

BANK REGULATORY COMPLIANCE

A L E R T™

by Lorraine Hyde

August 2011

Volume 18, Number 8

FFIEC RELEASES SUPPLEMENTAL GUIDANCE ON INTERNET BANKING AUTHENTICATION

A lot has happened in Internet banking since the last FFIEC guidance was issued in 2005, so regulators have issued supplemental guidance to reinforce risk management and explain agencies' expectations for customer authentication and other issues in "the increasingly hostile online environment."1

FINCEN ISSUES PREPAID ACCESS FINAL RULE, AMENDS GENERAL DEFINITION OF MSB

FinCEN and the agencies of FFIEC have issued a final rule amending prepaid access rules and clarifying the MSB definition.2

FTC ODDS AND ENDS

Read about the update of FCRA guidance on the Fair Credit Reporting Act, the final rule banning deceptive claims in consumer mortgage advertising, and the final policy statement on collecting debts from a deceased person's estate.3

HUD SETTLES KICKBACK CASES AND ISSUES FINAL RULES UNDER REG X AND SAFE ACT

This article discusses HUD's \$4.5 million settlement with a title company for RESPA violations, the \$3.1 million fine against a mortgage lender for RESPA and FHA violations, amendments to Reg Z, and the SAFE Act final rule.4

LESSONS FROM THE WELLS FARGO SETTLEMENT

If you were wondering why Dodd-Frank and Reg Z have created new rules for anti-steering and loan compensation for originators, just glance at the complaint against Wells Fargo that resulted in an \$85 million civil money penalty.8

DID YOU KNOW...?

This month we discuss the extension of the flood insurance program, the Fed's list of institutions exempt from debit card interchange fee standards and the list of institutions that are not exempt, and the availability of information for consumers about licensed mortgage loan originators from NMLS.10

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FFIEC Releases Supplemental Guidance on Internet Banking Authentication

How long has it been since you updated your Internet banking authentication? Hopefully, more often than the agencies have issued guidance. This is the only the third document since **E-BANKING** 2001, despite the lightening speed of technological changes.

When the Federal Financial Institutions Examination Council updated the 2001 guidance in 2005, most financial institutions followed the advice for authentication by eliminating single factor as the only control mechanism for high-risk transactions involving access to customer information or the movement of funds to other parties. Now the agencies are providing supplemental guidance to reinforce the risk management framework described in the original guidance and relay the agencies' supervisory expectations regarding customer authentication, layered security, and other controls in, what the press release calls, "the increasingly hostile online environment."

In general, the industry is glad to have the new guidance, although some say it still missed the mark in some areas and doesn't address issues like mobile banking. You can read the press release on the FFIEC web site at www.ffiec.gov/press/pr062811.htm. The guidance is effective January 1, 2012. Here are some of the highlights of the guidance.

Layered Security

The guidance emphasizes the fact that since nearly every authentication technique can be compromised, you should take a "belts and suspenders" approach to the issue and implement a layered security approach.

The guidance states that the agencies expect you to have a layered approach to security for high-risk

(continued on page 5)

FinCEN Issues Prepaid Access Final Rule, Amends General Definition of MSB

The Financial Crimes Enforcement Network has issued its final rule that amends Bank Secrecy Act Regulations — Definitions and Other Regulations Relating to Prepaid Access. The final rule amends the money services business (MSB) rules and establishes a more comprehensive regulatory approach for prepaid access. The rule puts in place suspicious activity reporting, as well as customer and transactional information collection requirements on providers and sellers of certain types of prepaid access similar to other categories of MSBs. It also clarifies the definition of MSB to ensure that certain foreign-located persons engaging in MSB activities within the United States are subject to BSA rules.

BANK SECRECY ACT

You can read the final rule on the FinCEN web site at www.fincen.gov/statutes_regs/frn/pdf/Prepaid_Final_7-22-201.pdf.

Prepaid Access

According to FinCEN Director James Freis, Jr., “The final rule addresses regulatory gaps that have resulted from the proliferation of prepaid access innovations over the last 12 years and their increasing use as an accepted payment method.” He went on to say that this rule will help law enforcement fight money laundering. The final rule:

- Renames “stored value” as “prepaid access,” without narrowing or broadening the meaning of the term, but to more aptly describe the underlying activity
- Adopts a targeted approach to regulating sellers of prepaid access products, focusing on the sale of prepaid access products whose inherent features or high dollar amounts pose heightened money laundering risks
- Exempts from the rule prepaid access products of \$1,000 or less and payroll products if they cannot be used internationally, do not permit transfers among users, and cannot be reloaded from a nondepository source
- Exempts closed loop prepaid access products sold in amounts of \$2,000 or less

- Excludes government funded and pre-tax flexible spending for health and dependent care funded prepaid access programs

A “provider” of “prepaid access” for a prepaid access program can be designated by agreement among the participants in the program or will be determined by their degree of its oversight and control over the program — including organizing, offering, and administering the program. Providers are required to register with FinCEN.

Sellers are retailers of prepaid access devices. While sellers are not required to register with FinCEN (just as no MSB that operates solely as an agent for another MSB is required to register), they must maintain an anti-money laundering program if the prepaid access product offered is covered by the rule and can be used without a later activation process that includes customer identification, or if a retailer sells prepaid access products (regardless of whether offered under a prepaid program) providing a portal to funds that exceed \$10,000 to any person during any one day.

Banks That Sell Prepaid Cards

Banks currently serving in a role that could otherwise fit the definition of a provider of prepaid access are not subject to this rule because FinCEN has excluded banks from its definition of MSB. However, banks are subject to distinct FinCEN rules implementing the BSA with respect to their products and services generally. Additionally, banks are subject to regulation by the federal banking agencies and, as such, must comply with the appropriate provisions of the Bank Secrecy Act and regulatory guidance. FinCEN and the agencies have issued examination guidance directed specifically at banks involved in the operation of a prepaid program. You can find it in the Interagency Fair Lending Examination Procedures Manual at www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_061.htm, Electronic Cash — Overview.

This rule will be effective 60 days from publication in the *Federal Register*. However, compliance with the registration requirement will not be required until six months from publication in the *Federal Register* to allow time for the registration form to be updated. ■

FTC Odds and Ends

Update of FCRA Guidance

On the eve of turning some of its rulemaking authority over to the Consumer Financial Protection Bureau, the Federal Trade Commission issued a staff report, “40 Years of Experience with the Fair Credit Reporting Act.” The report compiles and updates the agency’s guidance on the Fair Credit Reporting Act, and it will be a very handy reference for compliance officers. The report provides a brief overview of the FTC’s role in enforcing and interpreting the FCRA and includes a section-by-section summary of the agency’s interpretations of the act.

The FTC is withdrawing the agency’s 1990 commentary on the FCRA, which has become partially obsolete since it was issued. The new staff report deletes several FTC interpretations in the 1990 commentary that have since been repealed or amended, or have become obsolete or outdated. It also modifies some interpretations in the 1990 commentary and adds several interpretations reflecting changes that Congress has made to the FCRA over the years, rules issued by the FTC and other agencies under the FACT Act, statements in numerous staff opinion letters, and the staff’s experience from significant enforcement actions. You can read the report at www.ftc.gov/os/2011/07/110720fcrareport.pdf.

Final Rule Regarding Mortgage Advertisements

On July 19, the FTC issued a final rule banning deceptive claims regarding consumer mortgages in advertising or other types of commercial communications. Now this rule does not apply to banks, thrifts, and federal credit unions, which are outside the FTC’s jurisdiction, but it does bring other players to a level playing field. Although the FTC’s rulemaking authority for unfair and deceptive practices transferred to the CFPB on July 21, the FTC, the CFPB, and the states all will have authority to enforce the rule.

This final rule, which is effective August 19, 2011, applies to all entities within the FTC’s jurisdiction, including mortgage lenders, brokers, and servicers.

The new rule lists 19 examples of prohibited deceptive claims, including misrepresentations about:

- The existence, nature, or amount of fees or costs to

the consumer associated with the mortgage

FCRA/DEBT COLLECTION

- The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage
- The variability of interest, payments, or other terms of the mortgage
- The type of mortgage offered
- The source of an advertisement or other commercial communication
- The consumer’s ability or likelihood of obtaining a refinancing or modification of a mortgage or any of its terms

Section 5 of the FTC Act generally prohibits advertisers from making false or misleading claims. The rule parallels this legal principle and will allow the FTC to seek appropriate relief (including civil penalties) against those who engage in deceptive mortgage advertising. The Consumer Financial Protection Bureau and state law enforcement authorities also may bring actions to enforce the rule. You can read it on the FTC web site at www.ftc.gov/os/fedreg/2011/07/110719mortgagead-finalrule.pdf.

Final Policy Statement for Debt Collection from Deceased’s Estate

The FTC now has a policy statement regarding permissible methods to be used by debt collectors attempting to collect the debts of deceased consumers. The policy statement permits debt collectors to contact a deceased’s spouse, administrator or executor of the deceased’s estate, or anyone authorized to pay debts from the estate. Debt collectors may not mislead anyone into believing that the individual has authority to use assets of the estate to pay the debt if he or she does not have such authority, and may not create the impression that someone authorized to pay debts from the estate is personally liable for the debts or might have to pay using his or her own assets or assets jointly held with the deceased to pay. Collectors also may not contact individuals at unusual or inconvenient times or places. The FTC issued this policy statement to reconcile the Fair Debt Collection Practices Act with changes in state probate laws, which might not provide for a formal executor or administrator of an estate. The policy statement will become effective on August 29, 2011. You can read the final policy statement at www.ftc.gov/os/2011/07/110720fdcpa.pdf. ■

HUD Settles Kickback Cases and Issues Final Rules Under Reg X and SAFE Act

Fidelity National Financial Pays \$4.5 Million Fine to HUD

The Department of Housing and Urban Development has announced an agreement with Fidelity National Financial, Inc. (FNF) to settle allegations the title company paid real estate brokers and other settlement service providers improper kickbacks or referral fees in violation of the Real Estate Settlement Procedures Act.

RESPA/ SAFE ACT

According to HUD, FNF paid fees for the referral of settlement services through its subsidiaries. It worked this way. Real estate brokers had agreements for access to TransactionPoint, which automates real estate transactions from listing the property to closing the loan. It allows brokers to select real estate providers for all types of settlement services. The brokerage firms then entered into sublicense agreements with subsidiaries of FNF that allow the subs to be listed in TransactionPoint as service providers. HUD alleges that as part of the agreement FNF subs paid the brokers a fee for each referral of business that came to them through TransactionPoint.

FNF denied the allegations and said that it obtained legal opinions that it was not in violation of RESPA before it entered into the agreements and paid fees. Further it says that the payments were for the use of the computer platform and not for the referral of business, because it paid for the use of the system, whether or not the transaction closed with them. It also insists that the fees were for goods and services provided (not kickbacks or referral fees) and that consumers were not affected.

Nevertheless, to avoid further legal fees, FNF agreed to pay HUD \$4.5 million in fines and to terminate any agreements its subs have with TransactionPoint.

Prospect Mortgage to Pay \$3.1 Million Fine for RESPA and FHA Violations

Prospect Mortgage, LLC agreed to settle allegations the California-based mortgage lender created sham affiliated business arrangements for the purpose of paying improper kickbacks or referral fees in violation of Federal Housing Administration guidelines and the Real Estate Settlement Procedures Act. According to the

complaint, the businesses did not meet HUD's requirements for a bona fide affiliate, such as having sufficient initial capital and separate dedicated employees. Acting FHA Commissioner Carol Gallante suggested that they were created only to share in the referral fees.

HUD claimed Prospect operated as a "series limited liability company," a business structure unauthorized by FHA, and that Prospect used this business structure to create hundreds of sham joint ventures with real estate brokers, mortgage brokers, mortgage lenders, servicers, and other settlement service providers, and to share profits for the referral of real estate settlement services. Through these affiliated business arrangements, Prospect allowed nonapproved branch offices to originate FHA-insured mortgages in violation of FHA's guidelines.

HUD alleges that Prospect entered into "series" or "subscription agreements" with real estate brokers, agents, banks, mortgage servicers, and others to give the appearance that it was creating legitimate joint ventures to provide real and compensable services. HUD discovered these sham businesses had few or no employees or offices, or little capital; that all core mortgage origination services were performed by Prospect itself; and that Prospect had allowed these affiliated businesses to participate in the origination of FHA-insured loans out of branch offices registered with FHA as exclusive to Prospect. In return for the referral of business, Prospect shared 50 percent of its profits with these entities that HUD determined were not bona fide affiliated businesses, and many of which were not FHA-approved lenders.

Without admitting any liability, Prospect agreed to dissolve these sham joint ventures and pay \$3.1 million to resolve the complaint. However, they maintained that they had previously disclosed these companies in a previous HUD audit and received no negative feedback about them and therefore they assumed the business structure did not violate RESPA or any HUD/FHA requirements.

Amendments to HUD's Regulation X

As its last chance to update RESPA, since rule writing for the law has transferred to the Consumer Financial Protection Bureau, HUD added a few clarifying changes

that it had made clear in its FAQs in the last 18 months.

First HUD made it clear that before you can charge a fee other than a credit report fee, the consumer must show the intent to continue with the application. This point was made clear in the preamble to the rule change and in its FAQs but it is now part of the regulation in 24 CFR 3500.7(a) and (b). Second HUD has clarified that 24 CFR 3500.7(f)(6), which states that for construction loans where the closing will be more than 60 calendar days from the time the good faith estimate is provided the lender may include a statement that it may provide a

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revised GFE any time up until 60 days prior to closing. The preamble and FAQs were clear that this section was meant for new construction loans only, and so HUD has added the word “construction” in the heading of that section. HUD also made other housekeeping and technical changes to the regulation, such as correcting citation errors. The changes are effective August 11, 2011.

❑ FFIEC Issues Supplemental Guidance

(continued from page 1)

Internet-based systems. Layered security is characterized by the use of different controls at different points in a transaction process so that a weakness in one control is generally compensated for by the strength of a different control. The definition of high-risk systems or products has not changed since 2005. You will have to make your determination for the extent of security depending on both the type of customer using the product or service (retail or commercial) and the actual product or service, for example, a simple bill payment service compared to online account opening or loan origination.

The guidance lists the following examples of effective controls for a layered security program:

- Fraud detection and monitoring systems that include

HUD Issues Final Rule Implementing SAFE Act

HUD has issued its final rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Among other things, the SAFE Act final rule clarifies:

- The minimum standards that states must meet in licensing mortgage loan originators
- HUD’s oversight responsibilities under the SAFE Act
- Ambiguous or undefined terms appearing in the SAFE Act

The rule has made it clear that when someone sells his or her own home and takes back the financing, that person is not a loan originator and need not register. HUD also did not require individuals engaged in loan modifications or loss mitigation to be licensed as loan originators under the SAFE Act, but instead defers to the CFPB on the question of whether persons engaged in such activities should be required to be licensed. HUD noted, however, that any such individuals involved in a refinance transaction are subject to the SAFE Act’s loan originator licensing requirement. The final rule will take effect on August 29, 2011. You can read the rule at <http://portal.hud.gov/hudportal/documents/huddoc?id=SAFERULE.pdf>. ■

consideration of customer history and behavior and enable a timely and effective institution response

- Use of dual customer authorization through different access devices
- Use of out-of-band verification for transactions (A transaction that is initiated via one delivery channel (e.g., Internet) must be re-authenticated or verified via an independent delivery channel (e.g., telephone) in order for the transaction to be completed.)
- Use of positive pay, debit blocks, and other techniques to appropriately limit the transactional use of the account
- Enhanced controls over account activities; such as transaction value thresholds, payment recipients, number of transactions allowed per day, and allowable payment windows (e.g., days and times)

- Internet protocol (IP) reputation-based tools to block connection to banking servers from IP addresses known or suspected to be associated with fraudulent activities
- Policies and practices for addressing customer devices identified as potentially compromised and customers who may be facilitating fraud
- Enhanced control over changes to account maintenance activities performed by customers either online or through customer service channels
- Enhanced customer education to increase awareness of the fraud risk and effective techniques customers can use to mitigate the risk

At a minimum examiners will make sure that your layered security program will contain two basic elements: fraud detection and administrative control.

First it should include processes designed to detect anomalies and effectively respond to suspicious or anomalous activity related to initial log-in and authentication of customers and initiation of electronic transactions involving the transfer of funds to other parties.

Now the agencies are providing supplemental guidance to reinforce the risk management framework described in the original guidance and relay the agencies' supervisory expectations regarding customer authentication, layered security, and other controls in, what the press release calls, "the increasingly hostile online environment."

Second, for commercial accounts, layered security should include enhanced controls for system administrators who are granted privileges to set up or change system configurations, such as setting access privileges and application configurations and/or limitations. These enhanced controls should exceed the controls applicable to routine business customer users. For example, a preventive control could include requiring an additional authentication routine or a transaction verification routine prior to final implementation of the access or application changes. An example of a detective control could include a transaction verification notice immediately following implementation of the submitted access or application changes.

Other Security Issues

Device Identification

Many financial institutions use a cookie loaded to the customer's PC to confirm that it matches the PC the customer used to sign up for the service. However, fraudsters have been able to copy the cookie and move it to their own computers. There are more complex techniques such as a digital "fingerprint" that the agencies consider to be more secure and advise that you should no longer consider simple device identification, as a primary control, to be an effective risk mitigation technique.

Challenge Questions

Many institutions use challenge questions as a backup in the event that the primary log-in authentication technique becomes inoperable or presents an unexpected characteristic. In its basic form, the user is presented with one or more simple questions from a list that was first presented to the customer when originally enrolling in the online banking system. These questions can often be easily answered by an impostor who knows the customer or has used an Internet search engine to get information about the customer (e.g., mother's maiden name, high school the customer graduated from, year of graduation from college).

Therefore, the guidance suggests that challenge questions can be implemented more effectively using sophisticated questions. These are commonly referred to as "out of wallet" questions that do not rely on information that is often publicly available. They are much more difficult for an impostor to answer correctly. Sophisticated challenge question systems usually require the customer to correctly answer more than one question and often include a "red herring" question that is designed to trick the fraudster, but which the legitimate customer will recognize as nonsensical. The agencies have also found that the number of challenge questions employed has a significant impact on the effectiveness of this control.

Customer Awareness and Education

Your customer awareness and educational efforts should address both retail and commercial account holders and, at a minimum, include the following elements:

- Regulation E disclosures, if applicable
- An explanation of under what, if any, circumstances and through what means the institution may contact a customer on an unsolicited basis and request the customer's provision of electronic banking credentials
- A suggestion that commercial online banking customers perform a related risk assessment and controls evaluation periodically
- A listing of alternative risk control mechanisms that customers may consider implementing to mitigate their own risk, or a listing of available resources where such information can be found
- A listing of institutional contacts for customers' discretionary use in the event they notice suspicious account activity or experience customer information security-related events

At a minimum examiners will make sure that your layered security program will contain two basic elements: fraud detection and administrative control.

Risk Assessments

The guidance offers ideas for updating risk assessments and the environmental and customer changes to take into account when doing so. It emphasizes a risk-based approach where controls are strengthened as risk increases. It also differentiates between risks for consumer vs commercial account and is clear that the guidance applies to both.

Consumer Banking vs Commercial Banking

Online consumer transactions generally involve accessing account information, bill payment, making loan payments, transferring between their own accounts at your bank, and occasional fund transfers to other institutions. Since the frequency and dollar amounts of these transactions are generally lower than commercial transactions, regulators understand they pose a comparatively lower level of risk and so the security and controls should be commensurate with that risk.

Online business transactions generally involve ACH file origination and frequent interbank wire transfers.

Since the frequency and dollar amounts of these transactions are generally higher than consumer transactions, they pose a comparatively increased level of risk to both your bank and your customers. The agencies suggest that you utilize internal controls that are consistent with the increased level of risk for covered business transactions and recommend that institutions offer multifactor authentication to their business customers.

Updating Risk Assessments

Regulators expect you to review and update your existing risk assessments in the following circumstances:

- When technology changes and new information becomes available
- Before you offer a new electronic financial service
- Not less often than every 12 months

Here are the factors the agencies expect you to consider:

- Changes in the internal and external threat environment, including those discussed in the appendix to the new guidance
- Changes in the customer base adopting electronic banking
- Changes in the customer functionality offered through electronic banking
- Actual incidents of security breaches, identity theft, or fraud experienced by your institution or in the industry in general. ■

Correction

There was a mistake in question #15 of last month's Regulation CC Quiz. As published, the answer would be false. The question should have read as follows: "Tom Anderson deposited \$8,000 to his accounts in local checks on Monday the 1st and we placed a large deposit hold. In this case, we must provide \$200 by Tuesday the 2nd, an additional \$4,800 by Wednesday the 3rd, and the remaining \$3,000 by Wednesday the 10th." In this case the answer would be true. ■

Lessons from the Wells Fargo Settlement

If you were wondering why the Dodd-Frank Act and Regulation Z have created new rules regarding anti-steering and loan compensation for originators, just glance at the complaint from the Federal Reserve Board against Wells Fargo, which resulted in an \$85 million civil money penalty against Wells Fargo & Company of San Francisco, a registered bank holding company, and Wells Fargo Financial, Inc., of Des Moines, Iowa.

COMPLIANCE MANAGEMENT

The \$85 million civil money penalty is the largest the Fed has assessed in a consumer-protection enforcement action and is the first formal enforcement action taken by a federal bank regulatory agency to address alleged steering of borrowers into high-cost, subprime loans.

The order addresses allegations that Wells Fargo Financial employees steered potential prime borrowers into more costly subprime loans and separately falsified income information in mortgage applications. In addition to the civil money penalty, the order requires that Wells Fargo compensate affected borrowers.

Summary of the Complaint

Business Model

Financial's business model with respect to home mortgage lending was to sell debt consolidation, cash-out refinance loans at subprime rates (i.e., nonprime loans) to customers principally through a network of more than 800 offices located throughout the United States.

The principal marketing method was outbound, unsolicited telephone calls to individuals who had some existing customer relationship with Financial. Under Financial's underwriting process, the salesperson was responsible for obtaining income-related documents (such as pay stubs and W-2 forms) and forwarding them to Financial's centralized underwriting centers. Financial typically did not require that borrowers fill out and sign loan applications that included the borrower's representation of his or her income.

Compensation

Under Financial's sales performance standards and incentive compensation programs, Financial sales staff

were expected to sell a minimum dollar amount of loans to avoid performance improvement plans that could result in loss of their positions with Financial, and a minimum dollar amount of loans to receive incentive compensation payments above their base salary.

The \$85 million civil money penalty is the largest the Fed has assessed in a consumer-protection enforcement action and is the first formal enforcement action taken by a federal bank regulatory agency to address alleged steering of borrowers into high-cost, subprime loans.

Although contrary to Financial's written policies and procedures, the Fed discovered that some sales reps marketed these loans to customers by representing that the debt-consolidation home mortgage refinancing loans would improve or repair a consumer's credit. They also found that reps falsified documents just to ensure they made their sales goals, also against Financial's policies, of course. Wells Fargo compliance officers investigated the particular instances brought to their attention, and disciplinary action was taken against certain individual sales staff if their involvement in income document alteration or falsification was admitted or otherwise proven.

Steering Potential Prime Borrowers Into Nonprime Loans

Sometime in 2005 Financial initiated a process, referred to as the "A-Paper Filter," to provide prime pricing to customers for qualifying debt consolidation cash-out refinancing mortgage loans. Initially, if a transaction passed the filter and a further underwriting process, the customer would be offered prime pricing from Financial. In early 2006, the A-Paper Filter was modified so that customers with potentially qualifying transactions instead would be referred to Financial's affiliate, Wells Fargo Home Mortgage, which would determine the customer's eligibility for prime pricing and, if eligible, originate the prime priced home mortgage loan.

During this time period, Financial revised its performance standards and compensation programs so that it generally was less advantageous for a loan originator to

sell a prime loan to the customer than a nonprime loan. The Fed found that some customers during this time who might have qualified for a prime priced home mortgage loan at Financial or through referral to Home Mortgage were sold loans priced at nonprime rates. Loan originators did this primarily through upselling prospective borrowers so that the borrowers requested cash-back loans that were sufficiently large that the borrowers' transactions no longer qualified for prime pricing.

While the customers received disclosures regarding the nonprime rates they were being charged, the customers were not advised that they might have qualified for prime priced loans or that it was generally more advantageous for the salesperson to sell a nonprime, rather than a prime, loan.

While this instance is not the only reason we now have loan compensation and anti-steering rules, it is one indication of the type of activity that took place prior to 2008 that resulted not only in a mortgage market meltdown but also the passage of landmark legislation like Dodd-Frank.

Compensation for Loan Applicants

In addition to the civil money penalty and many requirements to for policy and procedure changes, audits, and compensation review, Wells Fargo must also compensate certain loan applicants. According to the Fed's press release, Wells Fargo must identify prime-eligible borrowers with cash-out refinancing loans who were subject to improper steering, and Wells Fargo is required to reevaluate the qualifications of all borrowers who took out a subprime, cash-out refinancing loan between January 2006 and June 2008 to account for certain specific steering techniques. To identify Wells Fargo Financial borrowers whose income information was falsified without their knowledge, Wells Fargo is required to set up a procedure for potentially affected borrowers to show that their actual income at the time did not qualify them for the loans they were granted. Wells Fargo is required to provide notice of this procedure to all borrowers who obtained cash-out refinancing loans between January 2004 and June 2008 at a Wells Fargo Financial office where there is evidence that sales personnel at that office altered or falsified borrowers' income information.

These compensation plans must be approved by the Federal Reserve. An independent, third-party adminis-

trator will review determinations about the eligibility of individual borrowers for compensation and the amounts of compensation provided. The Federal Reserve will also monitor compliance with the approved plans. Failure to comply with the plans will constitute a breach of the cease and desist order.

The amount of compensation provided to individual borrowers will depend on a number of factors, including differences between what borrowers paid and what they should have paid in terms of origination points, interest payments, fees, and penalties. Until specific determinations of harm to individual borrowers are made, it is difficult to determine the total amount of compensation provided to borrowers. Based on preliminary estimates, the amount of compensation that each eligible borrower will receive ranges between \$1,000 and \$20,000, but some eligible borrowers may receive less than \$1,000 and others may receive more than \$20,000. The number of borrowers who may receive compensation under both plans is estimated to be between 3,700 and 10,000, possibly more. You can see that getting out from under this order will take Wells Fargo many months and cost significantly more than the \$85 million CMP. ■

BANK REGULATORY COMPLIANCE ALERT

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did you KNOW...?

House Passes Flood Insurance Reform and Extension of NFIP

The House of Representatives passed HR 1309 and forwarded it to the Senate. The bill makes some changes to the National Flood Insurance Act regarding coverage and insurance rates. It also extends the National Flood Insurance Program to September 30, 2016. Currently the NFIP is scheduled to expire on September 30, 2011.

Fed Publishes Lists of Institutions Exempt from Debit Card Interchange Fee Standards

The Federal Reserve Board has published lists of institutions that are exempt from or subject to the debit card interchange fee standards in Regulation II. These lists, available at www.federalreserve.gov/payment-systems/debitfees.htm, are intended to help payment card networks and others determine which issuers qualify for the statutory exemption from interchange fee standards. Institutions have been grouped into two categories: exempt and not exempt.

Institutions in the exempt category have been determined to have, together with their affiliates, reported assets of less than \$10 billion, and therefore are exempt from the interchange fee standards under

the statute. Institutions in the not-exempt category have been determined to have, either individually or together with their affiliates, reported assets of \$10 billion or more, and therefore are not exempt from the interchange fee standards under the statute.

The interchange fee standards become effective on October 1, 2011. The Fed plans to update the lists annually.

NMLS Provides Consumer Access to Registrant Information

The Nationwide Mortgage Licensing System and Registry has announced that certain information provided by institutions and individual mortgage loan originators will be available through NMLS starting August 1, 2011. NMLS Consumer AccessSM is a free service for consumers to confirm that the mortgage company or mortgage professional with whom they wish to conduct business is licensed in their state. Users of NMLS Consumer Access are subject to the web site's terms of agreement. NMLS has also posted a guide to explain which institution and registrant data will be displayed. You can access the guide at <http://mortgage.nationwidelicencingsystem.org/fedreg/NMLS%20Document%20Library/Federal-Registry-Consumer-Access.pdf>. ■