



NAFCU's Compliance Hodgepodge

*A Whirl-Wind Tour from
Steve and Anthony*



Our Little Agenda

RESPA

SAFE Act

E-SIGN Act

Regulation Z – Private Student Loans

Regulation Z – HOEPA

Regulation Z -

HELOCs/Closed End Mortgages

BSA Update

NCUA Guidance Update

Pandemic Update

HVCC

Regulation D

Share Insurance

Flood Q and A's

Legislative Update

Corporate Stabilization

Fair Lending

Regulation CC

Gift Cards

Internet Gambling

Misc.

Compliance Tips



RESPA



RESPA Research

- Look at the actual final rule.
- If the answer isn't clear, then to the preamble.
- Then the FAQ document.
- If the answer still isn't clear, and the issue involves the GFE or HUD-1, look at Appendix A or C.
- If still unclear...
 - Ask for a legal opinion from an attorney (expensive)
 - Contact HUD directly (you may not get the answer you want)
 - Make business decision and document your research.



Research Tips

- Regulatory text is not overwhelming
 - [Here are those five pages.](#)
- GFE or HUD-1 questions?
 - [Here's the Golden Guidance.](#) (Appendixes A and C)
(NCB, Sept. 21, 2009)
- Pick up the phone
- Don't forget the existing rule
- compliance@nafcu.org
- Move to extend compliance deadline?



GFE

- Timing issues and fees
- Tolerances
- GFE Expiration
- GFE Binds
- Not a loan commitment
- Cure, baby cure



HUD-1

- Average charges
- Appendix A
- 60+ questions and answers devoted to HUD-1 within HUD's FAQ doc



SAFE Act



Who, What and When

- Mortgage loan originators: an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain.
 - Not someone who performs “purely” administrative tasks
- Look to Appendix A of proposal (will be § 761 of NCUA’s rules and regs)



Who, **What** and When

- Policies and procedures
- Registration:
 - Identifying info, 10-year employment history, 10 years financial history (including bankruptcy), expansive civil and criminal information, fingerprints
- Renewal
- NCUA will manage this process
- Don't forget CUSOs



Who, What and **When**

- Final rule must be issued
- Mortgage loan originator must register with the Registry within 180 days after NCUA provides public notice that the Registry is accepting registrations.
- *The giggle*



E-SIGN Act



E-SIGN Act Confusion

- Opt-in not Opt-out
- Passive Consent
- Affirmative Consent
 - Electronically; or
 - Confirmed electronically
- Membership App or Lobby Sign-up?
 - Still need electronic confirmation to verify the member can access electronically
- E-Sign article: www.nafcu.org/compliance



Private Student Loans



Issues

- Multi-purpose loans
- Added disclosures
 - Application
 - Approval
 - Final disclosures
- 30 days to accept



Regulation Z - HOEPA



HOEPA - HELOCs

- “HELOC trap” – HELOCs are impacted
- Clear & Conspicuous Standard
 - Equal prominence & close proximity
- Internet and oral disclosures
- Additional disclosures
 - Discount APR (time period and regular APR)
 - Balloon Payment (amount and timing)
 - Tax Implications (consult a tax advisor)



HOEPA - HELOCs

- **Alternative Disclosure for TV and Radio**
 - Disclose APR and toll-free number for full required disclosures
 - If multi-purpose number, disclosure option must be early in sequence
- **Promotional Rates & Payments**
 - New required disclosures
 - Time period, other APRs that will apply, other payment amounts and corresponding time periods



HOEPA - HPMLs

- “Higher-priced Mortgage Loans”
 - 1.5% above for first liens
 - 3.5% above for subordinate liens
 - “Average prime offer rate”
 - www.ffiec.gov/ratespread
 - <http://www.ffiec.gov/ratespread/newcalchelp.aspx#9>
- Verification of Repayment Ability
- Prepayment penalty restrictions (we’ll discuss later)
- Mandatory Escrow (we’ll discuss later)



HOEPA - HPMLs

- Prepayment Penalties
 - Already prohibited for FCUs
 - For State-chartered, only allowed if:
 - Allowed by applicable law to charge;
 - Within first **2 years** after loan is closed;
 - Not a refinance by same creditor;
 - Loan payments do not change within first **4 years.**
 - If you charge a prepayment, check the restrictions.



Reg Z - HPMLs

- Mandatory Escrow Requirement
 - April 1, 2010 for all but manufactured homes
 - First lien on principal dwelling
 - Includes manufactured housing, mobile homes, boats, trailers if used as principal dwelling
 - Escrow property taxes and mortgage insurance premiums
 - Can be canceled after first year – **if** member provides written, dated request after end of 1st year
 - Condos: if master plan for insurance – still need to escrow for property taxes
- Flood insurance?



Reg Z - HPMLs

- Verification of Repayment Ability
 - Section 32 Mortgages (“High-rate/High-fee”)
 - “Higher-priced mortgages”
- May not extend credit without regard to consumer’s ability to repay
- Verify:
 - Current and expected income; employment; and assets
 - Current obligations (existing debt); “simultaneous debt”; mortgage-related obligations



HOEPA - HPMLs

- Verification of Income or Assets
 - IRS W-2 forms; Tax returns; Payroll receipts; Financial records or other documents
 - If joint loan, verify both (unless relying solely on income/assets of one applicant)
- Verification of current obligations
 - Credit report
 - Must also include “simultaneous debt” (i.e. 2nd mortgage or “piggy back” loan)



HOEPA - HPMLs

- Mortgage-related obligations
 - Expected property taxes; mortgage insurance; Home Owners Association (HOA) dues; Condo or Co-op fees
- *Presumption* of compliance, if:
 - Verify income, assets, & obligations;
 - Determine repayment ability using largest payment amount scheduled for first 7 years;
 - Assess repayment ability using:
 - Debt-to-income ratio; or
 - Income member will have after paying debt obligations
- See Staff commentary to 12 CFR 226.34(a)(4)



HOEPA – No-Nos

Prohibited Acts or Practices

- Applies to all closed-end mortgages secured by principal dwelling
- No coercion or improper influence of appraiser (see 12 CFR 226.36(b))
- Failing to credit payment as of date of receipt
- Pyramiding late fees
- Failing to provide loan pay-off statement



HOEPA – Advertising

Prohibited Acts in Dwelling-Secured Ads

- Advertising “fixed” rates
 - If variable-rate, “ARM” or “variable-rate” must occur before first use of “fixed.” Each use of “fixed” must include time period the rate is fixed and that it may increase
 - If non-variable rate (i.e. stepped rate), include time period for “fixed” rate or payment amount
 - Must be equal prominence & close proximity



HOEPA - Advertising

- “Save \$300 per month on \$300,000 loan”
 - Must give disclosures reflecting comparison
- Gov’t loan program (unless FHA or VA)
- Misleading debt elimination claim
- Misleading use of “counselor” to refer to a mortgage broker
- Foreign-language ads – disclosures can not be in another language than ad



HOEPA – Rate sheet

- Use of term (e.g., 30 year mortgage) requires payment example (12 C.F.R. 226.24(d)(1)(ii)
 - But a new requirement kicks in
 - If you state a payment, 226.24(f)(3) requires additional disclosures, as necessary.
- 226.24(f)(2): if you state simple annual rate, and that rate can change (think ARM), you must disclose (clear and conspicuous)
 - All simple annual rates; period of time; APR



Regulation Z: Closed End and HELOC proposal



Reg Z – Closed End

- Proposal to Amend Closed-End Rules
 - Comments Due: December 24, 2009
- Similar to open-end rules, proposal changes format, timing and content of disclosures
- Would apply to **all** closed-end transactions secured by a dwelling (not just principal dwellings).



Reg Z – Finance Charge

- Change to “Finance Charge”
- Two-part Test. Fee is a finance charge if:
 - Paid directly or indirectly by the consumer;
AND
 - It is “imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.”
- Would include fees paid to 3rd parties if required



Reg Z – Finance Charge

- Proposal removes many exceptions from finance charge
 - 226.4(c) – (includes application fees)
 - 226.4(c)(7) – Real Estate Related Fees
 - The following fees would need to be included in the finance charge:
 - Title fees; property survey fees; fees for document preparation; notary and credit report fees; and property appraisal fees;



Reg Z – Disclosures

- Disclosures at Account Opening
 - One Page “Key Questions to Ask About Your Mortgage” document
 - One Page “Fixed vs. ARM” document
 - Replaces the CHARM booklet
- Early TILA Disclosures
 - Within 3 Business Days of Application
 - New tabular format (includes graphs to compare APRs with other consumers and HPML threshold)



Reg Z – Disclosures

- Final TILA Disclosures
 - Within 3 Business Days before Consummation
- Disclosures After Consummation
 - ARM rate change notices – 60 days prior
 - Force-placed insurance: must provide notice 45 days before charge and provide evidence of insurance to the borrower



Reg Z – Resources

- Further Resources:

- NAFCU Regulatory Alert 09-EA-20

- Proposed Rule (including model forms):

- <http://www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm>

- Highlights of Proposal:

- <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090723a1.pdf>



Reg Z - HELOCs

- Proposal to Amend HELOC rules
 - Comments Due: December 24, 2009
- At application, new one-page Q&A document with information on HELOCs
 - Attachment A:
http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/heloc_keyQs.pdf
- Transaction-specific disclosures within 3 business days of application



Reg Z - HELOCs

- Account Opening Disclosures
 - New tabular format and content
 - See Model Forms (G-15)
- Periodic Statement
 - Must include totals (both for the period and year-to-date) for fees and interest
 - See Model Forms (G-24)
- Change-in-Terms – Increased to 45 days
 - Must be in tabular format (first page)



Reg Z - HELOCs

- Additional Consumer Protections
 - For termination or reduction of credit line
 - Written notice within 3 business days
 - Statement of action taken, including effective date, and amount of new credit limit
 - Statement of specific reasons for action
 - If applicable, information concerning request for reinstatement of credit privileges
 - Notice for temporary or permanent freeze on advances
 - Statement & Reasons within 3 business days



Reg Z - HELOCs

- Further Resources:

- NAFCU Regulatory Alert 09-EA-19

- Proposed Rule (including model forms):

- <http://www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm>

- Highlights of Proposal (page 2):

- <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090723a1.pdf>



BSA Update



CTR Exemption Changes

FIN-2009-G003

- Phase I
 - No form or annual review for Phase I entities that are depository institutions or government entities
- Phase II
 - Eligible non-listed entities eligible* after either two months time or after conducting a risk-based analysis
 - “Frequent” now means five transactions per year
 - Biennial renewal submission abolished (annual review still required)
 - Change of control reports no longer needed
- Effective: January 5, 2009



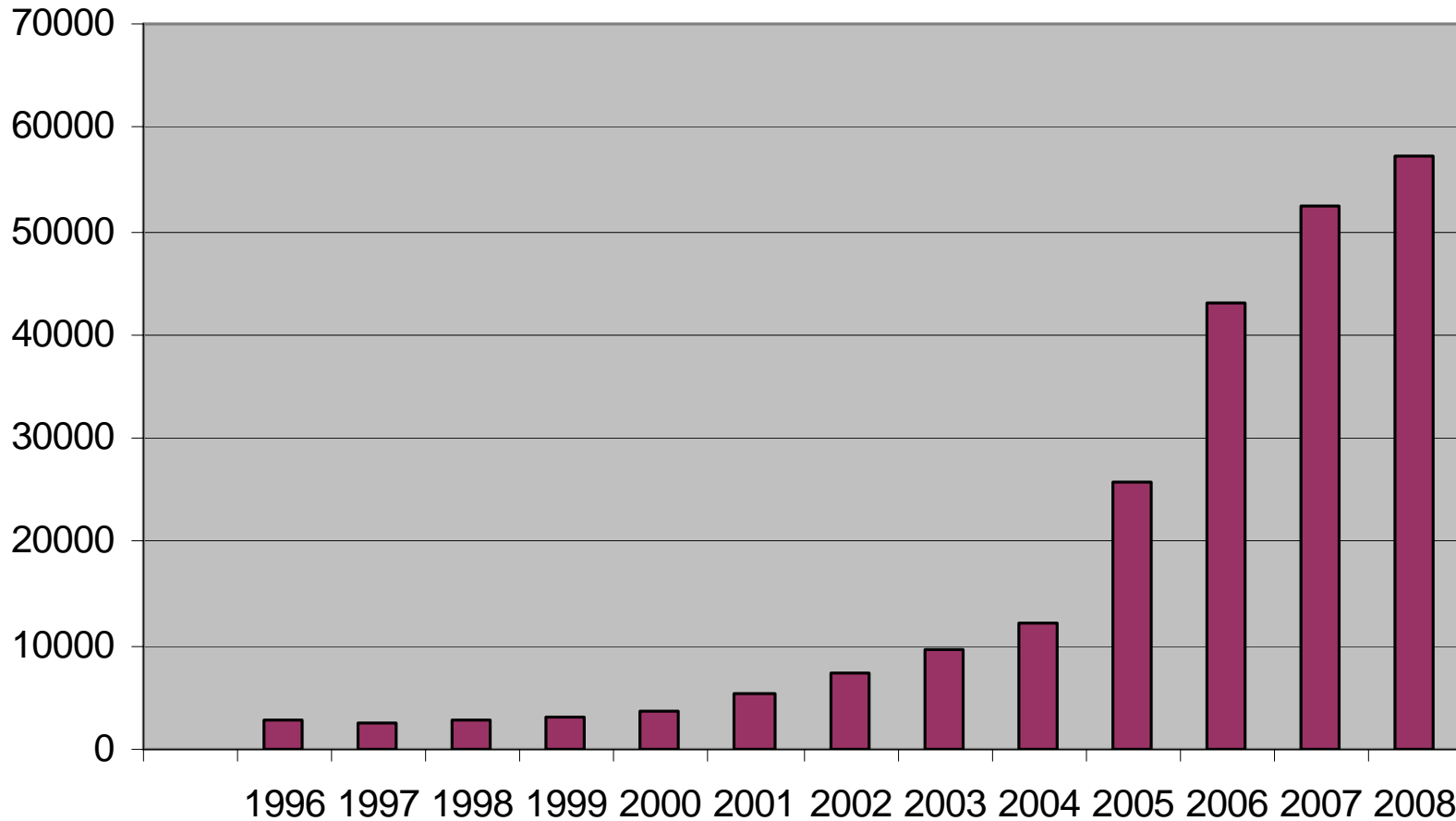
SAR Trends

- Total SARs filed by every in 2008 increased 3%, as compared to a 16% increase in 2007
- Credit unions?
 - 2004 – 28.7 % increase
 - **2005 – 111 % increase**
 - 2006 – 66.5% increase
 - 2007 – 21.6% increase
 - 2008 – 9 % increase



Credit Union SARs Filed by Year

SARS Filed by Credit Unions





General Fraud

- Nearly 50 % of increase from 2007 to 2008 in SARs involve fraud
 - Wire transfer fraud SARs increased 69%
 - Consumer loan fraud SARs increased 34%
 - Check kiting SARs up 25%

- NCUA Prohibition Orders

www.ncua.gov/Resources/AdministrativeOrders/Orders.aspx



BSA Manual Changes in 2010

- Areas with new guidance/focus
 - Remote deposit capture
 - Politically exposed persons (PEPs)
 - Letters of credit
 - Risk assessments
 - Banker's Banks
 - Gift cards/stored value cards?
 - Look for BSA rule on SVCs – Feb. 2010
- FinCEN's recently announced outreach program



NAFCU's Online Training for Credit Union Volunteers and New Employees



Key Components

- Delivered online
- Individual and group modules
- Volunteer and New Employee Training
- BSA Modules!
- Price includes access for all
 - 1 username, 1 password
- Optional testing
- Transcripts and handout materials
- Detailed outline for NCUA



Pricing

NAFCU Members

Non-members

< 50 MM	\$650	\$1,300
50 – 500MM	\$1,300	\$2,600
500MM to 1B	\$1,950	\$3,900
>1B	\$2,600	\$5,200



NCUA Guidance



Since we last met...

- 09-RA-10: CARD Act disclosure recommendation
- 09-RA-09: Fair Lending Exam Procedures
- 09-RA-08: Protecting Tenants at Foreclosure Act of 2009
- 09-RA-04: CTR Educational Pamphlet



Since we last met...

- 09-0608 – Mailing of ODP and NSF notices
- 09-0621 – Requirement to advertise abandoned property
- 09-0430 – Nonmember loan servicing
- 09-0218 – Applicability of NY law to FCU GAP waivers



Since we last met...

- 09-CU-19 – Evaluating Real Estate Mortgage Loan Mod programs
- 09-CU-12 – Interagency Procedures for credit extended to military personnel and their dependents
- 09-CU-01, 09-CU-07 – Evaluating risk in remote deposit capture, and questionnaire
- 09-0218 – Applicability of NY law to FCU GAP waivers



Pandemic Update



Pandemic Requirements

1. A preventative program to reduce effect of a pandemic;
2. A documented strategy that scales efforts in relation to different stages of pandemic
3. Comprehensive framework of facilities, systems or procedures
4. A testing program

<http://www.fspanfluexercise.com/>

5. Ongoing reviews and updates



Pandemic Resources

- NCUA Letter to CUs 09-CU-13, 08-CU-01, 06-CU-06
- Part 749, Appendix B
- www.flu.gov
- www.who.int
- www.ffiec.gov (IT Exam Handbook, BCP Booklet)
- <http://doihaveswineflu.org/>



HVCC



HVCC

- Created pursuant to a legal agreement between NY, Fannie and Freddie
- Applies in “limited” circumstances
 - Sales to Fannie/Freddie Originated after May 1, 2009
 - The Code does not apply to loans that are insured or guaranteed by a federal agency, such as FHA and VA loans.



HVCC Resources

- <https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/appcode/index.jsp>
 - Contains the HVCC
 - FAQs
 - Free Seminar
- *Don't forget to talk to your Fannie/Freddie Rep...*
- Failure or choice not to comply...ramifications?



HVCC Final Thought...

- Don't forget existing appraisal requirements
 - Part 722 of NCUA's rules and Regs
 - NCUA Letter to Credit Union 03-CU-17
 - *“Credit unions engaged in real estate-related activities should take measures to ensure that their program includes the independent selection of qualified, experienced, and educated individuals to appraise or evaluate real estate collateral. These individuals must be independent of the transaction and not subject to external or internal influence. Furthermore, an individual not involved in the loan production should select the appraiser or evaluator. Finally, a qualified and trained individual who is not involved in loan production should review the reports.”*



Regulation D



Regulation D

- On July 2, all “Reg D” transactions are limited to the six per month rule. The separate 3/6 limits has been obliterated.
- No requirement to change; Notification?
- Disclosures
 - Reg E, TIS
- Reg D Compliance Refresher
 - NAFCU Statement Insert



Share Insurance



What's New?

- \$250K level extended through 12/31/2013
 - Helping Families Save Their Homes Act of 2009
 - Will revert to \$100K without Congressional action
- Compliance issues
 - Long-term Share Certificates; POD Accounts; Accurately reporting insured shares; New beneficiary rules



Share Insurance Resources?

- Part 745 of NCUA's Rules
- NCUA Share Insurance Tool-kit
 - <http://www.ncua.gov/Resources/ShareInsuranceToolkit.aspx>
 - Estimator, Webinar, FAQ, Your Insured Funds
- FDIC “Your Insured Deposits”



Flood Insurance



Update

- Interagency FAQs updated July 09
 - FDIC FIL-42-2009
- On the Hill...
- Bank Civil Money Penalties
 - Compass Bank - \$70K
 - 2009? FDIC issued 65 CMP through August



Legislative Update



On The Hill

- Interchange
- CRA
- Overdraft Protection
- CFPA/Reg Reform
- Cram down
- Credit CARD Act/21 Day Notice



Corporate Stabilization



Corporate Stabilization

- Boom goes the dynamite
- NCUA taps NCUSIF and issues a premium
- Congress Acts, NCUA responds
- Stabilization Fund
 - Seven years to repay, 8 to restore NCUSIF
 - 69 bp return to insured credit unions
- NCUA Letter to Credit Union
- <http://www.ncua.gov/Resources/CorporateStabilization/index.aspx>



Fair Lending



Fair Lending

- GAO Report – July 2009 (GAO-09-0704)
 - Reviews fair lending exams
 - Recommends additional data collection
- FFIEC Updates Fair Lending Exam Procedures
- NCUA Issues Regulatory Alert (Sept. 2009)
- CFPA and CRA Proposals

- Approximately 25 exams per year – Risk-based
- Review the Exam Procedures to understand areas NCUA will place additional emphasis



Regulation CC



Restructuring

- Begun in 2003
- Goal: By end of 2009...
 - FRB Cleveland – single check processing center
 - FRB Atlanta – single electronic check processing center
- Compliance issues:
 - Possible Reg CC Change in Terms
 - Won't all checks be local? Reg CC overhaul?



Gift Cards



Gift Cards

- CARD Act Amends Electronic Funds Transfer Act --- Fed will need to amend Regulation E
- No fees during first 12 months of gift card
 - Requires clear disclosure of fees prior to issuance
- Funds must not expire for 5 years. For reloadable prepaid or gift cards – this is 5 years **since the last time funds were added.**

See Section 401; Effective August 22, 2010

- Also, don't forget BSA Provision of CARD Act



Internet Gambling



Regulation GG

- Unlawful Internet Gambling
 - NAFCU Final Regulation 08-EF-12
 - Compliance Date: December 1, 2009
- Applies to Commercial Customer Accounts
 - Regulates Internet Gambling Business
 - Institutions with a direct, customer relationship with business
 - Not the individual gambler
 - Gambling earnings/funds going **to the gambler** are not restricted transactions
- Card systems



Regulation GG

- Due Diligence Procedures
 - New Commercial Accounts
 - Incorporate into existing account opening CIP
 - Determine level of risk – “minimal risk”
 - If more than “minimal risk:”
 - Obtain certification from the member that the business is not an internet gambling business; or
 - If does engage as internet gambling business – obtain member’s gambling license and commitment to inform CU of any changes in legal authority
 - » And, third-party certification of license and activities



Regulation GG

- Existing Commercial Customers
 - Notification that restricted transactions are prohibited from being processed
 - Add term to account agreement, or
 - Notice to commercial customers
 - “Actual Knowledge”
 - Due diligence required if a particular fact or a specific commercial customer is known or brought to the attention of compliance personnel or officer of institution



Regulation GG

- **Five Payment Systems**
 - ACH System
 - Card system (credit, debit, prepaid, stored value)
 - Check collection system
 - Money transmitting business
 - Wire transfer systems
- **Exemptions for certain participants**
 - Non-exempt: policies and procedures



Regulation GG

- Policies and Procedures
 - Establish own policies and procedures to identify and block or prevent restricted transactions (see example policies & proc.)
 - Rely on and comply with policies and procedures established by payment system
 - May rely on written statement from operator of payment system (i.e. VISA or MasterCard)
- Procedures when Actual Knowledge



Exempted

ACH systems

- ACH system operator
 - ODFI in an ACH credit transaction
 - RDFI in an ACH debit transaction (except cross-border)
-

Check collection systems

- Check clearing house
 - Paying bank (unless it is also the depository institution)
 - Collecting bank (other than the depository institution)
 - Returning bank
-

Wire transfer systems

- Originator's bank (depository institution sending the wire on behalf of the gambler)
- Intermediary bank (other than the institution that sends the transfers to a foreign respondent bank)



Not Exempted

ACH systems

- ODFI in an ACH debit transaction
 - RDFI in an ACH credit transaction
 - Receiving gateway operator and any third-party processor that receives instructions for an ACH debit transaction directly from a foreign sender
-

Check collection systems

- Depository bank (first U.S. institution to which check is transferred)
-

Wire transfer systems

- Beneficiary's bank (institution receiving the wire on behalf of the gambling business)



Miscellaneous



Miscellaneous

- Regulation S
- Supreme Court Federal Preemption Case
- White House Preemption Memo
- Word of warning on increasing share-account non-interest income



Miscellaneous

- Model privacy notice? Soon.
- FCRA: FACT Act Accuracy and Integrity of Credit Information



Compliance Tips



Compliance Tips

- Email alerts
 - NCUA, FDIC, OCC, OTS, Trade emails, NAFCU's Compliance Blog, Federal Reserve, Banker's Online, Treasury, FinCEN, CU Times...
- Blogs
 - NAFCU's Compliance Blog, That Credit Union Blog, Bankers Compliance Consulting Blog...
- RSS



Compliance Tips

- Get organized
 - It's Delicious
 - RSS, Si Vous Plait
 - Organize your emails (code them, change them, file them)
 - Identify your resources
- Roundtables, conferences, buddy lists
- Develop your own book of answers



Research Tips

- Get your facts straight
- What rules apply?
- Who is your audience, and what information do they need?
- They may ask for A, but don't forget B, C, D...
- Write to your audience



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