November 2020

Compliance Update

Community Bankers for Compliance Newsletter

INSIDE

Distributed by:
Wisconsin Bankers Association
4721 S. Biltmore Lane
Madison, WI 53718

Published by:
Young & Associates, Inc.
121 East Main Street
P.O. Box 711
Kent, OH 44240

Unemployment Fraud Due to COVID-19

By Bill Elliott, CRCM; Director of Compliance Education

The Financial Crimes Enforcement Network (FinCEN) issued an advisory on October 13, 2020 alerting financial institutions to unemployment insurance (UI) fraud observed during the COVID-19 pandemic. We discussed this subject in our August newsletter, but, as FinCEN issued this new advisory, and we continue to see this behavior throughout our client banks, we have elected to revisit this issue.

The advisory contains descriptions of COVID-19-related UI fraud, associated financial red flag indicators, and information on reporting suspicious activity.

FinCEN advises financial institutions to consider all surrounding facts and circumstances before determining if a transaction is suspicious or otherwise indicative of potential UI fraud. Using your risk-based approach to compliance with the BSA, you are encouraged to perform additional inquiries and investigations where appropriate.

Financial red flags

FinCEN identified 10 financial red flag indicators to alert financial institutions to fraud schemes targeting UI programs, and to assist financial institutions in detecting, preventing, and reporting suspicious transactions related to such fraud. A sample of those red flags follow.

continued to next page ⇩

- UI payments from a state other than the state in which the customer reportedly resides or has previously worked
- Multiple state UI payments within the same disbursement timeframe
- UI payments in the name of a person other than the accountholder, or in the names of multiple unemployment payments recipients
- A customer's UI payments are quickly diverted via wire transfer, peer-to-peer (P2P) application, online bill pay, or app
- Multiple accounts receiving UI payments at one or more financial institutions are associated with the same free, web-based e-mail account that may appear in more than one UI application

Reporting suspicious activity

Reporting through the Suspicious Activity Report (SAR) process, in conjunction with effective implementation of due diligence requirements by financial institutions, is crucial to identifying and stopping unemployment insurance fraud related to the COVID-19 pandemic. FinCEN states that financial institutions should provide all pertinent and available information in the SAR and narrative. FinCEN requests that financial institutions reference this advisory by including the key term "COVID19 UNEMPLOYMENT INSURANCE FRAUD FIN-2020-A007" in SAR field 2 (Filing Institution Note to FinCEN) and the narrative to indicate a connection between the suspicious activity being reported and the activities highlighted in this advisory.

- Financial institutions also should select SAR field 34(z) (Fraud – other) as the associated suspicious activity type to indicate a connection between the suspicious activity being reported and COVID-19. When addressing unemployment fraud in a SAR, financial institutions should include the keywords "unemployment fraud" in SAR field 34(z).
- When filing a SAR, in addition to standard transaction data, providing the following information is highly valuable to law enforcement: relevant e-mail addresses, IP addresses with their respective timestamps, login information with location and timestamps, cyber-related information and technical indicators, virtual currency wallet addresses, mobile device information – such as device International Mobile Equipment Identity (IMEI), phone numbers, monikers, and description and timing of suspicious electronic communications.

We recommend reading the entire document (four pages) and sharing it with relevant staff to avoid difficulties with this type of fraud. The document may be found at https://www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf. ❑

Human Trafficking & Smuggling – BSA Responsibilities

By Bill Elliott, CRCM; Director of Compliance Education

The Financial Crimes Enforcement Network (FinCEN) issued an advisory on October 14, 2020 to protect the most vulnerable from predators who prey on the innocent and defenseless for money and greed. The advisory supplements the 2014 FinCEN Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking – Financial Red Flags (2014 Advisory).

Anyone can be a victim regardless of origin, sex, age, or legal status. FinCEN notes that the global COVID-19 pandemic can exacerbate the conditions that contribute to human trafficking, as the support structures for potential victims collapse, and traffickers target those most impacted and vulnerable.

Human trafficking is now one of the most profitable and violent forms of international crime, generating an estimated $150 billion worldwide per year. In the United States, human trafficking now occurs in a broad range of licit and illicit industries (e.g., hospitality, agriculture, janitorial services, construction, restaurants, care for persons with disabilities, salon services, massage parlors, retail, fairs and carnivals, peddling and begging, child care, domestic work, and drug smuggling and distribution). Transactions involving proceeds generated by human trafficking can be the basis for federal criminal charges and asset forfeiture, as human trafficking and associated crimes constitute specified unlawful activities (SUA) for the crime of money laundering.

continued to next page ⇩

Since the 2014 Advisory, the new advisory provides: (i) new information to assist in identifying and reporting human trafficking, and to aid the global effort to combat this crime; and (ii) two illustrative recent case studies. The 2014 Advisory remains relevant, and provides information related to human smuggling, in addition to human trafficking.

Because the information financial institutions collect and report is vital to identifying human trafficking and stopping the growth of this crime, it is imperative that financial institutions enable their detection and reporting of suspicious transactions by becoming aware of the current methodologies that traffickers and facilitators use. It is also critical that customer-facing staff are aware of behavioral indicators that may indicate human trafficking, as the only outside contact for victims of human trafficking may occur when visiting financial institutions.

The advisory discusses new typologies of human trafficking, including:

- Front companies
- Exploitative employment practices
- Exploitative fees
- Funnel accounts
- Alternative payment methods

Behavioral & financial red flags

The advisory offers eight red flags for behavioral indicators. That list might be a very good training subject, and can be very useful. The advisory does say the list is illustrative, not exhaustive.

The advisory provides additional information on 10 new financial red flag indicators. These red flags do not replace the red flags identified in the 2014 Advisory, all of which remain relevant, they supplement the earlier red flags.

The advisory covers several other subjects related to human trafficking and smuggling that include the following.

- Customer due diligence and identification of beneficial owners of new legal entity accounts
- Information sharing
- Suspicious activity reporting (SAR) and SAR filing instructions

The advisory also includes two case studies with the following titles:

- Funnel Accounts Facilitate International Thai Sex Trafficking Ring, and
- Trafficking Involving Prepaid Cards and Bitcoin

It is unfortunate that we even have to consider issues such as this in banking, but it is a reality, and we need to consider the possibility, no matter where we are located.

The advisory text is available at https://www.fincen.gov/sites/default/files/advisory/2020-10-15/Advisory%20Human%20Trafficking%20508%20FINAL_0.pdf. ❑

Premium Finance Lending & CIP

By Bill Elliott, CRCM; Director of Compliance Education

On October 9, 2020, the federal banking agencies and Financial Crimes Enforcement Network (FinCEN) issued an order granting an exemption from Customer Identification Program (CIP) requirements for loans extended by banks to all customers to facilitate purchases of property and casualty insurance policies. The federal banking agencies involved are the Office of the Comptroller of the Currency (OCC), Federal Reserve Board

continued to next page ⇩

(FRB), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA).

The order grants an exemption from the requirements of the CIP rules for loans extended by banks to all customers to facilitate purchases of property and casualty insurance policies (also known as premium finance loans or premium finance lending).

By letter in 2016 and 2017, a consortium of banks submitted a request to the agencies and FinCEN for an exemption or interpretation for these loan types. The request letters asserted that there is no need to apply the CIP rules to insurance premium finance lending because this activity presents a low risk of money laundering. In 2018, the agencies and FinCEN issued an order granting an exemption from the requirements of the CIP rules for loans extended by banks to facilitate premium finance lending only to commercial customers.

There was additional discussion on this subject and specifically requesting an exemption for all customers of premium finance lending. The contention was that there is no need to apply the CIP rules to insurance premium finance lending regardless of the customer type.

Under 31 CFR 1020.220(b), the agencies, with the concurrence of the Secretary of the Treasury, may by order or regulation exempt any bank or type of account from the requirements of the CIP rules. The Secretary's authority under this provision has been delegated to FinCEN.

Premium finance lending

Premium finance loans provide short-term financing to business and non-business borrowers to facilitate their purchases of property and casualty insurance policies. These types of loans present a low risk of money laundering because of the purpose for which the loans are extended and limitations on the ability of a customer to use such funds for any other purpose. Moreover, property and casualty insurance policies themselves are not an effective means for transferring illicit funds.

Insurance agents and brokers assist their customers to arrange financing for the purchase of single-premium insurance policies. An insurance agent or broker typically solicits loan quotes and then presents these quotes to the customer of the insurance agent or broker. The agents and brokers who facilitate these transactions are not required to collect customer information under the CIP rules.

Once the potential borrower selects a loan offer, the premium finance lender advances a loan to the borrower covering the premium. The bank remits the loan proceeds to the insurance company directly or through the agent or broker. The principal collateral for such a loan is the unearned premiums paid to the insurance company.

The processes for executing a premium finance loan are highly automated, as most premium finance industry loan volume is quoted and recorded electronically. These business processes make it difficult for banks to fully comply with the CIP information collection requirements.

Agencies' conclusions

The federal agencies, with the concurrence of FinCEN, found that there is a valid basis for an exemption to apply to all customers of premium finance lending.

The structural characteristics of premium finance lending, as described above, present a low risk for money laundering activity or terrorist financing. This exemption is consistent with safe and sound banking, according to the banking agencies. The resulting banking practices will not be contrary to generally accepted standards of prudent banking operation and will not give rise to abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds. The structural characteristics of premium finance lending are unlikely to pose a risk to the safety and soundness of the institution.

Banks engaging in consumer premium finance lending must comply with applicable consumer protection laws, as well as all other regulatory requirements, including the regulations implementing the BSA that require the filing of suspicious activity reports. ❑

OCC Assesses Large CMPs for Compliance Failures

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

The Office of the Comptroller of the Currency (OCC) announced the imposition of multimillion dollar civil money penalties (CMP) in two separate actions against three large banks this past month. Both actions are based on failures of the banks to resolve issues that were the subject of earlier enforcement actions.

Ineffective compliance & IT programs

The OCC assessed an $85 million CMP against USAA, Federal Savings Bank (San Antonio, TX).

The OCC took this action based on the bank's failure to implement and maintain an effective compliance risk management program and an effective information technology risk governance program. These deficiencies resulted in violations of law, including but not limited to violations of the Military Lending Act (MLA) and the Servicemembers Civil Relief Act (SCRA). The bank is in the process of remediating these violations pursuant to the requirements of the January 2019 Consent Order the bank entered into with the OCC.

The OCC penalty will be paid to the U.S. Treasury. The USAA Consent Order may be read at https://www.occ.gov/static/enforcement-actions/ea2020-059.pdf.

Deficient information security program

The OCC also assessed a $60 million CMP against Morgan Stanley Bank, N.A. (Salt Lake City, UT), and Morgan Stanley Private Bank, N.A. (Purchase, NY).

The OCC took these actions based on the banks' failure to exercise proper oversight of the 2016 decommissioning of two Wealth Management business data centers located in the U.S. Among other things, the banks failed to:

- Effectively assess or address risks associated with decommissioning its hardware
- Adequately assess the risk of subcontracting the decommissioning work, including exercising adequate due diligence in selecting a vendor and monitoring its performance, and
- Maintain appropriate inventory of customer data stored on the decommissioned hardware devices

In 2019, the banks experienced similar vendor management control deficiencies in connection with decommissioning other network devices that also stored customer data. The OCC found the noted deficiencies constitute unsafe or unsound practices and resulted in noncompliance with 12 CFR Part 30, Appendix B, "Interagency Guidelines Establishing Information Security Standards."

The OCC penalty will be paid to the U.S. Treasury. The Morgan Stanley Consent Order is available at https://www.occ.gov/static/enforcement-actions/ea2020-058.pdf. ❑

CFPB Final Rule Amends ATR/QM Rule

By Dale Neiss, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) issued a final rule (Patch Extension Final Rule or Final Rule) on October 20, 2020 to amend the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule). The Final Rule extends the sunset date for the Temporary GSE QM category (GSE Patch).

Background

With certain exceptions, the ATR/QM Rule requires creditors to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan and provides certain protections from liability for residential mortgage loans that meet the ATR/QM Rule's requirements for "qualified mortgages" ("QMs"). The ATR/QM Rule also establishes different categories of QMs.

continued to next page ⇩

One QM category is the General QM category. For a residential mortgage loan to fit within the General QM category, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent, and the creditor must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in Appendix Q of Regulation Z.

A second, temporary category of QMs consists of residential mortgage loans that, among other things, are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac (collectively, government sponsored enterprises or GSEs). This temporary category of QMs (referred to as the "GSE Patch"), is set to expire on January 10, 2021 (i.e., the sunset date) or when the GSEs exit conservatorship, whichever comes first.

On June 22, 2020, the CFPB issued two notices of proposed rulemaking:

- First, the CFPB issued the Patch Extension Notice of Proposed Rulemaking (NPRM), which proposed to amend the sunset date for the GSE Patch and to make conforming changes to the commentary, and
- Second, the CFPB issued the General QM NPRM, which proposed to amend the requirements for the General QM category

Additionally, on August 18, 2020, the CFPB issued a separate NPRM, the Seasoned QM NPRM, which proposed to add Seasoned QMs as a new category of QMs.

Extension of patch sunset date

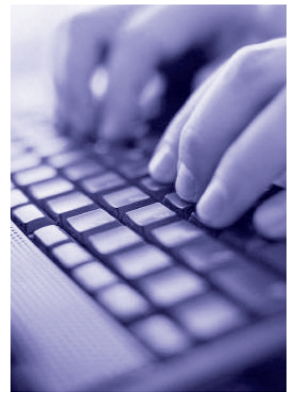
The Patch Extension Final Rule extends the sunset date for the Temporary GSE QM category, but it does not amend the provision stating that the GSE Patch expires when the GSEs exit conservatorship. Thus, under the Final Rule, the GSE Patch will expire on the earlier of the:

- Mandatory compliance date of the final rule amending the General QM loan definition (yet to come), or
- Date that the GSEs exit conservatorship

The Patch Extension Final Rule provides that the GSE Patch is available for a loan if the creditor receives the consumer's application before the mandatory compliance date of a final rule amending the General QM loan definition and the loan is consummated before the GSEs exit conservatorship.

For purposes of the GSE Patch sunset date, if a loan is subject to the TILA-RESPA Integrated Disclosures Rule (TRID Rule), the term "application" has the same meaning as it does for the TRID Rule. If the loan is not subject to the TRID Rule (e.g., it is secured by a dwelling but is not secured by real property), the creditor may apply the TRID Rule's definition of "application" or may use the general Regulation Z definition of "application" in 12 CFR 1026.2(a)(3)(i).

The Patch Extension Final Rule does not affect QMs made pursuant to the rules of the Federal Housing Administration (FHA), United States Department of Veterans Affairs (VA), or United States Department of Agriculture (USDA). Additionally, the expiration of the GSE Patch will not affect the QM status of a loan if the creditor made the loan or received the consumer's application for the loan before the extended sunset date. Thus, if a creditor receives an application for a loan before the expiration of the GSE Patch and that loan satisfies the criteria for GSE Patch, the loan will be a GSE Patch for the remainder of the loan's term.



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 Instutions 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

continued to next page ⇩

The Patch Extension Final Rule does not address the amendments proposed in the General QM NPRM or the Seasoned QM NPRM. The CFPB will address those proposed amendments at a later time.

The Final Rule is effective December 28, 2020, and can be found at https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-23540.pdf. ❑

Clearer Rules Issued for RESPA Section 8

The Consumer Financial Protection Bureau (CFPB) published guidance on October 7, 2020 in the form of Frequently Asked Questions (FAQs) on Real Estate Settlement Procedures Act (RESPA) Section 8 topics.

The FAQs provide an overview of the provisions of RESPA Section 8, and respective Regulation X sections, and address the application of certain provisions to common scenarios involving gifts and promotional activities, and marketing services agreements (MSAs).

Additionally, Compliance Bulletin 2015-05 is being rescinded. The rescission does not mean that MSAs are per se, or presumptively, legal. Whether a particular MSA violates RESPA Section 8 will depend on specific facts and circumstances, including the details of how the MSA is structured and implemented. MSAs will remain subject to scrutiny.

The questions in the FAQs, organized by general topic, are:

RESPA Section 8 General

1. What are the provisions of RESPA Section 8?

2. What is RESPA Section 8(a)?

3. What is RESPA Section 8(b)?

4. What payments are not prohibited under RESPA Section 8(c)?

5. Which individuals, entities, and transactions are covered by RESPA Section 8?

6. Under RESPA Section 8, can a lender or other settlement service provider give a gift, refund, or discount to a consumer for using that lender or provider?

RESPA Section 8(a)

1. What activities are prohibited under RESPA Section 8(a)?

RESPA Section 8: Gifts and Promotional Activity

1. Are gifts and promotions allowed under RESPA Section 8?

2. What conditions does Regulation X establish for gifts and promotions to be "normal promotional and educational activities" allowed under RESPA?

3. What are examples of "normal promotional and educational activities" meeting the conditions in Regulation X?

RESPA Section 8: Marketing Services Agreements (MSAs)

1. What are marketing services agreements?

2. What is the distinction between referrals and marketing services for purposes of analyzing MSAs under RESPA Section 8?

continued to next page ⇩

3. How do the provisions of RESPA Section 8 apply when analyzing whether an MSA is lawful?

4. What are some examples of MSAs prohibited by RESPA Section 8?

The answers to these questions can be seen at https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/real-estate-settlement-procedures-act/real-estate-settlement-procedures-act-faqs/. ❑

NFIP Reauthorized

By Dale Neiss, CRCM; Consultant

The National Flood Insurance Program (NFIP) was reauthorized by Congress through September 30, 2021. The extension is part of an act signed into law on October 5. Language was included to bridge the gap between the September 30, 2020, expiration date and the signing date.

Background

The NFIP was developed as a way to reduce federal expenditures related to disasters caused by flooding. The program consists of floodplain management plans that affected communities must implement and a flood insurance program to protect properties in flood hazard areas. The intent of the NFIP is to reduce federal outlays for disaster assistance by making those who choose to develop properties in flood-prone areas bear some cost to protect against flood risks involved, rather than allowing them to rely solely on federal aid.

If a property is located in both a special flood hazard area and a community participating in the NFIP, then a covered lender – which includes all financial institutions with federal deposit insurance – must require the borrower to obtain sufficient flood insurance before the loan may be made, if flood insurance is available.

In addition, covered lenders must force-place flood coverage if they determine at some time after closing that an affected property does not have adequate flood insurance. This might happen when flood maps are revised, when a policy lapses, or other circumstances – including the temporary lapse of the entire flood insurance program.

Lapse, then reauthorization

The Federal Emergency Management Agency's (FEMA) authority to issue flood insurance policies was due to lapse at midnight on September 30, 2020 if the Congress had adjourned without extending FEMA's issuance authority under the NFIP. Lenders would have been in an all too familiar position from recent years that, until the NFIP was reauthorized, flood insurance would not have been available for new loans. Covered lenders would still have had to perform flood hazard determinations, and could still make loans secured by flood-prone properties (if they wished), but could not require borrowers to obtain flood insurance before closing (since it would not have been available).

No doubt, the NFIP will continue the path of reauthorization – lapse – reauthorization. With the likelihood of future lapses, you should keep a copy of your agency's guidance on how to handle subsequent lapses readily available.

FDIC: https://www.fdic.gov/news/news/financial/2010/fil10023.html
FRB: https://www.federalreserve.gov/boarddocs/caletters/2010/1003/caltr1003.htm
OCC: https://occ.gov/news-issuances/bulletins/2010/bulletin-2010-20.html

In summary, in the event of future lapses, each of the agencies' guidance states:

- Lenders may continue to make loans subject to the flood provisions without flood insurance during a period when the NFIP is not available.
- Such lending does not violate the agencies' respective flood insurance regulations.
- However, lenders must continue to make flood determinations, provide timely, complete and accurate notices to borrowers, and comply with other parts of the flood insurance regulations

continued to next page ⇩

- In addition, lenders must evaluate safety and soundness and legal risks and prudently manage those risks during the lapse period
- Finally, a system must be in place to ensure that policies are obtained as soon as available following reauthorization for properties that are subject to mandatory flood insurance coverage

We have been down this path of lapse, reauthorization, lapse, reauthorization in the past, and no doubt will again. So, you may want to keep a copy of your agency's guidance handy in your regular compliance resource files. ❑

CRA Public Notices – National Banks & Federal Thrifts

The Community Reinvestment Act (CRA) notice for nationally chartered financial institutions – national banks and federal savings institutions – that you must post in your lobbies for customers and others to read has changed. The changes are minimal – other than consolidating the national bank and federal association notices into one – but nationally chartered institutions need to get these signs changed as soon as possible. The new CRA rule for national banks and federal thrifts was effective October 1, 2020.

To view the new text (and read carefully, it has not changed much) can be found at page 76 of

https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-11220.pdf. ❑

2021 HMDA Reference Chart Issued

On October 19, 2020, the Consumer Financial Protection Bureau (CFPB) published the 2021 Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart. The chart runs 38 pages, and discusses the coding for every HMDA field required to be reported in 2021. While the changes are fairly insignificant for 2021, all HMDA filers should have this chart available as they complete the 2021 HMDA LAR for reporting in 2022. The new chart can be found at https://files.consumerfinance.gov/f/documents/cfpb_2021-reportable-hmda-data.pdf. ❑

Washington Federal Bank Hit with HMDA Penalty

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

The Consumer Financial Protection Bureau (CFPB) settled with Washington Federal Bank, N.A. (Seattle, WA) to address the agency's finding that the bank reported inaccurate Home Mortgage Disclosure Act (HMDA) data about its mortgage transactions for 2016 and 2017.

The CFPB notes that inaccurate HMDA data can make it difficult for the public and regulators to discover and stop discrimination in home mortgage lending or for public officials and lenders to tell whether a community's credit needs are being met. The settlement requires Washington Federal to pay a $200,000 civil money penalty (CMP) and develop and implement an effective compliance-management system to prevent future violations.

Findings

The CFPB found that Washington Federal violated HMDA, its implementing Regulation C, and the Consumer Financial Protection Act of 2010 (CFPA) by failing to report accurate data about its mortgage-loan applications to the agency. Washington Federal is currently subject to a 2013 consent order with the CFPB based on the agency's previous findings that the bank violated HMDA and Regulation C.

Washington Federal reported HMDA data for over 7,000 mortgage applications in each of 2016 and 2017. The CFPB found that these data included significant errors, with some samples having error rates as high as 40 percent. These

continued to next page ⇩

significant errors in reported mortgage-application data violated Regulation C and HMDA. These violations also constituted violations of the CFPA.

Consent order

The consent order states:

- An internal audit of Washington Federal's 2016 HMDA LAR identified 40 files containing errors in a review of 100 files, a 40 percent error rate.
- The 2016 HMDA errors were caused by a lack of appropriate staff, insufficient staff training, and ineffective quality control.
- A CFPB review of 84 files in the bank's initial 2017 HMDA LAR identified 58 errors in 27 files, a 32 percent sample error rate.
- The 2017 HMDA errors are directly related to weaknesses in the bank's compliance-management system (CMS), especially in the areas of board and management oversight, monitoring, and policies and procedures.
- With respect to Washington Federal's resubmitted 2017 HMDA LAR, the CFPB reviewed 81 files and identified 21 errors in 13 files, a 16 percent sample error rate.
- In connection with its 2017 LAR resubmission, the bank imposed an incorrect policy, which directly led to the errors in its resubmitted LAR.
- The occurrence of errors in many different fields, rather than concentrated in one or two fields, indicates broad CMS failures and a lack of adequate resources, because the errors were not caught, and the errors cannot be directly attributed to one or two systemic failures
- The CFPB entered a consent order against Washington Federal on October 9, 2013, finding that the bank violated HMDA and Regulation C. The 2013 consent order required the bank to review, correct, and resubmit its 2011 HMDA LAR and imposed a $34,000 penalty.

The latest consent order is available at https://files.consumerfinance.gov/f/documents/cfpb_washington-federal-na_consent-order_2020-10.pdf. ❑

Regulation E in 2020

By Bill Elliott, CRCM; Director of Compliance Education

Every time there is a major event (and the COVID-19 pandemic certainly qualifies), we are forced into finding new ways to do banking. With the pandemic, many of our changes have been to embrace (or at least grudgingly accept) new technologies and products as a way to stay competitive. Many of those technologies and products have Regulation E impacts. So the question is: when do we re-disclose and how do we do it?

Changes in terms

Regulation E, § 12 CFR 1005.8, states that you must "mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition.…if the change would result in" increased fees for the consumer, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amount of transfers.

No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change. Of course, this makes advance notice problematic, especially if you have deposit account cycles that vary throughout the month.

For example, if you want to institute a change that requires the 21-day notice discussed above, some customers will

continued to next page ⇩

get notices 21 days early and some may receive 51 days' notice. The regulation does not discuss mailing days for notices, but you may want to consider a few extra days for everyone's benefit, so the range might be 24 to 54, or even more depending on how quickly your statements actually get on the way to the customer.

Most of the changes that we are experiencing do not require advance notice, as they do not meet the conditions stated above. Of course, we want people to use these new services, so we need to make them aware of them. Deciding to "advertise" the new service with an updated Regulation E notice does not seem like a very good idea, as we know how often they are read. But if there are customer liability issues with the new product or service, you may need to send everyone a new Regulation E notice, regardless of what the rule states, just for your own protection.

Cancelling access devices

Another trend we are seeing in Regulation E revolves around the question of cancelling an access device (debit/ATM card). The regulation is quite clear that no advance notice is required when the bank chooses to do so. Of course, you should tell the customer in writing as soon as possible regarding the action you took.

Remember, there is no "equal deposit" regulation that would govern the cancellation process. But be fair and balanced in your approach to cancelling a debit card. I recently spoke to a banker who was concerned that a customer threatened to sue the bank for cancelling the customer's debit card.

As the bank was convinced that the customer had committed fraud against the bank to the tune of about $3,000, my comment was that certain customers should bank with your competitors, and perhaps the risk of lawsuit was worth it. Whether anything will transpire remains to be seen, and that is part of our world in 2020.

Good luck with Regulation E issues. A law and regulation that has always been a part of our modern banking life will continue to impact it into the future. ❑

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.

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.).
- Comments on ANPRM regarding potential BSA rule amendments due to FinCEN by November 16, 2020.
- Large HMDA reporters (60,000 or more entries in 2019) electronically file third calendar quarter 2020 LAR by November 29, 2020. (CFPB temporarily suspending enforcement due to pandemic.)

December 2020

- CFPB final rule extending sunset date for "temporary GSE patch" to QM definition effective December 28, 2020.
- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2020.

January 2021

- Open Production Period related to revised URLA and updated AUS begins January 1, 2021 for all lenders.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.

continued to next page ⇩

- 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

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2021.

March 2021

- Mandate & Pipeline Transition Period related to revised URLA and updated AUS begins March 1, 2021 when all lenders (selling loans to GSEs and other secondary market participants) must begin using the new systems – with one-year transition period for loans in the pipeline by this date.
- 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 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].

May 2021

- Large HMDA reporters (60,000 or more entries in 2020) electronically file first calendar quarter 2021 LAR by May 30, 2021.

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].

August 2021

- Large HMDA reporters (60,000 or more entries in 2020) electronically file second calendar quarter 2021 LAR by August 29, 2021.

September 2021

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2021) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2021.

November 2021

- Transactions using the former URLA and legacy AUS will no longer be accepted beginning November 1, 2021.
- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2021.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 7, 2021 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2020) electronically file third calendar quarter 2021 LAR by November 29, 2021.

December 2021

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2021.

continued to next page ⇩

January 2022

- Regulation C (HMDA) changes related to open-end line data collection and reporting – permanently adjusting the coverage threshold to 200 open-end lines in each of previous two years – effective January 1, 2022.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2021 by January 31, 2022.
- Update FHHLDS home loan activity format with fourth calendar quarter 2021 data by January 31, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2022

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2022.

March 2022

- Retirement Date related to revised URLA and updated AUS – March 1, 2022. No legacy URLA and loan application submissions based on previous AUS specifications accepted from this date on (regardless whether dated before March 1, 2021). End of pipeline transition period.
- 2021 HMDA LAR must be submitted to the CFPB by March 1, 2022.
- 2021 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2022 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 13, 2022 (e.g., EDT, CDT, etc.).

April 2022

- Update information in CRA public file by April 1, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2022.
- Update FHHLDS home loan activity format with first calendar quarter 2022 data by April 30, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2022

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2022 by July 31, 2022.
- Update FHHLDS home loan activity format with second calendar quarter 2022 data by July 31, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

August 2022

- Large HMDA reporters (60,000 or more entries in 2020) electronically file second calendar quarter 2022 LAR by August 29, 2022.

September 2022

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2022) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2022.

November 2022

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2022.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 6, 2022 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2020) electronically file third calendar quarter 2022 LAR by November 29, 2022.

December 2022

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2022.