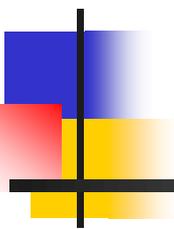


# ATLANTA REGION REGULATORY CONFERENCE CALL

August 29, 2012



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***Compliance and Consumer  
Protection Regulatory Changes  
and Emerging Issues***

# **SPEAKERS**

Acting Deputy Regional Director

**Sherri W. Brown**

Opening and Closing Remarks

Presenters

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**Tina Brison, RE**

**Kenneth Varvaro, RE**

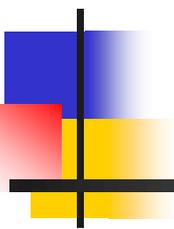
**Deborah Stephenson, RE**

**Barbara Reddit, FLEX**

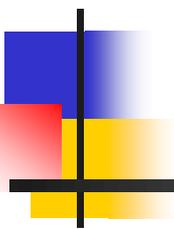
**Georgia Bass, RE**

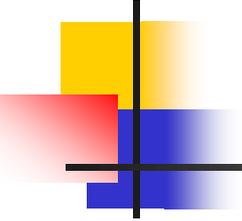
**Shirley Nanton, RE**

# SESSION OVERVIEW

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- Introduction
  - Consumer Financial Protection Bureau's (CFPB) Responsibilities and Impact on Banks Under \$10 Billion in Assets
  - Tips for Administering a Compliance Management System in Strategic Planning

# SESSION OVERVIEW

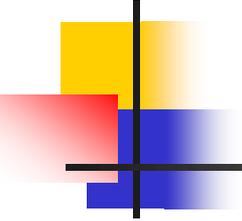
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- 
- FDIC Policies and Procedures Regarding Imposing Civil Money Penalties for Certain Violations
  - Regulatory Standards for Obtaining Spousal Guaranties
  - Electronic Fund Transfers and Opt In Provisions
  - Electronic Fund Transfers Error Resolution Procedures
  - Revised CRA and HMDA Data Collection and Reporting Requirements (2010 Census Data)



# Consumer Financial Protection Bureau

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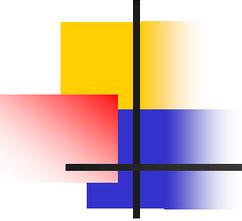
- WHY DO WE HAVE THE BUREAU?
  - Severe Financial Crisis
  - Unfair, deceptive, and abusive practices
  - Unregulated Non-Banking Entities



# Consumer Financial Protection Bureau

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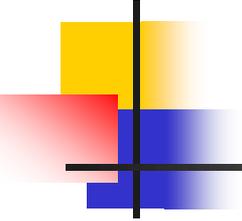
- WHAT IS THE BUREAU'S PURPOSE?
  - To implement and enforce federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.



# Consumer Financial Protection Bureau

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- HOW IS THE BUREAU'S PURPOSE ACHIEVED?
  - Ensure that consumers have timely and understandable information to make responsible decisions about financial transactions;
  - Protect consumers from unfair, deceptive, or abusive acts or practices, and from discrimination;
  - Reduce outdated, unnecessary, or overly burdensome regulations;
  - Promote fair competition by enforcing the Federal consumer financial laws consistently; and,
  - Advance markets for consumer financial products and services that operate transparently and efficiently to facilitate access and innovation.

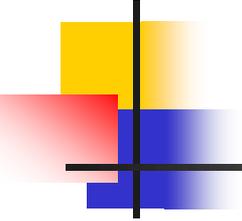


# Consumer Financial Protection Bureau

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- THE INDUSTRY'S CONCERNS
  - Impact on Small Banks
    - New and Revised Regulatory Requirements
    - Possible Increase in Cost of Regulatory Compliance
    - Co-ordination and Input

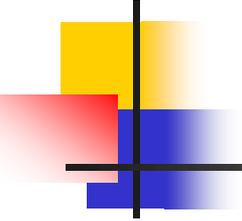
<http://www.consumerfinance.gov/notice-and-comment>



# TIPS FOR ADMINISTERING A COMPLIANCE MANAGEMENT SYSTEM (CMS) IN STRATEGIC PLANNING

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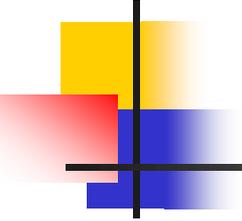
- Banking Industry Changes
- Industry Negative Press
- Product Diversification, Reliance on Third Parties, and Branch Openings/Closings/Mergers (“Activities”)
- Affect on Compliance Management System (“CMS”), FDIC Part 303 (“Part 303”), and Federal Deposit Insurance Act Section 42 (“Section 42”)
- Tips and Suggestions for Managing these Activities



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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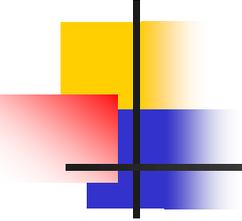
- Compliance Management System (CMS)
  - Board and Senior Management Oversight
  - Compliance Program
    - Policies and Procedures
    - Training
    - Internal Monitoring
    - Complaint Function
  - Audit Function
- Part 303 (Subparts C & D)
- Section 42



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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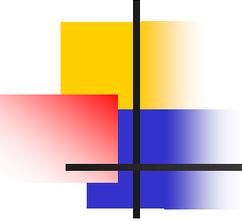
- Most common themes and requirements addressed for these activities
  - Consider these tips for business/strategic plans
    - De novo institutions (4-to-7 year business plans)
    - Non-de novo institutions (supervisory requests)
- 
- FDIC third-party guidance provided in July/November 2008 & January 2012
  - Robust pre-implementation review inclusive of a risk assessment and due diligence
  - Participation by compliance officer, senior management, legal staff, and the Board expected
  - Depth of review



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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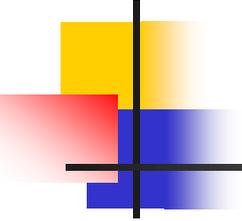
- Consistency of activity in relation to the bank's strategic plan & financial and managerial or staff resources
- CRA assessment area demographics and product utilization by customers
- Marketplace products
- Legal ramifications
- Fair lending implications
- Unfair and deceptive considerations
- Past or current regulatory scrutiny
- Complaint volume or trends



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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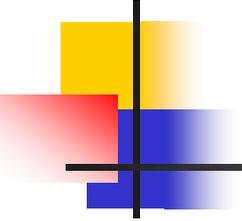
- Due diligence: FDIC expects a review of, at a minimum:
  - Audited financial statements
  - Regulatory reports and other filings
  - Strategic and business goals
  - Complaints, litigation, or regulatory actions
  - Qualifications and experience of the company's principles
- Contract: FDIC expects the contract to include, for example:
  - The rights/roles/responsibilities of each party
  - The scope of the services & performance standards
  - Liability limits
  - Complaint procedures
  - Cost and compensation



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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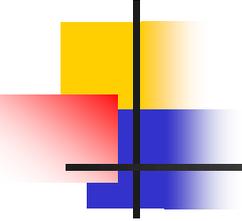
- CMS Perspective (Pre-implementation):
  - Existing policies and procedures and complaint procedures
  - Training needs assessment
  - Oversight and monitoring during pre-implementation phase
  - Audit considerations (internal or external)
  
- CMS Perspective (Post-implementation):
  - Board oversight & involvement/reporting to them
  - Policies & procedures, including complaint procedures
  - Training program
  - Monitoring function
  - Audit considerations (internal or external)



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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- For branch-related activities, the CMS items to address are the same during the pre-implementation:
  - Participation by compliance officer, senior management, legal staff, and the Board
  - Risk assessment & due diligence based on depth of activity, including contract structuring, as applicable
  - Strategic & financial plan considerations and CRA assessment area implications
  - Resource & CMS infrastructure impact (oversight, policies & procedures, training, monitoring, complaints, & audit)
  - Legal, fair lending, and regulatory implications

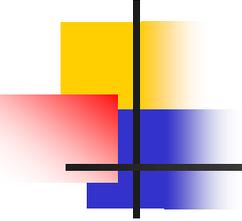


# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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- CRA and Fair Lending Impact
  - Demographic Considerations
  - Affect on Low- and Moderate-Income Areas & High-Minority Areas
  - Public Comments (to be discussed)
- Post-Implementation (CMS: Compliance Examination)
  - Board & Senior Management Oversight
  - Compliance Program (policies/procedures, training, internal monitoring, and complaints)
  - Audit Function

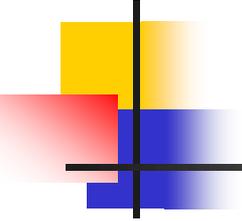
# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING



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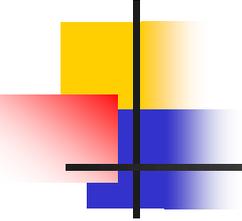
- Part 303 and Section 42 Requirements (they vary)
  - Notification to the FDIC (a filing or an application may be required)
  - Certain documentation to the FDIC in support of the activity, including the potential impact on the CRA assessment area and products & services
  - Copies of all notices & publications to the FDIC
  - Notification to existing customers
  - Publication of activity in newspaper(s) of general circulation allowing for public comment

# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING



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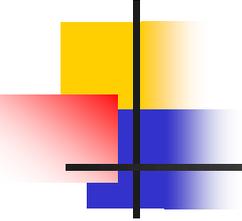
- Public Comments
  - Possible FDIC Investigation: Adverse public comments regarding the activity with respect to non-loan products and services offered by the bank. The FDIC may conduct an investigation if the comments were received during the public comment period or at another time if the comments were not received during this time.
  - Required FDIC Investigation: Adverse public comments regarding the activity with respect to the bank's lending. The FDIC will consider this to be a CRA Protest; we are required to conduct an investigation. If the comments were received outside the public comment period, the FDIC will make a determination as to whether an investigation should be conducted in conjunction with the activity or during the next CRA examination.



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING

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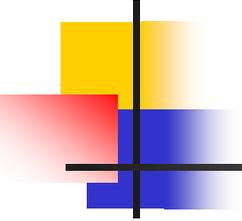
- **Consummation of Activity & Post-Implementation**
  - The outcome of the investigation, including the bank's level of response to the comments, could adversely affect the FDIC's decision regarding the activity and could result in adverse CRA ratings.
  - Adverse public comments may delay or alter the consummation timing of the activity.
  - Non-compliance with the requirements of Part 303 and Section 42 may also delay or alter consummation timing of the activity.
  - The FDIC will evaluate the structure of the bank's CMS in relationship to the activity at the next compliance examination.



# TIPS FOR ADMINISTERING A CMS IN STRATEGIC PLANNING (RESOURCES)

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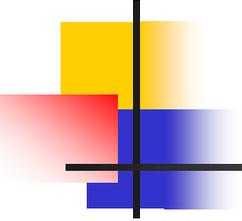
- Third-party and Third-party Payment Processing Guidance:  
<http://www.fdic.gov/news/news/financial/2008/fil08044.html>  
<http://www.fdic.gov/news/news/financial/2008/fil08127.html>  
<http://www.fdic.gov/news/news/financial/2012/fil12003.html>
- Relevant Regulatory Requirements-FDIC Part 303 & FDI Act 42:  
<http://www.fdic.gov/regulations/laws/rules/2000-200.html>  
<http://www.fdic.gov/regulations/laws/rules/5000-3830.html>
- Compliance Manual (CMS Section II.1.1 – 7.1):  
[http://www.fdic.gov/regulations/compliance/manual/index\\_pdf.html](http://www.fdic.gov/regulations/compliance/manual/index_pdf.html)



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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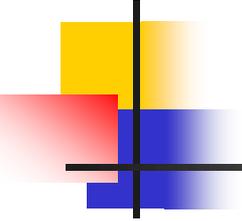
- Violations of the National Flood Insurance Act and Part 339 of the FDIC's Rules and Regulations [Loans in Areas Having Special Flood Hazards]
- Violations of Other Consumer Compliance and Fair Lending Regulations



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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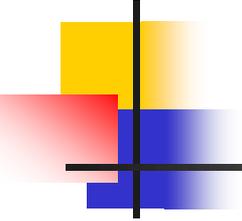
- Mandatory Civil Money Penalties
- Discretionary Civil Money Penalties
- Determining a Pattern or Practice



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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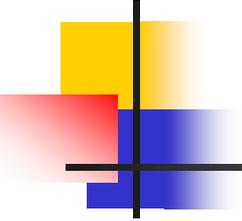
- **Mandatory Civil Money Penalties:**
  - National Flood Reform Act of 1994
  - National Flood Insurance Act [Flood Act]
  - Pattern and Practice of Violations
  - Subject Regulatory Requirements
    - Acquisition and Maintenance of Flood Insurance for the Term of a Loan [339.3]
    - Establishment of Escrow Accounts for Flood Insurance Premiums [339.5]
    - Notification Requirements for Designated Loans [339.9]
    - Force Placement of Flood Insurance – Notice and Purchase Requirements [339.7]



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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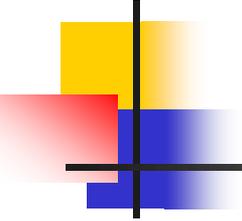
- Amount of Civil Money Penalties:
  - \$385 per Violation [Maximum]
  - \$135,000 in any one calendar year [Maximum]
  - Evaluated and adjusted for inflation at least once every four years
  - Assessments are paid into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of the Federal Emergency Management Agency



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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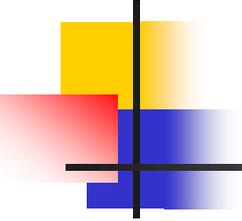
- Discretionary Civil Money Penalties
  - May be assessed for a pattern or practice of other Flood Act or regulatory violations [Part 339]
  - Example - failure to make flood hazard determinations and use the Standard Flood Hazard Determination Form, since this activity is integral to the regulatory scheme
  - Imposed under Section 8(i) of the Federal Deposit Insurance Act, not the Flood Act
  - The criteria in the Interagency Policy Statement regarding the Assessment of Civil Money Penalties is considered



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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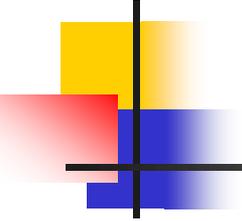
- Determining a Pattern or Practice
  - Not defined by the Flood Act
  - Excludes Isolated, unrelated, or accidental occurrences
  - Includes repeated, intentional, regular, usual, deliberate, or institutionalized practices
  - Considers the totality of the circumstances



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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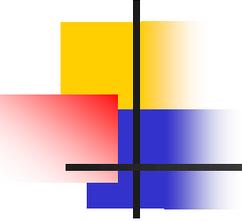
- If the conduct appears grounded in a written or unwritten policy or established practice
- Evidence of similar conduct by a bank toward more than one applicant. This is not a mathematical process, e.g., "more than one" does not necessarily constitute a pattern or practice
- If the conduct has a common source or cause within the bank's control
- Relationship of instances of conduct to one another (if they all occurred in the same area of the bank's operations)
- Relationship of the number of instances of conduct to total lending activity (Depending on the circumstances, violations involving only a small percentage of total lending activity could constitute a pattern or practice)



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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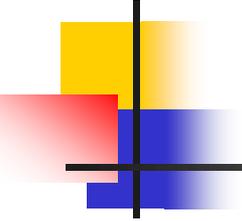
- Examiners will
  - Review transactions
  - Consider the number of violations found in the context of the universe of loan activity
  - Determine the knowledge level of bank management and personnel
  - Consider the bank's history of compliance with the Flood Insurance requirements
  - Consider the quality of the bank's compliance management system for Flood Insurance



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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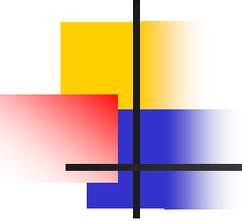
- Examiner request for loan file search
  - Include loans made, extended, renewed, and increased (include paid out loans)
  - Look-back period is 4 years (Exception)
  - Results
    - Will identify the universe of loans and total violations
    - Will be spot-checked by examiners
    - Pattern and practice violations will result in CMP consideration



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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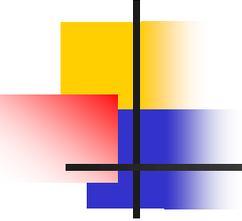
- Imposed under Section 8(i)(2) of the Federal Deposit Insurance Act
- Regulatory areas include but are not limited to
  - Flood Act/FDIC Part 339
  - Equal Credit Opportunity Act
  - Fair Housing Act
  - Real Estate Settlement Procedures Act
  - Section 5 of the Federal Trade Commission Act [Unfair and Deceptive Acts and Practices]



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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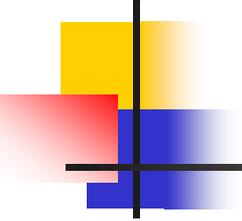
- A CMP will be considered when one or more of the following criteria are present:
  - A violation or practice causes harm to consumers or to an insured depository institution
  - A violation or practice subjects the insured depository institution to substantial reputational risk or causes substantial harm to the public confidence of the institution
  - A violation or practice is willful, flagrant, or shows bad faith on the part of an insured depository institution or IAP (repeated or multiple violations)



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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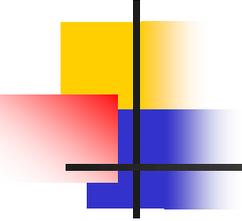
- A violation or practice that directly or indirectly involves an Institution Affiliated Party or related interest, who received material or substantial benefit from the activity
- Previous supervisory actions have been ineffective in eliminating or deterring a violation or practice
- Weaknesses in a bank's third-party oversight causes harm to consumers or the institution



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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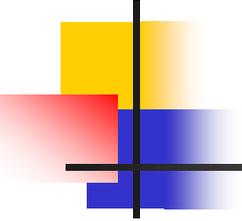
- Interagency Policy Regarding the Assessment of Civil Money Penalties [Interagency Policy]
- A CMP recommendation will be initiated when the violation is believed to meet the test of gravity in consideration of the 13 relevant factors found in the Interagency Policy and the existence of any one of the above seven criteria



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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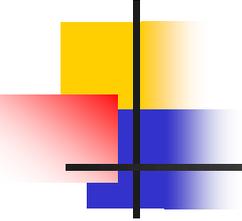
- The 13 Factors in the Interagency Policy are:
  - Evidence the violation was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution
  - The duration and frequency of the violations
  - The continuation of the violations after the respondent was notified or, alternatively, its immediate cessation and correction



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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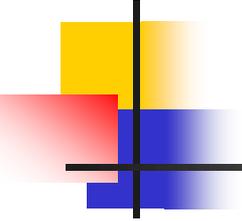
- The failure to cooperate with the agency in effecting early resolution of the problem
- Evidence of concealment of the violation or, alternatively, voluntary disclosure of the violation
- Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of such harm
- Evidence that a participant or his or her associates received financial gain or other benefit as a result of the violation



# **FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS**

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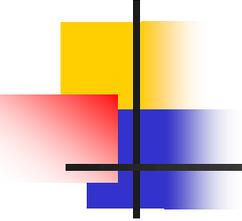
- Evidence of any restitution paid by a participant of losses resulting from the violation
- History of prior violations, particularly where they are similar to the actions under consideration
- Previous criticism of the institution or individual for similar actions
- Presence or absence of a compliance program and its effectiveness
- Tendency to engage in violations of law
- The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation



# FDIC POLICIES AND PROCEDURES FOR CIVIL MONEY PENALTIES COMPLIANCE AND FAIR LENDING VIOLATIONS

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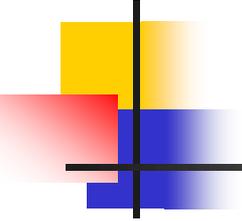
- In determining the appropriate amount of a CMP, the above assessment will be balanced against the following mitigating factors:
  - Size of financial resources [Ability to Pay and Restitution]
  - Good faith of the financial institution
  - Gravity and/or Egregiousness of the violation
  - History of previous violations
  - Other factors that justice may require



# RESOURCES

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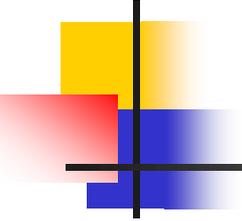
- Interagency Policy Regarding the Assessment of Civil Money Penalties by the Regulatory Agencies:  
<http://www.fdic.gov/regulations/laws/rules/5000-1600.html#fdic5000interagencypr>



# **SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT**

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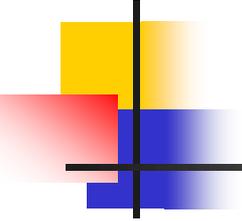
- Overview
  - Regulatory Requirements
  - Establishing Joint Intent
  - The SBA Lending Process
  - Best Practices



# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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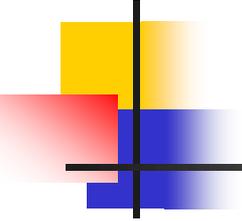
- Regulatory Requirements
  - ECOA – 202.7(d) provides, with exceptions, that a creditor cannot require a spousal signature on a credit instrument of non-joint applications if the applicant qualifies for credit standards on his or her own, unless:
    - Applicant's creditworthiness is supported or secured by property that is jointly owned,
    - Application is for joint credit, or
    - Community property state is involved.



# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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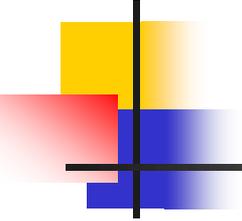
- Exceptions
  - Exception for secured credit: spousal signature on instrument necessary under state law to obtain loan collateral in event of default.
  - Exception for unsecured credit in non-community property states: spousal signature on instrument necessary under state law to obtain jointly held property creditor relied upon in extending credit.
  - Exception for unsecured credit in community property states: spousal signature on instrument necessary under state law to obtain community held property in event of default.



# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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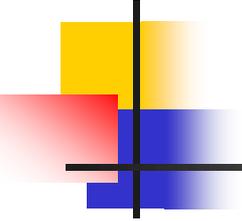
- Specifying Spouse as Guarantor
  - ECOA – 202.7(d)(5) states that if under the creditor’s lending standards the personal liability of an additional party is necessary to support applicant’s credit, the creditor may require a co-signer or guarantor but cannot require that the spouse be the additional party.
  - Official Staff Commentary 202.7(d)(6)-1: creditor may require personal guarantee of partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy.
  - Must be based on guarantor’s relationship with business and not on a prohibited basis.



# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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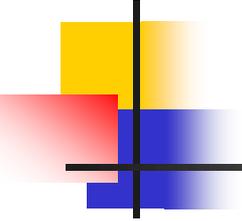
- Establishing Joint Intent
  - Official Staff commentary 202.7(d)(1)-2: joint applicant is someone who applies at the same time as the applicant for shared or joint credit.
  - Official Staff commentary 202.7(d)(1)-3: intent for joint application must be evidenced at time of application.
  - Spousal signatures or initials on a credit application for joint credit is acceptable evidence of intent. Use of ECOA model forms in Appendix B provides a safe harbor.



# **SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT**

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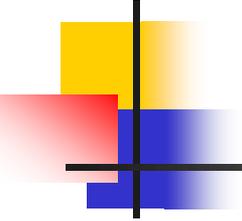
- Signatures on promissory notes or financial statement are not acceptable.
- Method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information (e.g., signed financial statement).



# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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- Small Business Administration Lending Process
  - Special Purpose Credit Program under ECOA permits a creditor to request and consider an applicant's marital status and the spouse's financial resources in determining eligibility for the loan program.
  - ECOA permits a creditor in such instances to require an applicant's spouse's signature, if the signature is required by federal or state law.

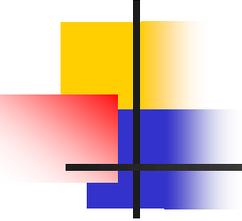


# SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT

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- SBA Regulations

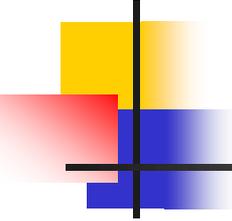
- Married person own at least 5% or more of the business, and Combined ownership of the business is 20% or more.
- SBA treats married person as a single owner of the business who is subject to the full loan guarantee requirements of the SBA, just like any other owner of 20% or more of the business.



# **SPOUSAL SIGNATURE RULES EQUAL CREDIT OPPORTUNITY ACT**

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- SBA rule is consistent with ECOA provisions that prohibit signatures of spouses on full loan guarantees who are not applicants or involved in the applicant's business.
- SBA signature requirement as it applies to married owners is also consistent with ECOA.

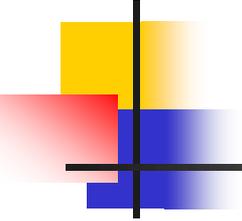


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Ensure all loan officers (consumer and commercial) are familiar with the restrictions on spousal signatures found in the regulation.
- Ensure lenders know the various requirements of state law with respect to joint and marital property in states which they operate and where the borrowers reside or where jointly owned assets supporting or securing the loan are located.

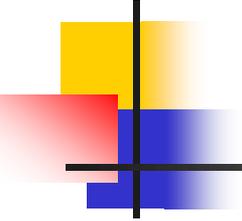


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Consider a three-prong approach to ensuring compliance with the spousal signature rules:
- Review and revise loan policies and procedures regarding spousal signatures.
  - Eliminate policies or procedures that are inconsistent with regulatory spousal signature provisions. Specifically, eliminate policies that require:
    - The guarantee of a loan to a closely held corporation by the spouses of the partners, officers, directors or shareholders of the corporation;
    - The signature of the spouse on the note when the applicant submits a joint financial statement; or
    - The signature of the spouse on the note when jointly owned assets are offered as collateral.

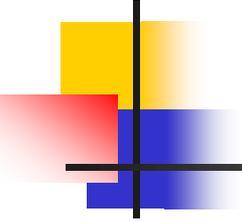


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Expand loan policies and procedures to provide loan staff with specific guidance on state law regarding necessary signatures, particularly in community property states.
  - Only obtain those signatures necessary to perfect the security interest.
  - Individual applications from a married borrower supported or secured by jointly owned property, you must look at the laws of the state where the borrower resides as well as those of the state where the jointly owned property supporting or securing the loan is located.
  - State laws will determine what documents must be signed by the co-owner of the property in order to perfect the creditor's security interest in the collateral.



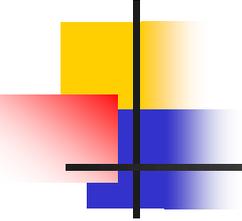
# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Create or amend checklists to address when spousal signatures may be obtained in connection with an individual application for credit.
  - Checklist should ask if an application is for individual credit and if so, whether the loan is supported or secured by jointly owned property and if a co-signor or guarantor is required in order to perfect the security interest in the jointly owned collateral.

NOTE: Whenever a co-signor or guarantor is requested in connection with an individual application for credit, the lender should document the basis for requiring the co-signor or guarantor and the guarantor's relationship with the applicant or, in the case of a commercial loan, the company.

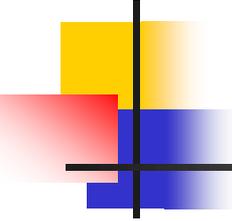


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Provide Periodic Training to Both Consumer and Commercial Loan Staff
  - ECOA requirements regarding spousal signatures apply to all loans, consumer and commercial.
  - Spousal signature rules should be part of any training program for new loan staff.
  - Periodic refresher training should also be conducted.

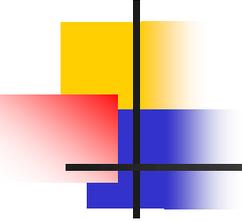


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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- Monitoring and Audits
  - Include reviews of all documents in a representative sample of loan files, particularly the application, financial statements, documents relating to collateral, as well as the credit instrument and any security documents.
    - When reviewing loan files, compare signatures on the loan applications with the signatures on the loan documents. If you find extra signatures on loan documents, find out how they got there;
    - Review and compare the documentation of loans with regard to the signatures that appear on the note;
    - If documentation does not explain the presence of signatures, initiate a review of loan underwriting procedures.; and
    - Build a minimum documentation standards checklist.

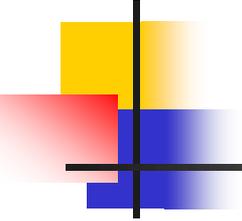


# Best Practices

## Ensuring Compliance With Spousal Signature Provisions

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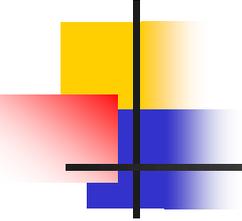
- Special attention should be taken with respect to loans to closely held corporations and business loans supported by jointly owned residential or personal property or other personal assets, like stock or savings.



# ELECTRONIC FUND TRANSFERS OPT-IN PROVISIONS

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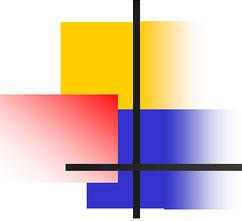
- Requirement for Overdraft Services (Section 205.17) effective July 10, 2010
  - Opt-In Requirement
  - ATM or One-Time Debit Card Transactions
  - Notice – Model Form A-9



# ELECTRONIC FUND TRANSFERS OPT-IN PROVISIONS

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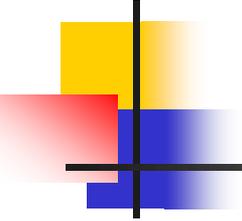
- Overdraft Service
  - Where a financial institution assesses a fee or charge on a consumer's account held by the institution (including a check or other item) when the consumer has insufficient or unavailable funds in the account
  - Includes when a bank pays a fee for paying an overdraft pursuant to any automated program or service, promoted or not, or as to a non-automated, ad hoc accommodation
  - Does not include methods of overdrafts requiring an express agreement of the consumer: lines of credit subject to Truth In Lending [i.e., transfers from a credit card account, Home Equity Lines of Credit, or overdraft line of credit] or a service transferring funds from one account to another at the institution



# ELECTRONIC FUND TRANSFERS OPT-IN PROVISIONS

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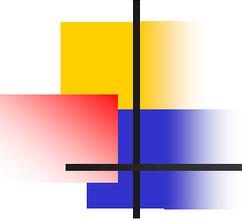
- Forced-Pay Transactions
  - Not subject to the Regulation E Opt-In requirement, as these conditions do not rise to an overdraft program or service provided by the bank
  - Involving ATM and one-time debit card transactions
  - Overdrafts result from timing differences between the initiation and the approval of the transaction and the clearing of the transaction
  - Payment of any overdrafts may be required, due to contracts with a payment processing servicer



# ELECTRONIC FUND TRANSFERS OPT-IN PROVISIONS

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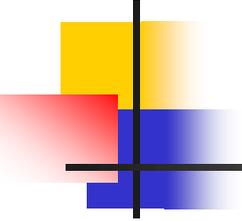
- Banks have provided an Opt-In notice substantially similar to Regulation E Model Form A-9, which
  - Does not accurately describe the actual practices of the bank
  - Does not clearly explain the types of overdraft transactions that would be paid
  - Could lead a customer to believe that such transactions will routinely be paid
  - Did not state that if a customer did not affirmatively Opt-In, the transactions would still be paid without charging an overdraft fee



# ELECTRONIC FUND TRANSFERS OPT-IN PROVISIONS

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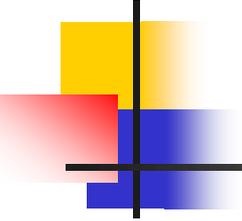
- When an Opt-In Notice utilized by a financial institution does not accurately describe actual practices, the Form may be considered deceptive under Section 5 of the Federal Trade Commission Act.
- The financial institution should
  - Terminate the use of the Opt-In notice
  - Terminate the assessment of the related overdraft fees
  - Provide restitution to adversely affected customers
  - Discuss litigation risks arising from the potential violation with legal counsel



# ELECTRONIC FUND TRANSFERS ERROR RESOLUTION PROCEDURES

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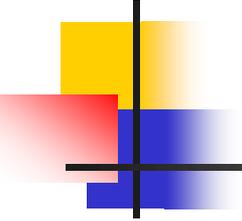
- After receiving a notice of error, the financial institution must:
  - Promptly investigate the oral or written notice
  - Complete its investigation within 10 business days
  - Report the results of its investigation within three business days



# ELECTRONIC FUND TRANSFERS ERROR RESOLUTION PROCEDURES

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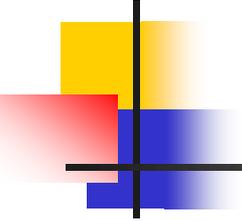
- The financial institution may take up to 45 calendar days to complete its investigation provided it:
  - Provisionally credits the customer's account
  - Advises the customer of the provisional credit within 2 business days
  - Gives the customer full use of the funds during the investigation



# ELECTRONIC FUND TRANSFERS ERROR RESOLUTION PROCEDURES

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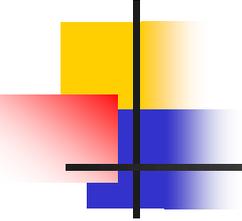
- After conclusion of the investigation, if an error has occurred, the institution must:
  - Correct the error within one business day
  - Notify the customer of the correction
  - Notify the customer that the provisional credit is final
- If no error has occurred:
  - Provide written notice to the customer within three business days
  - Provide information about a provisional credit (if applicable)



# ELECTRONIC FUND TRANSFERS ERROR RESOLUTION PROCEDURES

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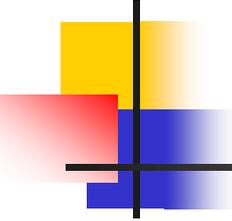
- Concerns:
  - Require written notice prior to starting the investigation
  - Require notice to be notarized or filed at a specific branch or with a certain bank officer
  - Require customer to contact merchant
  - Require customer to file a police report



# REVISED CRA/HMDA DATA COLLECTION AND REPORTING REQUIREMENTS BASED ON 2010 CENSUS DATA CHANGES

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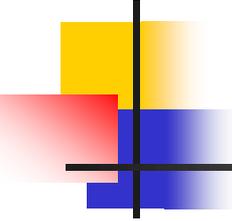
- Overview
  - Recent updates and changes
  - Impact on financial institutions
  - Impact on regulatory examinations
  - The importance of reporting accurate HMDA data



# REVISED CRA/HMDA DATA COLLECTION AND REPORTING REQUIREMENTS BASED ON 2010 CENSUS DATA CHANGES

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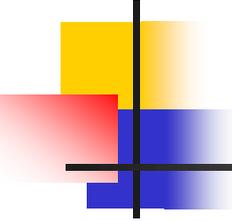
- Recent Updates and Changes
  - The Federal Financial Institution Examination Council (FFIEC) changed the method in which demographic and income information is collected and reflected in its census data base.
  - The U.S. Census Bureau will collect census data using the American Community Survey (ACS), which collects data annually and reports results on a five year cycle.
  - Effective January 1, 2012, depository institutions are required to use the 2010 census tracts and income data from American Community Survey (ACS) to collect and report 2012 HMDA/CRA data.
  - The 2012 FFIEC Geocoding System reflects the updated census tract and demographic data for the ACS five year estimates.
  - The HUD estimated median family income (MFI) will be replaced by the ACS estimated Metropolitan MFI listing (updated annually by FFIEC).



# REVISED CRA/HMDA DATA COLLECTION AND REPORTING REQUIREMENTS BASED ON 2010 CENSUS DATA CHANGES

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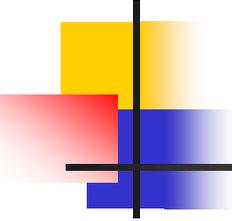
- Impact on Financial Institutions
  - Review 1<sup>st</sup> and 2<sup>nd</sup> quarter CRA/HMDA data with the new census tract information.
  - Review designated assessment area to determine if changes are warranted.
  - Assess the impact of the census data changes on internal and 3<sup>rd</sup> party vendor collection process.
  - Update CRA/HMDA data prior to the March 1<sup>st</sup> filing date to reflect 2010 census information.



# REVISED CRA/HMDA DATA COLLECTION AND REPORTING REQUIREMENTS BASED ON 2010 CENSUS DATA CHANGES

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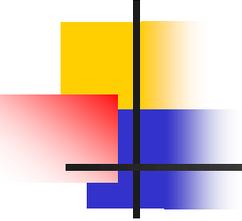
- Impact on Regulatory Examinations
  - Examiners will need to evaluate 2012 lending activity using 2010 census data during the CRA evaluation.
  - The CRA evaluation will consider both the 2000 and 2010 census data to determine the impact of the transition within the performance context.
  - HMDA validation may be conducted on 1<sup>st</sup> and 2<sup>nd</sup> quarter 2012 data and validated for use in Fair Lending examinations.
  - The impact of the 2010 census data will be considered regarding certain parts of the Fair Lending review.



# REVISED CRA/HMDA DATA COLLECTION AND REPORTING REQUIREMENTS BASED ON 2010 CENSUS DATA CHANGES

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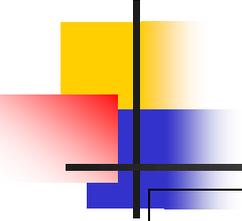
- Importance of Reporting Accurate HMDA Data
  - Public Information
  - Impacts HMDA and product sampling for CRA Evaluations
  - Relied upon to determine if financial institutions are serving the housing credit needs of their communities
  - Assist in directing government officials and private investors to areas that may need investment
  - Identifies possible discriminatory lending patterns
  - Assists regulatory agencies in enforcing compliance with anti-discrimination statutes



# RESOURCES

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- FFIEC (2010 Census Information):  
[www.ffiec.gov/press/pr10911\\_acs.htm](http://www.ffiec.gov/press/pr10911_acs.htm)  
[www.ffiec.gov/geocode/default.aspx](http://www.ffiec.gov/geocode/default.aspx)  
[www.census.gov/geo/www/maps/p110mapsuite/tract.html](http://www.census.gov/geo/www/maps/p110mapsuite/tract.html)



# QUESTIONS

Are there any questions?