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Practical Compliance

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In This Issue

More HMDA Changes on the Horizon

With all the HMDA related changes made in recent years, you'd think we'd have seen the last of them for the foreseeable future. However, that does not seem to be the case. In early May 2019, the Consumer Financial Protection Bureau (CFPB) published two HMDA related proposals in the Federal Register. Specifically:

- On May 8, 2019, the CFPB published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register, soliciting comments on whether to make changes to the data points that were added or revised by the 2015 HMDA rule; and soliciting comments on requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. Comments on the ANPR are due by July 8, 2019.
- On May 13, 2019, the Consumer Financial Protection Bureau (CFPB) published a Proposed Rule in the Federal Register regarding changes to HMDA reporting requirements. The Proposed Rule seeks to:
  - Adjust Regulation C's institutional and transactional coverage thresholds,
  - Incorporate the interpretations and procedures from its Interpretive and Procedural Rule issued on August 31, 2018 into Regulation C, and
  - Implement further section 104(a) of the *Economic Growth, Regulatory Relief, and Consumer Protection Act*.

  Comments on the substantive changes in the Proposed Rule are due by June 12, 2019; while comments regarding the Paperwork Reduction Act analysis in the Supplementary Information are due by July 12, 2019.

Fortunately, neither of these proposals contain any new requirements or adversely impact existing HMDA reporting requirements. In fact, the proposed changes are generally favorable.

As the ANPR basically solicits comment regarding the data points that were added or revised by the 2015 HMDA rule, without proposing any specific changes, there is not much to discuss at this point Consequently, this article will focus on the changes outlined in the Proposed Rule.

Proposed Rule – HMDA Threshold Changes & Incorporating 2018 Interpretive and Procedural Rule into Regulation C

The changes in the Proposed Rule have two different effective dates. The majority of changes in the Proposed Rule would take effect on January 1, 2020; while certain changes specific to open-end lines of credit would take effect on January 1, 2022.

The Proposed Rule does not appear to pose any additional regulatory burden; as the proposed changes to the various volume thresholds are all favorable to those presently in effect, and the incorporation of the interpretations and procedures from the *2018 Interpretive and Procedural Rule* into the Regulation is basically a codification of those interpretations and procedures, with no additional requirements or impact on HMDA reporting.

Comments on the threshold changes and incorporating the interpretations and procedures from the 2018 Interpretive and Procedural Rule into the Regulation outlined below are due by 06/12/19; while comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information are due by 07/12/19.

Proposed Changes to Take Effect January 1, 2020

Excluded Institutions & Transactions - General

The CFPB is proposing to modify the definition of a "financial institution" subject to HMDA reporting requirements by modifying the minimum number of reportable closed-end mortgage loans and open-end lines of credit in each of the two preceding calendar years for a "depository financial institution" in §1003.2(g)(1)(v)(A) and (B), and for a "non-depository financial institution" in §1003.2(g)(2)(ii)(A) and (B).

The proposed revisions within the definition of a "financial institution" subject to HMDA reporting directly impact the parameters for "excluded transactions" outlined in §1003.3(c)(11) and (12) regarding the minimum number of reportable closed-end mortgage loans and open-end lines of credit, respectively, in each of the two preceding calendar years.

Excluded Institutions - Specific Threshold Changes

The CFPB is proposing to increase the institutional threshold for closed-end mortgage loans from the current threshold of 25 to either 50, or alternatively, 100 closed-end mortgage loans in each of the two preceding calendar years. The new threshold for closed-end mortgage loans will be determined based on the comments received regarding the proposed options.

For open-end lines of credit, the Proposed Rule extends for two years the current temporary institutional threshold of 500 open-end lines of credit in each of the two preceding calendar years; rather than having the institutional threshold revert to the 100 open-end lines of credit threshold currently scheduled to take effect on January 1, 2020.

So, institutions which do not have reportable closed-end mortgage loans or open-end lines of credit that meet or exceed the applicable thresholds in each of the two preceding calendar years, but otherwise meet the definition of a "financial institution" subject to HMDA reporting, are not a "financial institution" subject to HMDA reporting for the current year; and would be deemed an "excluded" institution.

Excluded Transactions - Specific Threshold Changes

The "excluded transaction" definitions / thresholds for reportable closed-end mortgage loans and reportable open-end lines of credit are outlined in §1003.3(c)(11) and (12), respectively.

The proposed numeric thresholds for reportable closed-end mortgage loans or open-end lines of credit are the same as those just described for excluded institutions. However, there is an important distinction in the two sets of parameters. For excluded institutions, in *each of* the two preceding calendar years, none of the applicable numeric thresholds were met. For excluded transactions, the applicable numeric thresholds were not met in *either of* the two preceding calendar years.

The definitions provide that a financial institution may collect, record, report, and disclose HMDA data for an excluded closed-end mortgage loan or an open-end line of credit, as though it were a covered loan, provided that it complies with such requirements for all such applications for excluded closed-end mortgage loans or open-end lines of credit, as applicable, that it receives, originates, or purchases.

So, as one example, a "financial institution" that is subject to HMDA reporting for the current year for closed-end mortgage loans may (but is not required to) collect, record, report, and disclose HMDA data for excluded

open-end lines of credit, so long as it does so for all such excluded open-end lines of credit applications it receives, originates, or purchases.

Partially Exempt Transactions

The Proposed Rule adds and defines the terms, "partially exempt transactions" and "optional data", both as defined in the *2018 Interpretive and Procedural Rule,* in §1003.3(d) of Regulation C. Partially Exempt Transactions apply to insured depository institutions or insured credit unions that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans or fewer than 500 open-end lines of credit, not otherwise excluded under the regulation. The insured depository institution or credit union is not required to collect, record, or report optional data for closed-end mortgage loan or open-end line of credit applications, as applicable, that it receives, originates, or purchases.

Optional data is defined in §1003.3(d)(1)(iii) as including the following data points:

- Universal Loan Identifier (ULI) or Non-Universal Loan Identifier (NULI)
- Property address
- Rate Spread
- Credit Score
- Reason for Denial
- Total Loan Costs or Total Points and Fees
- Origination Charges
- Discount Points
- Lender Credits
- Interest Rate
- Prepayment Penalty Term
- Debt-to Income Ratio
- Combined Loan-to-Value Ratio
- Loan Term
- Introductory Rate Period
- Non-Amortizing Features
- Property Value
- Manufactured Home Secured Property Type
- Manufactured Home Land Property Interest
- Multifamily Affordable Units
- Application Channel (Submission of Application and Initially Payable to Your Institution)
- Mortgage Loan Originator NMLSR Identifier
- Automated Underwriting System
- Reverse Mortgage
- Open-End Line of Credit
- Business or Commercial Purpose

The Proposed Rule includes the following additional criteria with respect to optional data specifically outlined in the *2018 Interpretive and Procedural Rule*:

- For a partially exempt transaction, a financial institution does not report a universal loan identifier (ULI) for an application relating to a covered loan that it receives, originates, or purchases. Rather, the financial institution shall assign and report a non-universal loan identifier (NULI). The NULI must be composed of up to 22 characters to identify the covered loan or application, which:
  - May be letters, numerals, or a combination of letters and numerals;
  - Must be unique within the annual loan/application register in which the covered loan or application is included; and
  - Must not include any information that could be used to directly identify the applicant or borrower.

- While not required, a financial institution may collect, record, and report optional data, as outlined above, for a partially exempt transaction as though the institution were required to do so, provided that:
  - If the institution reports the street address, city name, or zip code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan, it reports all data that would be required if the transaction were not partially exempt; and
  - If the institution reports any data for the transaction involving credit score, reason for denial, total loan costs, total points and fees, non-amortizing features, application channel, or automated underwriting system, it reports all data that would be required if the transaction were not partially exempt.

The Proposed Rule also includes the caveat to an institution's eligibility for applying the partially exempt transaction provisions contained in the *2018 Interpretive and Procedural Rule*. Specifically, the proposed new paragraph §1003.3(d)(6) states that an insured depository institution cannot take advantage these provisions if, as of the preceding December 31st, it had received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent Community Reinvestment Act (CRA) Examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent CRA Examination.

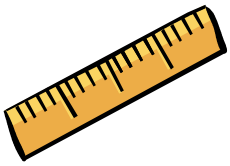
The Proposed Rule includes a newly added Commentary section for Partially Exempt Transactions in 3.3(d), Three of the four proposed Comments in this section relate to the application of the partially exempt transaction provisions in the case of mergers or acquisitions; i.e., the application of partial exemption thresholds to surviving or newly formed institution, CRA examination history, the applicability of partial exemptions during calendar year of merger or acquisition. The fourth proposed Comment clarifies that the determination of whether the closed-end mortgage loan or open-end line of credit applications that insured depository institution or insured credit union receives, originates, or purchases depends, in part, on whether the institution originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to §1003.3(c)(1) through (10) or (13) in each of the two preceding calendar years or fewer than 500 open-end lines of credit that are not excluded from this part pursuant to §1003.3(c)(1) through (10) in each of the two preceding calendar years.

The Proposed Rule also includes minor revisions to several existing Comments within Section 3.4(a) of the Commentary. These revisions add the "except for partially exempt transactions under § 1003.3(d)" statement, where applicable.

Proposed Changes to Take Effect January 1, 2022

The changes in the proposed rule that would take effect on January 1, 2022 are those related to the thresholds for reportable open-end lines of credit. As previously noted, the proposed rule extends the current temporary threshold of 500 open-end lines of credit from January 1, 2020 to January 1, 2022; and upon the expiration of the proposed extension of the temporary threshold, sets the permanent threshold going forward at 200 open-end lines of credit. The regulation presently sets a permanent threshold of 100 reportable open-end lines of credit effective January 1, 2020, the end of the current temporary threshold period.

Short Clips



Congress Passes Temporary Extension for NFIP

On 05/30/19, the US House of Representatives passed bill S. 1693, which was approved by the Senate last week, extending the National Flood Insurance Program (NFIP) through June 14, 2019. The program was originally set to expire on May 31, 2019.

The House is expected to vote as early as next week on a disaster relief package that contains a six-month extension for the NFIP.

CFPB Proposes Modernization, New Limits on Third-Party Debt Collection

On 05/21/19, the Consumer Financial Protection Bureau (CFPB) published a Proposed Rule in the Federal Register to modernize and clarify rules around third-party debt collection. Issued under the Fair Debt Collection Practices Act, the rule would not generally apply to creditors collecting their own debts and thus would not generally apply to banks and other financial institutions. Because some financial institutions place debt with third-party debt collectors, however, many must monitor their compliance with the FDCPA.

The proposed rule addresses several forms of communication that were not in place at the time of the FDCPA's passage in 1977—such as mobile phones, text messaging, email and social media—and would provide clarity on how and when collectors can use these forms of communication. The rule would also add substantial consumer protections, including a limit on the number of times that a collector may call a consumer, consumer opt-out procedures for certain collection communications and prohibitions against public contact on social media platforms. Comments to the proposed rule are due by August 19, 2019.

Fed Floats Extended Hours to Facilitate Same-Day ACH

On 05/16/19, the Federal Reserve (Fed) published a Notice in the Federal Register seeking public comment on whether the Fed banks should extend the daily operating hours of the National Settlement Service and Fedwire Funds Service to facilitate adoption of a third same-day ACH processing and settlement window.

The request for comment comes after NACHA, the electronic payments association, last fall approved a third same-day ACH window. The Fed proposed extending NSS operating hours by one hour to 6:30 p.m. ET, extending the time for initiating Fedwire transfers on behalf of third parties by 45 minutes to 6:45 p.m. ET and closing Fedwire half an hour later at 7 p.m. ET.

The Fed also requested comment on corresponding changes to the Fed's Policy on Payment System Risk. The Fed clarified that this request for comment does not address the idea of the Fed establishing its own 24/7/365 payments service. Comments are due by July 15, 2019.

Fed Transfers SAFE Act Rulemaking Authority to CFPB

On 05/15/19, the Fed published a Final Rule in the Federal Register transferring its rulemaking authority for the *Secure and Fair Enforcement Mortgage Licensing Act* (SAFE Act), which mandates a nationwide licensing and registration system for residential mortgage loan originators, to the CFPB. Accordingly, the Fed is repealing its SAFE Act regulations. Entities previously subject to Fed rules will now subject to the CFPB rules. The Final Rule will be effective on June 14, 2019.

FinCEN Reissues Real Estate Geographic Targeting Orders

On 05/15/19, the Financial Crimes Enforcement Network (FinCEN) reissued its geographic targeting orders temporarily requiring U.S. title insurance companies in specified areas to identify the individuals behind companies used to conduct high-end, all-cash real estate transactions. The purchase amount threshold remains at $300,000 for each covered metropolitan area.

The orders continue to cover Bexar, Tarrant and Dallas counties in Texas; Miami-Dade, Broward and Palm Beach counties in Florida; all boroughs of New York City; San Diego, Los Angeles, San Francisco, San Mateo and Santa Clara counties in California; the city and county of Honolulu; Clark County in Nevada; King County in Washington; Suffolk and Middlesex counties in Massachusetts;

and Cook County in Illinois.

CFPB Proposes Raising HMDA Reporting Thresholds

On 05/13/19, the Consumer Financial Protection Bureau (CFPB) published a Proposed Rule in the Federal Register regarding changes to HMDA reporting requirements. The Proposed Rule seeks to increase the coverage threshold for closed-end mortgage loans from 25 loans to either 50 or 100; and to extend the current temporary coverage threshold of 500 open-end lines of credit for another two years, after which, the threshold would be permanently set at 200. The CFPB is also proposing to incorporate the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018 into Regulation C, and to implement further section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Comments on the threshold changes in the Proposed Rule are due by June 12, 2019; while comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information are due by July 12, 2019.

FinCEN Issues Guidance on Convertible Virtual Currencies

On 05/09/19, the Financial Crimes Enforcement Network (FinCEN) issued FIN-2019-G001, which provides Guidance on how FinCEN's regulations apply to money transmission involving convertible virtual currencies. FinCEN indicated that the Guidance does not impose new regulatory requirements but rather consolidates existing regulations, administrative rulings and guidance.

The Guidance covers the application of FinCEN's money transmission to several business models involving convertible virtual currencies, including P2P exchangers, virtual wallets, various kinds of wallet providers, CVC kiosks, decentralized applications, anonymity-enhanced transactions, payment processors and internet casinos.

The Guidance also lists specific business models involving virtual currencies that may be exempt from the definition of money transmission, including currency trading platforms, decentralized exchanges, initial coin offerings, virtual currency miners conducting transactions with their own currency and transmission by mining pools and cloud miners.

FHA Proposes Changes to Lender Certification Requirements

On 05/09/19, the Federal Housing Administration (FHA) issued Proposed Changes to its Single-Family Housing Program regarding Loan-Level Certifications, Annual Lender Certifications, and Defect Taxonomy.

The proposed revisions to the *Addendum to the Uniform Residential Loan Application* provide greater clarity, streamline information and better align language in the addendum with existing statute and FHA policy. The proposed revisions would streamline annual lender certifications while continuing to hold lenders accountable for compliance with HUD eligibility and approval requirements. The proposed revisions to defect taxonomy to include more consistent "severity tier" definitions, potential remedies that align each severity tier, revised sources and causes in certain defect areas, new defect areas for servicing loan reviews and HUD policy references. Comments on the proposal are due June 8, 2019.

CFPB Solicits Comments on HMDA Data Point Changes from 2015 Final Rule

On 05/08/19, the CFPB published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register, to solicit comments on whether to make changes to the data points that were added or revised by the 2015 HMDA rule; and to solicit comments on requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. Comments on the ANPR are due by July 8, 2019.

OCC Updates Comptroller's Handbook

On 05/07/19, the OCC issued a revised Real Estate Settlement Procedures Act Booklet of the Comptroller's Handbook. This revised booklet replaces the similarly titled booklet issued in April 2015; and reflects changes since the CFPB's mortgage servicing rule took effect, as well as additional RESPA-related changes.

FHA Seeks Feedback on Single-Family Loan Sale Program

On 05/06/19, the FHA published an Advance

Notice of Proposed Rulemaking (ANPR) in the Federal Register. The ANPR seeks public feedback on the Agency's single-family loan sale program, as it looks to make the program permanent. Through the program, eligible single-family mortgage loans are assigned to FHA in exchange for claim payment, and mortgage notes are sold competitively to maximize recoveries and strengthen the FHA Mutual Mortgage Insurance Fund. Specifically, FHA is seeking feedback on program obstacles, benefits and drawbacks for single family loan servicers, bidders and purchasers. Comments are due by July 5, 2019.

EEOC to Collect 2017, 2018 Data on Pay and Hours Worked

On 05/03/19, the U.S. Equal Employment Opportunity Commission (EEOC) published an announcement regarding EEO-1 Pay Data Collection for 2017 in the Federal Register. The EEOC announced that it will require employers to submit EEO-1 survey data on employees' pay and hours worked for both 2017 and 2018 by the September 30, 2019 deadline. The EEOC's requirement for the collection of this data represents a significant expansion of the data that employers are required to report.

The EEOC's decision is the result of the April 25, 2019 Order by the US District Court for the District of Columbia requiring the EEOC to collect two years' worth of pay data. Other EEO-1 survey data is due on May 31, 2019.

OFAC Publishes Sanctions Compliance Guidance

On 05/02/19, the Office of Foreign Assets Control (OFAC) issued A Framework for OFAC Compliance Commitments, which provides guidance to financial institutions in developing appropriate Sanctions compliance programs. The guidance emphasizes the importance of a risk-based approach to sanctions for the development, implementation, and updating of a Sanctions compliance program.

While there is no one-size-fits-all approach for this type of program, the guidance notes that every program should include five essential elements: management commitment; risk assessment; internal controls; testing and auditing; and training. In addition, as has been done in the past, the guidance indicates that OFAC will consider an institution's Sanctions compliance program when imposing any penalties for a Sanctions violation.

CFPB Issues Fact Sheet on TRID Requirements for Assumptions

On 05/01/19, the CFPB issued a Fact Sheet to help lenders determine when the TILA-RESPA integrated disclosures [i.e., the Loan Estimate (LE) and the Closing Disclosure (CD)] are required when mortgages are assumed. The Fact Sheet addresses TRID requirements when a new consumer is added or substituted as an obligor on an existing closed-end credit transaction, except for a reverse mortgage, that is secured by real property.

The Fact Sheet uses a flowchart to illustrate when the LE and CD are required, and it discusses the specific factors that characterize an "assumption" as defined in Regulation Z: i.e., the creditor's express acceptance of the new consumer as a primary obligor, the creditor's express acceptance in a written agreement and the new borrower's use of the real property securing the mortgage as a principal dwelling.

CFPB Seeks Feedback on Remittance Rule Changes

On 04/29/19, the CFPB's Request for Information (RFI) Regarding Potential Regulatory Changes to the Remittance Rule was published in the Federal Register. The Remittance Rule established requirements for companies sending international money transfers on behalf of consumers. The CFPB is considering whether to raise the volume threshold that exempts certain providers from the rule's requirements and possibly incorporating a small financial institution exemption.

The CFPB is seeking comments on a provision in the rule granting a temporary exception allowing sending institutions to estimate the exchange rate and certain fees that must be disclosed. This exception, which many financial institutions have relied on since the rule took effect, is set to expire in July 2020. Comments on the proposal are due by June 28, 2019.

OCC Proposes Rule Changes on Fiduciary Capacity and Non-Fiduciary Custody Activities

On 04/29/19, the OCC's Advance Notice of Proposed Rulemaking (ANPR) regarding Fiduciary

Capacity; Non-Fiduciary Custody Activities was published in the Federal Register .

The OCC is considering amending the definition of "fiduciary capacity" to include trust-related roles allowed under state law that do not involve investment discretion (e.g., the roles of trust protector, trust director, and distribution trust adviser). The OCC is also exploring the possibility of issuing specific regulations governing non-fiduciary custody activities; activities which are currently subject to non-regulatory guidance in OCC handbooks and bulletins. Comments on the proposal are due by June 28, 2019.

CFPB Updates Prepaid Account Rule Compliance Guide

On 04/26/19, the CFPB updated its Prepaid Rule Small Entity Compliance Guide to reflect the final rule on prepaid accounts. The updated Guide incorporates recently issued technical specifications for submitting account agreements to the bureau, as well as several administrative changes.

FDIC Proposes Changes to Large Bank Deposit Recordkeeping Requirements

On 04/11/19, the FDIC's Notice of Proposed Rulemaking (NPRM) regarding Recordkeeping for Timely Deposit Insurance Determination was published in the Federal Register. The regulation requires banks with at least two million deposit accounts to upgrade deposit recordkeeping so that FDIC could use the system of a subject bank to make deposit insurance determinations in the event of failure. The NPRM seeks to Amend Part 370 of the FDIC's regulations regarding "recordkeeping for timely deposit insurance determination"; and provides an optional one-year compliance extension from the rule's original deadline of April 1, 2020. Comments are due by May 13, 2019.

FDIC Warns of Gaps in Tech Vendor Contracts

On 04/03/19, the FDIC issued FIL-19-2019, which outlined gaps noted by examiners in banks' contracts with technology vendors; and reiterated regulatory requirements for these contracts.

Examiners found that a number of contracts did not adequately define rights and responsibilities regarding business continuity and incident response, or that did not provide sufficient detail to allow financial institutions to manage those processes and risks. Specifically, some contracts did not require the vendor to have a business continuity plan, establish recovery standards, define remedies if a vendor misses a standard, detail a vendor's post-incident notification duties or define key terms related to business continuity and incident response.

The FIL reminds banks about the interagency guidelines setting information security standards, which were issued under the Gramm-Leach-Bliley Act and the notification requirements under Section 7 of the Bank Service Company Act. The FIL noted that long-term contracts and those that automatically renew may be at higher risk for coverage gaps; and that banks should assess and manage risks around those gaps.

Good to Know

Send your questions to the
answerperson@mandm.consulting

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

Q: Are we required to send last year's escrow analysis with this year's escrow analysis?

A: Yes. §1024.17(i) requires that a servicer provide a borrower with either the previous year's escrow projection or the initial escrow account statement, as applicable, when it provides subsequent annual escrow statements.

Q: We discovered a rate change that is currently in effect is incorrect; and are looking for guidance on how this should be disclosed to the borrower. The rate change was processed using the new rate that was disclosed on the change notice, however that rate is .125% higher than it should be.

We plan to change the interest rate on the loan to the correct rate, effective dated to the day of the rate change and reimburse the borrower for the excess interest collected; and notify the borrower in writing of the error and the corrective action taken. Is this planned action and notification given that the change is in the borrower's favor?

A: The methodology you've described is, in my opinion, appropriate from a regulatory perspective for addressing this particular error, and for documenting the file.

There is, however, another angle regarding this error that you should investigate, if you have not already done so. Specifically, is the error you identified an isolated incident, or was the underlying cause more systemic; potentially impacting rate changes for other borrowers? If it is the latter, the regulators will likely expect / require you to perform a much broader scope investigation; and to take similar corrective action for any other adversely impacted accounts identified in the process. As this wasn't referenced in your email, I don't know if it's applicable here, but I would be remiss to not at least to make mention of it.

Q: I thought a financial institution had to have originated 500 reportable open-end loans in only ONE of the last two years to require reporting of the open-end loans. However, the 2019 *Guide to Getting it Right* dated 03/07/19 states: *"...or originated at least 500 open-end lines of credit in each of the two preceding calendar years meets or exceeds the loan-volume threshold."*

This seems to indicate that 500+ reportable open-end loans would have had to be closed in BOTH years to be reportable. Would this be your interpretation of the requirement as well?

A: I can understand the confusion; given the phrasing and perspective differences in the Regulation compared to the Guide. Specifically, Section 1003.3(c)(12) of Regulation C addresses the subject from the "exemption" perspective; stating that *"open-end line of credits are exempt from reporting, if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years"*. The Guide, however, addresses the topic from the "requirement" perspective; stating (as you noted) that the institution *"...originated at least 500 open-end lines of credit in each of the two preceding calendar years meets or exceeds the loan-volume threshold"*.

When you examine both statements closely, you can see that they essentially state the same thing; although from different angles.

Q: If the bank is going to be in 1st lien position on a HELOC and the property is in a flood zone is the bank required to escrow for Flood Insurance?

A: HELOCs are specifically exempted under §339.5(a)(2)(iv) from the flood insurance escrow requirement.

Q: We are hoping to get some clarification regarding charge back rights. We received a chargeback and provided temporary credit for the item within 10 days. On Day 45, we had not yet heard from the merchant, so we sent the cardholder a letter stating that they had been given final credit for the charge back. However, two days later, we received documentation from the merchant with substantial evidence that the cardholder made the transaction. Do the regulations allow us to call the cardholder and pursue the matter further based on the new

information, and then subsequently charge her account if deemed appropriate, despite having gone beyond the 45-day investigation period and having sent a final credit notification letter?

A: Unfortunately, based on my review of Regulation E and applicable Commentary, as well as some additional online research, it appears that once you've issued final credit and the allowable investigation period has ended, the final credit cannot be reversed.

Q: We have a current customer for whom we will be changing their current deposit product to a newly created product. The only difference between the existing product and the new product is that their monthly fee will be reduced. Are we required to provide a change in terms notice to the customer given that the only change involved will be to the customers benefit?

A: From a compliance standpoint, Regulation DD does not require a change in terms notice with respect to the difference you've described between the two accounts. However, if you have not already done so, I would recommend having some sort of advance communication with the customer regarding the product change; explaining why it is being made, why they were selected, and the similarities / differences in features, benefits, and fees between the two accounts. I know that I would be initially "suspect" if my bank arbitrarily changed my product type without informing me, especially if my current product was still being offered. So even if not required by regulation, I'd err on the side of good customer service and relations.

Q: A borrower initially applies for a fixed rate mortgage. The next day, after we have sent all applicable initial disclosures, the borrower decides to go with an ARM product. In such cases, should we withdraw the loan application and start a new one, or can change the product on the initial application and proceed from there?

A: I don't see any potential regulatory issues with either approach. From a practical perspective, we typically see the product being changed, with a revised Loan Estimate and application, plus any applicable new disclosures (e.g., ARM Program Disclosure, CHARM Booklet, etc.) issued. Depending on the specific differences between the original and revised loan products, the borrower requested product change could meet the change in circumstance requirements outlined in §1026.19(e)(3)(iv)(C).

Q: We have a member who is a victim of a scam (over the $5k threshold) who accepted checks from an unknown person, deposited these checks to her personal accounts, and then sent checks drawn on her account to other unknown individuals based on the instructions of her online "boyfriend".

We think that a SAR is warranted; but are uncertain as to the appropriate reason to list for filing. We have had somewhat comparable cases where the victim was elderly, and we filed for elder financial exploitation. However, that does not apply to this case.

A: In my opinion, an SAR is warranted in this case. As you have identified a member as the victim of this scam, the minimum $5K filing threshold applies. With respect to the reason for filing, the general check fraud category would appear to be the most appropriate in this case. Also, I recommend that you utilize the narrative section of the SAR to clearly explain that your member is the apparent victim of this scam; and that, given her age, elder financial exploitation does not apply.

Q: We had an initial loan application that was taken and signed by one MLO; but was then reassigned to another MLO. As a result, there are two different MLOs listed file; one on the initial application and Loan Estimate; and the other listed on the Closing Disclosure, Note, and Mortgage. Does this present any potential compliance issue or concern?

A: The Official Interpretation to §1026.36(g)(1)(ii) speaks to such instances, and specifies that: "the name and NMLSR ID of the individual loan originator with *primary responsibility* for the transaction *at the time the loan document is issued* must be included". Thus, in my opinion, there is no regulatory issue with having one MLO identified on the note/mortgage, and another MLO identified on the application; so long as the MLO identified on the respective documents had primary responsibility for the transaction at the time that the document in-question was issued.

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.)

05/06/2019 FDIC, NPRM on Joint Ownership Deposit Accounts. End of Comment Period.
05/07/2019 FDIC, ANPR on Brokered Deposits and Interest Rate Restrictions. End of Comment Period.
05/07/2019 CFPB, ANPR on Residential Property Assessed Clean Energy (PACE) Financing. End of Comment Period.
05/13/2019 FRB, ANPR to Amend Reg. D Lowering Rate Paid on Excess Balances. End of Comment Period.
05/13/2019 FDIC, NPRM to Amend Large Bank Deposit Recordkeeping Requirements. End of Comment Period.
05/15/2019 CFPB, NPRM to Rescind Provisions of 2017 the Final Rule on Payday, Vehicle Title, and Certain High Cost Installment Loans. End of Comment Period.
05/21/2019 Department of Labor, Overtime Rule Proposal. End of Comment Period.
05/28/2019 Department of Labor, Regular Rate Proposal. End of Comment Period.
06/08/2019 FHA, Proposed Changes to Lender Certification Requirements. End of Comment Period.
06/12/2019 CFPB, HMDA, Proposed Rule. End of Comment Period for proposed increased and extended reporting thresholds.
06/14/2019 FRB, SAFE Act, Final Rule Transferring Rulemaking Authority to the CFPB. Effective Date of Final Rule.
06/14/2019 National Flood Insurance Program (NFIP) Extension. End of Temporary Extension Period.
06/28/2019 CFPB, RFI on Potential Regulatory Changes to the Remittance Rule. End of Comment Period.
06/28/2019 OCC, ANPR on Fiduciary Capacity; Non-Fiduciary Custody Activities. End of Comment Period.
07/01/2019 Agencies, Final Rule on Acceptance of Private Flood Insurance. Effective Date of Final Rule.
07/05/2019 FHA, ANPR on Single-Family Loan Sale Program. End of Comment Period.
07/08/2019 CFPB, ANPR on HMDA Data Point Changes from 2015 Final Rule. End of Comment Period.
07/12/2019 CFPB, HMDA, Proposed Rule. End of Comment Period for Paperwork Reduction Act analysis.
07/15/2019 FRB, Proposal to Extend Operating Hours to Facilitate Same-Day ACH. End of Comment Period.
08/19/2019 CFPB, Proposal to Amend Regulation F, Debt Collection Practices. End of Comment Period.
09/30/2019 EEOC, EEO-1 Pay Data Collection for 2017. Due Date for 2017 and 2018 Expanded Data Filing.
01/01/2020 HMDA, Regulation C. Quarterly reporting for high volume reporters starts.
04/01/2020 CFPB, Prepaid Accounts Rule. Revised mandatory compliance date for providing the full 24 months of written account transaction history upon request.
11/20/2020 CFPB, Delay in the Effective Date for the Underwriting Provisions of the 2017 Final Rule on Payday, Vehicle Title, and Certain High Cost Installment Loans. Proposed extension of Mandatory Compliance Date for the underwriting provisions of the Final Rule, originally set for August 19, 2019.

Registration Open to the 2019 M&M Compliance School

Registration is open for the 2019 M & M Compliance School, which will be held at the *Doubletree by Hilton* in Milford, Massachusetts (Exit 19 off I-495) on 9/17 & 9/18. The cost for this year's program for clients is $350 for both days! For those staying overnight, the hotel cost is $124 per night plus tax. The school is filling up quick, so reserve your spot today.

Please contact Dean Stockford (dstockford@mandm.consulting / (207) 458-8559) for more information.

