

Compliance Update



COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

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Are You \$1B Sure Your OFAC Program is Safe & Sound?

By Dee Bedell, CRCM; Consultant

Within a few weeks, two financial institutions with operations in the U.S. and other countries may have thought they had adequate OFAC programs until several agencies, including the U. S. Treasury Department and the bank’s primary regulators, imposed hefty fines and penalties for their unsafe and unsound practices.

Standard Chartered Bank

Standard Chartered Bank has agreed to settle its civil liabilities with various U.S. federal, state, and local authorities – including the Office of Foreign Assets Control (OFAC) – as well as the U.K.’s Financial Conduct Authority, for numerous alleged violations of a variety of sanctions programs involving the now-repealed Burmese Sanctions Regulations, the Cuban Assets Control Regulations, the Iran Transactions and Sanctions Regulations, the Sudanese Sanctions Regulations, and the Syrian Sanctions Regulations. The fines and penalties total approximately \$1.1 billion.

UniCredit

Then three weeks later, OFAC and the Federal Reserve Board announced that they, in coordination with actions by the Department of Justice, the Office of the U.S. Attorney for the District of Columbia, the New York County District Attorney's Office, and the New York Department of Financial Services, have imposed approximately \$1.3 billion in civil money penalties and forfeitures on UniCredit, S.p.A., a foreign bank operating in the U.S. and headquartered in Italy, and two of its subsidiaries, in connection with the firm's unsafe and unsound practices related to inadequate sanctions controls and supervision of its subsidiary banks.

Mega vs. community bank perspective

We realize these are mega international banks and, if you read the specifics, you will see the obvious negligence and outright blatant disregard for the laws with one bank knowingly and willfully moving funds through the U.S. financial system on behalf of sanctioned entities, most of which was for an entity – the Islamic Republic of Iran Shipping Lines – that the U.S. government specifically prohibited from accessing the U.S. financial system.

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But let's focus on you, the community size banks. Have you checked your internal controls recently? If you believe the vendor system which you rely on will ensure failings such as these don't happen to you, you might want to double-check. We know of a widely used AML/OFAC vendor that requires its client banks to manually keep the sanction programs updated.

Sanctions programs & tools

OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

OFAC does not maintain a specific list of countries that U.S. persons cannot do business with. This is because U.S. sanctions programs vary in scope. Some are broad-based and oriented geographically (i.e., Cuba, Iran). Others are "targeted" (i.e., counter-terrorism, counter-narcotics) and focus on specific individuals and entities. These programs may encompass both broad prohibitions at the country level and more targeted sanctions. Due to the diversity among sanctions, OFAC advises visiting the "Sanctions Programs and Country Information" page on its website at www.treasury.gov/resource-center/sanctions for information on a specific program.

OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) has approximately 6,300 names connected with sanctions targets. OFAC also maintains other sanctions lists which have different associated prohibitions.

Many individuals and entities often move internationally and end up in locations where they would be least expected. Accordingly, U.S. persons are prohibited from dealing with SDNs regardless of location and all SDN assets are blocked. Entities that an SDN owns (defined as a direct or indirect ownership interest of 50 percent or more) are also blocked, regardless of whether that entity is separately named on the SDN List.

Because OFAC's programs are dynamic, it is very important to check OFAC's website regularly. Ensuring that your sanctions lists are current and you have complete information regarding the latest relevant program restrictions is both a best practice and a critical part of your due diligence responsibility.

To make it easier to comply with its sanctions regulations, OFAC now offers all of its non-SDN sanctions lists in a consolidated set of data files, "the Consolidated Sanctions List." In the future, if OFAC creates a new non-SDN style list, the office will add the new data associated with that list to these consolidated data files, if appropriate. While the consolidated sanctions list data files are not part of OFAC's SDN List, the records in these consolidated files may also appear on that list. □



Prepaid Rule Guide Updated

By Karen S. Clower, CRCM; Consultant

On April 26, 2019, the Consumer Financial Protection Bureau (CFPB) published version 3.1 of the Small Entity Compliance Guide to the Prepaid Rule. The revised guide updates previously issued resources to help prepaid account issuers submit account agreements using Collect, the CFPB's online channel for submissions.

Version 3.1 of the Small Entity Compliance Guide to the Prepaid Rule can be found at files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

The revisions, summarized below, incorporate technical specifications for submitting prepaid account agreements and agreement information to the CFPB.

Submitting to the CFPB

The submission requirement was effective April 1, 2019. By May 1, 2019, issuers must submit to the CFPB any prepaid account agreements that they offer as of April 1, 2019.

After April 1, 2019, issuers are required to make submissions to the CFPB on a rolling basis, meaning: the issuer must make submissions within 30 days after a triggering event. The triggering events are when an issuer:

- Offers a new prepaid account agreement
- Amends a prepaid account agreement, or
- Ceases to offer (or withdraws) a prepaid account agreement

There are two exceptions to the submission requirement. They are:

- De minimis exception. An issuer is not required to make submissions if the issuer has fewer than 3,000 “open prepaid accounts.” A prepaid account is an “open prepaid account” if it meets any of the following three criteria, regardless of whether the issuer considers the account inactive or if the prepaid account has been suspended temporarily: (1) there is an outstanding balance on the prepaid account, (2) a consumer can load funds to the prepaid account even if the prepaid account does not currently have a balance, or (3) a consumer can access credit from a covered separate credit feature in connection with the prepaid account.

If an issuer who previously qualified for the de minimis exception has 3,000 or more open prepaid accounts as of the last day of a calendar quarter, the issuer must begin making submissions to the CFPB no later than 30 days after the last day of the calendar quarter. It does not matter if the issuer had fewer than 3,000 open prepaid accounts during the calendar quarter.

If an issuer that previously made submissions to the CFPB qualifies for the de minimis exception, the issuer can either notify the CFPB that it is withdrawing the prepaid account agreements it previously submitted and then stop making submissions, or it can continue making rolling submissions to the CFPB as otherwise required.

- Product testing exception. An issuer is not required to make submissions about a particular prepaid account agreement if the agreement: (1) is offered as part of a product test offered to only a limited group of consumers for a limited period of time, (2) is used for fewer than 3,000 open prepaid accounts, and (3) is not offered other than in connection with such product test.

If a prepaid account agreement fails to meet any of these criteria as of the last day of a calendar quarter, the issuer must submit the prepaid account agreement to the CFPB no later than 30 days after the last day of that calendar quarter.

If a prepaid account agreement that the issuer previously submitted to the CFPB qualifies for the product testing exception, the issuer must continue to make submissions on a rolling basis with respect to that agreement until the issuer notifies the CFPB that the issuer is withdrawing the agreement.

Form and manner required for submissions

The CFPB’s Technical Specifications for Submitting Prepaid Agreements provide details regarding the form and manner for submitting these agreements. Issuers are required to submit prepaid account agreements and agreement information to the CFPB using the Collect website.

The Collect website can be accessed at collect.consumerfinance.gov/s/login/?startURL=%2Fs%2F&ec=302.

To register, submitters must complete and submit a registration form to Collect_Support@cfpb.gov. The Collect website registration form is available at www.consumerfinance.gov/data-research/prepaid-accounts/issuer-instructions/. Once submitters receive login credentials, they will be able to add, amend, or withdraw prepaid account agreements using the Collect website.

To further help issuers make submissions, the CFPB has published a number of guides and tools regarding the agreement submission process, which are available at www.consumerfinance.gov/data-research/prepaid-accounts/. □



CFPB Proposes HMDA Changes

By William J. Showalter, CRCM, CRP; Senior Consultant

The Consumer Financial Protection Bureau (CFPB) issued a notice of proposed rulemaking relating to Home Mortgage Disclosure Act (HMDA) coverage thresholds and partial exemptions, as well as an advance notice of proposed rulemaking relating to HMDA data points and coverage of certain business- or commercial-purpose loans.

Comments will be due to the CFPB by 30 days after the proposal is published in the *Federal Register*.

The agency also posted a summary of the proposed rulemaking and an unofficial, informal redline of the proposed amendments to Regulation C, which implements HMDA, to assist industry and other stakeholders in reviewing the proposed changes.

Background

Regulation C includes institutional and transactional coverage thresholds that determine whether financial institutions are required to collect, record, and report any HMDA data on closed-end mortgage loans or open-end lines of credit (collectively, coverage thresholds). In the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Congress added partial

exemptions from HMDA's requirements that exempt certain insured depository institutions and insured credit unions from reporting some but not all HMDA data for certain transactions.

This proposed rule both adjusts Regulation C's institutional and transactional coverage thresholds and implements the new, separate EGRRCPA partial exemptions.

Proposed rule

The CFPB is proposing two alternatives to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans so that institutions originating fewer than either 50 closed-end mortgage loans, or alternatively 100 closed-end mortgage loans, in either of the two preceding calendar years would not have to report such data as of January 1, 2020.

The proposed rule would also adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit and setting the threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold.

The agency is also proposing to incorporate into Regulation C the interpretations and procedures from the interpretive and procedural rule that it issued on August 31, 2018, and to further implement section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

The proposed rule is available at files.consumerfinance.gov/f/documents/cfpb_nprm-hmda-regulation-c.pdf.

The summary of the proposal can be read at files.consumerfinance.gov/f/documents/cfpb_hmda-regulation-c_summary-2019-proposed-amendments.pdf.

In addition, the CFPB is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the proposed changes, and it can be found on the agency's regulatory implementation page for the HMDA Rule at www.consumerfinance.gov/policy-compliance/guidance/hmda-implementation/.

ANPR on HMDA data points & coverage

The CFPB is also issuing an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments relating to whether to make changes to the data points that the agency's October 2015 final rule added to Regulation C or revised to require additional information. Additionally, the agency is issuing the ANPR to solicit comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C.

The ANPR may be read at files.consumerfinance.gov/f/documents/cfpb_anpr_home-mortgage-disclosure-regulation-c-data-points-and-coverage.pdf. □



Compliance Q&A

The following questions and answers (Q&A) are drawn from questions asked by bankers calling our Compliance Hot Line. Please note that Young & Associates, Inc., is not engaged in the practice of law. The answers given here apply to individual situations that may differ from one institution to another. The advice of legal counsel should be sought on specific situations.

TILA/RESPA. Q: We are getting involved in a new loan product for Jumbo loans, and doing a new product set up on our LOS system. This product will involve large residential loans to be sold on the secondary market. One of the fees involved is a \$225 delivery fee (payable to the investor and is an underwriting/processing fee). The borrower will not be able to shop for this service. Where would this fee appear on the Loan Estimate and Closing Disclosure? Also, would this be a pre-paid finance charge?

A: This fee would go in the "Origination Charges" section on the LE and CD (on each disclosure under Closing Cost Details, Loan Costs on pg. 2).

This fee is definitely a finance charge and, since it will be paid in cash/check by the borrower before/at closing or withheld from the proceeds at any time, it is a "prepaid finance charge."

BSA. Q: We had a business customer deposit \$4,000.00 in cash on one day. On the same day, they also withdrew \$7,500.00 in cash from their account. Should we file a currency transaction report because together the cash in and cash out exceed \$10,000.00?

A: No, a CTR is not required in this case. The trigger for filing a CTR is over \$10,000 in currency going in the same direction – either in or out. You are not required to total cash deposits with cash withdrawals during a particular business day – just total deposits with deposits, and withdrawals with withdrawals, and both with cash/currency exchanges (where you have currency both coming in and going out).

MLA. Q: Is the bank allowed to exercise its right of set-off for a loan covered by the MLA rule?

A: Yes. According to Q&A #18 in the Interpretive Rule that the Department of Defense issued in August 2016, lenders may exercise a “statutory right” to take a security interest in funds deposited into a covered borrower’s account, which means banks may apply a statutory right of set-off.

EFTA. Q: A customer has notified us both verbally and in writing on October 5 that her daughter took her debit card without her authorization. Her daughter completed several point of sale (POS) transactions, starting on September 29 through October 5. She stated in her comments that the card has been missing for almost two weeks. Evidently, she has kept the card locked up at home with the PIN, which her daughter found.

Her daughter also performed three automated teller machine (ATM) withdrawals on September 29 (two transactions) and October 3 (one transaction).

She had the card in her possession on September 24 and then locked it up with the PIN. On September 26, she went to get it and it was not there.

We have cancelled the card so that there can be no more transactions made. I am trying to figure out if the bank owes her anything. The POS transactions totaled \$163.26 and the ATM transactions \$110.50.

A: Regulation E is very pro-consumer, but does place some responsibility on the customer to notify the bank promptly, which your customer did not. When notice is not given to the bank within two business days of discovery of the loss/theft of an access device, then the bank may hold the customer liable for up to \$500 – or the sum of \$50 (or amount of unauthorized electronic fund transfers/EFTs within two business days after learning of the theft/loss, if less than \$50) plus the amount of unauthorized EFTs occurring after the first two business days and before the bank is notified – whichever is less.

Your customer discovered that the card was missing on September 26. The first unauthorized transactions were on September 29, the third business day after discovery. The unauthorized EFTs (POS and ATM) total \$273.76.

So, you do not have to consider the \$50 limit for the first two business days since no unauthorized EFTs occurred then. The rest were after the first two business days, so they are subject to the \$500 limit. That means that Regulation E does not require the bank to refund anything to this customer because of her late notice to the bank – on October 5 instead of by September 28.

TILA. Q: Our borrower is purchasing a lot. If we issue a Loan Estimate (LE) today, what is the earliest we can close this loan?

A: The lender must make sure the LE is in the customer’s hands (not just placed in the mail) “not later than the seventh business day before consummation of the transaction.” So, the earliest the loan may close is the seventh (7) business day after delivery (in the borrower’s hands) of the LE.

If you just put the LE in the mail, then the earliest the loan may be closed would be on the tenth (10) business day after putting it in the mail. This is because you have to wait until the third (3) business day after putting the LE in the mail to presume receipt/delivery. Then, consummation may occur on the seventh business day after that. The seven-business-day count begins when the LE is verified to be in the borrower’s hands – through hand delivery or some other means.

In addition, do not forget to deliver the Closing Disclosure to the borrower (into their hands) no later than the third business day before closing/consummation. So, if the LE was in the borrower’s hands today, then the CD should be in their hands no later than the fourth business day after today, so the closing can proceed on the seventh business day after today.



Federal Deposit
Insurance Corporation
<http://www.fdic.gov>

Office of the Comptroller of the
Currency
<http://www.occ.gov>

Federal Reserve
<http://www.federalreserve.gov>

Housing and Urban
Development
<http://www.hud.gov>

Federal Financial Institutions
Examination Council
<http://www.ffiec.gov>

U.S. Department of Treasury
<http://www.treas.gov>

Financial Crimes Enforcement
Network
<http://www.fincen.gov>

Consumer Financial Protection
Bureau
<http://www.consumerfinance.gov>

EFTA. Q: We have a home equity line that the draw period has ended and is now in repayment. The customer is unable to make the payments so we will do a workout with them. My question is with a workout are we allowed to require automatic payments? I know Regulation E states this is prohibited as a condition of a loan but what about when you do a modification and workout plan?

A: No, there is no exception from the compulsory use prohibition for a workout loan. You can give the customer a rate incentive for using automatic payment, as long as there is an option (not at a reduced rate) for not using the automatic payment option.

ECOA. Q: If we have a loan application that we did not make a credit decision on and the customer decides not to go through with it (withdraws), do we have to send a notice letting the customer know we are closing the file?

A: No, Regulation B does not require any notice be sent to an applicant who withdraws their application, before or after a credit decision is made. Some lenders do so to document the outcome of the application, but it is not required. Just noting “withdrawn (date)” on the application and supporting documents that the bank retains is sufficient from a compliance standpoint. □

Compliance Calendar

This calendar is designed to help you address current and upcoming requirements related to compliance with federal consumer protection and other select rules. The calendar is not intended as general advice on when to perform ongoing compliance management functions, but as a reminder of due dates for completing these tasks. And, as always, consult the particular law or regulation for details on coverage, etc.

July 2019

- Lenders may begin using redesigned Uniform Residential Lending Application (URLA) form on July 1, 2019.
- Final rule regarding use of private flood insurance policies effective July 1, 2019.
- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2019 by July 31, 2019.
- Update FHHLDS home loan activity format with second calendar quarter 2019 data by July 31, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

September 2019

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2019) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2019.

October 2019

- Update HMDA-LAR with loans and applications that reached final disposition in third calendar quarter 2019 by October 30, 2019.
- Update FHHLDS home loan activity format with third calendar quarter 2019 data by October 30, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

November 2019

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2019.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 3, 2019 (e.g., EST, CST, etc.).

December 2019

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2019.

January 2020

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2019 by January 31, 2020.
- Update FHHLDS home loan activity format with fourth calendar quarter 2019 data by January 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2020

- Lenders must begin using the updated URLA form on February 1, 2020 for all new applications (to be sold on the secondary market). Also, Pipeline Loan Transition Period begins for older loans (typically construction loans) with an application received date prior to 2/1/2020 – allowing lenders to complete processing of such loans with old forms 1003.

March 2020

- 2019 HMDA LAR must be submitted to the CFPB by March 1, 2020.
- 2019 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2020 (except “small banks”).
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 8, 2020 (e.g., EDT, CDT, etc.).

April 2020

- Update information in CRA public file by of April 1, 2020.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2020 by April 30, 2020.
- Update FHHLDS home loan activity format with first calendar quarter 2020 data by April 30, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2020

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2020 by July 31, 2020.
- Update FHHLDS home loan activity format with second calendar quarter 2020 data by July 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

September 2020

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2020) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2020.

November 2020

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2020.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 1, 2020 (e.g., EST, CST, etc.).

December 2020

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2020.

January 2021

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.
- Update FHHLDS home loan activity format with fourth calendar quarter 2020 data by January 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2021

- Fannie Mae and Freddie Mac will no longer accept loans with the old form 1003 application.

March 2021

- 2020 HMDA LAR must be submitted to the CFPB by March 1, 2021.
- 2020 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2021 (except “small banks”).
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 14, 2021 (e.g., EDT, CDT, etc.).

April 2021

- Update information in CRA public file by of April 1, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2021.
- Update FHHLDS home loan activity format with first calendar quarter 2021 data by April 30, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2021

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2021 by July 31, 2021.
- Update FHHLDS home loan activity format with second calendar quarter 2021 data by July 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].