Regulatory Compliance - What You Need to Know
Compliance Risk

• Defense or move forward
• It exists for all FIs
• Identify, rank, manage, prove it
Introducing John Zasada

John Zasada is a principal with the CliftonLarsonAllen LLP Financial Institutions Group specializing in all aspects of regulatory compliance. John has 20 years experience assisting credit unions nationwide in complying with consumer protection regulations including establishing regulatory compliance programs, conducting compliance assessments, training staff on credit union regulations, performing website compliance assessments, and BSA/AML/OFAC independent testing. Prior to joining CliftonLarsonAllen, John was a Managing Director with RSM McGladrey, Inc.

John is a frequent speaker on regulatory compliance trends, BSA/AML, compliance management, advertising compliance and website compliance. John has also been the lead instructor for the National Credit Union Administration (NCUA) Regulatory Compliance School and trained over 300 examiners on regulatory compliance.

John attended Utica College of Syracuse University, University of Colorado at Boulder, University of Copenhagen, Denmark, and Vermont Law School.
Agenda

• 2015 compliance environment
• Compliance management
• Compliance Audit
• Derisking
• UDAAP
• TIL/RESPA mortgage disclosures final rule
• Complaints
• BSA and MSBs
• Overdraft protection
• Fair lending
Examiner Focus

- BSA and MSBs
- ATR/QM
- TRID
- MLO compensation
- UDAAP
- Fair lending
Which Agency Examines You

• NCUA, CFPB, FDIC, etc.
• Share more information
• More consistent handling issues
• Exams more similar
Working with Agencies

- Enforcement actions
- CFPB
- Ongoing examiner communication
- Speeches
Compliance Management System

• 4 pillars
  – Oversight
  – Program
  – Complaints
  – Compliance audit

• Audit should cover complaint process
• Program and tone at the top vital
• Avoid appearance of wholesale breakdowns
• Compliance audit critical
Examiner Concerns

- Do what you say you are going to do
- What is the harm to consumers?
- Training alone not always the answer
- BOD informed of critical compliance issues
- Controls, policies, procedures
- Staff turnover
Regulatory Change Management

- 6,000 pages of changes
- Regulation change management system
- Point person
- Document your approach
- Active list of applicable regulations
Compliance Best Practices

- Compliance officer integration
- Guidance = rule?
- Self detection
- But...
Monitoring and Audit

- Monitoring – less formal, not independent, done more often
- Audit
- Regulatory changes warrant more monitoring
Self Identification is First Step

• Must also correct
• Self identification alone does not prevent enforcement action
• Remediation?
• Root cause
Compliance Officer Worries

• Enhanced examiner scrutiny
• Increased regulations
• UDAAP and fair lending
• Compliance officer on an island
Personal Liability

• MoneyGram
• $1m penalty
• 63,000 complaints
• Chilling effect?
TRID

• HELOCs not impacted
• Monitor 3rd parties providing new forms
• Loan estimate within 3 days of application
• Application definition
  – No catch-all
• Small creditor
Revising Loan Estimates

• Old rules regarding change circumstances largely intact
• Challenging area for credit unions
• New rule prohibits revised Loan Estimates after the closing disclosure is provided
• Minor exceptions permitted
Good Faith Compliance

• Good faith effort
• Sensitive to progress
• CFPB
• NCUA
• Consistent with earlier changes
• Civil liability?
Complaints

• Drives compliance efforts
• Verbal complaints important
• CFPB Final Policy Statement
• Consumers complaint narrative made public
Complaint Process

• NCUA Letter
• 1st phase - 60 days to review and resolve
• 2nd phase – CAC formal investigation
• Managing complaint process
  – written
UDAAP

• Violations increasing
• Start with complaints
• Example
• New product or service
UDAAP Violation Causes

• Complaints
• Complexity
• 3rd parties
  – Risk assessment
How to Avoid UDAAP Violations

• Risk assessment for new products and services
• Simplicity
• Examine incentives
• Fairness
• 3rd parties
• Complaints
BSA

- Tougher examinations
- Even with no FI changes, more violations possible
- Risk rating
- File or not to file SARs
Exam Manual Updated

• No major changes, more details
• SAR information sharing
• Prepaid access
BSA Management

• Spending up
• BSA officer resources
• Training includes fraud
• Automated systems
BSA Deficiencies

• Internal controls
• Testing
  – Impact considered
  – Testing vs. exam
• Risk assessment
NCUA BSA MSB’s Supervisory Letter

- 14-05
- Issued December 19, 2014
- 300k penalty against small CU
- Due diligence
What are MSBs

• Many different kinds
  – Money orders
  – Traveler’s checks
  – Check cashing
  – Currency exchange
  – Money transmitter
  – Prepaid access cards
BSA MSB Risk Factors

• Not all MSBs pose similar risk
• Risk factors:
  – Diverse products, services and customer base
  – Lack ongoing customer relationships
  – Minimal or no identification requirements
  – Limited recordkeeping
  – Frequent currency transactions
  – Various levels of oversight
  – Frequent change of product mix, location, operations
Lower Risk

- Routine transactions
- Single MSB product
- No out-of-state checks
- No third-party checks or only cashes payroll or government checks
- Established business with an operating history
- Serves local residents only
- Only remits funds to domestic entities
Higher risk

• Higher-amount transactions with high frequency
• Multiple types of money services products
• Cashes third-party check or commercial checks
• Cross-border transactions
• Currency dealer of jurisdictions posing heightened risk for money laundering
• New business
• Located in HIFCA or HIDTA
Due Diligence

• Proper identification of MSB relationships
• Adequate assessment of potential risks
• Adequate understanding of the business model and activity of the MSB
• Adequate and ongoing due diligence relative to the risk assessed
• Adequate and ongoing suspicious activity monitoring
• Adequate staffing, expertise, and resources
Examiner Expectations

- CIP procedures
- Confirm MSBs register with FinCEN, if applicable
- Confirm MSBs comply with state or local licensing requirements, if applicable
- Confirm MSB’s agent status, if applicable
- Conduct a BSA risk assessment covering:
  - Types of products and services offered by the MSB
  - Location(s) and market(s) served by the MSB
  - Anticipated account activity and volume
  - Purpose of the account
Enhanced Due Diligence

• Reviewing an MSB’s BSA program
• Reviewing results of an MSB’s independent testing
• Reviewing written procedures for the operation of an MSB
• Conducting on-site visits of an MSB
• Reviewing an MSB’s written employee screening practices
North Dade Community Development Federal Credit Union

- 300k penalty
- No independent testing
- Excessive MSB activity
- SAR deficiencies
North Dade continued...

• CIP lacking
• No risk assessment
• Training deficient
  – Did not include BOD
• No compliance officer
Marijuana Accounts

• Want them?
• Benefits and risks
Derisking

- MSBs, marijuana-related accounts
- Not just single account but whole segments
- Avoid risk assessment, due diligence, compliance hassles
- Avoid crackdown on money laundering and fraud
- Penalties more common
- Risk outweighs reward
- Relationships being terminated
Who is Being Hurt?

• Cash-intensive businesses and those known for illicit activity

• Regulators are concerned vulnerable populations being negatively impacted by derisking

• May move to alternative markets
  – Less compliance and examinations
Flood Insurance

- Scrubbing loan files
- 2nd reviews
- Pre and post closing testing
NMLSR # on Loan Docs

• Must appear on:
  – Loan application
  – Note
  – Security instrument

• Does not apply to HELOCs

• Multiple individual loan originators
MLO Compensation

• Either in compliance or not
• Explain comp scheme
• Make sure it is not too complex
MLO Policy and Procedures

- Establish and maintain written policies and procedures
- Sliding scale
- Being tested
HMDA

• Changes coming...
$7.5M Penalty for Overdraft Violations

• Regions Bank

• Charged overdraft fees who did not opt in

• First CFPB enforcement action for overdraft violations

• $7.5m penalty and $49m in refunds

• Advisory issued same day
Overdraft Requirements

• 2010 rule
• Fee for paying ATM or one-time debit card transaction when funds not available to cover
• Does not apply overdrafts related to lines of credit transfers from other deposit accounts
• Does not apply if policy is to decline to cover overdrafts
Opt In

- Fees can be imposed for paying ATM or one-time debit card transactions if:
  - Written notice
  - Opt in
  - Written confirmation of opt in
  - Right to revoke
Regions Bank Violations

• No opt in
• Linked checking accounts and savings accounts
• $36 fee assessed if ATM or one-time debit transaction caused shortage in both accounts
• Waited too long to fix issue
• Charged fee when it claimed it would not
Redlining Settlement

• Associated Bank
• Discriminated on the basis of race and national origin
• Bank engaged in discriminatory lending practices regarding the denial of mortgage loans to African-American and Hispanic applicants
• Bank was discriminatory in providing loan services in African-American and Hispanic neighborhoods
Settlement

• $200m penalty
• Open 4 new loan production offices
• Train all employees and implement 2\textsuperscript{nd} level review process for all denied residential loans
Thank You

John Zasada | 218.790.1086
John.zasada@claconnect.com