

Compliance Journal

Special Focus

Welcome Back, Old Friend – Section 8 of RESPA is a Hot Topic Again

Section 8 of the Real Estate Settlement Procedures Act (RESPA)¹ – the prohibition against kickbacks and unearned fees – is back and compliance officers are taking note. In the last year, we have seen a significant increase in RESPA section 8 questions, many of which involve a determination as to whether certain marketing activities are permissible. This is due, in part, to evolving technology which provides a platform to facilitate marketing relationships between settlement service providers, along with recent regulatory and case law developments. Some of these arrangements are simple, while others extraordinarily complex. Either way, I sense bit of panic from compliance officers any time there's a new opportunity to market the institution's mortgage area that may implicate RESPA (and for good reasons – penalties and reputation to name a couple!). Not all these arrangements are problematic, especially in light of the recent PHH decision and developments out of the Consumer Financial Protection Bureau (CFPB), but some arrangements should still make your ears perk up.

So, how do we analyze whether a marketing opportunity presents a RESPA Section 8 issue? Let's discuss.

When we consider marketing activities under RESPA, there are two primary provisions of RESPA Section 8 that are relevant to our analysis: (1) Section 8(a) which delineates prohibited activity,² and (2) Section 8(c) which prescribes permissible activities.

Sections 8(a)– Prohibited Activity

The first is Section 8(a) of RESPA which prohibits illegal kickbacks – the giving or receiving of a “thing of value” for referrals made between settlement service providers. Specifically, Section 8(a) prohibits any person from giving or accepting any fee, kickback, or thing of value pursuant to an agreement or understanding for the referral of a settlement service involving a federally related mortgage loan (a.k.a. consumer mortgage loans).³ There are three elements to an illegal kickback under Section 8(a):

1. A “thing of value” – for example, money, defrayed costs, special contract terms, a promise to provide future referrals, and things (such as sporting event tickets or office supplies);
2. An “agreement or understanding”, whether oral, written, or established by practice; and
3. A “referral”, which is defined in two ways: (a) oral or written action that has the effect of affirmatively influencing selection of a settlement service provider, or (b) when a person is required to use a particular settlement service provider.

All of these components must be present to be considered a prohibited activity under RESPA. Thus, when a potential RESPA-implicating opportunity presents itself, each of these components must be analyzed in detail.

Section 8(c) of RESPA – Permissible Activity

Notwithstanding the prohibitions in Sections 8(a), the second relevant provision, contained in Section 8(c) of RESPA, sets forth *permissible* activity. Relevant here, RESPA specifically permits the following:

¹ 12 U.S.C. § 2607. Implementing Regulation X is codified at 12 C.F.R. § 1024.14.

² Note that section 8(b) prohibits the giving or accepting of a “portion, split, or percentage of any charge made or received” for rendering settlement services other than for services actually performed. In other words, institutions cannot share a portion of or split fees with other settlement service providers when rendering settlement services unless the payment given/received is for “services actually performed”. Though a very important component of RESPA to understand, this provision is not often relevant in the marketing context.

³ 12 U.S.C. § 2607(a) and 12 C.F.R. § 1024.14(b).



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- “normal promotional or educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred...”;⁴ and
- “payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.”⁵

These permissible activity exceptions are generally relied upon in order to create relationships between settlement services providers (e.g. the institution and a realtor).

Importantly, there are some general principles that have developed over time, via administrative interpretations, case law, and enforcement actions that must be true in order for the marketing activity to be permissible pursuant to one of these exceptions:

- Services must *actually* be performed or goods must *actually* be provided. For example, advertising must actually be provided. Any payment for advertising that does not actually occur will be considered an unlawful kickback.
- The payment for such services or goods must be bona fide. That is, payment must be reasonable market value. Any excess payment above reasonable market value will be seen as an illegal kickback.⁶

Now, assuming the marketing activity meets the parameters of one of the Section 8(c) exceptions, the activity receives a “safe harbor” from a RESPA Section 8 violation. Note, however, that the “safe harbor” rule was not the prevailing opinion of the CFPB under the reign of Director Richard Cordray, which was a significant departure from previous, longstanding interpretations of RESPA under the Department of Housing and Urban Development (HUD). However, in perhaps one of the most contentions of RESPA cases in recent history, *PHH Corporation v. Consumer Financial Protection Bureau*,⁷ the Court of Appeals for the D.C. Circuit confirmed that Section 8(c) of RESPA provides a safe harbor so long as the activity meets the parameters of the Section 8(c) exceptions.

Analysis When Considering Marketing Opportunities

With that RESPA background in mind, if your institution is considering a marketing opportunity involving federally related mortgage loans, I suggest engaging in the following analysis:

- (1) Might this be deemed a prohibited activity under RESPA Section 8(a) or 8(b)?
 - a. That is, could this be considered an illegal kickback under Section 8(a) in that all three elements are present, as described above and restated here:
 - i. A “thing of value”;
 - ii. An “agreement or understanding”; and
 - iii. A “referral”
 - b. Or, is this impermissible fee splitting under 8(b)?
 - i. Though not often arising in the marketing context and, consequently, not thoroughly discussed herein, the institution should consider applicability

If NO, that’s the end of your analysis – no Section 8 concern

If MAYBE or YES, continue to (2) and (3).

4 12 C.F.R. § 1024.14(g)(1)(vi).

5 12 C.F.R. § 1024.14(g)(1)(iv).

6 See *PHH Corporation v. Consumer Financial Protection Bureau*, 839 F.3d 1 at 41 (D.C. Cir. 2016).

7 839 F.3d 1 (D.C. Cir. 2016). The court’s interpretation of RESPA was upheld by a petition for rehearing en banc by the D.C. Circuit Court of Appeals. *PHH*, No. 15-1177 (Jan. 31, 2018).

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- (2) Is the activity “saved” by the Section 8(c) educational and marketing exception; or
- (3) Is the activity “saved” by the Section 8(c) “bona fide payment for services actually performed” exception?

Let’s take a couple of common marketing opportunities and run through the analysis:

Hosting a Complementary Educational Seminar for Settlement Service Providers

If an institution chooses to host a complementary educational seminar for real estate professionals, such an event may be considered to violate Section 8(a) of RESPA because it’s certainly the provision of a “thing of value” provided in hopes of generating business (or, in other words, referrals from those settlement service providers). In fact, previous HUD Guidance states that such educational events implicitly positions settlement service providers to refer business to the institution. We can question whether there is an “agreement or understanding”, but let’s just assume that the conduct is indicative of such. The question then becomes whether this can be redeemed by the “normal promotional and marketing” exception under 8(c).

Whether an educational seminar meets the safe harbor exception is very much dependent upon the facts and circumstances at hand. Consider the following:

- Is the event in any way conditioned on past, present, or future referrals of business? For example, does the institution provide an incentive for attendees to refer business back to the institution? Or, does the institution only invite settlement service providers that have previously referred business to the institution? If so, the safe harbor is unlikely to be met.
 - *Note that who is invited can make a difference here. The more “open” the attendance list (e.g. not just settlement services providers located near your branches or those who have previously referred business your way), the more likely the seminar is to pass muster.*
- Does the seminar defray costs of the attendees? For example, if the seminar provides a course required to receive or maintain licensure, that would be defraying a cost ordinarily incurred and would be, consequently, unlawful.

The most challenging aspect here is to remain referral-neutral. Pay careful to this component in your analysis.

Advertising with a Realtor

Recently, a number of institutions have been given the opportunity to advertise their services on a realtor’s website or jointly advertise with a realtor on a separate platform (e.g. Zillow). I think we could all agree that this is prohibited activity under Section 8(a). Thus, we turn to whether it can be saved under either of the relevant Section 8(c) exceptions delineated above.

Of course, facts matter here. The following should be considered:

- Is the advertising conditioned on past, present, or future referrals of business? For example, if the institution and the realtor enter into a contractual arrangement for direct advertising, does the agreement discuss future business or incentives for referrals? Pay close attention to contract language, if a contract exists, and remain referral-neutral in order to meet the exception.
- Is the institution paying for the advertising? If the advertising is free, this will not meet the exception as the institution’s costs will be defrayed.
- Is the institution paying reasonable market value for the advertising? Assuming the institution is paying for the advertising, is the institution paying reasonable market value? Remember, any payment above reasonable market value will be seen as an illegal kickback.

One of the challenges with meeting these relevant Section 8(c) exceptions is to get the fee structure exactly right. If the institution is obtaining free advertising or is receiving “below market rate” advertising, you run the risk of receiving “defrayed costs” or not making a bona fide payment for the advertising. In contrast, if you pay above market rate, the portion of the payment above market rate kicks you back into prohibited activity under Section 8(a). To this end, we always suggest drafting a business justification to demonstrate that the fee paid is fair market value and maintaining it in your files. To determine market value, we suggest considering the following:



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- a. Look internally for evidence of similar transactions (e.g. is the price similar to the institution's other advertising costs for the type of media, duration, etc.);
- b. Look externally to determine if the price is consistent with the price third parties would incur for similar services (e.g. other financial institutions in the area); and
- c. Management should exercise its best judgment based on the internal and external evidence.

Furthermore, you should be especially careful when navigating joint marketing arrangements when a third party is involved. For example, Zillow offers lenders and real estate agents the opportunity to jointly advertise via the Zillow online platform. In this program, Agent invites up to five lenders to jointly market with Agent. Lender then pays Zillow for the opportunity to advertise with Agent. The advertising fees paid by lender, in turn, reduce the amount the Agent pays Zillow for Agent's advertising. The more the lender spends, the more often the lender is featured (versus other lenders with whom the Agent advertises). Though this program was being investigated by CFPB for violations of RESPA Section 8 and UDAAP, the investigation quietly concluded and Zillow announced in a June 2018 SEC filing that the company had received a letter from the Bureau indicating that it would not be pursuing enforcement action.

The Zillow case is comforting to institutions inasmuch as the CFPB validated that these types of marketing arrangements can lawfully exist. However, they do not come without scrutiny. In these types of arrangements, institutions should pay considerable attention to how the fee structure flows through the parties, in addition to the considerations above. In my experience, these arrangements can be incredibly complex and always invite risk. It's prudent to get legal counsel involved before agreeing to participate in this kind of arrangement.

To conclude, RESPA Section 8 questions can be complex, rife with competing interpretations from HUD, CFPB and the courts, and require wading through uncharted waters with ever-changing leadership at the CFPB. Given that penalties are steep, as permitted by statute – recent RESPA CFPB enforcement actions have imposed penalties ranging from \$35,000 to \$265,000 and the amount at issue in the PHH case was \$109 million – these questions deserve attention, thorough analysis, and often times, involvement of counsel.

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Regulatory Spotlight

Agencies Request Comment on Information Collection.

- The Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) announced they seek comment on the information collection titled Regulation I: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance. The agencies also gave notice that they sent the collection to OMB for review. Comments are due **10/28/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18606.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45491-45494.
- The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) announced they seek comment on the information collection titled Country Exposure Report and Country Exposure Information Report. The agencies also gave notice that they sent the collection to OMB for review. Comments are due **10/09/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19369.pdf>. *Federal Register*, Vol. 84, No. 174, 09/09/2019, 47264.

CFPB Requests Comment on Information Collections.

- CFPB announced it seeks comment on the information collection titled Regulation I: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance. CFPB also gave notice that it sent the collection to OMB for review. Comments are due **09/23/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-23/pdf/2019-18249.pdf>. *Federal Register*, Vol. 84, No. 164, 08/23/2019, 44289-44290.



Regulatory Spotlight

- CFPB announced it seeks comment on the information collection titled Generic Information Collection Plan for the Collection for Qualitative Consumer Education, Engagement and Experience Information Collections. CFPB also gave notice that it sent the collection to OMB for review. Comments are due **09/25/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-26/pdf/2019-18251.pdf>. *Federal Register*, Vol. 84, No. 165, 08/26/2019, 44603-44604.
- CFPB announced it seeks comment on the information collection titled Truth In Lending Act (Regulation Z). CFPB also gave notice that it sent the collection to OMB for review. Comments are due **09/25/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-26/pdf/2019-18252.pdf>. *Federal Register*, Vol. 84, No. 165, 08/26/2019, 44604-44605.
- CFPB announced it seeks comment on the information collection titled Generic Information Collection Plan for Surveys Using the Consumer Credit Panel. CFPB also gave notice that it sent the collection to OMB for review. Comments are due **11/04/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18933.pdf>. *Federal Register*, Vol. 84, No. 170, 09/03/2019, 45998-45999.
- CFPB announced it seeks comment on the information collection titled Truth in Savings. CFPB also gave notice that it sent the collection to OMB for review. Comments are due **11/08/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19385.pdf>. *Federal Register*, Vol. 84, No. 174, 09/09/2019, 47264.

FRB Finalizes Amendments to Regulation A.

The Board of Governors of the Federal Reserve System (FRB) has adopted final amendments to its Regulation A to reflect FRB's approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of FRB's primary credit rate action. The amendments are effective **08/12/2019**. The rate changes for primary and secondary credit were applicable on **08/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-12/pdf/2019-17173.pdf>. *Federal Register*, Vol. 84, No. 155, 08/12/2019, 39723-39724.

FRB Finalizes Amendments to Regulation D.

FRB is amending Regulation D to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (IORR) and the rate of interest paid on excess balances (IOER) maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 2.10 percent and IOER is 2.10 percent, a 0.25 percentage point decrease from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (FOMC). The amendments are effective **08/12/2019**. The IORR and IOER rate changes were applicable on **08/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-12/pdf/2019-17175.pdf>. *Federal Register*, Vol. 84, No. 155, 08/12/2019, 39724-39725.

FRB Issues Correction to Availability of Funds and Collection of Checks.

FRB published a final rule in the *Federal Register* on **07/03/2019** amending Regulation CC, which implements the Expedited Funds Availability Act (EFA Act), to implement a statutory requirement in the EFA Act to adjust the dollar amounts under the EFA Act for inflation, incorporate the Economic Growth, Regulatory Relief, and Consumer Protection Act and made certain other technical amendments. The notice corrects errors in amendatory instructions affecting FRB's rules. The correction is effective **07/01/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18658.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45403.

FRB Requests Comment on Information Collections.

- FRB announced it seeks comment on the information collection titled Reporting and Disclosure Requirements Related to Securities of State Member Banks as Required by Regulation H. FRB also gave notice that it sent the collection to OMB for review. Comments are due **10/11/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-12/pdf/2019-17185.pdf>. *Federal Register*, Vol. 84, No. 155, 08/12/2019, 39845-39847.
- FRB announced it seeks comment on the information collection titled Interchange Transaction Fees Survey. FRB also gave notice that it sent the collection to OMB for review. Comments are due **10/11/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-12/pdf/2019-17186.pdf>. *Federal Register*, Vol. 84, No. 155, 08/12/2019, 39847-39849.



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- FRB announced it seeks comment on the information collection titled Notice of Mutual Holding Company Reorganization, Application for Approval of a Stock Issuance by a Subsidiary Holding Company of a Mutual Holding Company, Application for Conversion of a Mutual Holding Company to Stock Form, Proxy Statement, Offering Circular, and Order Form. FRB also gave notice that it sent the collection to OMB for review. Comments are due **10/11/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-12/pdf/2019-17190.pdf>. *Federal Register*, Vol. 84, No. 155, 08/12/2019, 39841-39843.
- FRB announced it seeks comment on the information collection titled Savings Association Holding Company Report. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19445.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47514-47516.
- FRB announced it seeks comment on the information collection titled Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19446.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47507-47509.
- FRB announced it seeks comment on the information collection titled Transfer Agent Registration and Amendment Form. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19447.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47512-47513.
- FRB announced it seeks comment on the information collection titled Notice of Branch Closure. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19489.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47516-47517.
- FRB announced it seeks comment on the information collection titled Payments Research Survey. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19490.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47511-47512.
- FRB announced it seeks comment on the information collection titled Banking Organization Systemic Risk Report. FRB also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19522.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47509-47511.

FDIC Proposes Amendments to Securitization Safe Harbor Rule.

The Federal Deposit Insurance Corporation (FDIC) is proposing a rule that would revise certain provisions of its securitization safe harbor rule, which relates to the treatment of financial assets transferred in connection with a securitization or participation transaction, in order to eliminate a requirement that the securitization documents require compliance with Regulation AB of the Securities and Exchange Commission in circumstances where Regulation AB by its terms would not apply to the issuance of obligations backed by such financial assets. Comments are due **10/21/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-22/pdf/2019-15536.pdf>. *Federal Register*, Vol. 84, No. 163, 08/22/2019, 43732-43737.

FDIC Proposes Removal of Transferred OTS Regulation Regarding Deposits.

FDIC proposes to rescind and remove the “Deposits” regulations because they are unnecessary and duplicative of currently applicable provisions of law with respect to the maintenance of deposit account records at State savings associations. These regulations apply solely to State savings associations, and were included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on **07/21/2011**, in connection with the implementation of title III of the DoddFrank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Comments are due **09/25/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-26/pdf/2019-18268.pdf>. *Federal Register*, Vol. 84, No. 165, 08/26/2019, 44558-44563.



Regulatory Spotlight

FDIC Proposes Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized.

FDIC issued proposed revisions to its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions. Under the proposed rule, the FDIC would amend the methodology for calculating the national rate and national rate cap for specific deposit products. The national rate would be the weighted average of rates paid by all insured depository institutions on a given deposit product, for which data are available, where the weights are each institution's market share of domestic deposits. The national rate cap for particular products would be set at the higher of the 95th percentile of rates paid by insured depository institutions weighted by each institution's share of total domestic deposits, or the proposed national rate plus 75 basis points. The proposed rule would also greatly simplify the current local rate cap calculation and process by allowing less than well capitalized institutions to offer up to 90 percent of the highest rate paid on a particular deposit product in the institution's local market area. Comments are due **11/04/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-04/pdf/2019-18360.pdf>. *Federal Register*, Vol. 84, No. 171, 09/04/2019, 46470-46495.

FDIC Issues Notice on Terminations of Receiverships.

FDIC as Receiver for former depository institutions, intends to terminate its receivership for the institutions listed in the notice. The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201. No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18552.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45491.

FDIC Requests Comment on Information Collections.

FDIC announced it seeks comment on the information collection titled Interagency Charter and Federal Deposit Insurance Application. FDIC also gave notice that it sent the collection to OMB for review. Comments are due **09/26/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-27/pdf/2019-18414.pdf>. *Federal Register*, Vol. 84, No. 166, 08/27/2019, 44895.

OCC Finalizes Assessment of Fees.

The Office of the Comptroller of the Currency (OCC) is adopting a final rule to revise its assessment rule to provide partial assessment refunds to national banks, Federal savings associations, and Federal branches and agencies of foreign banks (collectively, banks under the jurisdiction of the OCC) that exit the OCC's jurisdiction within the first half of each six-month period beginning the day after the date of the second or fourth quarterly Consolidated Report of Condition and Income (Call Report). The final rule will not change the current payment due dates for assessments nor will it change the way assessments are calculated for banks that remain under the OCC's jurisdiction. The final rule will also make technical changes to the assessment rules. The final rule is effective **09/20/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-21/pdf/2019-17535.pdf>. *Federal Register*, Vol. 84, No. 162, 08/21/2019, 43475-43479.

OCC Requests Comment on Information Collections.

- OCC announced it seeks comment on the information collection titled Bank Secrecy Act/Money Laundering Risk Assessment. OCC also gave notice that it sent the collection to OMB for review. Comments are due **09/23/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-23/pdf/2019-18158.pdf>. *Federal Register*, Vol. 84, No. 164, 08/23/2019, 44352-44353.
- OCC announced it seeks comment on the information collection titled Guidance Regarding Unauthorized Access to Customer Information. OCC also gave notice that it sent the collection to OMB for review. Comments are due **09/23/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-23/pdf/2019-18159.pdf>. *Federal Register*, Vol. 84, No. 164, 08/23/2019, 44354-44355.



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- OCC announced it seeks comment on the information collection titled Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities. OCC also gave notice that it sent the collection to OMB for review. Comments are due **11/04/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-04/pdf/2019-18992.pdf>. *Federal Register*, Vol. 84, No. 171, 09/04/2019, 46604-46606.
- OCC announced it seeks comment on the information collection titled Securities Exchange Act Disclosure Rules. OCC also gave notice that it sent the collection to OMB for review. Comments are due **10/10/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19516.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47631-47632.

HUD Finalizes Rule on Project Approval for Single-Family Condominiums.

The Department of Housing and Urban Development (HUD) finalized a rule implementing HUD's authority under the single-family mortgage insurance provisions of the National Housing Act to insure one-family units in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semidetached, or detached, and an undivided interest in the common areas and facilities which serve the project. The rule provides for requirements for lenders to obtain approval under the Direct Endorsement Lender Review and Approval Process (DELRAP) authority for condominiums, and for standards that projects must meet to be approved for mortgage insurance on individual units. The rule provides for flexibility with respect to the concentration of Federal Housing Administration (FHA)-insured units, owner-occupied units, and the amount that can be set aside for commercial and non-residential space. This will enable HUD to vary these standards, within parameters, to meet market needs. The final rule is effective **10/15/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-15/pdf/2019-17213.pdf>. *Federal Register*, Vol. 84, No. 158, 08/15/2019, 41846-41877.

HUD Proposes Amendments to Disparate Impact Standard.

HUD proposes to amend its interpretation of the Fair Housing Act's disparate impact standard to better reflect the Supreme Court's 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, and to provide clarification regarding the application of the standard to State laws governing the business of insurance. The proposal follows a **06/20/2018**, advance notice of proposed rulemaking, in which HUD solicited comments on the disparate impact standard set forth in HUD's 2013 final rule, including the disparate impact rule's burden-shifting approach, definitions, and causation standard, and whether it required amendment to align with the decision of the Supreme Court in *Inclusive Communities Project, Inc.* Comments are due **10/18/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-19/pdf/2019-17542.pdf>. *Federal Register*, Vol. 84, No. 160, 08/19/2019, 42854-42863.

HUD Issues Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols.

HUD issued a notice that it will be demonstrating the National Standards for the Physical Inspection of Real Estate (NSPIRE), which will further one of HUD's highest priority strategic outcomes—resident health and safety. HUD is looking at the implementation of NSPIRE as an opportunity to reduce regulatory burden through alignment and consolidation compared to either maintaining or increasing the number of standards and protocols to evaluate HUD-assisted housing across multiple programs. During this demonstration, HUD will solicit volunteers to test the NSPIRE standards and protocols as the means for assessing the physical conditions of HUD-assisted and -insured housing. The demonstration, which will include approximately 4,500 properties, will be implemented on a rolling, nationwide basis and will assess all aspects of the physical inspection line of business of the Real Estate Assessment Center—the collection, processing, and evaluation of physical inspection data and information, including a new scoring model. As the first step in the implementation of NSPIRE, HUD is soliciting comment on this proposed, voluntary demonstration. HUD will consider the comments and incorporate them into the demonstration. Subjecting the NSPIRE model to a multistage demonstration will serve as an opportunity to refine processes and ensure all mechanisms are in place to facilitate the transition to a nationwide implementation. The demonstration will also serve as the precursor to any required rulemaking. Comments are due **10/21/2019**, the notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-21/pdf/2019-17910.pdf>. *Federal Register*, Vol. 84, No. 162, 08/21/2019, 43536-43542.



Regulatory Spotlight

HUD Requests Comment on Information Collection.

- HUD announced it seeks comment on the information collection titled FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by FHA-Approved Lenders. HUD also gave notice that it sent the collection to OMB for review. Comments are due **09/13/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17453.pdf>. *Federal Register*, Vol. 84, No. 157, 08/14/2019, 40435-40437.
- HUD announced it seeks comment on the information collection titled Multifamily Mortgagee's Application for Insurance Benefits. HUD also gave notice that it sent the collection to OMB for review. Comments are due **11/08/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19414.pdf>. *Federal Register*, Vol. 84, No. 174, 09/09/2019, 47315-47316.

FEMA Issues Final Flood Hazard Determinations.

The Federal Emergency Management Agency (FEMA) has issued a final notice which identifies communities in the state of **Wisconsin**, where flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in FEMA's National Flood Insurance Program (NFIP). The final notice is effective **12/09/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-28/pdf/2019-18550.pdf>. *Federal Register*, Vol. 84, No. 167, 08/28/2019, 45160-45162.

FEMA Issues Final Notices of Changes in Flood Hazard Determinations.

- FEMA issued new or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for communities in the states of **Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, and Wisconsin**. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents. The effective date for each LOMR is indicated in the table in the final notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-16/pdf/2019-17577.pdf>. *Federal Register*, Vol. 84, No. 159, 08/16/2019, 41996-42000.
- FEMA issued new or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for communities in the states of **Indiana, Michigan, and Minnesota**. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents. The effective date for each LOMR is indicated in the table in the final notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-16/pdf/2019-17578.pdf>. *Federal Register*, Vol. 84, No. 159, 08/16/2019, 41994-41996.
- FEMA issued new or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for communities in the states of **Minnesota, and Wisconsin**. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents. The effective date for each LOMR is indicated in the table in the final notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18691.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45511-45513.



Regulatory Spotlight

FEMA Issues Proposed Flood Hazard Determinations.

FEMA has requested comments on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for communities in the state of **Iowa**. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). Comments are due **11/27/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18695.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45509-45510.

FEMA Requests Comment on Information Collection.

FEMA announced it seeks comment on the information collection titled Community Disaster Loan (CDL) Program. FEMA also gave notice that it sent the collection to OMB for review. Comments are due **09/27/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-28/pdf/2019-18544.pdf>. *Federal Register*, Vol. 84, No. 167, 08/28/2019, 45162-45163.

FEMA Issues Correction to Revisions to Methodology for Payments to Write Your Own Companies.

FEMA corrects the preamble to an Advance Notice of Proposed Rulemaking (ANPRM) which FEMA published on **07/08/2019**, seeking comment regarding possible approaches to incorporating actual flood insurance expense data into the payment methodology that FEMA uses to determine the amount of payments to WYO companies. <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18982.pdf>. *Federal Register*, Vol. 84, No. 170, 09/03/2019, 45933-45934.

FinCEN Requests Comment on Information Collection.

The Financial Crimes Enforcement Network (FinCEN) announced it seeks comment on the information collection titled Renewal of Information Collection Requirements in connection with the Imposition of a Special Measure concerning North Korea as a Jurisdiction of Primary Money Laundering Concern. FinCEN also gave notice that it sent the collection to OMB for review. Comments are due **11/12/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19486.pdf>. *Federal Register*, Vol. 84, No. 175, 09/10/2019, 47632-47633.

Treasury Announces Pricing for 2019 Apollo 11 50th Anniversary Commemorative Coins.

The Department of the Treasury (Treasury) is announcing pricing for the 2019 Apollo 11 50th Anniversary Commemorative Coins and Kennedy/Apollo 11 Intaglio Prints. The notice contains a table containing the pricing. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-19/pdf/2019-17793.pdf>. *Federal Register*, Vol. 84, No. 160, 08/19/2019, 42991.

Treasury Issues Correction to Multiple Employer Plans.

Treasury issued a correction to a notice of proposed rulemaking that was published in the *Federal Register* on **07/03/2019**. The proposed regulations relate to the tax qualification of plans maintained by more than one employer. As published, the notice of proposed rulemaking contains errors which may prove to be misleading and need to be clarified. Comments are still being accepted and are due **10/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-21/pdf/2019-17849.pdf>. *Federal Register*, Vol. 84, No. 162, 08/21/2019, 43542-43543.

Treasury Requests Comment on Information Collection.

- Treasury announced it seeks comment on the information collection titled Supporting Statement of Ownership for Overdue United States Bearer Securities. Treasury also gave notice that it sent the collection to OMB for review. Comments are due **09/27/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-28/pdf/2019-18495.pdf>. *Federal Register*, Vol. 84, No. 167, 08/28/2019, 45217.
- Treasury announced it seeks comment on the information collection titled TreasuryDirect. Treasury also gave notice that it sent the collection to OMB for review. Comments are due **09/27/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-28/pdf/2019-18479.pdf>. *Federal Register*, Vol. 84, No. 167, 08/28/2019, 45216-45217.



Regulatory Spotlight

FASB Issues Interpretation of SFFAS 5 and SFFAS 6.

The Federal Accounting Standards Advisory Board (FASB) has issued Interpretation of Federal Financial Accounting Standards 9, Cleanup Cost Liabilities Involving Multiple Component Reporting Entities: An Interpretation of SFFAS 5 & SFFAS 6. The Interpretation is available on the FASB website at <https://www.fasab.gov/accounting-standards/>. Copies can be obtained by contacting FASB at (202) 512-7350. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-21/pdf/2019-18047.pdf>. *Federal Register*, Vol. 84, No. 162, 08/21/2019, 43599.

FASB Issues Exposure Draft of Technical Bulletin.

FASB issued an exposure draft of a proposed Technical Bulletin titled Loss Allowance for Intragovernmental Receivables. The exposure draft is available on the FASB website at <https://www.fasab.gov/documents-forcomment/>. Copies can be obtained by contacting FASB at (202) 512-7350. Comments are due **10/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-05/pdf/2019-19191.pdf>. *Federal Register*, Vol. 84, No. 172, 09/05/2019, 46732.

FHFA Finalizes Rule on Credit Score Models.

The Federal Housing Finance Agency (FHFA) is issuing a final rule on the process for validation and approval of credit score models by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises). The final rule defines a four-phase process for an Enterprise to validate and approve credit score models. The process begins with the Credit Score Solicitation (a solicitation by the Enterprises of applications from credit score model developers), followed by the Submission and Initial Review of Applications (an initial review by the Enterprise of submitted applications). The third phase is a Credit Score Assessment by the Enterprise, and the fourth phase is an Enterprise Business Assessment. The final rule establishes criteria for each of the four phases and includes required timing and notices for Enterprise decisions under the process. The final rule is effective **10/15/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-16/pdf/2019-17633.pdf>. *Federal Register*, Vol. 84, No. 159, 08/16/2019, 41886-41908.

SBA Extends Decrease in Surety Bond Guarantee Program Fees.

The Small Business Administration (SBA) announces a one-year extension of the temporary decrease in the guarantee fees that SBA charges all Surety companies and Principals on each guaranteed bond (other than a bid bond) issued in SBA's Surety Bond Guarantee (SBG) Program. The temporary initiative to test lower fees will be extended through **09/30/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17442.pdf>. *Federal Register*, Vol. 84, No. 157, 08/14/2019, 40466-40467.

SBA Extends 504 Loan Program Rural Initiative Pilot Program.

SBA's 504 Loan Program Rural Initiative Pilot Program (504 Rural Pilot) authorizes Certified Development Companies (CDCs) to make 504 loans for projects in rural counties located in their SBA Region during the two-year period beginning 07/19/2018 and ending 07/20/2020. SBA announces the extension of the 504 Rural Pilot to **09/30/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-28/pdf/2019-18609.pdf>. *Federal Register*, Vol. 84, No. 167, 08/28/2019, 45060-45061.

FSA Finalizes Agriculture Risk Coverage and Price Loss Coverage Programs.

The Farm Service Agency (FSA) issued a rule implementing the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs authorized by the Agricultural Act of 2014 (the 2014 Farm Bill), as amended. The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended 2014 Farm Bill provisions regarding ARC and PLC, and authorized the ARC and PLC Programs for the 2019 through 2023 program years. The ARC and PLC Programs are continuing, with some changes. This rule also includes conforming changes to Farm Service Agency (FSA) general regulations that apply to multiple programs. The ARC and PLC Programs provide producers a choice between a counter-cyclical payment support type program (PLC) and an income support program (ARC). In a defined election and enrollment period, producers can elect different programs for different covered commodities on a farm, for example, choosing PLC for corn and ARC for soybeans on the same farm. There is also an option to elect ARC individual coverage (ARC-IC); however, if that option is elected, all the farm's covered commodities are elected with that option. The rule specifies the eligibility requirements, enrollment procedures, and payment calculations for the ARC and PLC Programs. The final rule is effective **09/03/2019**.



Regulatory Spotlight

The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18853.pdf>. *Federal Register*, Vol. 84, No. 170, 09/03/2019, 45877-45895.

RHS Delays Effective Date of Single Family Housing Guaranteed Loan Program.

The Rural Housing Service (RHS) published a final rule in the *Federal Register* on **07/22/2019** concerning construction to permanent loan financing, repair or rehabilitation financing, and the removal of a maximum the interest rate cap for the Single Family Housing Guaranteed Loan Program. The effective date was published as 08/21/2019 and is being deferred to **10/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-19/pdf/2019-17683.pdf>. *Federal Register*, Vol. 84, No. 160, 08/19/2019, 42799.

RHS Proposes Amendments to Guaranteed Rural Rental Housing.

RHS is proposing to amend its regulation to remove the stated amount that RHS will charge for the initial and annual guarantee fees. The regulation change will allow RHS the flexibility to establish or make any future changes to the initial and annual guarantee fees without the need for a regulatory change. Comments are due **11/04/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18773.pdf>. *Federal Register*, Vol. 84, No. 170, 09/03/2019, 45927-45929.

FTC Finalizes Amendments to Telemarketing Sales Rule Fees.

The Federal Trade Commission (FTC) is amending its Telemarketing Sales Rule by updating the fees charged to entities accessing the National Do Not Call Registry as required by the Do-Not-Call Registry Fee Extension Act of 2007. The final rule is effective **10/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-27/pdf/2019-18446.pdf>. *Federal Register*, Vol. 84, No. 166, 08/27/2019, 44686-44687.

NCUA Requests Comment on Information Collection.

- The National Credit Union Administration (NCUA) announced it seeks comment on the information collection titled Corporate Credit Union Monthly Call Report and Report of Officers. NCUA also gave notice that it sent the collection to OMB for review. Comments are due 10/28/2019. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18652.pdf>. *Federal Register*, Vol. 84, No. 168, 08/29/2019, 45536-45537.
- NCUA announced it seeks comment on the information collection titled Records Preservation, 12 CFR part 749. NCUA also gave notice that it sent the collection to OMB for review. Comments are due 11/04/2019. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18943.pdf>. *Federal Register*, Vol. 84, No. 170, 09/03/2019, 46051.

VA Requests Comment on Information Collection.

The Department on Veterans Affairs (VA) announced it seeks comment on the information collection titled Supplement to VA Forms. VA also gave notice that it sent the collection to OMB for review. Comments are due **10/07/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-09-06/pdf/2019-19246.pdf>. *Federal Register*, Vol. 84, No. 173, 09/06/2019, 47041-47042. ■

Are you a WBA member with a compliance question?

Contact the
**WBA Legal Call
Program**

This WBA member-exclusive program provides information in response to compliance questions.

call: 608-441-1200



Compliance Notes

▲ NCUA released interim guidance on serving hemp businesses, which discusses how federally insured credit unions may provide certain financial services to legally operating hemp businesses. The guidance may be viewed at: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/serving-hemp-businesses>

▲ FDIC released its August 2019 FDIC Consumer News featuring an article warning about scams involving fake checks. The article also included a number of tips for spotting fake checks and steps a consumer should take if a bogus check scam is suspected. The article may be viewed at: <https://www.fdic.gov/consumers/consumer/news/august2019.pdf>

▲ FFIEC announced the availability of data on mortgage lending transactions at 5,683 U.S. financial institutions covered by the Home Mortgage Disclosure Act (HMDA). Covered institutions include banks, savings associations, credit unions, and mortgage companies. Released are loan-level HMDA data covering 2018 lending activity that were submitted on or before August 7, 2019. The announcement may be viewed at: <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/>

▲ FDIC updated its Risk Management Manual of Examination Policies to incorporate a new section titled Risk-Focused, Forward-Looking Safety and Soundness Supervision. The latter describes the FDIC's long-standing philosophy and methods for supervising institutions by focusing on the areas presenting the greatest risks. The new section has been included in the new Part VI of the Manual titled "Appendix: Examination Processes and Tools," and describes communication and risk-tailoring principles followed during safety and soundness examination activities. The notice may be viewed at: <https://www.fdic.gov/news/news/financial/2019/fil19047.html>

▲ CFPB launched the American Consumer Financial Innovation Network (ACFIN), a network to enhance coordination among federal and state regulators to facilitate financial innovation. CFPB invited all state regulators to join ACFIN, and the initial members of ACFIN are the Attorneys General of: Alabama, Arizona, Georgia, Indiana, South Carolina, Tennessee, and Utah. The announcement may be viewed at: <https://www.consumerfinance.gov/about-us/newsroom/bureau-state-regulators-launch-american-consumer-financial-innovation-network/>

▲ OCC issued a bulletin to remind banks of the new registration requirement for appraisal management companies (AMC) that became effective on August 10, 2019. Under this requirement, AMCs must register with the state or states in which they do business and must be subject to state supervision. Federal law bars AMCs from providing appraisal management services to financial institutions for consumer credit transactions secured by a consumer's principal dwelling that are federally related transactions if the AMCs are not registered as required. This bulletin discusses considerations for banks with regard to confirming AMC registration as part of sound third-party risk management and suggests alternatives that banks can use when no registered AMCs are available. The bulletin may be viewed at: <https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-43.html>

▲ ABA released an article on preparing for a lapse in flood insurance. When the NFIP lapses, either due to a shutdown of the federal government or because Congress does not reauthorize it, many loan closings in these areas are delayed or otherwise complicated, resulting in additional costs and borrower frustrations. Unfortunately, the potential for lapse has become increasingly common, with 10 short-term extensions of the program and two brief lapses since 2016. The current authorization for the NFIP will expire at midnight on Monday, Sept. 30, 2019. The article may be viewed at: <https://bankingjournal.aba.com/2019/09/how-banks-should-prepare-for-a-flood-insurance-lapse/>. FRB, FDIC, OCC, and FCA also have issued an interagency statement on lapses in the NFIP. The statement may be viewed at: <https://www.fdic.gov/news/news/press/2018/pr18106.html>

▲ FDIC released results of its annual survey of branch office deposits for all FDIC-insured institutions as of June 30, 2019. The FDIC's Summary of Deposits (SOD) provides deposit totals for each of the more than 86,000 domestic offices operated by more than 5,300 FDIC-insured commercial and savings banks, savings associations, and U.S. branches of foreign banks. The results may be viewed at: <https://www5.fdic.gov/sod/sodMarketBank.asp?barItem=2>

▲ FHFA announced a revised cap structure on the multifamily businesses of Fannie Mae and Freddie Mac (the Enterprises). The new multifamily loan purchase caps will be \$100 billion for each Enterprise, a combined total of \$200 billion in support to the multifamily market, for the five-quarter period Q4 2019 – Q4 2020. The new caps apply to all multifamily business – no exclusions. The announcement may be viewed at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Revises-Multifamily-Loan-Purchase-Caps-for-Fannie-Mae-and-Freddie-Mac.aspx>



Compliance Notes

▲ FTC charged the operators of two similar student loan debt relief schemes, and a financing company that assisted them, with bilking millions of dollars from consumers. The defendants allegedly charged illegal upfront fees that they led consumers to believe went towards consumers' student loans, and falsely promised that their services would permanently lower or even eliminate consumers' loan payments or balances. The defendants also signed customers up for high-interest loans to pay the fees without making required disclosures. The notice may be viewed at: <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-takes-action-against-operators-student-loan-debt-relief>

▲ FDIC posted its state profile for second quarter 2019. FDIC State Profiles is a quarterly summary of banking and economic conditions in each state. The profiles may be viewed at: <https://www.fdic.gov/bank/analytical/stateprofile/>

▲ HUD announced a significant expansion of its Rental Assistance Demonstration (RAD) to facilitate capital investment in senior housing developments assisted through HUD's Section 202 Supportive Housing for the Elderly Project Rental Assistance Contracts (PRAC). Expanding RAD to include Section 202 PRAC units will now allow nonprofit housing developers to access capital investment to revitalize their aging properties and to ensure sustainable affordability for their very low-income elderly residents. There are approximately 120,000 units across 2,800 properties that will now become eligible to participate in RAD. The notice may be viewed at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09hsgn.pdf>

▲ NCUA Chairman Rodney E. Hood issued the following detailed statement in response to the Aug. 20, 2019, D.C. Circuit Court of Appeals decision in *American Bankers Association v. National Credit Union Administration*: "In response to the D.C. Circuit's ruling, which largely upholds the NCUA's field-of-membership rules, the NCUA will take a phased approach to implementing this decision. Such a phased approach is necessary because the D.C. Circuit's ruling remains subject to requests for further review. With respect to credit unions serving rural districts, the NCUA Board will permit federal credit unions to submit applications seeking expanded rural districts serving geographic regions that encompass up to one million people and that meet the other requirements set forth in the agency's field-of-membership rules. The NCUA will act on such applications at the appropriate time. The D.C. Circuit upheld the portion of NCUA's 2016 rule, which allowed charters serving Combined Statistical Areas or a portion thereof, subject to a 2.5-million person limit. We will announce further guidance on this issue shortly. In the near future, the NCUA Board will consider a limited proposal that will address another issue raised by the D.C. Circuit regarding the definition of local community that includes portions of Core-Based Statistical Areas that do not include the urban core. The format of this proposal will be a notice of proposed rulemaking with public comment." The announcement may be viewed at: <https://www.ncua.gov/newsroom/press-release/2019/chairman-hood-ncua-will-take-phased-approach-implement-fom-rule>

▲ CFPB released the results of a pilot study, Planning for tax-time savings, launched with the tax preparation company H&R Block that shows that simple messages encouraging customers to use their prepaid card to save at tax time increased the likelihood that they would do so. The pilot study, conducted during the 2017 tax filing season, randomly assigned a subset of H&R Block's prepaid card customers to one of three groups. One group was sent an email with a message encouraging them to save using a savings feature on the prepaid card, one was sent an email message offering them a \$5 incentive to save on the card, and one was not sent any savings message. The study may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_planning-for-tax-time-savings_report.pdf

▲ FHFA announced it is expanding its foreclosure prevention options to allow borrowers in Presidentially Declared Major Disaster Areas (PDMDAs) with delinquent FHA-insured mortgages to bring their mortgages current without increasing their interest rates or principal and interest payments. The notice may be viewed at: https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_132

▲ FRB released the latest issue of the *Consumer Compliance Outlook*. This issue features articles on effective change management, and vendor considerations for flood insurance requirements. The issue may be viewed at: <https://consumercomplianceoutlook.org/>

▲ FinCEN has launched its Global Investigations Division (GID), which will be responsible for implementing targeted investigation strategies rooted in FinCEN's unique authorities under the Bank Secrecy Act (BSA) to combat illicit finance threats and related crimes, both domestically and internationally. FinCEN Director Kenneth A. Blanco announced that Matthew Stiglitz, a former Principal Deputy Chief in the Department of Justice's Criminal Division, will lead GID. The announcement may be viewed at: <https://www.fincen.gov/news/news-releases/new-fincen-division-focuses-identifying-primary-foreign-money-laundering-threats>



Compliance Notes

▲ FDIC updated its Risk Management Manual of Examination Policies (the Manual) to incorporate a new section titled Risk-Focused, Forward-Looking Safety and Soundness Supervision. The latter describes the FDIC's long-standing philosophy and methods for supervising institutions by focusing on the areas presenting the greatest risks. The new section has been included in the new Part VI of the Manual titled "Appendix: Examination Processes and Tools," and describes communication and risk-tailoring principles followed during safety and soundness examination activities. The announcement may be viewed at: <https://www.fdic.gov/news/news/financial/2019/fil19047.html>

▲ CFPB released its fourth biennial report on the state of the credit card market for the period 2017-2018. In 2009, the Credit Card Accountability Responsibility and Disclosure Act (Act) made substantial changes to the legal requirements applicable to the credit card market, with Section 502 of the Act also requiring that a report be issued every two years with respect to the market. The report may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf

▲ FRB conducted a floating-rate offering of term deposits through its Term Deposit Facility on August 22, 2019. The operation offered seven-day term deposits with the rate set equal to the sum of the interest rate paid on excess reserves plus a fixed spread of 1 basis point. The results of the offering may be viewed at: <https://www.federalreserve.gov/newsevents/pressreleases/mone-tary20190822a.htm>

▲ OCC will host two workshops at the OCC Central District Office in Chicago, October 1 and 2, for directors of national community banks and federal savings associations supervised by the OCC. The workshops are taught by experienced OCC staff and are two of the 24 offered nationwide to enhance and expand the skills of national community bank and federal savings association directors. Registration information may be viewed at: <https://www.occ.gov/news-issuances/news-releases/2019/nr-occ-2019-96.html>

▲ OFAC and FinCEN announced coordinated actions to bring additional financial pressure upon those who manufacture, sell, or distribute synthetic opioids or their precursor chemicals. The announcement may be viewed at: <https://home.treasury.gov/news/press-releases/sm756> ■



Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

SEPTEMBER 2019

• Supervisor Boot Camp

24-25 Wisconsin Dells – \$535/attendee*

9/30 • Deposit Compliance School

-10/1 Wisconsin Dells – \$535/attendee*

OCTOBER 2019

• Personal Banker School

8-9 Wisconsin Dells – \$450/attendee*

• Principles of Banking Course

7 - 8 Platteville - \$550/attendee

9 - 10 Wausau - \$550/attendee

• Diversity in Banking Conference

10 Madison - \$100/attendee

• Advanced Financial Statement & Cash Flow Analysis Workshop

10 Wisconsin Dells - \$245/attendee

• Strictly Business: The Dale Carnegie Immersion Seminar

24 Madison - \$1,895/attendee

• Bank Directors Summit

15 Madison - \$225/ first attendee; \$175/additional attendees

• Community Bankers for Compliance (CBC) – Session 4

15 Stevens Point - Pricing Options Vary

16 Madison - Pricing Options Vary

• IRA Essentials Workshops

15 Eau Claire - \$245/attendee

17 Madison - \$245/attendee

23 Neenah - \$245/attendee

• Advanced IRA Workshops

16 Eau Claire - \$245/attendee

18 Madison - \$245/attendee

24 Neenah - \$245/attendee

• Enterprise Risk Management Peer Group

22 Eau Claire Area - \$39/attendee

• FIPCO Compliance & Software Forum: (Loan & Mortgage)

22-23 Wisconsin Dells - \$297/attendee

• BSA/AML Workshops

29 Eau Claire - \$245/attendee

30 Neenah - \$245/attendee

31 Madison - \$245/attendee

OCTOBER 2019

• Family-owned & Closely-held Banks: Chart Your Own Path

29-30 Galena, IL - \$295/attendee

• Procedures Upon a Depositor's Death Webinar

30 \$325 + sales tax/connection

NOVEMBER 2019

• Auditing Real Estate Loans Boot Camp

5-7 Wisconsin Dells – \$795/attendee*

• Principles of Banking Course

4-5 Green Bay - \$550/attendee

6-7 Madison - \$550/attendee

• BOLT Winter Leadership Summit

7 Stevens Point – \$100/attendee

• ABA National Agricultural Bankers Conference

10-13 Dallas, Texas

• LEAD360 Conference: Marketing, Retail Banking, Sales and Financial Literacy

20-21 Wisconsin Dells - \$350/ first attendee; \$300/each additional attendee

• Compliance Forum: Session 2

19 Stevens Point - Pricing Options Vary

20 Wisconsin Dells - Pricing Options Vary

21 Pewaukee - Pricing Options Vary

DECEMBER 2019

• Enterprise Risk Management Peer Group

11 Madison - \$39/attendee

JANUARY 2020

• Wisconsin Economic Forecast Luncheon

9 Madison - \$400/Table of 8; \$75/individual

10 Eau Claire - \$350/Table of 8; \$50/individual

• Community Bankers for Compliance - Session 1

28 Stevens Point - Pricing Options Vary

29 Madison - Pricing Options Vary

Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

FEBRUARY 2020

- **Bank Executives Conference**
3 - 5 Wisconsin Dells - \$495/each first two bank attendees;
\$450/each additional attendee
- **Residential Mortgage Lending School**
17-20 Madison - \$1,045/attendee
- **Compliance Forum: Session 3**
18 Stevens Point - Pricing Options Vary
19 Wisconsin Dells - Pricing Options Vary
20 Pewaukee - Pricing Options Vary
- **Commercial Lending School**
24-28 Madison - \$1395/attendee

MARCH 2020

- **Credit Analysis Boot Camp**
5-6 Madison - \$495/attendee
19-20 Green Bay - \$495/attendee
- **Loan Compliance School**
9-13 Madison - \$1,295/attendee
- **Real Estate Compliance School**
11-13 Madison - \$795/attendee
- **Advanced IRA Workshops**
17 Wausau - \$245/attendee
18 Madison - \$245/attendee
- **Security Officer Workshops**
24 Neenah - \$175/attendee
25 Eau Claire - \$175/attendee
26 Wisconsin Dells - \$175/attendee
- **Call Report Workshop**
24 Madison - \$245/attendee
- **ABA Government Relations Summit**
22-25 Washington, DC - Complimentary
- **Cash Management Workshop**
TBD Madison - \$245/attendee
- **Enterprise Risk Management Workshop**
TBD Madison - \$245/attendee

APRIL 2020

- **Health Savings Account (HSA) Workshop**
8 Madison - \$245
- **Agricultural Bankers Conference**
15-16 Wisconsin Dells - \$350/attendee;
\$300/Ag Section Member

APRIL 2020

- **Power of Community Week**
20-24 www.wisbank.com/BanksPowerWI
- **Women in Banking Conference**
21 Wisconsin Dells - \$245/each first two bank
attendees; \$195/each additional attendee
- **Community Bankers for Compliance - Session 2**
28 Stevens Point - Pricing Options Vary
29 Madison - Pricing Options Vary
- **Principles of Banking Course**
TBD Location TBD- \$550/attendee

MAY 2020

- **American Mortgage Conference**
4 - 6 Charleston, SC
- **Lending Boot Camp**
4 - 6 Madison - \$535/attendee (2-day); \$795/attendee
(3-day)
- **Compliance Management School**
5 - 7 Madison - \$795/attendee
- **FIPCO Compliance & Software Forum: Deposit:**
7 Madison
- **School of Bank Management**
11-15 Madison - \$1,395/attendee
- **BSA/AML Compliance Conference**
20-21 Wisconsin Dells - \$449/attendee

JUNE 2020

- **BOLT Summer Leadership Summit**
11-12 Wisconsin Dells - \$150/attendee
- **Compliance Forum: Session 1**
TBD Locations TBD - Pricing Options Vary

JULY 2020

- **Agricultural Lending School**
22-24 Madison - \$895/attendee
- **Community Bankers for Compliance - Session 3**
28 Stevens Point - Pricing Options Vary
29 Madison - Pricing Options Vary