M&M CONSULTING | Partners in Risk Management

Volume 11, Issue 5, October 2018

Practical Compliance

M&M Consulting, LLC Compliance Group

Julie Beaumont
(603) 325-5001
jbeaumont@mandm.consulting

Kim Conroy
(774) 275-7017
kconroy@mandm.consulting

Kendra Cruz
(781) 507-4579
kcruz@mandm.consulting

Jessica Coulombe
(774) 218-1004
jcoulombe@mandm.consulting

Jeff Hubbard
(603) 440-3702
jhubbard@mandm.consulting

Ana Maguire
(413) 244-9324
amaguire@mandm.consulting

Lisa Pandolfo
(207) 610-4079
lpandolfo@mandm.consulting

Marcy Rodrigue
(207) 240-6527
mrodrigue@mandm.consulting

Jane Scattergood
(603) 812-9736
jscattergood@mandm.consulting

Roy Thattacherry
(978) 646-7149
rthattacherry@mandm.consulting

Deborah Yates
(207) 677-6354
dyates@mandm.consulting

In This Issue

HMDA Partial Reporting Exemptions – Worth the Effort for 2018?

On September 7, 2018, the Consumer Financial Protection Bureau's (CFPB) Interpretive and Procedural Rule (Rule) was published in the Federal Register. The Rule is intended address concerns raised by banks, regarding the partial exemptions for certain financial institutions from reporting an expanded set of HMDA data points made under S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, signed into law by the President on May 24, 2018; and to provide additional clarification to the Statements issued on July 5, 2018 by the CFPB, FDIC, and the OCC acknowledging the partial exemptions granted under Section 104.

Reporting institutions eligible for the partial exemptions should fully evaluate the Rule; and make their own determination as to whether it makes sense to take advantage of them for the 2018 HMDA reporting year. In this article, we will outline the eligibility requirements for institutions, the specific data field exemptions, as well as other aspects eligible reporting institutions need to consider.

Eligibility for Partial Reporting Exemptions

The Rule states that institutions qualify for partial reporting exemptions for the designated HMDA data points based on the following criteria:

- For closed-end mortgage loans if they originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years; and
- For open-end lines of credit if they originated fewer than 500 open-end lines of credit in each of the two preceding calendar years.

However, the Rule clarifies that exemptions do not apply for institutions that have received either:

- Consecutive ratings of "needs to improve" during their two most recent Community Reinvestment Act (CRA) exams before December 31st of the preceding year; or
- A rating of "substantial noncompliance" in meeting community credit needs on their most recent examination.

Exempt Data Points / Fields

The Rule provides reporting exemptions for 26 of the 48 Data Points, and 37 of the 110 individual report fields, as outlined below *(please note that Key Data Points / Fields are highlighted in **bold**)*. The Rule establishes also establishes two values to be used for reporting specific fields as exempt. Specifically, nineteen fields will be coded as "Exempt", and nineteen fields will be coded as "1111". The appropriate values are also indicated in this listing.

1) Property Address
   - Street Address (Field: Exempt)
   - City (Field 14: Exempt)
   - State (Field 15: Exempt)
   - Zip (Field 16: Exempt)
2) Rate Spread (Field 59: Exempt)
3) **Credit Score (Fields 62 And 63: 1111)**
4) Credit Score Model (Fields 64 And 66: 1111)
5) Reasons for Denial (Field 68: 1111)
6) Total Points and Fees (Fields 73 And 74: Exempt)
7) **Origination Charges (Field 75: Exempt)**
8) **Discount Points (Field 76: Exempt)**
9) **Lender Credits (Field 77: Exempt)**
10) **Interest Rate (Field 78: Exempt)**
11) Prepayment Penalty Term (Field 79: Exempt)
12) **Debt-To-Income Ratio (Field 80: Exempt)**
13) **Combined Loan-To-Value Ratio (Field 81: Exempt)**
14) **Loan Term (Field 82: Exempt)**
15) Introductory Rate Period (Field 83: Exempt)
16) Non-Amortizing Features
    - Balloon Payments (Field 84: 1111)
    - Interest-Only Payments (Field 85: 1111)
    - Negative Amortization (Field 86: 1111)
    - Other Non-Amortizing (Field 87: 1111)
17) **Property Value (Field 88: Exempt)**
18) **Manufactured Home Secured Property Type (Field 89: 1111)**
19) Manufactured Home Land Property Interest (Field 90: 1111)
20) Multifamily Affordable Units (Field 92: Exempt)
21) Submission of Application
    - Directly Submitted (Field 93: 1111)
    - Initially Payable (Field 94: 1111)
22) MLO NMLS Identifier (Field 95: Exempt)
23) Automated Underwriting System
    - Name (Field 96: 1111)
    - **Result (Field 102: 1111)**
24) **Reverse Mortgage Flag (Field 108: 1111)**
25) **Open-End Line of Credit Flag (Field 109: 1111)**
26) **Business or Commercial Purpose Flag (Field 110: 1111)**

In addition, the Rule allows for eligible institutions use a **Non-Universal Loan Identifier *(NULI)*** instead of a **Universal Loan Identifier *(ULI)* (Field 3)** for individual Loan Application Register records. A NULI can contain up to 22 characters, comprised of letters, numerals, or a combination of letters and numerals. The NULI must

be unique within the reporting institution, and not include any information that could be used to directly identify the applicant or borrower.

To quantify the impact of these partial exemptions on a per record basis, 73 individual fields (23 Key fields) require application / loan specific information, rather than the 110 individual fields (37 Key Fields) required for institutions not covered by the partial exemptions.

Which LAR Records are Impacted?

The Rule specifies that institutions qualifying for, and wishing to take advantage of, the partial reporting exemptions:

- **Need not collect** exempt data points for applications received on/after May 24, 2018;
- **Need not report** exempt data points collected on/before May 24, 2018; and
- **Can voluntarily report** exempt data points for transactions that qualify for a partial exemption. However, if information for an exempt data point is reported, the institution must report all data fields that are included in that specific data point (e.g., property address).

Regulatory Relief

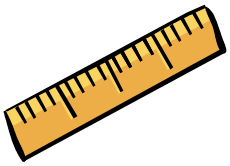
The Agencies have indicated that they will take the following approaches with respect to the reposting of 2018 HMDA data. The Agencies:

- Will not require data resubmission for HMDA data collected in 2018 and reported in 2019 unless data errors are "material". This term has not been further clarified or quantified;
- Do not intend to assess penalties for errors in 2018 HMDA data; and
- Will credit good-faith compliance efforts in their diagnostic examinations of 2018 HMDA data.

Should Qualifying Institutions Take Advantage of the Partial Exemptions in 2018?

Given the timing of the Rule (issued nine months into the 2018 reporting year), the potential differences in methodologies applied to applications received pre- and post- May 24, 2018, the reliance on software vendors needed to reprogram their respective systems, and the amount of time needed to make changes to all 37 reporting fields for existing LAR entries, the feedback we have received from most clients is that they do not plan to take advantage of the partial reporting exemptions in 2018. Rather, they intend to wait for the 2019 reporting year so that they can start fresh in reporting information subject to the partial exemptions; and feel more confident that their software programs can handle them accordingly. However, eligible institutions should make their decisions based on their specific situations; as small institutions with lower LAR volumes might still find the partial exemption a worthwhile effort for 2018.

Short Clips



Regulators Issue Proposed Rule Regarding Treatment of HVCRE

On 09/28/18, the financial regulatory agencies Proposed Rule implementing a provision of S. 2155 regarding the treatment of high volatility commercial real estate (HVCRE) was published in the Federal Register. The new law limits the exposures subject to a 150 percent risk weight to only those high-volatility commercial real estate loans that fall under the statutory "HVCRE ADC" definition.

The proposal defines an HVCRE ADC loan as one that is secured by land or improved real property; has the purpose of providing financing to acquire, develop or improve the real property such that the property would become income producing; and is dependent upon future income or sales proceeds from, or refinancing of, the real property for repayment of the loan. In addition to updating the definition, the proposal also provides additional clarity on the risk-weighting of HVCRE loans. Comments are due by 11/27/18.

Fed to Remove Regulations H & K from its Rules

On 09/25/18, the Federal Reserve (Fed) proposed to repeal its versions of Regulations H and K, which implement the SAFE Act, was published in the Federal Register. The repeal is the result of these regulations having been incorporated in the Consumer Financial Protection Bureau's (CFPB) rules pursuant to the Dodd-Frank Act.

FinCEN Updates List of AML/CFT Jurisdictions

On 09/21/18, the Financial Crimes Enforcement Network (FinCEN) released FIN-2018-A004, an Advisory which contains the revised lists of: Section I jurisdictions that are subject to countermeasures or enhanced due diligence due to anti-money laundering and counter-terrorist financing deficiencies; and Section II jurisdictions with AML/CFT deficiencies that are working to correct them.

Iraq and Vanuatu were removed from the Section II list due to significant progress in improving their AML/CFT regime and establishing the legal and regulatory frameworks to meet their action plan commitments; while Pakistan was added to the Section II list facing significant deficiencies related to counter-terrorist financing.

NACHA Approves Same-Day ACH Enhancements

On 09/14/18, NACHA approved three new rules that will expand the capabilities of same-day ACH for banks and bank customers, including expanded hours and a higher per-transaction dollar limit.

The first rule, effective 09/18/20, will expand same-day ACH by two hours every business day through the creation of a new same-day ACH processing window by the two ACH network operators. The second rule, effective 03/20/20, will increase the same-day ACH per-transaction limit to $100,000. The third rule, effective 09/20/19, will make funds from same-day ACH credits processed in the existing first window available by 1:30 p.m. local time. Funds from certain other ACH credits will be available by 9 a.m. local time by the receiving bank.

CFPB Releases New Version of Its Electronic Regulations Platform

On 09/13/18, the CFPB rolled out an updated version of its eRegulations tool, now called Interactive Bureau Regulations. The new version of the tool allows for easier content updates than its earlier iteration intended to provide more accurate and up-to-date information; and offers increased flexibility in its search function.

CFPB Issues Records Disclosure Final Rule

On 09/12/18, the CFPB published its Final Rule on the disclosure of records and information. The Final Rule makes clarifying changes to the CFPB's practices related to Freedom of Information Act requests, requests for information in connection with legal proceedings and the Privacy Act of 1974. The Final Rule takes effect 10/12/18.

The Final Rule omits previously proposed changes that would have threatened the confidentiality of supervisory information banks provide to CFPB examiners by allowing the Bureau to disclose confidential supervisory information to any agency it deems "relevant to the exercise of the Agency's statutory or regulatory authority"; including state attorneys general, foreign regulators and state bar associations. There was

concern that this change would have expanded the Bureau's authority to share confidential information far beyond its statutory authority, and raised significant safety and soundness, litigation and reputational concerns for banks under CFPB supervision.

Fed Approves Changes to Reg. CC Liability Provisions

On 09/12/18, the Fed approved changes to Regulation CC's liability provisions to address situations involving a dispute about whether portions of an electronic check have been altered or whether the item is a forgery.

The Fed acknowledged that in today's check collection environment, original checks may not be available for inspection when disputes between banks arise. In cases where the original paper check is not available, the amendments stipulate that for purposes of determining the burden of proof, it will be assumed that the item has been altered rather than forged. The presumption applies only in disputes between banks when one bank has transferred an electronic or substitute check to the other bank. The changes take effect 01/01/19.

OCC Updates Comptroller's Handbook

On 09/12/18, the Office of the Comptroller of the Currency (OCC) released revisions to the "Deposit-Related Credit" booklet of its Comptroller's Handbook. The booklet provides general guidance on the risks associated with deposit-related credit products, such as check credit, overdraft protection, and deposit advance products. It incorporates updates related to small-dollar lending, the Military Lending Act, third-party risk management and UDAP.

Agencies Affirm No Enforcement Actions Based on Guidance

On 09/11/18, the financial regulatory agencies issued a joint statement clarifying the role of supervisory guidance in bank supervision, noting that it "does not have the force and effect of law." The Agencies affirmed that supervisory guidance is intended to outline expectations and general views regarding appropriate practices for a given subject area, and that they would not pursue enforcement actions based on it.

CFPB Updates Model Disclosure Forms to Reflect Changes to FCRA

On 09/18/18, the CFPB's Interim Final Rule making changes to two model disclosure forms (i.e., Summary of Consumer Rights, and Summary of Identity Theft Rights) to reflect changes made to the Fair Credit Reporting Act by S. 2155, was published in the Federal Register.

The law requires consumer reporting agencies to provide consumers with the ability to freeze their credit free of charge, and for consumers to be notified of the security freeze right when receiving either of the two disclosures. It also extends to one year the minimum time that reporting agencies must include an initial fraud alert in a consumer's file, which alerts prospective lenders that the consumer may have been a victim of identity theft.

The updated model forms are available both in English and in Spanish; and become effective 09/21/18. The comment period ends 11/19/18.

OCC Issues Charter Flexibility Proposal

On 09/18/18, the OCC's Proposed Rule to implement a new section of the Home Owners' Loan Act permitting certain federal thrifts to elect the rights and duties of national banks was published in the Federal Register. Under the proposal, federal savings associations with total consolidated assets of $20 billion or less would be eligible to take an election to become "covered associations." Doing so would remove portfolio asset restrictions that have limited some banks' ability to respond to changing community needs. The Proposed Rule would also subject those institutions to the same duties, restrictions, penalties, liabilities, conditions, and limitations that apply to national banks without requiring a charter conversion. Comments on the proposal are due by 11/19/18.

FDIC Proposes to Retire Certain Outdated, Duplicative Financial Institution Letters

On 09/10/18, the Federal Deposit Insurance Corporation (FDIC) issued FIL-46-2018, in which it is proposing to retire 374 financial institution letters related to risk management supervision that it has identified as being outdated or duplicative. The retired FILs would be archived and remain accessible for reference. The FDIC noted that it is in the process of reviewing

additional FILs that could be further updated or streamlined. Comments are due by 10/10/18.

FinCEN Grants Permanent Relief from CDD Rule for CDs, Auto-Renewals

On 09/07/18, FinCEN issued FIN-2018-R004, permanently granting relief from beneficial ownership requirements for certificate of deposit rollovers and loans that renew automatically; loans where the renewal, modification or extension does not require underwriting; and safe deposit box renewals. The exception applies to rollovers, renewals, modification or extensions occurring on or after 05/11/18.

CFPB Clarifies HMDA Partial Exemptions

On 09/07/18, the CFPB's Interpretive and Procedural Rule clarifying several changes to Home Mortgage Disclosure Act regulations made under S. 2155, was published in the Federal Register. The rule is intended to address concerns raised by banks about S. 2155's partial exemptions for certain financial institutions from reporting an expanded set of HMDA data points.

Institutions qualify for partial reporting exemptions for certain HMDA data points for closed-end mortgage loans if they originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, and for open-end lines of credit if they originated fewer than 500 open-end lines of credit in each of the two preceding calendar years.

Under the Interpretive Rule, institutions subject to the partial exemptions may report exempt data fields, provided they report all data fields within any exempt data point that they do choose to report. The rule clarifies that only loans and lines of credit that are otherwise HMDA-reportable count toward the thresholds to qualify for the partial exemptions; and specifies the 26 data points that are subject to the exemption, as well as the 22 covered by the partial exemptions.

The Rule clarifies that exemptions do not apply for banks that have received consecutive ratings of "needs to improve" during their two most recent Community Reinvestment Act (CRA) exams before December 31st of the preceding year. The CFPB said that it will pursue notice-and-comment rulemaking in the future to incorporate its interpretations into Regulation C.

OCC Issues ANPR To Modernize CRA

On 09/05/18, the OCC's Advance Notice of Proposed Rulemaking (ANPR) seeking input on the best ways to modernize CRA regulations was published in the Federal Register. The ANPR asks for comment on several issues, including how to:

- Encourage more lending areas that need it most, including low- and moderate-income areas.
- Broaden and clarify the types of activities eligible for CRA consideration.
- Update assessment area definitions to accommodate digital lending channels.
- Measure bank CRA performance by a metric-based framework, "using quantitative benchmarks" that would assign numerical values to CRA activities.
- Evaluate CRA activities more consistently.
- Reduce the cost and burden of CRA evaluation.

The ANPR formally kicks off what will be a months-long process of modernizing the CRA regulatory framework. Because the OCC will share the ANPR results with the FDIC and the Fed, all U.S. banks should consider responding to the ANPR and emphasize the need for modernization. Comments are due by 11/19/18.

Agencies Extend Comment Period on Volcker Overhaul Proposal

On 09/04/18, the federal financial regulatory agencies announced that they will extend the comment deadline for a recent proposal to simplify and better tailor the Volcker Rule to 10/17/18. The Proposal would streamline and tailor the rule by focusing its restrictions on proprietary trading and investments in covered funds on banks with "significant" and "moderate" trading activities; banks with limited trading assets and liabilities of less than $1 billion would have a rebuttable presumption of compliance with the Volcker Rule.

Final Rule to Extend Exam Cycle for More Banks

On 08/29/18, a Joint Interim Final Rule by the federal banking agencies making qualifying banks with up to $3 billion in assets eligible for an 18-month on-site exam cycle was published in the Federal Register. The Rule Implements a provision in the S. 2155 regulatory reform bill.

Prior to S. 2155's passage, only banks with under $1 billion in assets were eligible.

Under the Final Rule, insured depository institutions, including federal or state branches of foreign banks, qualify if they have an "outstanding" or "good" composite rating. Comments are due by 10/29/18.

CFPB Announces 2019 Reg. Z Dollar Thresholds

On 08/27/18, the CFPB announced 2019 changes in dollar thresholds for several Regulation Z provisions governed by the CARD Act, the Home Ownership and Equity Protection Act and the Dodd-Frank Act. The thresholds are based on changes in the Consumer Price Index and take effect on 01/01/19.

OCC Updates CRA Policies and Procedures Manual

On 08/15/18, the OCC updated its Policies and Procedures Manual clarifying its policy and methodology for determining how evidence of discrimination or illegal credit practices will affect a bank's CRA rating.

The updated manual maintains the OCC's position that there be a logical nexus between the CRA rating and evidence of discriminatory or illegal credit practices. The revisions clarify that in assigning a CRA rating, the OCC first evaluates a bank's CRA performance for the applicable period; and then makes any adjustments that are warranted based on evidence of discriminatory or other illegal credit practices.

The OCC also clarified that its general policy is to downgrade the rating by only one rating level unless such illegal practices are found to be particularly egregious.

FCC Seeks Comment on Blocking of Presumptively Illegal Calls

On 08/10/18, the Federal Communications Commission (FCC) issued Public Notice DA 18-842 seeking comment on how it might further empower companies that provide telephone service to block fraudulent and other illegal calls. The FCC's request comes after it authorized, but did not require, voice service providers to block calls from phone numbers that are invalid or unassigned to a specific user. In its ongoing effort to combat illegal calls, the FCC is seeking comment on additional criteria by which voice service providers may block calls that are "highly likely to be illegal".

The FCC is also seeking feedback on how best to implement a "white list" to protect legitimate calls made by banks and other businesses and to avoid enabling unlawful spoofing of numbers. Comments are due by 09/24/18.

Annual Privacy Notice Requirements Final Rule

On 08/17/18, the CFPB's Final Rule Amending Regulation P to incorporate a new legal exception to the requirement for banks to send annual privacy notices to their customers was published in the Federal Register. Under a law passed by Congress in 2015, financial institutions are no longer required to send an annual privacy notice if they have not changed their policies and practices about how they share customer information since the previous notice was sent, provided they only share nonpublic personal information with third parties as permitted by one of the statutory or regulatory exceptions.

While the statutory provisions took effect on enactment, the Final Rule formally codifies that change, clarifying lingering confusion about compliance. The Final Rule also establishes deadlines for resuming annual privacy notices should an institution no longer qualify for an exemption. Additionally, the Final Rule eliminates the Reg. P provision that allows for use of an alternative delivery method, noting that such a method will likely no longer be necessary. The Final Rule is effective 09/17/18.

CFPB HMDA File Format Verification Tool

On 08/09/18, the CFPB rolled out its file format verification tool for Home Mortgage Disclosure Act data collected in 2018 and submitted in 2019. Using the tool, filers can test whether their HMDA files meet the formatting requirements laid out in the HMDA filing instructions guide.

CFPB Releases 2017 HMDA Data

On 08/07/18, the CFPB announced that the 2017 Home Mortgage Disclosure Act data is now available. The 2017 HMDA Dynamic National Loan-Level Dataset and the Aggregate & Disclosure reports can now be viewed on the FFIEC web page.

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: We received a joint mortgage application where the co-borrower subsequently wanted to be taken off the loan. The applicants withdrew that application, and a new application was submitted in the borrower's name. Our LAR now reflects two applications for this one property. Should we have treated this as one c999ontinued application? I always thought you could add a borrower to a loan, but not take one off.

A: Assuming both transactions are HMDA reportable, there is no problem reporting them as two separate transactions. Alternatively, you could have reactivated / modified the initial LAR application, as long as it is properly documented and handled consistent with the timing requirements under Regulation B.

Q: We have a refinance transaction that the proceeds of the loan are to satisfy the existing mortgage and obtain cash out to buy out an owner (soon to be ex-spouse) to remove them from the existing deed. Would the purpose be coded as a purchase for HMDA reporting purposes?

A: I believe this would be a Refinance or Cash-Out Refinance depending on how the bank treats these types of loans. Given that the property is currently owned jointly, this would not be considered a purchase.

A Refinancing is a Closed-End Mortgage Loan or Open-End Line of Credit in which a new Dwelling-secured debt obligation satisfies and replaces an existing Dwelling-secured debt obligation by the same borrower. 12 CFR 1003.2(p). Generally, whether the new debt obligation satisfies and replaces an existing obligation is determined by reference to the parties' contract and applicable law. In order for a Covered Loan to be a Refinancing, both the new and existing transactions must be secured by a Dwelling. Only one borrower need be the same on the new and existing transactions. Comments 2(p)-1, -3, -4.

Q: I was hoping you could assist with a BSA reporting question. We had a customer withdraw over $10k in cash today.

Instead of giving him US dollars, we gave him Euros. I'm sure we need to report this transaction, but we've have never previously encountered this situation.

Do we just enter the total US dollar figure in the withdrawal amount? That would be my guess, but I want to be sure.

A: Per Instructions to CTR for *Items 26 and 27, Total Cash In/Total Cash Out. In the spaces provided, enter the total amount of currency received (Total Cash In) or total currency disbursed (Total Cash Out) by the financial institution.* ***If foreign currency is exchanged, use the U.S. dollar equivalent on the day of the transaction (See "Foreign exchange rates"), and complete item 26a or 27a, whichever is appropriate.***

Q: Can an appraisal be ordered without having received an "intent to proceed"?

A: I am not aware of any prohibition on ordering the appraisal before receipt of the Intent to Proceed. However, you cannot collect an appraisal fee from an applicant before without it. Comment 26.19(e)(2)(i)(A) states:

Fees restricted. *A creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B).*

Q: The Bank uses a vendor for flood zone and flood insurance determinations. The vendor issued a determination form stating that the property is in a flood zone based on the most recent flood zone map from 2014. However, the potential borrower has provided a FEMA Letter of Map Revision that states the property is no longer in the flood zone; however, the map has not been reissued. Bank management has appealed to the

flood zone vendor to consider this Letter of Map Change and reissue its opinion.

If the vendor does not revise its determination, is the Bank allowed to make its own determination based on the FEMA Letter of Map Change, thereby overriding the vendor's determination? Is this a violation of the Flood Regulations, and potentially a fineable event?

A: Based on FEMA's FAQ Item #3, the Bank may rely on the LOMA that the potential borrower is presenting to the Bank. The FAQ states:

If the LOMA or LOMR-F removes the SFHA presented to the lender as proof that there is no federal flood insurance requirement for the property. However, even though a LOMA or LOMR-F may waive the federal requirement for flood insurance, a lender retains the prerogative to require flood insurance.

Q: I was looking for some clarification on Money Market account transaction limits. Specifically, whether there are limits regarding checks vs. other transactions? For example, can the money market account only have 3 checks and 3 electronic transactions processed per month, or is it 6 total transactions, regardless of the mix?

A: The transactions that count towards the limit of six transactions may occur in any combination. The 'Savings Deposits' section of Regulation D outlines the transaction limitations, as follows:

- *allow no more than six transfers or withdrawals per calendar month or statement cycle of at least four weeks for the purpose of transferring funds to another of the depositor's accounts at the same institution or making third-party payments by means of preauthorized, automatic, or telephonic transfers or transfers or withdrawals made by check, debit card, or other similar order made by the depositor and payable to third parties.*

Q: We have a loan request involving a property in a special flood hazard area, where the member already has flood insurance. Do we still have to give a 10-day notice to obtain flood insurance before we can close on our loan? We can't seem to find guidance on this scenario.

A: Even for members who already have flood insurance, you need to give a notice to the member in a **reasonable amount of time prior** to the closing. Regulators have generally interpreted this as being 10-days prior to closing, although that is not specifically stated in the regulation.

You need to provide a "Notice of Special Flood Hazard Area and Availability of Federal Disaster Relief Assistance" on property located in a flood zone to the member. The Credit Union needs to retain proof of receipt in a reasonable time prior to consummation. If the Notice is provided less than 10 days prior to closing, the file should be documented to clearly show the reason (e.g. the application was at that time, or the property was not identified for collateral purposes until that time, etc.)

When a prior determination is being used, the Notice must still be provided. There is no exception allowing reliance on the prior Notice.

Q: We a have a few questions specific to late charges as stated in Maine Title 9-A Article 2, Part 5, Section 2-502 - Delinquency Charges:

1. Does this statute pertain to non-real estate secured credit only?
2. Is the cap 5% of the payment amount not to exceed $10.00?
3. Is this law applicable to us as a NH bank with a Maine borrower?

A: Based on my research, I offer the following responses to the questions raised:

1. In my opinion, it would not. The statute applies to a "consumer credit transaction"; defined as: *"a consumer credit sale, consumer lease or consumer loan or a modification thereof including a refinancing, consolidation or deferral.* Which could mean goods, services or interest in land are purchased primarily for a personal, family or household purpose, and with respect to a sale of goods or services, not including manufactured housing or a motor vehicle, the amount financed does not exceed $50,000. §1-301. General definitions
2. The cap information you listed is correct.
3. Yes, the statutes states that "*The creditor, wherever located, induces the consumer who is a resident of this State to enter into the*

transaction or open-end credit plan by face-to-face, mail, telephone or electronic mail solicitation in this State".
§1-201. Territorial application

Q: We have a question regarding a new Vermont Regulation, Reg. B-98-1, which addresses commitment letter content and timing. As a federally chartered credit union, do State Regulations apply to us? While the revisions to our current commitment letter would be minor, we're not sure we're required to make them.

A: The institutions subject to Regulation B-2018-02, which replaces Reg. B-98-1, are not clearly identified within the Regulation itself. However, the Vermont Banking Division's own website makes it clear that it has no jurisdiction over Federally chartered credit unions.

Q: We had a new attorney close a loan for us last week. They put the Bank and Originator names and NMLS numbers on the front page of the Mortgage; but not the last page. Do we have to do a confirmatory mortgage and record it with the information on the last page also?

A: §1026.36(g)(1) and §1026.36(g)(2) of the Regulation only require that the NMLS information be listed, it does not specify where. Typically, I have seen the NMLS information noted on the first page of the mortgage, but on the last page of the Note. Official interpretation #3 indicates you only need to list them once:

INCLUSION OF NAME AND NMLSR ID.

Section 1026.36(g)(1) requires the inclusion of loan originator names and NMLSR IDs on each loan document. Those items need not be included more than once on each loan document on which loan originator names and NMLSR IDs are required, such as by including them on every page of a document.

Q: I am in commercial lending, and most (if not all) of our commercial mortgage loans are written as a 10-year note, with a 20-year or 25-year amortization. Frequently, the 10-year note will have an interest rate fixed for five years and then it will reprice based on an index and margin.

My question is whether the initial 5-year interest rate considered an "introductory rate" under HMDA? Also, is there any exemption for commercial loans?

A: Yes, in my opinion, for a covered loan, this is an introductory rate which §1003.4(a)(26) defines as *"the number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening"*. Commercial loans are not exempt from reporting this field.

Q: We have a legal entity borrower that has two owners. The loan was opened prior to May 11, 2018 so there is no existing Certificate of Beneficial Ownership.

One of the owners is buying out the other, leaving a single owner legal entity. As there is only a single owner, is this now considered a sole proprietorship and not subject to needing a CBO?

A: If the customer is a sole proprietor, then a CBO is not required. It is hard to determine if the customer is truly a sole proprietor based on the information provided, but I have provided the definition of a legal entity customer per §1010.230(e)(1) for you to consider with respect to your customer.

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.

Legal entities do not include sole proprietors, unincorporated associations, or natural persons opening accounts on their own behalf.

Q: Do consumer loans require billing statements if coupon books are not provided? We want to discontinue using coupon books; and are trying to determine if these loans (i.e., unsecured loans, car loans, personal loans, share loans non-real estate secured loans), will now require a billing statement. Also, if a customer opts for automatic payments, is a billing statement required?

A: I did not find any requirement to provide billing statements on non-real estate secured loans; regardless of whether the customer arranges to have automatic payments made.

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.)

09/04/2018 Federal Reserve, New Messaging Standard for Fedwire Funds Service. End of Comment Period regarding the proposal to adopt the International Organization for Standardization's 20022 message format for its Fedwire Funds Service
09/17/2018 CFPB, Regulation P. Effective date for legal exemption regarding Annual Privacy Notices.
09/21/2018 CFPB, FCRA Interim Final Rule. Effective date for changes to two Model Disclosure Forms.
09/24/2018 FCC, Request for Comment on Blocking Presumptively Illegal Calls. End of comment Period.
10/01/2018 CFPB, Amendments to the TRID Rules. Mandatory compliance date.
10/10/2018 FDIC, Proposal to Retire Outdated FILs. End of Comment Period.
10/17/2018 Agencies, Joint NPR - Volker Rule. End of extended Comment Period.
10/29/2018 Agencies, Expansion of 18-month Exam Cycle to Banks Under $3 Billion in Assets. End of Comment Period.
11/19/2018 CFPB, FCRA. End of Comment Period regarding changes to two Model Disclosure Forms.
11/19/2018 OCC, S. 2155-Mandated Charter Flexibility Proposal. End of Comment Period.
11/19/2018 OCC, ANPR to Modernize CRA Regulations. End of Comment Period.
11/26/2018 FRB, Proposal to Repeal its Versions of Regulations H & K. End of Comment Period.
11/27/2018 Agencies, Proposed Rule Regarding Treatment of HVCRE. End of Comment Period.
12/31/2018 FHFA, HARP Extension. Program extended beyond original September 2017 end-date.
01/01/2019 HMDA, Regulation C. Effective date for changes to enforcement and reporting provisions.
01/01/2019 CFPB, Regulation Z. Effective date for annual changes in Regulation Z dollar thresholds.
01/01/2019 Federal Reserve, Regulation CC. Effective date for changes involving electronic check liability provisions.
04/01/2019 CFPB, Prepaid Accounts Rule. New mandatory compliance date for most Reg. E & Reg. Z changes, electronic transaction histories, and for submitting prepaid account agreements to the CFPB.
04/01/2020 CFPB, Prepaid Accounts Rule. Revised 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.

