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Quarterly Report

Mid-South Regulatory Compliance Group

August 2019 Vol. 16 No. 3

ICE IN AUGUST

No, we have not reversed global warming. But, we do have the Immigration and Customs Enforcement ("ICE") coming to our meetings in August. Stephen Cole with the Department of Homeland Security will speak at the Jackson meeting and we hope to have another ICE representative at the Memphis meeting. They will speak on customer identification and BSA related issues such as acceptable ID documents for non-resident aliens, visas, work authorization social security cards, permanent resident IDs, employment authorized documents, ITINs and BENs, and types of potentially suspicious or unusual activity being seen such as human trafficking and suspicious money transfers, and they will also take your questions. This should be of special interest to your BSA Officer and personnel.

<Cliff Harrison>

CONSUMER COMPLAINT MANAGEMENT 101

As a friendly reminder, a Consumer Complaint Response Program is an important element of a sound Compliance Management System ("CMS"). As you know, weaknesses in a bank's CMS can result in a higher risk of violations of consumer laws and potential consumer harm and can lead to downgrades of the bank's compliance rating and even to downgrades in the management component of its CAMELs rating. So what is your bank doing to management complaints?

First, it helps to define what a complaint really is. According to the Miriam Webster dictionary, a complaint is an expression of dissatisfaction. That is a very broad definition. In the banking context, a complaint could arise from any number of things, such as dissatisfaction in how the bank handled an overdraft, imposing a fee, collecting a loan, or how someone was treated at a teller's window, just to name a few. No one particularly likes being on the receiving end of a complaint, but there is a positive aspect to them as well. Complaints can provide valuable feedback to bank, or any business for that matter. For example, complaints about a new product or service may help a bank focus its efforts to improve its products or better explain product features and requirements to customers. Complaints about an employee's inappropriate actions may help a bank provide better training for its employees.

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In a regulatory compliance exam, examiners will consider a bank's complaint management process in evaluating the bank's overall CMS. The will look to see if your bank is responsive to consumer complaints and inquiries. They will also look at the overall effectiveness of the complaint resolution process and management's responsiveness to complaints. They will start by determining the following:

- Does the bank have adequate processes and procedures for addressing consumer complaints?
- Are investigations and responses to complaints by the bank reasonable?
- Are complaints and inquiries resolved in a timely fashion?
- Are complaints involving more serious issues or potential consumer harm (such as unfair treatment or discrimination, improper sales practices, or imminent foreclosure) appropriately identified and escalated?
- Are complaints and inquiries appropriately documented?
- Does management monitor complaints to identify any risks of potential consumer harm?
- Does management take appropriate corrective action if any potential harm is detected (like changes to products, disclosures, policies or procedures)?
- Are employees appropriately trained on the bank's complaint policy and procedures?

After that, specific testing will be performed, including reviewing the adequacy of the policy and procedures, and reviewing specific complaints and how they were handled.

What does your bank need to be doing to ensure the bank has a strong compliance management process for complaints? Let's look at a few thoughts, and we will delve further into these at the quarterly meeting.

The first step is to make sure the bank has a complaint policy and procedures in place. If not, you will definitely need to get busy quickly! Complaints can come to the bank in a variety of ways and can impact all areas of the bank. So, it may be appropriate to gather key people throughout various areas and look at the types of complaints that have been received in the past and how they have been dealt with. It is important that the bank has a mechanism for recording or tracking of complaints from all sources and areas, and that might require establishing a point person or area for receiving complaints. Some type of complaint information collection and tracking will be needed which could take the form of a "complaint log" of some type. Information to be collected might include:

- Date the complaint was received;
- Where did the complaint come from? (phone, mail, website, social media, regulator, etc.)
- Type of product identified in the complaint (consumer loan, mortgage loan, deposit account, etc.);
- Possible subproduct (auto loan, credit card, etc.);
- Issue identified in the complaint;
- Detail of the complaint;
- Investigation and response;
- Date of the response and if it was timely;
- Resolution;
- Was the customer satisfied?
- Any additional action taken.

Monitoring of complaints is important to track trends and, particularly, to determine if complaints raise fair lending or CRA issues; potential UDAAP issues; or concerns about improper sales practices, such as unauthorized

account openings, product enrollment or the addition of ancillary products. Multiple complaints about a particular product or fee, for example, may indicate that the product terms need to be reconsidered or better explained to customers. It can also be helpful to track and monitor complaints by location. Complaints about serious issues such as concerns about fair lending or improper sales practices should receive management's prompt attention. Reporting to management is a key element. Management will need to be made aware of the types of complaints, if any are from a regulatory agency submission, action taken – a good summation in order that management can identify any potential risks. If risks are identified, then immediate appropriate action should take place.

Training is also important. All employees should be aware of the banks policies and procedures, including their role and responsibilities when someone files or states a complaint, who the complaint needs to be referred to or how the complaint should be investigated and responded to, documentation required, and the need to respond to the compliant in a timely manner.

We will get into more details on the "how to's" and "why to's" at the meeting. For now, be thinking about what your bank is doing. The bottom line is we want to make sure your bank has strong processes and procedures for addressing consumer complaints; that complaint investigations and responses are prompt and thorough; that management monitors consumer complaints to identify risks of potential consumer harm, program deficiencies, customer service issues and takes appropriate action when necessary; and that any violations that are detected are minor.

<Patsy Parkin>

COMPLIANCE CONSIDERATIONS IN ONLINE ACCOUNT OPENING

We are certainly living in a digital age. It seems that almost everything can be done online- shopping, banking, even getting groceries. Internet access is everywhere and while it makes life easy and convenient for us as consumers, the same is not always true for bankers. According to a survey conducted by the American Bankers Association in late 2017, the majority of Americans access their bank accounts through the internet on a computer (42%) or through mobile device (30%). These numbers have likely increased since the time of the survey almost two years ago.

Allowing customers to open deposit accounts online, apply for loans or even originate loans without setting foot in a branch offers an easy solution for bank customers but can be quite a headache for compliance offers. It is not always easy to ensure compliance with ever changing (and some unchanging) laws and regulations such as E-sign, Truth-in-Savings, Regulation E, Truth-in-Lending, Privacy rules, etc. This article addresses some initial considerations to be made prior to offering online account or loan opening.

In order to offer online account opening or online loan applications, it is important to ensure that the process can be completed electronically –including providing disclosures and other documents in an electronic format. In order to provide the necessary information electronically, the bank must first ensure compliance with the E-Sign Act. The E-Sign Act permits the use of electronic disclosures to satisfy laws or regulations that require written disclosures if certain consumer consent requirements are satisfied. The E-Sign Act does not alter or limit any of the bank's existing disclosure

requirements. Disclosure timing and content and other requirements set forth in each specific regulation do not change just because the documents are provided electronically. If the bank fails to take the appropriate steps, then significant compliance, legal and reputational issues could potentially arise.

In order to comply with E-Sign, the consumer must receive a disclosure of his or her rights related to electronic disclosures and the bank must obtain consent from the consumer in such a way that demonstrates his or her ability to access the electronic disclosures. A customer must be provided with a clear and conspicuous notice that can be kept or accessed later. The notice should contain: any right or option to receive the disclosures or other information on paper or non-electronic form; the consumers' right to withdraw consent including any consequences, conditions or fees associated with such withdrawal; a statement of whether the consent applies only to the particular transaction the disclosures relate to or to all other disclosures that may be provided during the course of the consumer's relationship with the bank; the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and the method through which he or she may request a paper copy of a record and whether any fee will be charged for that copy. The customer must also be informed of the hardware and software requirements for accessing and retaining records.

Once the customer has received the above described notice, he or she must affirmatively consent to receiving information electronically. Affirmative consent means that the customer must **do** something. While negative consent (e.g, unless you notify us of your intent to receive paper disclosures, you will receive electronic disclosures) is easier from the bank's perspective, it is not allowed under the E-Sign Act. Examples of affirmative consent include: a requirement for the customer to click a box to accept electronic disclosures or agree to receive electronic documents; entering a code; or clicking through the agreement to accept it.

Once affirmative consent has been provided, the consumer must reasonably demonstrate that he or she can access information provided in electronic form. This means that they must show their ability to access the disclosure on a device that he or she has regular access to, such as their own PC or smart phone. Simply allowing the customer to see the information on the computer screen at the bank is not sufficient. Some banks may send an email with a code to enter back on the bank's main webpage, or may send a link in an email to follow that proves the consumer can access the information. It is important that the same technology is used to send the information and verify receipt of the information. For example, the bank should not send a text message to verify that the consumer can receive an email, and an email should not be used to prove that the customer can receive information through a mobile application, etc.

When determining the methods to use to obtain a reasonable demonstration or affirmative consent from a customer, it is important to have strong controls and an audit trail. The bank customer should have his or her own specific log-in information to a system that they control, then the customer is authenticated with questions that only they know the answer to and employees should not have access to edit a document after it was delivered.

It is important to remember that E-Sign requirements must be satisfied prior to providing electronic disclosures. Disclosures should not be provided in the same email that is sent to obtain consent and demonstrate that he or she can access the information. Banks are required to obtain consent and to confirm that the information can be received prior to providing any other required disclosures electronically. Additionally, if the bank makes changes in hardware or software requirements, the bank is required to inform its customers of any major hardware or software changes that could affect the customer's ability to receive electronic disclosures and other documents. Then, once that notice is received, the customer must again affirmatively consent and reasonably demonstrate that he or she can access the information electronically.

Many frequent E-Sign violations result from changes to a bank's electronic products or services and/or delivery of documents. For example, it is a violation to obtain consent after or at the same time as account opening disclosures are provided. Similarly, if consent is not obtained in the required manner or incomplete E-Sign disclosures are provided, then the bank can be found to be in violation. In order to avoid similar errors, it is important that the bank involve its compliance staff in any changes, establish a regular audit review of products, services and information that can be obtained electronically, and review relevant actions taken by third parties.

Once E-Sign requirements are satisfied, then disclosures can be provided electronically the same as they would be provided in writing pursuant to each specific regulation such as Regulation E and Regulation DD. It is important to remember that some required disclosures must be provided before the account is opened, the service is provided, or at the time of contract or prior to the first transfer. In order to comply with the timing requirements of these regulations, the bank must find a way to ensure that these disclosures appear automatically or via a link that cannot be bypassed by the consumer just to get the account opened. Another important note related to disclosures is to remember to timely update online versions when changes are made to those on paper.

Another obstacle for banks to overcome when opening accounts online is how to comply with CIP/CDD requirements under the Bank Secrecy Act. Identity theft and other cybercrimes are rampant, and the bank must do all it can to be certain that the identity of the account opener is confirmed and verified. When a consumer does not have to come into a branch or meet face-to-face with a bank employee, it can difficult to determine and verify the consumer's identity. While a photo ID will still be required, it is very easy for fraudsters to purchase templates of driver's licenses of almost any state. Employees should be trained to recognize inconsistencies between official and fake forms of identification such as watermarks or other symbols that a specific state may require.

An important thing for the bank to determine prior to offering online account opening is whether or not the bank will allow customers outside of a designated geographical area to open an account online. This area can be made up of state(s), counties, MSAs, census tracts, etc. Certain systems may allow an alert to be sent to the bank if an attempt is made outside of its designated area or it may block the account from being opened altogether. Consider reasons specific to your area as to why someone outside of that designated area may want to open an account with your bank and how to handle these situations. For example, if there is a college in your area, then it may be important to address the fact

that college students or teachers may want to open an account with you but have an address that is not local. Policies and procedures should include the treatment of instances in which a customer must come into a branch to open an account face-to-face.

Once a consumer has started the application, the bank will usually pull some sort of report reflecting his or her past account history, such as a credit report. These reports in combination with the consumer's date of birth and social security information can be used to authenticate identification. Additionally, through this information and other available information about the customer, out-of-wallet questions can be developed. Out-of-wallet questions are often used to authenticate a consumer's identification by relying on information that is not usually readily or publically available. These questions are typically presented in multiple-choice format and the bank can choose the number of questions the consumer has to answer correctly prior to moving forward in the process. For example, a bank may provide five questions and the consumer has to answer four or more correctly or come to the branch to complete the application process. A few examples of these types of questions are: previous address(es), names of relatives, place of birth, existing credit card or store/merchant accounts, existing mortgage, etc.

This is just the tip of the iceberg of compliance concerns related to offering online account opening. Other items of consideration are account monitoring, methods of accepting initial deposits, instances in which a customer claims he or she did not open the account, etc. We will discuss this subject at the August meeting and hope to open the discussion up for comments from the group so we can all gain a better understanding of the practical aspects of offering online account opening.

<Memrie Fortenberry>

OVERDRAFT PROTECTION PROGRAMS REVISITED

We have discussed overdraft protection programs numerous times over the years, but due to the recent number of lawsuits filed against banks alleging improper overdraft practices, we thought it would be a good idea to revisit past regulatory guidance regarding overdraft protection programs and "fresh start" loan programs. In this article, we will discuss recommended best practices for banks in implementing these programs to avoid UDAAP violations.

Based on criticism of these programs and their fees, the federal regulators issued the Joint Guidance on Overdraft Protection Programs (the "Guidance") in 2005, which addressed safety and soundness, legal risks, and "best practices" regarding overdraft protection programs. Then, in 2010, the regulators implemented changes to Reg. E concerning overdrafts for ATM and point-of-sale debit card transactions, the most notable of which was the requirement for customers to opt-in to an overdraft protection program. The concepts of fairness and transparency that formed the basis for both the Reg. E provisions and the Guidance are consistent, so banks should continue to consider the Guidance when developing policies and procedures governing overdraft protection programs.

Safety and Soundness. The safety and soundness considerations in the Guidance apply to all overdrafts, not just those under an overdraft protection program. Written policies and procedures are required to address the

credit, operational and other risks associated with the program. The policy must establish account eligibility standards and criteria for establishing available dollar limits. Monitoring is required on an ongoing basis to make sure that credit risks remain in line with expectations and so that steps may be taken to reduce credit risks, such as by terminating overdraft protection on particular accounts where appropriate. Policies and procedures should include prudent risk management practices with respect to suspension of overdraft protection services and repayment of outstanding overdrafts. There should be established time limits for repayment and procedures for terminating overdraft services when the account no longer meets the eligibility criteria or where there is a default in repayment of an overdraft, bankruptcy or other similar circumstances.

Under the Guidance, unpaid overdraft balances generally should be charged off within 60 days (This may differ from applicable state law. For example, Mississippi law generally requires unsecured overdrafts to be charged off within 30 days). The bank's procedures for establishing adequate loan loss reserves should include an element for overdraft protection losses, and the loss estimation process should cover possible loss of overdraft protection income either by including in the reserve calculation an element for uncollectible fees or, alternatively, only recognizing that portion of earned fees estimated to be collectible.

Management reporting is required on a regular basis sufficient to enable management to identify and manage overdraft volume, profitability and credit risk. Overdraft balances should be reported as loans in call reports and, where the bank advises account holders of the available amount of overdraft protection, the unused amount of overdraft protection should be reported as "unused commitments" in the call report.

The Guidance requires proper risk-based capital treatment of unpaid overdrafts and unused commitments. Unpaid overdraft balances should be included in the bank's risk weighted asset calculation. Unused portions of available overdraft limits may also affect capital requirements unless the unused "commitment" has a maturity of one year or less or is cancelable by the bank at any time.

Finally, if the bank contracts with a third-party vendor for servicing an overdraft program, it must conduct a thorough due diligence review of the vendor prior to signing the contract following the guidance contained in the November 2000 Risk Management of Outsourcing Technology.

Legal Risks. The Guidance points out that overdraft protection programs must comply with applicable federal and state laws and regulations. Among the federal laws and regulations specifically cited as concerns are:

- **The Federal Trade Commission Act –** The FTC Act prohibits unfair or deceptive acts or practices. Marketing and other consumer materials should contain no deceptive, inaccurate or misleading statements or unfair practices.

- **Truth in Lending and Reg. Z –** A bank's overdraft policy is not covered by Reg. Z unless the bank agrees in writing to pay an overdraft and unless the NSF fee exceeds the amount that would be imposed for an NSF item on a similar transaction account that does not have overdraft protection. However, Reg. Z will apply to any loan or repayment plan for unpaid overdrafts, if the loan is payable by written agreement in more than four installments or if a finance charge is imposed.

- **ECOA and Reg. B –** The criteria for determining eligibility for participation in an overdraft protection program must be nondiscriminatory. The bank must also be careful not to steer consumers on a prohibited basis into an overdraft protection program while offering other customers true overdraft lines of credit or overdraft protection through other more favorable means such as by transfers from a savings account.

- **Truth-in-Savings Act and Reg. DD –** The Guidance discussed the Reg. DD requirements for initial disclosures, statement disclosures and advertising restrictions and requirements. Some of these requirements have changed since the time the Guidance was first issued.

Initial deposit account disclosures must include the amount and conditions for any fee that may be imposed. A bank must specify in its initial Reg. DD disclosure statement the categories of transactions that may incur an overdraft fee. An exhaustive list is not required; it is sufficient to say, for example, that the fee is imposed on overdrafts "created by check, in-person withdrawal, ATM withdrawal or other electronic means", as applicable. This requirement applies to all institutions, not just those that promote payment of overdrafts.

All institutions must disclose on periodic statements the aggregate dollar amount of overdraft fees and returned item fees charged for both the statement period and the calendar year to date. The statement disclosures must follow the location and format requirements contained in the regulation.

Misleading advertisements are prohibited, and new disclosure requirements apply to any advertisement promoting payment of any overdraft. The official commentary gives examples of ads that are considered to be misleading, such as: representing an overdraft service as a "line of credit"; representing that the bank will honor all checks, with or without a dollar limit, when it actually retains discretion; representing that a consumer may be allowed to maintain a negative balance when the bank's overdraft service requires the consumer to repay the overdraft; describing an overdraft service solely as protection against bounced checks when the bank also permits overdrafts for a fee resulting from ATM or other electronic withdrawals; or describing an account as "free" or "no cost" in an ad that also promotes a service with a fee attached, such as an overdraft service, unless the ad clearly and conspicuously indicates there is a cost for that service.

Any advertisement that promotes payment of overdrafts must also clearly and conspicuously disclose: (i) the fee for payment of each overdraft; (ii) the categories of transactions for which an overdraft fee may be imposed; (iii) the time period by which the consumer must repay or cover an overdraft, and (iv) the circumstances under which the bank will not pay an overdraft.

- **Electronic Funds Transfer Act and Reg. E –** In addition to the requirements for overdraft fees on ATM and debit card transactions, if an overdraft occurs in connection with an ATM withdrawal or a debit card, Reg. E requires periodic statement and terminal receipt disclosures to be met, and the Reg. E error resolution procedures apply to any consumer complaints of errors or requests for information involving electronic transactions.

Best Practices. In particular, the Guidance states that clear disclosures and explanations to consumers about how an overdraft protection program operates, its costs and limitations are fundamental to responsible use of overdraft protection. Disclosures should be designed to minimize potential customer confusion and complaints, to foster good customer relations and to reduce credit, legal and other potential risks to the bank. The bank should consider the following best practices, although the best practices are not mandatory:

- *Avoid promoting poor account management*. Do not promote the program as a substitute for a short-term loan or in a manner that encourages routine or intentional overdrafts. Instead, present it as a service to cover inadvertent overdrafts.

- *Fairly present the overdraft protection program and alternatives*. Inform consumers about all available overdraft services and how the terms and fees for those products differ. Explain the consequences of frequent use of the overdraft protection program.

- *Train staff to explain the program features and other choices*. Customer service and complaint processing staff should be able to explain costs and terms including how to opt out of the service, other available overdraft protection products and how consumers may qualify for them.

- *Clearly explain the discretionary nature of the program*. Make it clear that payment of an overdraft by the bank is discretionary. Don't represent or imply that payment of an overdraft is guaranteed or promised where the bank has discretion.

- *Distinguish overdraft protection from "free" account features*. Do not promote free accounts and overdraft protection programs in the same advertisement.

- *Clearly disclose program fees*. The dollar amount of the NSF fee or other fees that may apply should be clearly disclosed. The program material should not just simply say that the bank's standard NSF fee will apply.

- *Clarify that fees count against the overdraft protection limit*. Clearly disclose that NSF fees are added to the overdraft balance in the account and reduce the availability of any further overdraft protection.

- *Demonstrate when multiple fees may be charged*. Clearly disclose how fees are charged and whether a fee is per day or per item and, if applicable, whether more than one overdraft fee may be charged per day.

- *Explain impact of transaction clearing policies*. Clearly explain that the order in which transactions are processed may not be the order in which they occur, and the order of processing can affect the total amount of overdraft fees.

- *Illustrate the types of transactions covered*. If applicable, clearly disclose that overdraft fees may result from ATM withdrawals, debit card transaction, pre-authorized debits or other transfers. Avoid implying that checks are the only transactions covered.

- *Provide opt-in and ability to opt out of service*. Obtain the consumer's affirmative agreement to participate in the overdraft protection plan and provide a clear disclosure of the option to opt out of the program once enrolled. Note that this item has changed from the language originally published in the Guidance following the 2010 revisions to Reg. E.

- *Alert consumers before a transaction triggers fees*. Where feasible, notify consumers specifically at the time a withdrawal is requested that completing the transaction may trigger an overdraft fee and allow the consumer to cancel the transaction without incurring the fee. If it is not feasible to provide specific notice, then notices should be posted on ATMs and at tellers' windows explaining that transactions may be approved that overdraw the account and the consumer may incur NSF fees.

- *Prominently distinguish balances from overdraft funds availability*. If providing the consumer with only a single balance for an account, whether at an ATM, at a teller's window, or by telephone inquiry, do not include overdraft protection amounts in the account balance. If more than one balance is provided, the amount of available funds without overdraft protection amounts included should be separately and prominently identified.

- *Promptly notify consumers each time overdraft protection is used*. Notify consumers each time the overdraft protection program is used on the day of usage identifying the date of the transaction, the type of transaction, the overdraft amount, the NSF/overdraft protection fee, the amount necessary to return the account to a positive balance, the amount of time consumers have to repay the overdraft and the consequences of not bringing the account to a positive balance within the stated time. Consumers should also be notified if the bank terminates or suspends the consumer's access to the overdraft protection service, for example, if the account is no longer in good standing.

- *Consider daily limits on consumer accounts*. Consider setting a limit on the maximum amount of NSF fees that will be imposed per day.

- *Monitor program usage*. Accounts should be monitored for excessive overdraft protection use and, where it occurs, consumers should be informed of other alternatives.

- *Fairly report program usage*. Do not report negative information to credit bureaus when overdrafts are paid under the terms of the overdraft protection program promoted by the bank.

The Guidance recommends that every financial institution review its overdraft protection program to ensure marketing and other communications do not mislead consumers and that the institution has carefully weighed the credit, legal, safety and soundness and other risks associated with its overdraft protection program.

Fresh Start Programs

Recently, examiners have been reviewing "fresh start" loan programs that are typically offered to consumers as a means of repaying overdrafts and rebuild credit. Typical features of a fresh start program include a 0% interest rate loan to be repaid in installments. Banks will typically suspend customers' access to overdraft protection until the balance of the fresh start loan is paid in full.

As mentioned in the last meeting, concerns regulators have about fresh start programs include: how and when disclosures are made to consumers; whether or not the program is only offered to those who have opted-in to the bank's overdraft program; whether overdraft protection becomes available again once a loan is booked; will overdraft protection be made available to the consumer after the loan is paid and how is that monitored; and how and at what time a customer is offered a fresh start loan and how eligibility is monitored.

If your bank offers overdraft protection programs, including fresh start loans, it is critical to familiarize yourself with the Guidance to ensure that the bank has adequate disclosure and operations of the program's features. While the Guidance is nearly 15 years old, the regulators have repeatedly reaffirmed the principles it contains and expect the banks they supervise to closely monitor and oversee any overdraft programs offered to consumers by taking appropriate

measures to mitigate risk and incorporating best practices outlined in the Guidance.

<Doug Weissinger>

ATTENTION NON-HMDA BANKS!

It has recently come to our attention that the Office of Management and Budget revised some Metropolitan Statistical Areas, effective September 14, 2018. Yes, 2018!! Apparently the FDIC also just recently became aware of this because several of you have reported to us that the FDIC has called to inform the bank that since it now has an office in a MSA, it is subject to HMDA reporting. We have not received or seen any information regarding these revisions prior to these reports either!

In looking at the Mississippi MSAs, it appears that the following counties have been added:

- Gulfport – Biloxi: Stone County has been added (Hancock, Harrison, Jackson, Stone);
- Hattiesburg: Covington County has been added (Covington, Forrest, Lamar, Perry);
- Jackson: Holmes County has been added (Copiah, Hinds, Holmes, Madison, Rankin, Simpson, Yazoo);
- Memphis, TN-MS-AR: Benton County, MS has been removed (Crittenden, AR; DeSoto, MS; Marshall, MS; Tate, MS; Tunica, MS; Fayette, TN; Shelby, TN; Tipton, TN.

The link to the OMB Bulletin No. 18-04 is https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf. List 2 (beginning on page 41) contains the list of all MSAs, principal cities, and counties included in the MSA. All non-HMDA banks may need to take a look at the revisions, consider their locations (If you have a full-service branch in one of these newly added counties, you will now be subject to HMDA reporting.), and reconfirm whether or not they are covered. If you have not been a HMDA reporter in the past, but will be based on this revised list, collection of HMDA data will need to begin January 1. We are here to help!

We plan to schedule a HMDA training session in our office in September, and we plan to arrange for remote access for anyone interested who cannot attend in person. In the meantime, for those interested in preparing for data collection and reporting, we can send you basic information on determining what loans and applications are subject to HMDA reporting so you can begin to review your originated and non-originated loans to determine which are covered. In the training, we will plan to walk step by step through the information that will need to be collected and reported. If there is good news in this, it may be that we expect those banks not previously covered will likely fall under the partial exemption from expanded HMDA reporting so that only a portion of the full reporting requirements will apply.

If your bank will now be a HMDA reporter and you are interest in attending the training, please contact me ASAP. We will plan on having plenty of seats and would encourage those attending to bring as many of your staff with HMDA responsibilities as possible - including lenders. Because of the detailed requirements for data collection under HMDA, it is important that lenders also be aware of those requirements. Much of the information has to be collected by the lender at the time of application, so your lenders will play an integral part of ensuring the accuracy of the data reported.

Feel free to call if you have any questions.

<Patsy Parkin>

REG CC CHANGES

The Federal Reserve and the CFPB recently finalized changes to Reg CC implementing cost of living adjustments required by the Dodd-Frank Act. These changes also implemented certain amendments made by the Economic Growth, Regulatory Relief and Consumer Protection Act. The adjustments will be made based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Initial adjustments are effective July 1, 2020 and future adjustments are to be made every five years after July 1, 2020. The dollar amounts related to next day availability, permanent availability, new accounts, large deposits, repeated overdrafts and civil liability will be adjusted effective July 1, 2020, on July 1, 2025, and on July 1 of every fifth year after 2025.

Effective July 1, 2020, the $200 rule will change to $225. A bank customer must be allowed to withdraw the first $225 of any check deposit not otherwise subject to next-day availability on the business day following the day of deposit. Further, in addition to the first $225, effective July 1, 2020, the $400 rule will change to $450. The customer must be allowed to withdraw $450 of the deposited funds (or the maximum amount that can be withdrawn from an ATM, but not more than $450) no later than 5:00 P.M. on the day funds become available for check withdrawal from an ATM. Also effective July 1, 2020, the thresholds for new accounts, large deposits and determining repeat overdrafts will increase from $5000 to $5525.

In addition to the above mentioned threshold changes and the implantation of the cost of living adjustments to those, one definition was added and another amended. The definition of United States for purposes of

Regulation CC was changed to add American Samoa, the Commonwealth of the Northern Marina Islands, and Guam. Therefore, the United States, for Regulation CC purposes, includes the District of Columbia, the U.S. Virgin islands, American Samoa, the Commonwealth of the Northern Marina Islands, Guam and Puerto Rico.

A definition for automated teller machine was added and it is defined as an electronic device located in the United States at which a natural person may make deposits to an account.

<Memrie Fortenberry>

MRCG MEETING TO BE HELD ON AUGUST 22, 2019

The MRCG will hold its Quarterly Meeting on August 22, 2019, at the Mississippi Sports Hall of Fame & Museum Conference Center, 1152 Lakeland Drive, Jackson, Mississippi. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m.

We are extremely fortunate to have Chris Finnegan with the FDIC at the August meeting. Chris is the Assistant Regional Director for Depositor and Consumer Protection and no stranger to the group. We have been trying to get him to a quarterly meeting for a while and are pleased that he is able and has agreed to speak at the August meeting. Chris will talk about compliance hot topics, recent exam findings, fair lending enforcement, and FDIC priorities among other things, and will answer your questions, so come prepared.

In addition to representatives from ICE and Chris Finnegan with the FDIC, the August meeting will also feature a presentation on compliance considerations in online account opening, a review of overdraft best practices and related UDAAP concerns with overdraft protection programs, and a discussion on an effective complaint management and resolution process as an important element of your compliance management system/CMS.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration to Liz Crabtree no later than Thursday, August 15, 2019, so that arrangements for lunch can be finalized. We look forward to seeing you there.

<Cliff Harrison>

MSRCG QUARTERLY MEETING TO BE HELD ON AUGUST 27, 2019

The MSRCG will hold its Quarterly Meeting on August 27, 2019, at **Memphis Botanic Garden** in the Goldsmith Room located at 750 Cherry Road, Memphis, Tennessee. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m. Directions to Memphis Botanic Garden can be found by going to their website (https://www.memphisbotanicgarden.com/) and clicking directions and parking at the bottom right corner of their home page.

We are extremely fortunate to have Chris Finnegan with the FDIC at the August meeting. Chris is the Assistant Regional Director for Depositor and Consumer Protection and no stranger to the group. We have been trying to get him to a quarterly meeting for a while and are pleased that he is able and has agreed to speak at the August meeting. Chris will talk about compliance hot topics, recent exam findings, fair lending enforcement, and FDIC priorities among other things, and will answer your questions, so come prepared.

In addition to representatives from ICE and Chris Finnegan with the FDIC, the August meeting will also feature a presentation on compliance considerations in online account opening, a review of overdraft best practices and related UDAAP concerns with overdraft protection programs, and a discussion on an effective complaint management and resolution process as an important element of your compliance management system/CMS.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration to Liz Crabtree no later than Tuesday, August 20, 2019, so that arrangements for lunch can be finalized. We look forward to seeing you there.

<Cliff Harrison>

MRCG-MSRCG COMPLIANCE CALENDAR

07/01/2019 – Private flood insurance rule effective	09/19/2019 - MRCG-MSRCG Joint Steering Committee Meeting
07/01/2019 – Comment period expires on CFPB request for input as part of its RFA review of Reg. E ATM/POS overdraft rule	10/15/2019 – Comment period expires on CFPB ANPR request for comments on costs and benefits of collecting and reporting certain HMDA data points and reporting multi-family loans to business entities
07/15/2019 – Comment period expires on CFPB request for input on how it plans to conduct RFA reviews of its regulations	11/19/2019 – MSRCG Annual Meeting
07/18/2019 - MRCG-MSRCG Joint Steering Committee Meeting	11/21/2019 – MRCG Annual Meeting
08/19/2019 – Mandatory compliance date for portions of CFPB Rule on Payday, Vehicle Title and High Cost Installment Loans	11/24/2019 – Effective date for Sec. 106 of EGRRCPA re: job change relief for mortgage loan originators
08/22/2019 - MRCG Quarterly Meeting	01/01/2020 – Quarterly HMDA data reporting begins for data collected in 2020
08/27/2019 - MSRCG Quarterly Meeting	07/01/2020 – Reg. CC inflation adjustments of availability dollar amounts effective
09/16/2019 – Comment period expires on CFPB ANPR request for comments on expiration of temporary GSE QM loan classification and need for revisions	11/19/2020 – Mandatory compliance date for ability to repay underwriting requirements of CFPB rule on Payday, Vehicle Title and High Cost Installment Loans
09/18/2019 – Comment period expires on CFPB FDCPA Reg. F proposed amendments	01/10/2021 – Temporary GSE QM loan classification under Reg. Z scheduled to expire