Allocate sufficient resources to monitor and provide oversight





Add-On Products



Add-On Products

Background

- Identity Theft Protection
- Credit Score Tracking



Add-On Products (cont.)

Unfair or Deceptive Acts or Practices (UDAP)

Unfairness:

1. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers;
2. The injury is not reasonably avoidable by the consumer; and
3. The unfair act or practice is not outweighed by countervailing benefits to the consumers or competition

Note: Public policy may also be considered under the unfairness test



Add-On Products (cont.)

Unfair or Deceptive Acts or Practices (UDAP) (cont.)

Deception:

1. A representation, or omission, or practice must mislead or be likely to mislead the consumer;
2. The consumer's interpretation of the representation, omission, or practice must be reasonable under the circumstances; and
3. The misleading representation, omission, or practice must be material



Add-On Products (cont.)

Unfair or Deceptive Acts or Practices Risks

- Marketing of Product
- Enrollment Without Affirmative Consent
- Billed for Services Not Performed or Activated



Add-On Products (cont.)

Preventative Measures

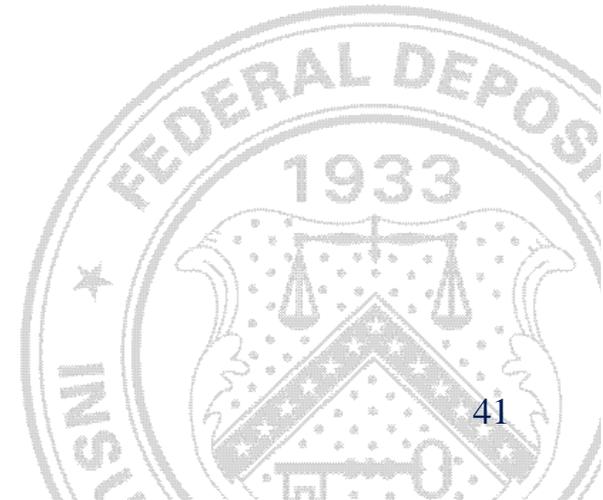
- Third-Party Due Diligence and Oversight
- Review of Marketing Materials
- Review of Telemarketing Scripts/Procedures
- Monitor Sales and Customer Service Calls
- Monitor Product Cancellation Rates
- Employee Incentives or Compensation



Add-On Products (cont.)

Preventative Measures

- Review and Tracking of Complaints
- Written Policies and Procedures
- Training of Applicable Staff
- Independent Audit of the Add-on Product





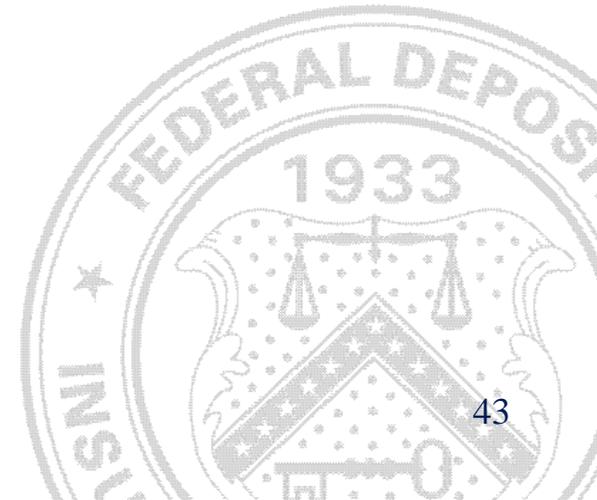
Mobile Financial Services



Mobile Payments Technologies

Established retail payments channels remain the principal ways mobile payments accounts are funded and transactions settled

- Automated Clearing House (ACH)
- Credit/Debit Networks
- Electronic Funds Transfers (EFT)
- Intra-Account Transfers





Mobile Payments – Laws and Regulations

Regulations That Apply to Mobile Payments Transactions

- Electronic Funds Transfer Act / Regulation E
- Truth in Lending / Regulation Z
- Unfair or Deceptive Acts or Practices (UDAP)
- Gramm-Leach-Bliley Act (GLBA)
- Deposit Insurance Requirements





Mobile Financial Services – Additional Considerations

- Accessibility of Disclosures on Mobile Devices
- Advertisement Compliance
- Compliance Management System Modifications
- Monitoring for Legal and Regulatory Changes



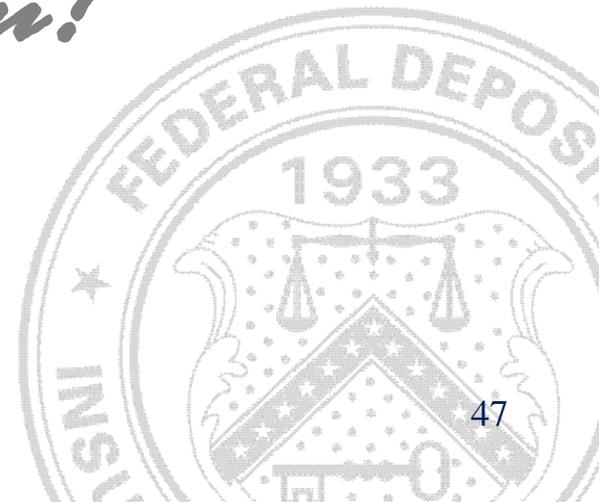
Mobile Financial Services – Additional Considerations (cont.)

- Training Regarding Compliance Implications
- Appropriate Third-Party Relationships Oversight
- Potential and Perceived Risks of Fraud



Questions?

Thank you!



Resources

Flood Insurance

- FIL 42-2009 – July 21, 2009 Questions and Answers
<http://www.fdic.gov/news/news/financial/2009/fil09042.html>
- FDIC Press Release - October 2011 Q&A's # 9 and # 61
www.fdic.gov/news/news/press/2011/pr11163.html
- Part 339 – Loans in Areas Having Special Flood Hazards (FDIC's implementing regulation)
<http://www.fdic.gov/regulations/laws/rules/2000-6100.html>
- FEMA – April 16, 2008 – W-08021 Procedures Relating to Flood Zone Discrepancies
<http://nfipiservice.com/pdf/bulletin/w-08021.pdf>
- The Biggert-Waters Flood Insurance Reform Act of 2012
<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>

Resources (cont.)

Flood Insurance (cont.)

- FIL 14-2013 – March 29, 2013 Interagency Statement on the Impact of Biggert-Waters Act

<http://www.fdic.gov/news/news/financial/2013/fil13014.html>

- FIL 48-2013 – October 21, 2013 Joint Notice of Proposed Rulemaking on Loans in Areas Having Special Flood Hazards

<http://www.fdic.gov/news/news/financial/2013/fil13048.html>

- NFIP Flood Insurance Manual, effective October 2013

<http://www.fema.gov/media-library/assets/documents/34745>

- NFIP June 2014 Program Changes – WYO Program Bulletin

<http://www.nfipiservice.com/Stakeholder/FEMA2/W-13070.html>

- FDIC Press Release – December 2013 Technical Assistance Videos on Flood Insurance

<http://www.fdic.gov/news/news/press/2013/pr13110.html>

Resources (cont.)

Flood Insurance (cont.)

- The Standard Flood Hazard Determination Form
<http://www.fema.gov/media-library/assets/documents/225?id=1394>
- Consolidated Appropriations Act, 2014
<http://beta.congress.gov/113/bills/hr3547/BILLS-113hr3547enr.pdf>
- FEMA Fact Sheet of FAQ regarding NFIP and the Consolidated Appropriates Act, 2014
http://www.fema.gov/media-library-data/1392062928758-80537fe9ad63607837d8a29f04280492/BW12_consolidated_app_2014.pdf
- FEMA – April 2013 – Overview of subsidies phase out
http://www.fema.gov/media-library-data/20130726-1909-25045-0554/bw12_sec_205_207_factsheet4_13_2013.pdf

Resources (cont.)

Spousal Signatures and Joint Intent

- FIL-6-2004 Spousal Signature Provisions of Regulation B
<http://www.fdic.gov/news/news/financial/2004/FIL0604.html>
- FIL-9-2002 Guidance on Avoiding Violations of the Spousal Signature Provisions of Regulation B
<http://www.fdic.gov/news/news/financial/2002/fil0209.html>
- FDIC DCP Dallas Regional Newsletter – June 2013
- FDIC Statement of Policy “Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement”
<http://www.fdic.gov/regulations/laws/rules/5000-1800.html#fdic5000equalco>

Resources (cont.)

Spousal Signatures and Joint Intent (cont.)

- Section 1002.7(d) of Regulation B Signature of spouse or other person

<http://www.fdic.gov/regulations/laws/rules/6500-200.html#fdic65001002.7>

- Official Staff Interpretations to Section 1002.7(d)(1) - Joint Intent

<http://www.fdic.gov/regulations/laws/rules/6500-300.html#fdic6500supplement1topart1002>

- Section 1002.6(b)(8) of Regulation B - Marital status

<http://www.fdic.gov/regulations/laws/rules/6500-200.html#fdic65001002.6>

Resources (cont.)

Add-On Products

- CFPB Bulletin 2012-06 Marketing of Credit Card Add-on Product

http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf

- FIL-44-2008: Guidance For Managing Third-Party Risk
<http://www.fdic.gov/news/news/financial/2008/fil08044.html>



Resources (cont.)

Third Party Risk

- FIL-44-2008: Guidance For Managing Third-Party Risk
<http://www.fdic.gov/news/news/financial/2008/fil08044.html>
- FDIC's Third-Party Risk Examination Procedures
<http://www.fdic.gov/regulations/compliance/manual/pdf/VII-5.1.pdf>
- Supervisory Insights – Summer 2007 - Third-Party Arrangements: Elevating Risk Awareness
http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum7/article01_third-party.html
- FIL-127-2008: Guidance on Payment Processing Relationships
<http://www.fdic.gov/news/news/financial/2008/fil08127.html>

Resources (cont.)

Third Party Risk (cont.)

- FIL-3-2012 Payment Processor Relationships Revised Guidance

<http://www.fdic.gov/news/news/financial/2012/fil12003.html>

- FIL-43-2013 FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities

<http://www.fdic.gov/news/news/financial/2013/fil13043.html>

- Supervisory Insights – Summer 2011 Managing Risk in Third-Party Payment Processing Relationships

<http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum11/managing.html>

Resources (cont.)

Mobile Financial Services

- Supervisory Insights - Winter 2012
Mobile Payments: An Evolving Landscape
<http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin12/>
- Supervisory Insights - Winter 2011
Mobile Banking: Rewards and Risks
<http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin11/>

