

# Blunder Report

After each compliance blunder, we have included a notation of the blunder, along with an explanation.

CISSY CSR (talking to Carla): I am so pleased! Things went very smoothly this morning with opening the bank. I was supposed to meet Tommy here for the opening, but my kids just wouldn't get up this morning and I was running late. He went ahead and opened himself and I thought he did really well, especially when you consider the fact that he has only been at the bank seven months, so he hasn't had any security training yet. His timing was bad when he started here. We had just finished the annual security training about a week before, so he still has a while to wait before we have security training again. Anyway, he did a fine job.

**Blunder:** Opening the bank with just one person probably violates the bank's internal bank security program. In addition, the bank blundered by failing to provide initial security training to Tommy. Both initial *and* periodic security training are required

CISSY CSR (turning to greet someone who has just arrived at her desk): Hello, how can I help you?

COCKY CUSTOMER: I'd like to open a savings account. I've completed the application form, although I had to leave the social security number part blank because I surrendered my social security number. I'm in kind of a hurry. Here is my initial deposit -- \$12,000 in cash. Is there anything else you need?

CISSY CSR (looking over the application): So, this is a personal account, I see. I'll just put N/A under SSN, since you don't have one anymore. And I know you from seeing you at the Parent/Teacher conference at my son's school, so that takes care of identification. Let's see. Here is your funds availability disclosure, a booklet to record your transactions in and the receipt for your first deposit. That should be all you need.

**Blunder:** #1 An individual cannot "surrender" a social security number. Without one, Cissy should have refused to open the account. Not only would a correct TIN be required by the IRS, since this is an interest-bearing account, it is also required by the Bank Secrecy Act. #2 Cissy's "know your customer" method is not adequate to guard against identity theft and it will never fly under the PATRIOT Act CIP regulations. #3 She provided a funds availability disclosure. Savings accounts are not covered by Reg CC and the Expedited Funds Availability Act. #4 She has apparently failed to realize she will need to file a CTR because the deposit exceeds \$10,000 in cash. #5 There's nothing to indicate she attempted to discern whether there is a legitimate source for the cash. If he's a teacher at the

local school, this amount of cash deposit with no rational explanation for its source would be suspicious. #6 Cissy gave the customer a disclosure he wasn't supposed to get (funds availability), yet failed to provide the Reg DD, privacy, and Reg E disclosures he should have been given.

SINGLE SUZIE, a customer, (speaking to CISSY): I couldn't help noticing that very attractive man you were just speaking to. Why don't I ever meet men like that?

CISSY CSR: He's a teacher at the high school across the street. Teaches Algebra. His name is Cocky Customer. He's single, and I think he must have some other sources of income, judging from his opening deposit. I'll bet you can figure out a way to meet him. You would make such a cute couple!

Blunder: Cissy violated the GLBA privacy restrictions by disclosing nonpublic personal information about a customer to a nonaffiliated third party and there is no "exception" in the privacy rule that allows disclosures for match-making purposes!

CARLA (after overhearing Cissy): I'm not so sure I'd be trying to fix Cocky Customer up with anyone. I know for a fact that we filed a suspicious activity report a couple of years ago when he had a checking account with us. It was a big deal. All the employees were buzzing about it at the time.

Blunder: Carla's big mouth just caused a BSA violation. You cannot reveal, directly or indirectly, to the subject of a SAR that a SAR has been filed. This means that the information must be disclosed only on a need-to-know basis to avoid it being indirectly communicated back to the subject. Also, it sounds like the bank incurred a BSA violation years previously when "all the employees" were buzzing about the SAR. All the employees shouldn't have known a SAR was filed.

SINGLE SUZIE: I'm so glad you warned me. Maybe he's not as good as he looks.

FLUSH FLOYD, a customer (speaking to TOMMY and handing him 100 neatly stacked \$100 bills.): I'd like to deposit this into my account, please.

TOMMY TELLER: Sure thing. It will just take me a second. I'll need to fill out a Currency Transaction Report. It's just a standard government form that must be filed on all cash transactions of \$10,000 or more.

Blunder: Tommy incorrectly identified the trigger for filing a CTR. A CTR must be filed on cash transactions *over* \$10,000 – not for a transaction that consists of *just* \$10,000. [Note: If this had been a situation where a CTR *was* required, there is no problem with revealing that to the customer.]

FLUSH FLOYD: But I'm already late for work. Do you have to? I'll tell you what. I'll just deposit part now and part later today. That way, you won't have to file anything.

TOMMY (sounding exasperated): Well, now I'll have to file a Suspicious Activity Report on you!

**Blunder:** Tommy should have kept his mouth shut. He violated the BSA regulations by notifying the customer of his intent to file a SAR on him.

FLUSH FLOYD: I'm going to see my lawyer! (Grabs his money and walks out, muttering angrily.)

CURIOUS KATE (talking to Cissy): I'm thinking about opening an account for me and my husband. Do you have any literature that describes what you offer?

CISSY CSR: Well, not really. I mean we do, but they get printed out when someone actually opens an account. I could certainly tell you about what we have and try to answer any of your questions. You may have seen our ad in the paper for "Better than free checking." The only time you have to pay a fee is if you fail to meet the minimum balance requirement, or if you have more than three transactions per month, or if you transfer funds from one account to another. Like the ad says, it's a no cost account! Let me know what you decide.

**Blunder:** Of course the bank has literature that describes the accounts they offer! That's precisely what the Truth in Savings disclosures are supposed to be, and the regulation requires that they be made available to anyone upon request. It's great that she's willing to answer questions, but that is not sufficient to comply with TISA. #2 Cissy talks about the bank's "Better than free checking", yet her description of the account makes it clear that this would *not* qualify as a free account for Reg DD purposes because it entails charges that would be considered maintenance or activity fees.

DAVID DEALER (a noncustomer): (talking to Mark Moneyorder) Man, like I really need to get a cashier's check. Help me count this cash, dude. I just need it converted to a blank cashier's check.

MARK MONEYORDER: (after counting the large stack of bills) Looks like you have \$4300. Here is your cashier's check. (handing the blank cashier's check to David, who immediately leaves the bank.)

**Blunder:** Mark sold a monetary instrument to an individual in an amount between \$3,000 and \$10,000 in cash without complying with the BSA recordkeeping requirements.

TOMMY TELLER: (talking to Mark Moneyorder) Who was that guy?

MARK MONEYORDER: Don't have a clue. Never saw him before. Don't know what his name was. Oh. That reminds me. I meant to tell you that Anthony Pins came by two

weeks ago while you were on vacation. He told me that he had lost his ATM card and that several unauthorized withdrawals have been made with it.

**Blunder:** Further illustration of Mark's earlier blunder where he sold a monetary instrument to an individual in an amount between \$3,000 and \$10,000 in cash without complying with the BSA recordkeeping requirements. If he has no idea who the individual was, he can't possibly have collected the necessary information to record on the BSA monetary instruments log. Plus, he reports that Anthony Pins came by *two weeks ago* to report a lost ATM card and several unauthorized withdrawals. Regulation E sets forth strict time frames for investigating claims of EFT errors. Mark's failure to act on the complaint more quickly means the bank blew the deadline (10 business days), assuming this was not a new account, in which case the initial investigatory period would be 20 business days.

**TOMMY TELLER:** Well, he obviously must have had his PIN written on the back. Sometimes these customers just have to learn the hard way that it is going to cost them money if they do stupid things like that.

**Blunder:** As much as we hate it, we cannot deny a claim of unauthorized use merely because the customer had his PIN written on the back of his ATM or debit card.

**MARK MONEYORDER:** He also asked me something I wasn't sure about. He wrote a check for \$22.63 at the convenience store. It bounced. A couple of weeks later, the convenience store evidently sent through an electronic debit to his account, but it wasn't for \$22.63. It was for \$37.63. They can't do that, can they?

**TOMMY TELLER:** Not unless he signed a written contract authorizing them to add a fee. It has to be in writing.

**Blunder:** Under the revised commentary to Regulation E, the FRB acknowledges that in a situation where a check bounces, the payee can send through an electronic debit for the amount of the check plus a fee, so long as the consumer agreed to the fee. Most merchants are taking the position that so long as they have a sign posted that notifies customers of the returned check charge, any customer who writes a check is on notice of the charge and has thus agreed to its imposition.

**MARK MONEYORDER:** That's good to know.

**TOMMY TELLER:** (speaking to Mark Moneyorder) By the way, I sent a memo to the President last week, recommending that we start sending checking account statements quarterly, rather than monthly, since postage has gone up again. He thought that sounded great and he has Marketing working on how to roll it out.. With Internet banking, our customers can just go online to check their account between statements if they need to.

Blunder: Reg E says that “For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred.” As a practical matter, that means you have to send your checking account statements monthly, unless you have a mechanism in place that would enable you to easily differentiate between customers who have had EFTs within the month and less frequently to those who haven’t. If you’re going to use online statements, you must first obtain your customer’s consent to receive electronic statements. Otherwise, you can provide them as a convenience, but you can’t eliminate the paper ones.

MARK MONEYORDER: Have you seen the new Reg E disclosures we got printed up? I think they do a nice job of trying to explain to the customer what their potential liability is and what they should do if an access device is lost or stolen. They are a lot better than our old ones because these say “Call your branch office”. That’s better than having a main office phone number.

Blunder: The Reg E Commentary to 205.7 says that an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

TOMMY TELLER: I did see them. They look good. Plus, I noticed you removed the part about limitations on the frequency and dollar amount of transfers. I think it’s important to keep that secret for security reasons. Customers don’t need to be told in advance there are limitations. Most of them will never come close to them anyway. Plus, if they tried to make a withdrawal when the ATM was offline, the limitations would not click in anyway, so it would just be too confusing.

Blunder: According to the Reg E Commentary, information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to \$100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

TRUDY TELLER (talking to Cissy CSR): Refresh my memory against about these money market accounts. I know that there is a limit on the number of withdrawals and transfers a customer can make, but I can’t remember the specifics.

CISSY CSR: It's easy. Some count, some don't. If they make a transfer or withdrawal in person, at an ATM, using a computer, or by telephone, it doesn't count toward the limit. Only those made by check, by mail, or as a preauthorized transfer, are counted toward the limit. The limit is six per month, and no more than 5 of those may be via check payable to a third party. On a savings account, the limit is six per statement cycle, and statements are only sent quarterly.

Blunder: Cissy got one part right: some withdrawals and transfers count toward the limit, and some don't. The limit is six covered transfers/withdrawals per month, even with savings accounts. No more than 3 may be by check or similar instrument payable to a third party. The only kinds that *don't* count are those made in person, by messenger, or at an ATM. Also not counted are transfers to pay on a loan of the customer at the same institution. Preauthorized transfers and transfers made by telephone (and that includes by computer!) are counted toward the limit.

TRUDY TELLER: Thanks. I needed to know because I'm opening a new account for a customer that is a church. They wanted a NOW account, but they aren't eligible because the church is a corporation. I told them that an MMDA would be just as good.

Blunder: Nonprofit organizations *are eligible* for NOW accounts, regardless of whether they are corporations, partnerships, associations, etc. Assuming the church is a nonprofit organization, it would have been eligible for a NOW account.

CARLA CASHIER: (joins Trudy and Cissy) We've got trouble. Mel Mean's account has had debits initiated against it for the last two months by an insurance company. Mel's saying that the insurance company had no right to the money. I've looked everywhere and I can't find evidence that we obtained a written authorization from Mel for the preauthorized transfers. The examiners can nail us for a Reg E violation. I'm not sure what to do. He told me he wants me to stop payment on the debit that is likely to come through next week, but he left town before he could come in and sign the stop order in writing, so I don't think we can legally reject the EFT. (Carla walks off dejectedly.)

Blunder: The insurance company is the one on the line. Under Reg E, The account-holding financial institution does not violate the regulation when a third-party payee of an EFT debit from the customer's account fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation. As far as the stop payment is concerned, Carla should have honored Mel's stop payment request. The reg says that a consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution *orally* OR in writing at least three business days before the scheduled date of the transfer, so it appears Mel was within the proper time frame and should have been allowed to stop the payment.

LARRY LENDING: (rises to greet customer Earl Enterprise.) How's it going, Earl? Your stores are doing great! What can I do for you today? Another construction loan for a new store?

EARL ENTERPRISE: Not today, Larry. I found a new house I want to buy and I need to act quickly. I'll give you a mortgage on my existing house, to secure the loan to buy the new one, but I really need to close the loan this afternoon. That won't be a problem, will it? I want to borrow \$550,000. You've seen my house. You know it's worth twice that, and I own it free and clear. Do I need to fill out some sort of written application?

LARRY LENDING: Earl, for you, my best customer, I will make sure you get your money this afternoon. We don't need a written application. I'll just pull the legal description off the Assessor's site on the Internet. All we'll need to do is crank out the note and mortgage and you'll be set.

Blunder: This is a home purchase loan. Even though a dwelling other than the one being purchased is going to serve as collateral, the loan would be subject to HMDA (if the bank is subject to HMDA) and the monitoring information must be requested. An appraisal will have to be obtained and the bank will need to provide a notice of right to receive a copy of the appraisal – or actually provide a copy of the appraisal itself. The bank would need to complete the Standard Flood Hazard Determination Form, give notice to the borrower if the property serving as collateral is in a flood zone, and require flood insurance if it is both in a flood zone and in a participating community. In addition, this is a loan primarily for a personal purpose and a security interest will be taken in a consumer's principal dwelling. Since it is not exempt under the residential mortgage transaction exemption, the right of rescission will apply and there's no way Earl can get his funds this afternoon. Larry had better start cranking out the disclosures. Even though Earl is typically a commercial customer, this particular loan is a consumer loan, subject to Reg Z, RESPA, and all the rest!

EARL ENTERPRISE: That's what I like about you Larry. No hassles. See you this afternoon.

LARRY LENDING: (speaking to Robin Real) Yesterday afternoon, after you had left Oliver Oldperson came in. He wanted to talk to you about a real estate loan, but I let him know that he wouldn't qualify, since he is retired. He may still call you back, but I think I was pretty firm.

Blunder: Larry had no business discouraging Oliver from applying for a loan. He has clearly made assumptions about Oliver's creditworthiness that appear to be based upon age. The discouragement on the basis of age is a violation of Reg B.

ROBIN REAL: Thanks. I don't need any more applications to deal with! With interest rates low, I've been working way too hard. I don't even want to take an application unless I think the borrower is top rate. Too many of these young married people just want it all. I don't know where they get off thinking they ought to be able to buy houses in their twenties. I've managed to advise several of them, successfully, that they should just invest their money and wait until they're a little older. You're so lucky you deal only with business purposes loans. You never have to contend with flood insurance, or providing copies of appraisals or any of those pesky consumer compliance requirements.

**Blunder: More age discrimination! Plus, she is making erroneous comments about the applicability of certain requirements (such as flood hazard and copies of appraisals) to business lending.**

LARRY LENDING: That's the great thing about commercial lending. You structure the deal the way you want, you document it just the way you want to. As long as you get a note and you do the financing statement or mortgage correctly, you're golden. On that appraisal thing, though, just don't get a formal appraisal. That was my secret when I did consumer lending. If you just do an informal evaluation of the property and don't use a certified or licensed appraiser, you don't have to provide anything.

**Blunder: This way of thinking is all too common and it leads to a variety of compliance violations. Even in the commercial arena, you can have a loan that is covered by HMDA, the appraisal requirements, flood hazard and, of course, always, Regulation B. In terms of his statement regarding the informal evaluation of the property, the Reg B definition of "appraisal" includes any evaluation of the property (other than one derived solely from public records) that the bank relied upon to value the property, so he's wrong about not having to provide anything in such a case.**

LUCY LOANER: (joins Robin and Larry) I have a meeting that is getting started late and I'm afraid I won't be back in time for Susan Soleborrower to finalize her loan. Could one of you pinch hit? Susan applied for a loan to buy a new Volvo. She is a realtor and thinks it is important to have a nice car to impress clients with. I told her I'd make the loan if her husband co-signed, so they should both be coming by to sign the note and security agreement.

**Blunder: If Susan is individually creditworthy, the bank cannot require a cosigner or guarantor. Even if she is unable to qualify for the credit on her own and needs a cosigner or guarantor, the bank cannot require it to be the spouse.**

ROBIN REAL: Is that legal?

LUCY LOANER: Yeah. The law says anytime you're making a loan to a married person you need to obtain the signature of the spouse on the note. Oh, and they wanted to pledge their house as collateral instead of the car so she could get a deduction for the mortgage



interest, so I've prepared the mortgage document for them to sign, too. That should be all you need.

**Blunder:** Oops! Now it's a real estate loan. That means RESPA (assuming the loan was for a personal purpose), right of rescission, Truth in Lending disclosures, flood hazard requirements, and even consumer protection insurance disclosures, if applicable. And that comment about "any time you're making a loan to a married person you need to obtain the signature of the spouse on the note" is just flat wrong – and can lead to ECOA/Reg B violations. A creditor may require the signature of a spouse or other person on the documents necessary under state law to give the creditor access to the property in case of default.

ROBIN REAL: Okay. I'll take care of it for you. Also, Felix Cohabitor came by yesterday with his girlfriend. They wanted to get prequalified for a home loan. I told them to come back once they got married. I guess I said something wrong. I didn't realize they weren't planning to get married. They've been living together for several months. I just assumed . . .

**Blunder:** Robin strayed into impermissible territory and appears to be violating Reg B's prohibition against marital status discrimination.

LUCY LOANER: It's a bad situation. If they break up, what's going to happen to the house? To the loan? You just can't take that risk. If they aren't willing to commit to marriage, they probably aren't ready to commit to repaying a loan. Plus, my religion teaches that it is a sin to live together outside marriage, so I can't make a loan that will go against my religious beliefs.

**Blunder:** Lucy gets into the marital status discrimination act and throws in a little religious discrimination to boot. Both are ECOA/Reg B violations.

ROBIN REAL: I had an idea I wanted to discuss with you. The baby boomer population is so huge now. What would you think of running a special home equity loan program for borrowers age 50 and over?

**Blunder:** Now we're back to age discrimination! You can have a credit program that *favors the elderly* under Regulation B, but "elderly" means 62 or older, so the program Robin describes would not be permissible.

LUCY LOANER: Awesome idea! Gotta go. Got a customer waiting!

LUCY LOANER: (to Ned Nolongerworking) Hi, Ned! Listen, I was sure sorry to hear that a bunch of you got laid off out at the plant last month. Doesn't sound likely you'll be called back anytime soon. That's a tough break. What can I help you with?

NED NOLONGERWORKING: Well, I need a loan. I thought while I was off work I'd try to fix up my house. There are lots of improvements that need to be done.

LUCY LOANER: Gee, Ned. I'd love to help, but I'm sure you understand that with you not working, there's no way you could qualify for credit. You ought to just use your credit cards to fund the projects. Didn't you get remarried? Maybe your wife could apply.

Blunder: Ned would presumably be getting unemployment benefits. Regulation B prohibits discrimination against an individual because all or part of their income is derived from a public assistance program. When Lucy inquires into his marital status and suggests his wife apply, she crosses the marital status discrimination line. Her suggestion that he use his credit cards to fund the project amounts to a form of discouragement. She is discouraging him from applying for this loan, due to her perception of his ability to qualify based upon his source of income, and is instead trying to push him to get credit elsewhere. Not only that, but the credit card debt would undoubtedly cost him more, so it's not great advice, regardless of why she's giving it.

NED NOLONGERWORKING: My wife was in a few days ago and applied for a loan, but they told her she couldn't get it because she was trying to qualify based on alimony payments she is getting and you guys said that since her ex-husband isn't a customer of your bank, there's no way to know whether the alimony payments will keep coming.

Blunder: While it is permissible for the bank to look into the alimony situation (looking, for example, for the existence of a court order mandating the alimony and looking at the past history of payments), it is not permissible to disallow the counting of alimony as income just because the divorced spouse is not a customer of the bank.

LUCY LOANER: I've got an idea. How about if we look at what kind of collateral you could pledge? That might help. Since you used to be in the furniture business, you have some beautiful and valuable furniture in your home. You have a killer stereo system, too, don't you? If the collateral is strong enough, cash flow just isn't an issue.

Blunder: Reg AA prohibits taking household goods as collateral on a consumer loan except in a purchase money security interest situation. Plus, Lucy's statement about "if collateral is strong enough, cash flow just isn't an issue" smells like predatory lending.

Phone rings. Lucy answers it. It's Fred with a question. LUCY LOANER: Hi, Fred. Your customer doesn't want to have to purchase flood insurance? I know. Seems like such an unnecessary expense. They get so little rain around there, it just seems silly. Well, if you're just taking the real estate out of an abundance of caution, the loan is exempt from the flood insurance requirements.

Blunder: There is no abundance of caution exception to the flood hazard requirements.

On that other loan you spoke to me about yesterday, where you *do* have to have flood insurance, remember that there is a 45 day grace period. That should please the customer to know that he won't have to obtain flood insurance until 45 days after the loan is closed. Plus, as long as the term of the loan is under a year, flood insurance is never required.

**Blunder:** There is no 45 day grace period. The bank needs to obtain proof of coverage at the time of closing. The 45-day period only comes into play later, if, during the term of the loan, flood insurance coverage lapses and has to be force placed.

ROBIN REAL: (speaking to Lucy after Ned leaves) I can't handle these foreign customers! I don't mind the ones from England or Canada – I love their accents – but the ones who speak another language – their English is bad, they're hard to understand. I just don't have the patience. Time's a wastin'. I can either deal with one of them or three normal customers. No contest in my mind.

**Blunder:** Robin's attitude evidences a discriminatory attitude on the basis of national origin or race.

LUCY LOANER: What you do is, if they look foreign, ask them right away if they are a U.S. citizen. If they aren't, tell them we don't make loans to noncitizens unless they are from certain countries.

**Blunder:** It is permissible to inquire into an applicant's citizenship and it is not a violation of Regulation B to deny credit based upon the fact that an individual is not a citizen. But if you make loans to some noncitizens, but not to others, it may appear that you are really discriminating on the basis of national origin.

ROBIN REAL: Sounds like a good way to handle it. Plus, in view of the terrorism and all, I think we should avoid doing business with people who are originally from places like Afghanistan, even if they've become citizens. The government may decide to kick them out anyway. Then where would we be? It's best to just avoid those loans.

**Blunder:** (See comments above.) It is permissible for a creditor to consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

LUCY LOANER: To be honest, there are lots of applicants I don't like dealing with. If they're under 25, they need to go elsewhere. I am tired of spoiled Gen X-ers. And old people make me nervous. My grandparents all died before I was born and I've just never been around people of retirement age. I can't relate to them. They move too slow.

**Blunder:** Decisions relating to credit must be made in a way that is not discriminatory on the basis of age. Lucy sounds like she's going to be

discriminating against very old people – and very young people! That’s a problem under Regulation B.

ROBIN REAL: Did you hear that Drew is getting a divorce? I think we ought to send her a notice telling her we need her to update the information on her financial status in connection with her line of credit.

Blunder: Reg B says that a creditor may periodically request updated information from applicants but may *not* use events related to a prohibited basis--such as an applicant's retirement, reaching a particular age, or change in name or marital status--to trigger such a request.

LUCY LOANER: I’m not approving Tom’s loan. He applied for it in just his name. I don’t care how rich he is. I think that’s slimy. When people are married, they need to have full disclosure of financial matters. If he won’t agree to tell his wife Veronica, we don’t want to be in the middle of this. Anyway, Reg B says that we can require the spousal signature if we have a reasonable belief that it’s needed. We have a reasonable belief.

Blunder: This is thinly veiled marital status discrimination in violation of Reg B. And “reasonable belief” to require a spousal signature doesn’t mean “we think we need it”. The commentary to Reg B states “A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

ROBIN REAL: You know, I’m getting much more cautious. After you’ve had a few loans go bad, you just don’t take chances. Like that application from Newbie Corporation, Inc. Sure, they look good on paper and have no problem qualifying for the loan. I’m still requiring the personal guarantee of the directors and officers of the business. I don’t always do that, but this is a woman-owned business and they’re going to have a harder time staying profitable. That’s just a fact of life. I guess I ought to talk to them about it. That application has been sitting on my desk for three months now and I’ve been meaning to get to it and make a final decision about whether to approve it or not. At least I got the credit reports pulled on all the officers and directors of Newbie Corporation, so I have the information I need in the file.

Blunder: Robin is discriminating on the basis of gender, making it clear that it’s because it is a woman-owned business that she is requiring the personal guarantees. She’s also blown the timely processing requirements for applications set forth in Regulation B. She should have sent them a notice of incompleteness, an approval, a denial, or a counter-offer long before now. Plus, the applicant for the loan was a corporation, yet she pulled credit reports on the officers and directors. If they don’t turn out to be guarantors, or haven’t explicitly authorized the pulling of their credit reports, she has a Fair Credit Reporting Act violation on her hands.

LUCY LOANER: I talked to a friend at another bank. She said their bank doesn't report any loans to the credit bureau. Can you imagine?

ROBIN REAL: I don't think that's allowed. I think you always have to report every loan to the credit bureau under at least one borrower's name. That's what we do. We report under the primary borrower's name.

Blunder: Robin's wrong. You don't have to report anything to the credit bureau. If you do report, however, you have to report joint credit in both the borrowers' names.

ROBIN REAL: (speaking to Ruth Resspuh, who has just brought in a loan application to finance the purchase of a home she wants to buy) Hi, Ruth. Thanks for bringing this application in. We'll have some paperwork for you in a couple of weeks. Here's an application for credit life insurance. You can go ahead and take this with you. And here is a little booklet called "When Your Home Is On the Line". When we close the loan, you'll have to wait three days for the proceeds because rescission applies, since this is a residential mortgage transaction.

Blunder: If Robin waits a couple of weeks to give Ruth any paperwork, she is out of compliance with RESPA, Reg Z, and the consumer protection insurance disclosure requirements, all of which would mandate that certain disclosures be given earlier. (Servicing transfer disclosure under RESPA at time of application, GFE and early TIL disclosures within three business days of application, insurance disclosures at the time of application.) She also needs to get busy doing the flood hazard determination. And she gave the wrong booklet. She should have given the settlement costs booklet. She's wrong about rescission applying. This is *exempt* from the right of rescission under the residential mortgage transaction exemption in Reg Z.

RUTH RESSPUH: If you can give me any idea of what kinds of fees I'll have on this transaction, it sure would help.

ROBIN REAL: Oh, of course. We will have a Settlement Statement available for inspection one business day prior to closing. You'll get an idea of what the charges might be at that time. Until then, we just really don't have any idea.

Blunder: That's what the Good Faith Estimate is for. Cough it up, Ruth!

RUTH RESSPUH: Uh, well, okay. I guess I'll just cross my fingers and hope I have enough cash. I'm not a very good money manager. In fact, would you mind, if my loan is approved, setting up some sort of escrow for the payment of my taxes and hazard insurance each year? I'm afraid if it's not handled like that, I'll never have the money for those things when they come due.

ROBIN REAL: Yeah, sure. Whatever. We don't normally do escrows, but I think we can handle it for those two things. Not for your flood insurance though. You'll need to take care of that yourself.

**Blunder:** If you are escrowing on a RESPA-covered loan for hazard insurance or taxes, you must escrow for flood insurance, too, if flood insurance is required.

RUTH RESSPUH: One more thing. Since I am trying to cut costs, I'm wondering if you could use the appraisal the seller got when he bought the property last year. It's barely a year old and, as you know, property values have done nothing but rise since then. Back then, it was valued at \$650,000 and my application is for \$525,000.

ROBIN REAL: Sure. As long as the appraisal is less than seven years old, we can accept it. And while we're on the subject of insurance, don't forget to fill out your application for credit life. I'll want to see that before I make a decision on your loan.

**Blunder:** Robin has the appraisal mixed up with the SFHDF. There is no such provision for appraisals being reusable if less than 7 years old. Plus, the bank must use an appraisal obtained for the bank – not one commissioned by some third party. She also has a problem under the consumer protection insurance reg because she failed to give the necessary oral and written disclosures and obtain Ruth's acknowledgment, plus she has made a statement that is directly contrary to the anti-coercion portion of the consumer insurance protection requirements.

Meanwhile, back in Operations . . .

TRUDY TELLER: (talking to Carla Cashier) Carla, I feel so bad. Dennis Deadman was just in here. He and his wife purchased a CD four days ago and she suddenly passed away yesterday. He wanted to cash in the CD today, but I told him he would have to wait until it matured or we would be required, under Regulation D, to impose an early withdrawal penalty. I sure wish there was something we could do.

CARLA CASHIER: Well, we can't afford to incur a violation. As hard as it may have been, you did the right thing.

**Blunder:** Trudy is wrong. There is an exception to Reg D's early withdrawal penalty requirement where one of the owners has passed away.

TOMMY TELLER (talking to Carla): I'm sorry to interrupt, but this is important. There is an IRS agent in the lobby. He wants to get copies of the records on Ted Taxevader's checking account for the last two years. I asked him if he had some sort of court order or summons or anything. He said he didn't need one because the IRS is covered by Title 26

of the United States Code and there is an exception under the Right to Financial Privacy Act for the IRS.

CARLA CASHIER: I remember seeing that in the RFPA. Go ahead and give him what he's asked for. I certainly don't want the IRS mad at us! And you did respond to that IRS levy we got on Ted a couple of weeks ago, didn't you?

Blunder: If the IRS follows procedures in Title 26 to obtain customer records they do, in fact, fall within an exception to the RFPA, but there is not an automatic exemption – they must follow the alternate procedures in Title 26 or they cannot obtain the records. On another matter, Carla expected Tommy to have responded to an IRS levy received two weeks ago, but although the bank should have frozen affected funds, it cannot file its answer and remit funds until the 21-day period in the Taxpayer's Bill of Rights has passed.

TOMMY TELLER: Not yet. We have 21 days after receipt of the levy. The 21<sup>st</sup> day is Thursday. I will take a look at his account on Thursday and freeze any funds that are there. I know his payroll direct deposit came in yesterday, so there should be quite a bit in the account on Thursday.

Blunder: Tommy's partially right. He knows there's a 21 day factor. But the funds should be frozen when the levy is received. A levy is a snapshot in time. It does not capture subsequently received deposits.

TOMMY TELLER: I also meant to mention that we got a federal grand jury subpoena for records relating to Weseldrugz Corporation. Apparently, the feds think the company is laundering money, big time. I called the company's president and let them know about the subpoena. He says they get harassed by the government all the time. He really appreciated my call, I could tell. I've been keeping track of the time we're spending researching and copying the records so we can get reimbursed by the U.S. Attorney's office.

Blunder: Sorry. Records of corporations are not covered by the RFPA, so subpoenas dealing with them are not eligible for reimbursement under Regulation S. The safest route is to treat all federal grand jury subpoenas as highly confidential. Section 3420(b) of the RFPA spells out an automatic prohibition against disclosure when the subpoena relates to certain types of investigations. Technically, it could be argued that it doesn't apply when the subpoena is for corporate records because it prohibits notifying "any person named in a grand jury subpoena" and the word "person" is defined in Section 3401 as meaning "an individual or partnership of five or fewer individuals." Nonetheless, you don't want to be a crash test dummy on the interpretation of this provision. Just zip your lips any time you receive a federal grand jury subpoena, regardless of whose records it seeks.

CARLA CASHIER: Document it carefully. We can't do this for free.

CARLA CASHIER (spotting Cissy, Tommy and Trudy): Hey, gang. I have an idea to bounce off you. Our computer programmer is in here today and I was thinking about having him adjust our software to allow us to start charging some new fees today on our deposit account. Here's what I was thinking: I'd like to impose a fee of \$15.00 for every check that is not properly MICR encoded. We have to handle those manually and that costs us money. I think it will deter customers from ordering checks through off-brand vendors. I also want to charge a daily fee of \$1.00 for balances remaining in overdraft. We'll give them a couple of days to come in and make a deposit. If they don't, then in addition to the overdraft charge, we'll charge \$1.00 a day. Plus, ever since we did that promotion for money market accounts where we didn't require a minimum balance, we have had tons of accounts that people opened and never did anything with. If the account goes dormant, I want to convert it to a non-interest bearing account and I want to impose a fee of \$5.00 per month while it is dormant. What do you think?

**Blunder:** You can't convert a consumer's interest-bearing account to a non-interest bearing account just because it's dormant. The Commentary to Reg DD says "Institutions must pay interest on funds in an account, even if inactivity or the infrequency of transactions would permit the institution to consider the account to be "inactive" or "dormant" (or similar status) as defined by state or other law or the account contract." If you're going to impose a fee for checks that have bad MICR lines, be sure you come up with a clear way to describe it in your disclosures and give the requisite advance notice.

CISSY: I think those are great ideas. If we can start identifying the transactions and accounts that would be impacted, we can start racking up the fee income this week. Christmas bonuses, here we come!

**Blunder:** If these are consumer accounts, you can't impose any new fees until you have provided a change in terms notice at least 30 days in advance under Regulation DD.

TRUDY TELLER: I had the most interesting thing happen to me today. A guy came in to open an account. He filled out the application and handed it to me, along with his deposit. Then I got some sort of weird alert on our software. Something about OFAC. I didn't know what it was, but he sure seemed to. He said he didn't want to burden me, so he just took his deposit back and decided not to open the account after all. I thought that was awfully thoughtful.

**Blunder:** Once the bank has possession of a deposit being made by an individual or entity that is subject to blocking under OFAC, it must freeze those funds. It cannot give them back.

CISSY: I wish they were all that easy.