May 2021

Compliance Update

Community Bankers for Compliance Newsletter

INSIDE

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2020 FDIC Examination Violations

By Karen Clower, CRCM; Director of Compliance

In the March 2021 issue of the *Consumer Compliance Supervisory Highlights* publication from the Federal Deposit Insurance Corporation (FDIC), there is an article that discusses the most frequently cited violations found during FDIC examinations in 2020. The violations are ranked by level of severity, with Level 1 being the lowest level of concern and 3 being the highest.

The article focuses on the five most frequently cited instances of Level 3 or Level 2 violations. The most frequently cited violations (representing approximately 74 percent of the total violations cited in 2020) involve the following regulations:

- Regulation Z, implementing the Truth in Lending Act (TILA)
- Regulation DD, implementing the Truth in Savings Act (TISA)
- FDIC Regulation 339, implementing the Flood Disaster Protection Act (FDPA), as amended
- Regulation E, implementing the Electronic Fund Transfer Act (EFTA), and
- Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA)

Consumer compliance examinations are conducted using a risk-focused methodology. Therefore, the most frequently cited violations generally involve regulations that represent the greatest potential for consumer harm. The TILA section of the article cites violations that include required disclosures about mortgage costs and certain

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calculation errors that could result in required reimbursements to consumers. Moreover, the flood insurance provisions included in the FDPA section could result in penalties if the supervised institution does not take certain steps to ensure compliance.

In 2020, the FDIC initiated eight formal enforcement actions and 16 informal enforcement actions to address consumer compliance examination findings. During this period, the FDIC issued Civil Money Penalty (CMP) orders against institutions to address violations of the FDPA totaling $63,466. Voluntary payments to consumers totaled approximately $7.4 million to more than 67,000 consumers.

All financial institutions should pay particular attention to their compliance with the regulations mentioned in the article, which pose the greatest risk to their institution from both a regulatory violation standpoint and as a result of potential monetary penalties.

The March 2021 *Consumer Compliance Supervisory Highlights* publication can be found at

https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2021.pdf. ❑

CFPB Delays General QM Rule

The Consumer Financial Protection Bureau (CFPB) has delayed the mandatory compliance date of the General Qualified Mortgage (QM) final rule from July 1, 2021, to October 1, 2022.

The CFPB said it has taken this action to help ensure access to responsible, affordable mortgage credit, and preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects. Delaying the mandatory compliance date of the General QM final rule allows lenders more time to offer QM loans based on the homeowners' debt-to-income (DTI) ratio, and not solely based on certain pricing thresholds.

Delaying the final rule's compliance date would also give lenders more time to use the Government-Sponsored Enterprise (GSE) Patch, which provides QM status to loans that are eligible for sale to Fannie Mae or Freddie Mac. However, the availability of the GSE Patch after July 1, 2021, may be limited by recent revisions to the Preferred Stock Purchase Agreements entered into by the Department of the Treasury and the Federal Housing Finance Agency.

The CFPB final rule may be read at https://files.consumerfinance.gov/f/documents/cfpb_general-qm_mcd-delay_final-rule_2021-04.pdf.

The CFPB has also issued an executive summary and an unofficial redline of the rule and has updated other compliance aids related to the ATR/QM Rule. The resources are available at https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/ability-repay-qualified-mortgage-rule/. ❑

Changes to the World of BSA

by Bill Elliott, CRCM; Director of Compliance Education

The Financial Crimes Enforcement Network (FinCEN) has issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions related to the implementation of the beneficial ownership information reporting provisions of the Corporate Transparency Act (CTA).

While we seldom address ANPRM issues in this newsletter, this is the first of what promises to be a long line of new changes to the Bank Secrecy Act (BSA) regulations. In January 2021, the National Defense Authorization Act became law. This law, even though it doesn't have BSA in the title, made sweeping changes to BSA – changes that will eventually appear in regulation. While there is no need to panic at this point, everyone needs to be aware that the world of BSA will change.

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This ANPRM is the first in a series of regulatory actions that FinCEN will undertake to implement the CTA.

The CTA amended the BSA to require corporations, limited liability companies, and similar entities to report certain information about their beneficial owners (the individual natural persons who ultimately own or control the companies). The CTA requires FinCEN to maintain the reported beneficial ownership information in a confidential, secure, and non-public database. The CTA authorizes FinCEN to disclose beneficial ownership information subject to appropriate protocols and for specific purposes to several categories of recipients, such as federal law enforcement.

However, the CTA requires FinCEN to revise existing financial institution customer due diligence regulations concerning beneficial ownership to take into account the new direct reporting of beneficial ownership information. This may result in less information being required at account opening. However, all of this remains to be seen.

FinCEN strongly encourages all interested parties, particularly those that would be affected by the beneficial ownership information reporting provisions or would seek access to reported beneficial ownership information, to submit written comments. Such written comments will help inform FinCEN's implementation of all aspects of the beneficial ownership reporting rulemaking.

The ANPRM is available at https://www.govinfo.gov/content/pkg/FR-2021-04-05/pdf/2021-06922.pdf. ❑

Does Your Bank Have a Culture of BSA Compliance?

By Mary Green; Consultant

Who is responsible for Bank Secrecy Act (BSA)/anti-money laundering (AML) compliance at your bank? The simple answer is everyone. The information below may seem simplistic, but many banks have failed to follow the simple guidelines identified here.

We all know that the culture of an organization is critical to its compliance. The Financial Crimes Enforcement Network (FinCEN) spelled out for us how a financial institution can strengthen its BSA/AML compliance culture in FIN-2014-A007 and these basic facts are still true today.

- *Leadership should be engaged.* An institution's leadership may include its board of directors, senior and executive management, owners and operators. These leaders are responsible for understanding an institution's responsibilities regarding compliance with the BSA and creating a culture of compliance.
- *Compliance should not be compromised by revenue interests.* An institution's interest in revenue should not compromise efforts to effectively manage and mitigate BSA/AML deficiencies and risks, including submission of appropriate and accurate reports to FinCEN.
- *Information should be shared throughout the organization.* The bank should ensure it has appropriate mechanisms in place for sharing relevant information with the BSA/AML staff. Information from the various departments could be useful and should be shared.
- *Leadership should provide adequate human and technological resources.* The bank must designate an individual with responsibility for coordinating and monitoring day-to-day compliance with BSA. This individual must have sufficient knowledge and authority to administer the program.
- *The program should be effective and tested by an independent and competent party.* A financial institution's leadership should ensure that the party testing the program is independent, qualified, unbiased, and does not have conflicting business interests that may influence the outcome of the compliance program test. Safeguarding the integrity and independence of the compliance program testing enables an institution to locate and take appropriate corrective actions to address deficiencies.
- *Leadership and staff should understand how their BSA reports are used.* The reporting that financial institutions provide assist in the fight against criminal organizations, including those involved in drug trafficking and fraud schemes targeting the U.S. government and its citizens.

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FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. The BSA program at your financial institution plays a huge role in that mission. ❑

FinCEN Reissues GTOs

The Financial Crimes Enforcement Network (FinCEN) announced the renewal of its Geographic Targeting Orders (GTOs) that require U.S. title insurance companies to identify the natural persons behind shell companies used in all-cash purchases of residential real estate. This is the fourth renewal of these GTOs.

The renewed GTOs are identical to the May 2019 GTOs (see our June 2019 issue) with one modification: the GTOs now do not require reporting for purchases made by legal entities that are U.S. publicly-traded companies. Real estate purchases by such entities are identifiable through other business filings.

The terms of these Orders were effective beginning May 5, 2021 and ending on October 31, 2021. They apply to purchases made without a bank loan or other similar form of external financing and paid for, at least in part, using currency or a cashier's, certified, traveler's, personal or business check, a money order in any form, a funds transfer, or virtual currency. The orders provide FinCEN valuable data on the purchase of residential real estate by persons possibly involved in various illicit enterprises.

The GTOs cover certain counties within the following major U.S. metropolitan areas: Boston; Chicago; Dallas-Fort Worth; Honolulu; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; and Seattle.

These FinCEN GTOs do not require any banks to take any action. We report on them because they may affect your customers. ❑

What? CTR Reporting for Cash Shipments?

By Dee Bedell, CAMS, CRCM; Consultant

Young and Associates, Inc has recently become aware of a situation when a cash shipment is to be reported on a Currency Transaction Report (CTR).

If the financial institution (FI) contracts with a third party (e.g., an armored carrier service, ACS) to pick up and deliver cash to and from its branch(es) and that ACS is identified as a money service business (MSB), then the FI is responsible for creating currency transaction reports (CTR) for those shipments (to and from) that total over $10,000.

Some ACS use their own cash inventory to fulfill the bank's cash order request, thus making them an MSB. They may be creating CTRs for the transactions, but the Federal Deposit Insurance Corporation (FDIC) recently ruled that they are not obligated to complete one but the FI is required to. The FDIC's position is based on a 2013 ruling from the Financial Crimes Enforcement Network (FinCEN) that was updated the next year – FIN-2014-R010 Administrative Ruling on the Application of FinCEN Regulations to Currency Transporters, Including Armored Car Services, and Exceptive Relief. This ruling may be read at https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R010.pdf.

You will want to revisit your agreement if you contract an ACS for your cash shipments. See if you are placing your order with the ACS, and further determine if they are an MSB. If yes, begin completing CTRs immediately for those transactions. In addition, the FDIC states the FI is also encouraged to contact FinCEN for a back filing determination. ❑

Regulation E & Overdraft Services – Notice and Opt-in

By Michelle Graber, CRCM; Senior Consultant

An overdraft occurs when a consumer does not have enough money in their account to cover a transaction, but the financial institution pays it anyway. Studies have shown that consumers typically prefer to have their checks paid into overdraft but would rather have automated teller machine (ATM) withdrawals and debit card transactions declined if they have insufficient funds (and not pay an overdraft fee). When the financial institution's "overdraft service" includes ATM withdrawals and one-time debit card purchases, Regulation E requires you to provide consumers with the right to opt in, or affirmatively consent.

The term "overdraft service" means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account [Regulation E, §1005.17(a)].

When a consumer opts-in (as discussed below), they are essentially telling you, "When I do not have sufficient funds, I want you to authorize and pay one-time debit card purchases and ATM withdrawals and charge me the overdraft fee."

Notice & opt-in requirements

Before you can charge the consumer overdraft fees for one-time debit card purchases and ATM withdrawals that you authorize and pay as part of your overdraft service, Regulation E requires that you must do all of the following:

- Provide a written notice to the consumer set apart from all other information, describing the overdraft service.
- Provide a reasonable opportunity for the consumer to affirmatively consent (opt-in) to the overdraft service for ATM and one-time debit card transactions.
- Obtain consumer consent to allow the financial institution to authorize and pay ATM and one-time debit card transactions, as part of the overdraft service, that exceed the account balance.
- Provide written confirmation of the consumer's consent or agreement, which must include a statement informing the customer of their right to revoke or terminate their consent.

No overdraft service – no benefit – no notice & opt-in – no fee

The final rule and commentary include the word "authorize" where necessary for accuracy. When you do not intentionally "authorize" and pay ATM or one-time debit card transactions as part of any overdraft service and/or you do not have an overdraft service – notice and opt-in requirements do not apply, and the consumer cannot be assessed an overdraft fee.

Consumers that are provided the notice and opt-in in these situations receive no benefit. There is no overdraft service, and the financial institution does not intentionally pay ATM or one-time debit card transactions into overdraft because of the opt-in.

Force-pay transactions

Assume you have a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. You authorize an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction. However, at settlement, if the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer's account), you are not permitted to assess an overdraft fee or charge for paying the transaction in such a situation [Official Staff Commentary on Regulation E, comment 17(b) -1(iv)].

Timing & revocation

A consumer can affirmatively consent to your overdraft service at any time. However, you should not provide the notice and opt-in unless (or until) the consumer will receive the benefit of the overdraft service. A consumer can also revoke consent at any time. You must implement the revocation of consent as soon as reasonably possible. This includes instances when the financial institution terminates the service.

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Fee prohibition

If a consumer has not opted into the financial institution's overdraft service for ATM or one-time debit card transactions, you cannot charge a fee for paying an ATM or one-time debit card transaction. This fee prohibition encompasses not only overdraft fees assessed on a per-transaction basis, but also any daily, sustained, or continuous overdraft fees, negative balance fees, and similar fees and charges.

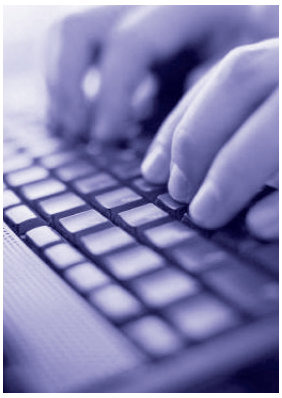
Where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, you are prohibited from assessing any such fees unless the consumer has opted in. However, you are not prohibited from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, automated clearinghouse (ACH), or other type of transaction not subject to the Regulation E notice, opt-in, and fee prohibition requirements.

Conclusion

Young and Associates, Inc. continues to find financial institutions that provide the notice and opt-in even when there is no overdraft service or when they do not intentionally authorize and pay ATM or one-time debit card transactions as part of any overdraft service. Although transactions are not "authorized and paid" into overdraft intentionally, the financial institution incorrectly believes the opt-in allows them to charge the fee when there is a force-pay transaction.

We also find instances where procedures do not include revocation of the opt-in when the financial institution terminates the overdraft service, or the consumer revokes a previous opt-in election. Failure to revoke the consumer's affirmative consent would allow situations where the consumer would be charged prohibited overdraft fees.

Because of the potential for civil money penalties, you should make sure anyone that has opted in, receives the benefit of your overdraft service. The benefit is that the financial institution will intentionally authorize and pay ATM or one-time debit card transactions. Ensure that you have detailed, specific procedures (relating to opt-in timing, system specifications, opt-in revocation, fee assessment, fee prohibition, etc.) for all aspects of the overdraft service. Appropriate management oversight of your program is fundamental to enabling responsible use of overdraft protection. The goal should be to minimize potential consumer confusion and complaints; foster good customer relations; and reduce credit, legal, and other potential risks. ❑



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

CFPB Rescinds Temporary Flexibilities Statements

By Sharon Bond, CRCM; Consultant

Effective April 1, 2021, the Consumer Financial Protection Bureau (CFPB) rescinded seven policy statements issued last year that provided temporary flexibilities to financial institutions in consumer financial markets including mortgages, credit reporting, credit cards, and prepaid cards. The agency is also rescinding its 2018 bulletin on supervisory communications and replacing it with a revised bulletin describing its use of matters requiring attention (MRA) to effectively convey supervisory expectations.

With these rescissions, the CFPB is providing notice that it intends to exercise the

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full scope of the supervisory and enforcement authority provided under the Dodd-Frank Act, to ensure the industry complies with consumer protection laws. Please note, that the CFPB states that it will not continue to provide the flexibilities afforded entities in the following interagency statements, as of April 1, 2021.

The flexibilities that were of interest regarding consumer compliance regulations are as follow:

- *Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act* (March 26, 2020). The CFPB issued this policy statement regarding the exercise of its supervisory and enforcement discretion in connection to the Home Mortgage Disclosure Act (HMDA). Specifically, the statement provided that until further notice, the CFPB did not intend to cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly, as required under Regulation C.

  The CFPB rescinded, as of April 1, 2021, the statement and provided guidance on how entities subject to Regulation C should now meet this obligation. The rescission instructs all financial institutions required to file quarterly to do so beginning with their 2021 first quarter data, due on or before May 31, 2021, for all covered loans and applications with a final action taken date between January 1 and March 31, 2021.

  The CFPB noted that approximately half of the financial institutions subject to the requirement are now filing their data, choosing not to take advantage of the flexibility provided by the statement.

- *Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers* (March 26, 2020). The CFPB issued this statement regarding the exercise of its supervisory and enforcement discretion under the Truth in Lending Act (TILA), Regulation Z, and Electronic Fund Transfer Act (EFTA), Regulation E. The statement provided that the CFPB, until further notice, did not intend to cite in an examination or initiate an enforcement action against any entity for failure to submit to the agency certain information collections relating to credit card and prepaid accounts required by TILA, Regulation Z, and EFTA, Regulation E.

  The CFPB rescinded the statement as of April 1, 2021 and provided guidance on how entities should now meet the following information collections requirements relating to credit card and prepaid accounts:

  - □ Annual submission of certain information concerning agreements between credit card issuers and institutions of higher education (and certain affiliated organizations), as required by Regulation Z, 12 CFR 1026.57(d)(3)
  - □ Quarterly submission of consumer credit card agreements, as required by Regulation Z, 12 CFR 1026.58(c)
  - □ Collection of certain credit card price and availability information from a sample of credit card issuers under TILA, 15 U.S.C 1646(b)(1) et seq.; and
  - □ Submission of prepaid account agreements and related information required by Regulation E, 12 CFR 1005.19(b)

  The statement expressed the CFPB's recognition of the impact of the COVID-19 pandemic on consumers and the operations of many financial institutions, the critical role played by credit card and prepaid account issuers in ensuring that consumers have access to credit and other funds, as well as the critical importance of this access in light of the dramatic effects of the pandemic on the finances of consumers. The agency therefore believed it was necessary to provide credit card and prepaid account issuers with flexibility and reduce their administrative burden to allow them to focus their attention on making sure consumers have access to credit and other funds. The CFPB has concluded that this tradeoff is no longer necessary.

- *Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act* (April 1, 2020). The CFPB issued this statement regarding the exercise of its supervisory and enforcement discretion in enforcing the Fair Credit Reporting Act (FCRA) and Regulation V. The statement highlights furnishers' responsibilities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and informs consumer reporting agencies and furnishers of the CFPB's flexible supervisory and enforcement approach during the COVID-19 pandemic regarding compliance with FCRA and Regulation V. As part of that flexible approach, the agency also stated that it intended to consider the circumstances that entities face as a result of the pandemic and their good faith efforts to comply with their statutory and regulatory obligations.

  The CFPB has rescinded the portion of the statement that set forth the agency's flexible supervisory and enforcement approach during the pandemic regarding compliance with FCRA and Regulation V and announced its intent to exercise

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its supervisory and enforcement authority consistent with the Dodd-Frank Act and FCRA, and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the CFPB.

The rescission leaves intact the section entitled "Furnishing Consumer Information Impacted by COVID-19" which articulates the CFPB's support for furnishers' voluntary efforts to provide payment relief and that the agency does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

The CFPB has concluded that since release of this statement circumstances have changed. As states and other jurisdictions have rescinded and modified stay-at-home orders over the course of the pandemic, the agency has learned that many entities have resumed some level of in-person operations and, in many instances combined with more robust remote capabilities, have demonstrated improved business continuity. The CFPB believes that consumer reporting agencies and furnishers have had sufficient time to adapt to the pandemic and should be able to regularly meet their obligations under FCRA and Regulation V.

- *Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic* (May 13, 2020). The CFPB issued this statement regarding the exercise of its supervisory and enforcement discretion under Regulation Z.

The statement provided that when evaluating a creditor's compliance with the maximum timeframe for billing error resolution in Regulation Z, the CFPB intended to consider the creditor's circumstances and did not intend to cite a violation in an examination or bring an enforcement action against a creditor that took longer than required by the regulation to resolve a billing error notice, so long as the creditor had made good faith efforts to obtain the necessary information and made a determination as quickly as possible, and complied with all other requirements pending resolution of the error.

The CFPB has rescinded the statement and announced its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the CFPB.

Based on the agency's market monitoring, it is believed that creditors now have sufficient capacity to manage consumer dispute requests and are able to regularly meet their obligations under Regulation Z without the flexibility afforded under the statement.

- *Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic* (June 3, 2020). The CFPB issued this statement regarding the exercise of its supervisory and enforcement discretion under the Truth in Lending Act (TILA), as implemented by Regulation Z.

The statement provided that under specified circumstances, the CFPB did not intend to cite a violation in an examination or bring an enforcement action against an issuer that during a phone call did not obtain a consumer's E-Sign consent to electronic provision of certain written disclosures required by Regulation Z, so long as the issuer during the phone call obtained both the consumer's oral consent to electronic delivery of the written disclosures and oral affirmation of his or her ability to access and review the electronic written disclosures.

The statement pertained to oral telephone interactions where a card issuer may seek to open a new credit card account for a consumer, provide certain temporary reductions in annual percentage rates (APR) or fees applicable to an existing account, or offer a low-rate balance transfer.

The CFPB rescinded this statement and announced its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the CFPB.

Based on its market monitoring, the agency believes that credit card issuers have adapted and improved operations over the course of the pandemic and are now able to respond to the credit needs of consumers while still providing consumers with the full protections afforded by TILA and Regulation Z without the flexibility afforded under the statement. The CFPB never intended the statement to be permanent, and the statement expressly indicated that the relief was intended to be temporary and targeted.

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Note to compliance officers & auditors

Please make sure that all staff are aware that these flexibilities no longer exist. You might want to perform some spot checks to make sure that any practices modified for the pandemic are changed back so that you comply with the full regulatory requirements. One thing that I have seen during compliance reviews is that error resolution dispute processing timelines, subject to Regulations Z and E, were extended based on the flexibilities referenced above. Young & Associates is always here to help if needed.

You can access the notices of rescission at https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-series-of-policy-statements-to-ensure-industry-complies-with-consumer-protection-laws/. ❑

HMDA Partial Exemption – Do You Still Qualify?

By Michelle Graber, CRCM; Senior Consultant

On top of all the issues everyone had to manage related to the COVID-19 pandemic in 2020 and beyond, financial institutions were busy originating a record number of mortgage loans. Most likely as a result, your 2020 Home Mortgage Disclosure Act (HMDA) loan application register (LAR) far exceeded the total number of applications during previous years.

After it significantly expanded HMDA data collection, the Consumer Financial Protection Bureau (CFPB) included a partial exemption from the expanded data requirements for some HMDA lenders. A partial exemption applies to applications for, originations of, and purchases of closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years and meets the qualifying criteria listed below.

If your bank originated 500 or more closed-end mortgage loans during calendar year 2020 it is no longer eligible for and cannot take advantage of the partial exemption for calendar year 2021 or calendar year 2022 [12 CFR 1003.3(d)(2)]. For data collected in 2021 and 2022, the bank must collect, record, and report all the HMDA data points for your closed-end mortgage loans [12 CFR 1003.4(a)].

For a financial institution to claim a partial exemption, it must:

- Be either an insured depository institution or an insured credit union, as defined in 12 CFR 1003.3(d)(1)
- Not have received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations, or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under the Community Reinvestment Act (CRA), as required by 12 CFR 1003.3(d)(6), and
- Have originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years to claim the partial exemption for closed-end mortgage loans, as required by 12 CFR 1003.3(d)(2), or originated fewer than 500 open-end lines of credit in each of the two preceding calendar years to claim the partial exemption for open-end lines of credit, as required by 12 CFR 1003.3(d)(3)

If you previously claimed the partial exemption, it will be necessary to determine the best way for the institution to manage the additional data points. To ensure that accurate data is collected and maintained, existing policies, procedures, and systems should be updated. Preparing and implementing the changes could also involve additional staffing and training, and possible software updates. Transaction testing should be conducted to verify the accuracy of the HMDA data.

The partial exemption for closed-end mortgage loans and the partial exemption for open-end lines of credit operate independently of one another. Therefore, in a given calendar year, an eligible financial institution may be able to rely on one partial exemption but not the other.

The CFPB recently published a set of frequently asked questions (FAQ) related to the partial exemptions on its HMDA Implementation and Guidance website. To access the partial exemption FAQs and other HMDA FAQs visit https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/. ❑

CFPB Proposes Delay for Updated Debt Collection Rules

By Bill Elliott, CRCM; Director of Compliance Education

The Consumer Financial Protection Bureau (CFPB) has proposed extending the effective date of two recent debt collection rules to give affected parties more time to comply due to the ongoing COVID-19 pandemic. As the rules were promulgated late in 2020, we would expect that they would have considered this when they issued the rules.

The CFPB issued a Notice of Proposed Rulemaking (NPRM) to delay by 60 days the effective date of two final rules issued under the Fair Debt Collection Practices Act (FDCPA). The debt collection rules were scheduled to take effect on November 30, 2021. The CFPB is proposing to extend the effective date of both rules to January 29, 2022. Although issued for comment, we sincerely doubt that the delay will not take place.

The first debt collection rule focuses on the use of communications related to debt collection, and clarifies prohibitions on harassment and abuse, false or misleading representations, and unfair practices by debt collectors when collecting consumer debt.

The second debt collection rule clarifies disclosures debt collectors must provide to consumers at the beginning of collection communications. The rule also prohibits debt collectors from making threats to sue, or from suing, consumers on time-barred debt. The rule requires debt collectors to take specific steps to disclose the existence of a debt to consumers before reporting information about the debt to a consumer reporting agency.

Although many financial institutions will not be subject to either rule, portions of the rule would be very useful, as they deal with issues such as collecting a loan via a text message, e-mail, voicemail, or other electronic means that were not available to financial institutions and debt collectors when this rule was last revisited.

The proposal is open for comment until May 19, 2021, and may be read at https://www.govinfo.gov/content/pkg/FR-2021-04-19/pdf/2021-07505.pdf. ❑

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.

May 2021

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

June 2021

- FEMA no longer publishing community suspensions from the NFIP in the *Federal Register*.

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.

October 2021

- Renewed FinCEN GTOs due to expire on October 31, 2021.

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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.

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 and estimated closing costs 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.

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October 2022

- Regulation Z changes implementing changes to "general QM" rule mandatory beginning October 1, 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.

January 2023

- "General performance standards" (GPS) national banks must comply with assessment area, and data collection, recordkeeping, and reporting requirements beginning January 1, 2023. Also, wholesale and limited purpose national banks must comply with data collection, recordkeeping, and reporting requirements on this date.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2023.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2022 by January 31, 2023.
- Update FHHLDS home loan activity format with fourth calendar quarter 2022 data by January 31, 2023 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

March 2023

- 2022 HMDA LAR must be submitted to the CFPB by March 1, 2023.
- 2022 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2023 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock and estimated closing costs expirations on TRID Loan Estimates on March 12, 2023 (e.g., EDT, CDT, etc.).

April 2023

- Update information in CRA public file by April 1, 2023.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2023 by April 30, 2023.
- Update FHHLDS home loan activity format with first calendar quarter 2023 data by April 30, 2023 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].