

# Howard & Howard

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## Assessing the Risks of Non-Compliance

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# Today's Presenter – Steve Van Beek

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Steve Van Beek

**Attorney, Howard & Howard Attorneys PLLC**

Steve Van Beek is an attorney at Howard & Howard Attorneys PLLC, where he concentrates his practice in the area of financial regulations. He assists financial institutions throughout the country with managing and reducing compliance, legal, and reputation risks.

He received his bachelor's degree from Hope College and his J.D. from George Mason University School of Law and is a member of the American Bar Association.

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# Overview

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- What if we don't comply?
- What are the penalties?
- Risk Assessment
- Unique Factors of Situation?
- Flood Insurance Violations
- E-SIGN Act
- Finance Charges
- Changes-in-Terms
- Adverse Action Notices
- Credit Card APR Reevaluations
- Recap
- Q&A

# 1. Understanding the Risks

What are the risks of non-compliance?

# What if we don't comply?

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- What if we don't comply?
- What if we can't comply?
- What if we will not be ready to comply by the mandatory compliance date?
- What if we will not be able to fully comply due to our:
  - Systems
  - Vendors
  - Other reasons?
- Can we, in good faith, explain our interpretation and challenge the finding?

# What are the penalties?

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- Will we receive a civil money penalty?
- Could we receive a Cease & Desist Order?
  - Would we be prevented from opening new accounts or originating new loans?
- Could we be sued? Could it be class action litigation?
- Would we have to refund fees or interest?
- Would non-compliance result in deeper or additional audits or exams?
- Would non-compliance impact our reputation?

# Risk Assessment

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- Compliance Risk
- Legal and Litigation Risk
- Contract Risk
- Transaction Risk
- Reputation Risk
- Financial Risk
  - Time, resources, effort + possible fines or loss of income
- Impact on Culture of Compliance

# Unique Factors of Situation?

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- Which members are impacted?
  - New members, new accounts, new loans?
  - Existing members, accounts, and loans?
  - Only certain accounts?
- New regulation, new interpretation, or new requirements?
  - Good faith efforts to comply?
- Contractual aspects?
- UDAAP concerns?



## 2. Examples

Analyzing and assessing the risks of non-compliance

# Flood Insurance Requirements

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- Common Violations
  - Inadequate insurance
  - No insurance
  - Lapsed insurance
  - Force Placement
  - No notice provided
- Mandatory Civil Money Penalty for “Pattern or Practice” of Noncompliance
  - \$2,226 per violation; no annual cap

# E-SIGN Act Compliance

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- E-SIGN Act
  - Allows electronic delivery of disclosures, notices, agreements
- Process Must be an Opt-In Process
  - Member must consent electronically or confirm their consent electronically
- Possible Impacts of Non-Compliance
  - Violation of underlying regulatory requirement
    - Periodic statement or required notice not provided properly
    - Error resolution timeframe not started
  - Terms of disclosure, notice, or agreement not enforceable
  - Fraud or unauthorized transaction timeframes extended
  - Obtain new electronic consent from members

# Finance Charges

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- Regulation Z – Closed-End Credit
  - Disclose total finance charges and APR
- Failure to Properly Calculate Finance Charges
- Possible Impacts of Non-Compliance
  - Class action litigation
  - Examination issues → Refund of fees exceeding tolerance level
  - Required to conduct detailed review and analysis of loan records
- Related: Non-Disclosure of Late Fee (or Incorrect Amount)

# Change-in-Terms Requirements

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- Specific Requirements Depend on Applicable Regulation
  - Special Rules for open-end credit under Regulation Z
    - Tabular format and additional requirements for credit cards
  - Can the change be provided on or with a periodic statement?
- Contract Law Considerations
  - Are we formally changing the terms, and can we enforce the new terms?
- Possible Impacts of Non-Compliance
  - Change-in-Terms not effective
    - Improperly charged higher fee or enforced different terms
  - Required to conduct detailed review of account records, issue refunds, new notice, etc.

# Adverse Action Notice Requirements

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- Required by Regulation B and Fair Credit Reporting Act
  - Model Forms in Appendix to Regulation B
- Failure to Provide Required Notices
- Possible Impacts of Non-Compliance
  - Examination issues → Require sending of “stale” notices
    - May require cover letter and explanation
  - Required to conduct detailed review of account or loan records
  - Update or enhance current procedures

# Credit Card APR Reevaluation

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- Regulation Z – Special Credit Card Rule
  - Reevaluate credit card APR increases every 6 months
    - Special one-time review allowed within 6 months of merger
- Must Reevaluate APR Increases From 45-Day Change-in-Terms Notices
  - Must reduce the APR, if applicable, based on review of required factors
  - Reviews must continue until APR reduced back to prior APR
- Possible Impacts of Non-Compliance
  - Examination issues → Force reevaluations and new procedures
  - Required to conduct detailed review of account records
    - Recalculate interest charges based on rate reduction
    - Provide refund of overcharged interest

### 3. Recap

Compliance, non-compliance & risk management



# Recap

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## 1. 100% Compliance

- The ultimate goal
- Difficult or impossible to reach
- Complicated and detailed rules

## 2. Substantial Compliance

- Good faith efforts to comply
- Technical violations
- Solid culture of compliance

## 3. Non-Compliance

- Isolated incident?
- New or changed regulation?
- Willful violation?
- Good faith interpretation?

## 4. Risk Assessment

- Fundamental requirement?
- How many members?
- Fees or additional interest?
- Reputation risk? Litigation risk?

## 5. Corrective Action

- Proactive response?
- Provide fee or interest refunds?
- Correct process or procedures
- Prevent similar issue going forward

## 6. Improvements

- How can we improve?
- How can we prevent future issues?
- Enhanced training or procedures?
- Learn from past issues

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**Any questions?**

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