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Practical Compliance

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In This Issue

Preparing for FinCEN's May 2018 "Beneficial Owner" CDD Requirements

Good News / Bad News Regarding Implementation Planning

Let's start with the "good news". The mandatory compliance date for the new "Beneficial Owner" Customer Due Diligence (CDD) Requirements is a little more 13 months away (May 11, 2018). If you're an optimist, you may think that there is plenty of time for your institution to develop and initiate its compliance implementation plan. Oddly enough, the "bad news" is also that the mandatory compliance date for the new "Beneficial Owner" CDD Requirements is a little more 13 months away. If you aren't such an optimist, and your institution has not yet begun to develop and/or initiate its compliance implementation plan, you may (and should) be at least a little concerned.

If your institution has not yet begun to develop and/or initiate its compliance implementation plan, it should begin the process as soon as possible.

New CDD Requirements Refresher

For those who may have put dealing with the new CDD requirements on the back burner after they were issued last May, a refresher on the specific terms and requirements that become effective on May 11, 2018 is in order before delving into the implementation planning process:

Customer Risk Profiles / Ongoing Monitoring

Covered institutions must develop customer risk profiles, and to monitor suspicious activity on an ongoing basis. This includes maintaining and updating customer information beneficial ownership information.

- ***Customer Risk Profile*** refers to the information gathered about a customer at account opening used to develop a baseline against which customer activity is assessed for suspicious activity reporting which may include self-evident information such as the type of customer or type of account, service, or product. This profile may, but need not, include a system of risk ratings or categories of customers.
- ***Ongoing Monitoring*** requires covered institutions to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. This includes updating beneficial ownership information when the financial intuition becomes aware of changes information during its process of assessing or re-evaluating the risk posed by the customer.

Identification and Verification of Beneficial Owners of Legal Entity Customers

Covered institutions must identify the beneficial owners of its legal entity customers, subject to the previously outlined exceptions, at the time a new account is opened on or after May 11, 2018. Institution may satisfy this identification requirement either by completing a standardized form, attached to the Final Rule as Appendix A, or obtaining the information required by the standardized form (e.g., name, date of birth, address, social security number, etc.) through another means. A covered institution may rely on the beneficial ownership information supplied by the customer, provided it has no knowledge of facts that would reasonably call into question the reliability of the information provided by the customer.

After identifying the beneficial owners of new legal entity accounts, a covered institution must verify the identity of the beneficial owners. However, it is not responsible for verifying the status of beneficial owners. An institution may verify the identity of beneficial owners using the same elements contained in the risk-based procedures currently used to verify customers under existing CIP practices. Thus, a covered institution may verify the identity of the beneficial owner by requesting a copy of the beneficial owner's driver's license, but would not be required to undergo an exhaustive investigation through corporate records to verify the status of the beneficial owner.

In addition to the beneficial owner identification and verification requirements at account opening, a covered institution must update and modify beneficial owner information for its legal entity customers if it becomes aware of changes during the ongoing monitoring required under the new "fifth pillar" of CDD.

The following further explains the key terms relating to these new requirements:

- ***Legal Entity Customers***

  A legal entity customer means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

  There are several exemptions from the definition of a legal entity customer. Specifically:
  - Certain federally registered financial institutions, such as banks, broker-dealers, and investment advisers;
  - Trusts, except for trusts created through a filing with a state (*e.g.*, statutory business trusts);
  - Investment companies registered with the U.S. Securities and Exchange Commission (SEC);
  - Certain issuers of securities registered with the SEC under the Securities Exchange Act of 1934;
  - Exchanges, clearing agencies, or any other entity registered with the SEC under the Exchange Act;
  - Public accounting firms registered under the Sarbanes-Oxley Act;
  - U.S. government departments or agencies, or any entity that exercises governmental authority on behalf of the U.S. federal or state government;
  - Entities whose common stock or equity interests are listed on a stock exchange;
  - Registered entities, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, swap dealers, and major swap participants registered with the Commodity Futures Trading Commissions;
  - Bank holding companies, and saving and loan holding companies;
  - Certain pooled investment vehicles;
  - State-regulated insurance companies;
  - Financial market utilities designated by the Financial Stability Oversight Council;
  - Foreign financial institutions where the foreign regulator maintains beneficial ownership information;
  - Departments, agencies, and political subdivisions of foreign governments; and
  - Private banking accounts subject to FinCEN's private banking account rules.

Many of the above entities were exempted from the definition of a legal entity customer because information about their beneficial owners is already accessible.

- ***Account***

  The Final Rule definition of an *account* is the same as that in the CIP rules. This definition notably excludes accounts opened for participating in an employee retirement plan established under the Employee Retirement Income Security Act of 1974, as these are viewed as having an extremely low money laundering risk. Further, the new beneficial owner identification / verification requirements apply only to new accounts opened on behalf of a legal entity on or after May 11, 2018.

- ***Beneficial Owners***

  The definition of beneficial owner for BSA/AML purposes is the natural person(s) who own or control a legal entity or those who exercise effective control over a legal entity. Thus, the regulations reflect a two-prong definition of beneficial owners:

  - ***Ownership:*** Each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owns 25% or more of the equity interests of a legal entity customer; and
  - ***Control:*** An individual with significant responsibility to control, manage or direct a legal entity customer, including: (i) an executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, a general partner, president, vice president, or treasurer); or (ii) any other individual who regularly performs similar functions.

  Each prong is must be considered independently. A covered institution must identify and verify up to four individuals, as applicable, under the ownership prong ***and*** one individual under the control prong. Thus, if a legal entity is owned equally by four persons (*e.g.*, four 25% owners), and then managed by a separate natural person, a covered institution must identify and verify all five persons.

  However, a single individual may satisfy both the ownership and the control prongs. A legal entity may not have any 25% owners. Thus, if a legal entity is owned by one person (e.g., one 100% owner), and is managed by that same person, then a covered institution must identify and verify only that one person to satisfy the two prong requirements. Conversely, if a legal entity does not have any owners with 25% or more ownership interest, then a covered institution must identify and verify only a single person who satisfies the control prong of the Final Rules.

Having revisited the new CDD requirements, we are now better able to tackle the areas to be considered implementation planning process.

General Areas / Suggestions to Consider in Implementing the Final Rule

Current CDD practices by financial institutions vary significantly. Some institutions obtain beneficial ownership information routinely, while others obtain this information for only certain categories of customers, or following a triggering event. Practices may also vary with respect to percentage of ownership thresholds applied, and the specific information collected. Given the variation in current practices, the CDD compliance burden will be different for each institution.

The following are general suggestions for your institution to consider for the initial phases of its implementation planning process:

- **Information Technology (IT) Systems Modifications:** This is likely one of the most time-consuming aspects involving in updates / revisions to any BSA/AML program. As such, it is a critical and high priority area.

  If your institution has not already done so, it should assess the ability of current IT systems to handle the new requirements relating to customer on-boarding, transaction monitoring, record retention, and suspicious activity investigation and reporting, and begin working on making the necessary modifications.

- **Determine Whether Special "Ownership Thresholds" Apply:** The Final Rule established a 25% ownership threshold in the "ownership prong" of the definition of a beneficial owner. However, the Final Rule noted that, consistent with the risk-based approach, some financial institutions may determine that there are some circumstances in which they should identify and verify beneficial owners at a lower threshold.

  Your institution should determine whether it has certain customers / members, products, or services that could pose a higher risk, and for which a lower ownership threshold may be appropriate. If so, your institution should establish the applicable ownership threshold(s) for the impacted customers / members, products, or services, and update the applicable risk assessment(s), policies, and procedures accordingly.

- **Modifications to Account Opening Processes:** If your institution is not currently collecting beneficial ownership information, the May 2018 requirements will significantly impact your account opening processes and forms; and this will be the next high priority area to work on. Although the Final Rule permits an institution to rely on the beneficial ownership information provided by the customer, it can only do so provided it has no knowledge of facts that would reasonably call into question the reliability of such information.

  Your institution should develop its criteria for assessing the reliability of the beneficial ownership information provided, and for addressing situations when it cannot form a reasonable belief, after completing its standard procedures, that it knows the actual identity of the beneficial owner(s) of a legal entity customer.

- **Updating Beneficial Ownership Information on Current Accounts:** While the Final Rule primarily applies only to new accounts opened after the effective applicability date, May 11, 2018, it also requires that institutions update beneficial ownership information *"based on risk, generally triggered by a financial institution learning through its normal monitoring of facts relevant to assessing the risk posed by the customer."*

  Your institution should consider its approach to, and develop procedures for, situations that will require it to obtain beneficial ownership information on existing customers after the mandatory compliance date.

- **Incorporation of Beneficial Ownership Information:** The Final Rule provides several specific examples of how FinCEN expects financial institutions to incorporate beneficial ownership information into their BSA/AML program. Specifically, FinCEN expects financial institutions to fully incorporate beneficial ownership information in the customer information to be updated, where a change in such information could affect the risk presented by the customer, in suspicious activity reports (SARs), for purposes of enhancing Office of Foreign Assets Control (OFAC) sanctions and additional screening procedures, and for Currency Transaction Reporting.

  Your institution should develop procedures to incorporate the update of beneficial ownership information derived from its transaction monitoring, and to incorporate the use of this information in its suspicious activity reports (SARs), Office of Foreign Assets Control (OFAC) sanctions and any additional screening methods, and for Currency Transaction Reporting.

- **Certification Documentation**: The use of the standard Certification Form in Appendix A of the Final Rule is optional, and that institutions can use any means to obtain beneficial owner information (e.g., develop its own form, etc.), so long as it meets the substantive requirements for obtaining the information required by the standardized form.

  Your institution should determine whether it will use the standard Certification Form for beneficial owner information, or will develop and use an alternative form or methodology. If your institution chooses an alternative form or methodology, it needs to ensure that the form / methodology: (1)

includes all required information found in the standard Certification Form; and (2) is finalized and disseminated sufficiently in advance of the mandatory compliance date.

- **Record Retention** Records relating to beneficial ownership may be kept in any manner (e.g., retained electronically or incorporated into existing databases, etc.). There are two retention periods that apply, depending on the type of information involved: (1) *Identifying Information* - Any identifying information obtained (including, certification, if applicable,) must be retained for a period of five years after the account is closed, and (2) *Verification Information* - Any verification information, such as a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any nondocumentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

  Your institution should also determine how it will retain the records for these two types of information, and ensure that the appropriate procedures (manual and system) are developed and documented, and that that these methods meet the substantive requirements of the recordkeeping rule.

- **Modifications to AML Program and Procedures**: Implementation will require modifications to your institution's written AML program, corresponding procedures, and forms.

  Once your institution has determined how it will address the specific areas outlined above, it should ensure that the required updates and modifications are formally made to its AML Program, procedures, forms, etc. well in advance of the mandatory compliance date. Doing so will allow sufficient time to provide appropriate training to all applicable staff before the new requirements go into effect.

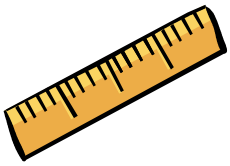
- **Training:** The new requirements relating to beneficial ownership, and any new / modified internal processes and procedures will require training for many employees / job functions within the institution.

  Your institution should build in sufficient time in advance of the mandatory compliance date to provide employees sufficient classroom and/or on-the-job training regarding the new requirements, and your institutions changes to its internal processes and procedures to comply with them.

Other "Tools" Available for Implementing the Final Rule

In the research performed for this article, we came across only one "checklist" that you may find useful in your institution's implementation planning efforts. *CUNA* has developed a Customer Due Diligence Checklist that includes sections that address the new CDD requirements effective May 11, 2018. While this checklist was developed specifically for Credit Unions, it is general enough in nature that it can readily be applied to Banks as well.

Short Clips



CFPB Imposes Largest–Ever HMDA Fine

On March 15, 2017, the Consumer Financial Protection Bureau (CFPB) issued an enforcement action for Home Mortgage Disclosure Act (HMDA) reporting deficiencies by Nationstar Mortgage, the ninth-largest HMDA-reporting institution. The enforcement order imposes a $1.75 million fine, the largest ever for a CFPB HMDA violation, and requires Nationstar to correct reporting deficiencies by improving its compliance management program, and correcting its HMDA submissions from 2012 - 2014.

Nationstar grew its HMDA-covered loan portfolio by nearly 900 percent over a four-year period, and due to flawed HMDA compliance systems, had submission sample error rates as high as 33%.

CFPB Proposes 6–Month Delay in Effective Date of the Prepaid Accounts Rule

On March 9, 2017, the CFPB issued a proposal to delay the effective date of its prepaid accounts rule by 6 months. The proposal was published in the Federal Register on March 15, 2017.

The CFPB indicated that the proposed delay is in response to concerns expressed by some industry participants that they will have difficulty complying with certain provisions of the rule by the current October 1, 2017 effective date. The Bureau believes that delaying the effective date by six months will be sufficient for industry participants to ensure compliance with the rule.

The proposal asks the public to provide comments about any implementation challenges that may affect consumers, and how additional time will impact industry, consumers, and other stakeholders. The Bureau indicated that if the comments received indicate the need for any substantive changes to the rule, it will issue a separate proposal, with an opportunity to comment, before finalizing. Comments on the current proposal are due by April 5, 2017.

CFPB Publishes Prepaid Rule Disclosure Guide

On March 7, 2017, the CFPB published a Guide on the short-form disclosures required by its final rule on prepaid accounts. The Guide provides basic instructions on how to prepare the disclosures for prepaid accounts, other than govt. benefit accounts or payroll account cards.

As noted in the prior clip, the CFPB has proposed a 6-month delay in the effective date of the final rule, from October 1, 2017 to April 1, 2018.

DOL Moves to Postpone Fiduciary Rule

On March 2, 2017, The Department of Labor (DOL) published a notice in the Federal Register proposing to extend the applicability deadline of the Fiduciary Rule for 60 days, until June 9, 2017. The Rule was originally scheduled to take effect on April 10. Comments on the extension proposal were due by March 17, 2017.

The Rule, which expanded the definition of "fiduciary" under ERISA and the IRS Code, was the target of a recent executive action by President Trump, directing the Secretary of Labor to thoroughly review the rule's effect on Americans' ability to access financial services. Comments related to this action, which was included in the proposal, are due by April 17, 2017.

The delay will provide the DOL additional time to determine the Rule's full impact on consumers, and, if necessary, issue a new proposal for revising or rescinding the Rule.

FDIC Releases Q2 CRA Exam Schedule

On February 28, 2017, the FDIC released its second quarter CRA examination schedule, covering April through June 2017.

DoD Reports MLA Website Malfunction

On February 16, 2017, the Department of Defense (DoD) posted a notice on its Military Lending Act (MLA) website stating that due to a system malfunction, it was unable to process 149 request files between February 9, 2017 – February 15, 2017. The DoD recommends that creditors who submitted multiple record request files in this period resubmit their files for processing.

OIG Report Cites Gaps in Vendor Contracts

On February 16, 2017, the FDIC's independent Office of Inspector General issued its report on Technology Service Provider Contracts with FDIC-Supervised Institutions. The report noted that few banks' contracts with technology service

providers (TSPs) provide sufficient detail about the providers' business continuity and incident response capabilities and duties. The report noted shortfalls in banks' assessments of how providers could affect their own ability to plan for business continuity and incident response, and expressed concern that some banks may not be sufficiently knowledgeable about or engaged in contract management related matters.

In response, the FDIC said it would work with other FFIEC agencies to update guidance on business continuity planning and incident response, and that it would continue to examine and monitor vendor management.

CFPB Exploring Use of Alternative Data in Credit Process

On February 16, 2017, the CFPB issued a Request for Information (RFI) seeking feedback on the benefits and risks of using alternative data sources (e.g., mobile phone bills, rent payments, etc.) to help consumers establish a credit history. The Bureau believes that using this type of information could help expand access to affordable credit to consumers who lack a traditional credit history built from mortgages, credit cards and other loans.

The Bureau indicated that it will evaluate: (1) how using alternative data sources could improve creditors' ability to assess creditworthiness; (2) whether using alternative data sources would add additional cost or complexity to the credit application and approval process; (3) privacy and data security implications of using alternative data sources; and (4) how certain demographic groups might be affected if alternative data were factored into credit scoring models.

Comments on this Request for Information are due by May 19, 2017.

New York Finalizes Cybersecurity Rules

On February 16, 2017, the New York *Department of Financial Services* (NYDFS) issued final regulations in 23 NYCRR 500 requiring its state-chartered banks and affiliates to establish and maintain a cybersecurity program as part of an ongoing effort to protect consumers and the state's financial system from cybercrime. The rules became effective March 1, 2017, and with limited exceptions, banks will have 180 days (August 28, 2017) to comply.

The NYDFS regulations are the first of this kind to be issued by a state regulator.

CFPB Updates HMDA Compliance Resources

On February 8, 2017, the CFPB updated its compliance resources for addressing HMDA filing requirements. The updated resources include a webinar that discusses identifiers and other data points, including those related to applicants and borrowers, and a chart that illustrates banks' options for collecting and reporting ethnicity and race information required by Regulation C.

FFIEC HMDA & CRA Website Updates

On January 31, 2017, the Geocoding System tool on the FFIEC's HMDA and CRA websites was updated to include 2017 Census information. On February 1, 2017, the 2017 FFIEC Census File of Metropolitan Statistical Area / Metropolitan Division, state, county, tract and income level indicators was added to the websites.

CFPB Issues Prepaid Rule Compliance Guide

On January 31, 2017, the CFPB issued a Small Entity Compliance Guide for its final rule on prepaid accounts.

The Guide includes definitions of various prepaid accounts, covered entities, exclusions, required disclosures, change-in-terms notices, periodic statements and alternatives, error resolution, limitations on liability, receipts at electronic terminals, access devices, compulsory use, account agreements, overdraft credit features, remittances and record retention.

As previously noted, the CFPB has proposed a 6-month delay in the effective date of the final rule, from October 1, 2017 to April 1, 2018.

CFPB Updates Compliance Guide on Remittances

On January 31, 2017, the CFPB issued the fourth edition of its Small Entity Compliance Guide on Remittance Transfers. The new version of the Guide encompasses updates related to the Bureau's final rule on prepaid accounts.

Good to Know

Send your questions to the
answerperson@mandm.consulting

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received and responded to five days a week.

Q: There seems to be some disagreement in different updates and information we have gotten about the number of fields that are being captured in the upcoming changes in 2018. Can you tell me what the number of fields that we are going from and to in 2018?

A: I think you'll find the CFPB's Summary of Reportable HMDA Data – Regulatory Reference Chart most helpful in clarifying the matter for you. The Chart contains a total of 48 "Data Points", which includes fields for institution specific information.

Nine of the "Data Points" contain the same information as is presently reported; 14 of the "Data Points" contain comparable to information to what is presently reported, however, there are modifications to what is reported in these fields beginning in 2018; and 25 of the "Data Points" are completely new.

Q: We have a customer who applied for an equity loan. We mailed the LE and the intent to proceed. The customer did not return the Intent to proceed. During the process the appraisal was ordered and the file went to underwriting. The appraisal was received and the Bank made a counter offer due to the appraised value. After the credit decision was made (counteroffer) the customer withdrew.

What is the best way to handle the adverse action? Would the Bank issue the denial based on the original request and ignore the underwriter's counter offer?

A: If the counteroffer was communicated to the customer using a notice comparable to Form C-4 in Regulation B, *Sample Notice of Action Taken, Statement of Reasons and Counteroffer*, no additional notification is needed. Otherwise, you would send an Adverse Action Notice based on the original request.

Q: On the Loan Estimate for our Home Equity loans, we disclose a discharge fee of $76 in total recording fees when we know another lien is to be paid off. We also include the $76 in lender credits, as we pay the fees on our Home Equity loans. However, when it comes to preparing the Closing Disclosure, we run into the following issue. In nearly all Home Equity loans involving a payoff, the discharge fee has been included in the payoff quote, and we reduce total recording fees on the CD by $76. While we do the refund the discharge fee through a General Lender Credit, it doesn't seem appropriate to tell borrowers that we pay the fee, if they pay it as part of the current loan payoff. Our questions are: Should we be not disclosing the discharge fee on the LE? And then, if the discharge fee is charged separately from the payoff quote, can add it on the CD, as it is going to be lender paid anyway?

A: In my opinion, either approach for preparing the LE & CD for your Home Equity Loans would be appropriate and compliant.

Your current disclosure for this on the LE is appropriate as is. Further, it sounds like the adjustments you are making on the Closing Disclosure may also be appropriate as is. Since you've disclosed a $76 Lender Credit on the LE, that Lender Credit must also be reflected on the Closing Disclosure, which it sounds like you have been doing. The fact that the $76 charge is now being captured in the payoff calculation (which is totally outside of your control) versus being reflected in total recording charges wouldn't impact anything in this regard.

If you opted not to include the $76 in the total recording fees calculation on the LE, you would still need to reflect the $76 General Lender Credit (as the borrower would otherwise be paying the discharge fee as part of the payoff). If the discharge fee is not included in the payoff, you should be able to list the charge on the CD as lender-paid (i.e., a specific lender credit), replacing the $76 General Lender Credit, without causing any alerts or issues within your LOS. If that doesn't work as indicated, you could list the fee as borrower paid and keep the $76 General Lender Credit as originally disclosed. However, in this latter scenario, the $76 discharge recording fee becomes subject to the aggregate 10% overage threshold.

Q: We now offer credit cards for our business customers and their employees through *Elan Financial Services*. Can we get CRA credit for any such cards that are issued?

A: While CRA credit may generally be obtained for reporting credit cards to small business customers as small business loans, these would not be reportable in your case. As these credit cards are issued and serviced by *Elan*, they would not be reflected on the Bank's books. Given this, they cannot be reported as small business loans. However, for potential CRA credit, you can code them as "Other Loan Data" (Code 9), so that while they are not "reported", they will be "recorded" for you to present to the examiners for possible consideration at your next CRA Exam.

Q: What is the Bank's responsibility under TRID for the Seller's CD?

A: Typically, the Bank's responsibility with respect to the Closing Disclosures provided by the Settlement Agent is basically limited to ensuring that the required disclosures are provided at or before consummation. This is outlined in Comment 3 to 19(f)(1)(v), which addresses the creditor's responsibilities in the working arrangement with the settlement agent.

Thus, the Bank is not technically responsible for the information contained within the Seller's CD prepared and provided by the settlement agent, only that it is appropriately provided.

Q: It was recently brought to my attention that the NCUA doesn't allow Home Equity Lines of Credit on Second Homes with a term (draw and repay period) exceeding 20 years. We currently have a product with a 10-year draw / 20-year repayment period. Can you clarify whether the NCUA has such a prohibition?

A: In my opinion, HELOCs on second homes with a total draw and repayment period of 30 years do not appear to be prohibited by the NCUA. There are a number of sections within §701.21, Loans to members and Lines of Credit to members, and §723, Member Business Loans; Commercial Lending, which relate in some way to this issue.

I base my opinion on the following citations:

- §723.8(c): This section allows for loans secured by a 1- to 4-family residential property that are not a member's primary residence to be originated and classified as Member Business Loans, and appears to include lines of credit;
- §701.21(c)(1): This section states that the general rules in §701.21(c) apply to Lines of Credit *"where indicated… except as otherwise provided in the remaining provisions of §701.21"*;
- §701.21(c)(4): This section states that *"Lines of credit are not subject to a statutory or regulatory maturity limit"*; and
- §701.21(f) *20-Year Loans* and §701.21(g) *Long-Term Mortgage Loans*: These sections make no reference to Lines of Credit (and appear to speak only to loans secured by primary residences), which per General Rule §701.21(c)(1) means that HELOCs are not subject to these provisions.

Q: If a member has a consumer loan (installment, line-of-credit, etc.) with the Credit Union, can we mail a quarterly statement, or are we required to send a monthly periodic statement reflecting the payments, finance charges etc.?

A: The answer depends whether the account involves closed-end or open-end credit, and whether the loan is set up for automatic payments. Specifically:

- For closed-end consumer installment loans in general, the Regulations do not specifically require a periodic statement. However, the provision and frequency of statements may be addressed in certain Credit Union Agreements, etc., so you should check on that angle. Also, from a practical perspective, if your closed-end consumer installment loan periodic statements include a "payment stub", payments are due monthly, and you don't require automatic payments from a share account, you should continue to provide monthly statements so that members can make their regular monthly payments using the payment stub, if they so choose.
- If, however, payments to closed-end consumer installment loans are made via automatic payments, then Regulation B applies. Providing the monthly periodic

statement for the share account and a quarterly periodic statement for the loan account fulfills the periodic statement requirements of §1005.9(c)(3).

- For open-end credit, Regulation Z does establish timing requirements for periodic statements, which is outlined in §1026.5(b)(2)(ii)(B). This basically ties the timing and frequency of periodic statements to the next payment due date. Thus, if the line of credit requires a monthly payment, a monthly periodic statement is required.

Q: Can you tell me if it is a requirement to run an OFAC check on our vendors?

A: There's no formal "requirement" for doing so, however, the regulations do require that you conduct an OFAC risk assessment and construct an OFAC compliance program responsive to that risk assessment. Your OFAC program should specify, based on the risk assessment, whether an initial OFAC check is to be performed as part of your new vendor due diligence efforts, and whether (and how often) your Accounts Payable transactions (which include vendor payments) are to be vetted against the OFAC lists.

Basically, every transaction that a U.S. financial institution engages in is subject to OFAC regulations. If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful. Management needs to assess the risk, and decide whether it warrants performing OFAC checks as part of its new vendor due diligence efforts, and on Accounts Payable vendor payments.

Q: I'm a bit confused over the recent changes to the BSA civil and criminal penalties. We're attempting to update our internal training materials to reflect these changes, but are not sure if the information we've come up with using the final rule, CUNA's resources, and a little internet research is accurate. Can you direct me to an authoritative source for the information for the increased penalties as of August 2016?

A: I've provided a link to a page on Cornell University's Legal Information Institute website that includes a table of the current penalties. Please note that these penalty amounts were adjusted again in February 2017.

Q: I have a new employee who is questioning whether we should give the Borrowers Interest form for second homes. I was under the impression that it only required for refinance transactions on owner-occupied primary residences, and that second homes and investment properties were excluded. Can you clarify this requirement for me?

A: It looks like your new employee is correct. 209 CMR 53.00 defines a "Home Loan" as: "*A loan, other than a reverse mortgage transaction, in which:*

(a) the borrower is a natural person;

(b) the debt is incurred by the borrower primarily for personal, family or household purposes; and

(c) the debt is secured by a mortgage on real estate improved with a dwelling designed to be occupied by not more than four families and occupied or to be occupied in whole or in part by the borrower.

Home loan does not include a loan with a maturity of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling".

Q: Is there an approach you see most commonly used by lenders for establishing their Escrow computation year, e.g., is the analysis conducted on the anniversary month of each loan, or is it conducted once a year on the whole portfolio (but ensuring 12 months captured)?

A: We've seen both approaches utilized by clients. Generally, when clients utilize an alternative approach to the single annual escrow analysis / escrow computation year, that decision is based on staffing / operational considerations. For example, a small loan servicing department with a significant number of accounts subject to annual escrow analysis may have found that performing the analysis at one time may adversely impact its ability to handle its other daily responsibilities; whereas spreading the process out throughout the year has minimal adverse impact on daily operations.

Important Dates– Don't Forget!

Generally, we retain the prior month, and go forward for at least a year as known. Dates are either effective dates of Final Rules, or end of the comment period for proposed rules.)

03/17/2017 FFIEC, Consumer Compliance Rating System. Applies to exams starting on/after this date.
04/03/2017 FinCEN SAR Update & Revisions Proposal. End of Comment Period.
04/05/2017 CFPB, Prepaid Accounts Rule - Proposed 6-month Delay Effective Date. End of Comment Period.
04/24/2017 IRS, Guidance for Information Reporting de minimis Rule. End of Comment Period.
05/19/2017 CFPB, Request for Information - Use of Alternative Data in Credit Process. End of Comment Period.
09/15/2017 Next Day ACH Program. Effective Date of Phase 2 Implementation.
09/29/2017 NACHA Rule on Registration of Third Party Senders. Effective date for compliance by ODFIs.
10/01/2017 Military Lending Act Regulation. Sections on credit card accounts become mandatory.
10/01/2017 CFPB, Prepaid Accounts Rule. Current mandatory compliance date for most Reg. E & Reg. Z changes.
01/01/2018 HMDA, Regulation C. Revised transaction coverage and expanded fields effective.
05/11/2018 FinCEN, CDD / Beneficial Ownership Rules. Mandatory compliance date.
10/01/2018 CFPB, Prepaid Accounts Rule. Mandatory compliance date regarding electronic transaction histories, and for submitting prepaid account agreements to the CFPB.
01/01/2019 HMDA, Regulation C. Effective date for changes to enforcement and reporting provisions.
10/01/2019 CFPB, Prepaid Accounts Rule. Mandatory compliance date for providing the full 24 months of written account transaction history upon request.
01/01/2020 HMDA, Regulation C. Quarterly reporting for high volume reporters starts.

More Important Dates... 2017 M&M Compliance School

The 2017 *M&M Compliance School* will be held September 19 & 20, 2017 (Tuesday - Wednesday) at the *Doubletree by Hilton* in Milford, Massachusetts (Exit 19 off I-495). The cost for this year's program for clients is $350 for both days! Stay tuned for more information. Registration will begin shortly.

