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Partners in Risk Management

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Practical Compliance

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In This Issue

Private Flood Insurance Acceptance Rule Takes Effect

On 07/01/19, the financial regulatory agencies' *(i.e., Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, National Credit Union Administration)* Joint Rule on Private Flood Insurance Acceptance went into effect. The rule implements the 2012 Biggert Waters Act provision requiring federally regulated lending institutions to accept private flood insurance policies that meet certain statutory criteria to satisfy the mandatory purchase requirement.

The Rule was discussed in-depth in our February 2019 *Practical Compliance Newsletter* article. However, as six months have since passed (and some of us may suffer from the "out of sight, out of mind" syndrome), we thought the timing was appropriate to provide a refresher on the subject.

Bare Bones Summary

In a nutshell, the Private Flood Insurance Acceptance Rule:

- Requires regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" as defined in the Biggert-Waters Act;
- Permits institutions discretion in accepting flood insurance policies issued by private insurers, as well as plans providing flood coverage issued by mutual aid societies, that do not meet the statutory definition of "private flood insurance," subject to certain restrictions (i.e. the policy must provide sufficient protection and be consistent with general safety and soundness principals, and the institution must document the sufficiency of the policy in writing); and
- Provides a compliance aid provision, which will allow financial institutions to determine whether a flood insurance policy meets the definition of "private flood insurance" without undertaking a lengthy evaluation of a policy.

What Qualifies as "Private Flood insurance"?

To qualify as private flood insurance, a policy must be issued by an insurance company that is:

- Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or is
- Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property.

Note that policies issued by surplus lines insurers for noncommercial properties are included, as these insurers meet the criteria of being ‘‘otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located.”

In addition, to qualify as private flood insurance, a policy must:

1. Provide flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:
   - Define the term ‘‘flood’’ including the events defined as a ‘‘flood’’ in an SFIP;
   - Contain the coverages specified in an SFIP: e.g., building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;
   - Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender. For policies with coverage in excess of the amount available under the NFIP, the policy must only meet the deductible applicable for the maximum amount of coverage available in an SFIP. For example, if a private policy for a commercial structure provides coverage of $1,000,000, the policy only needs to match the SFIP deductible for the first $500,000. The policy is permitted to have deductibles higher than the NFIP maximum for the coverage over $500,000;
   - Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Other exclusions are only permitted if they pertain only to the coverage above the amount and type of coverage provided by an SFIP, or have the effect of providing broader coverage to the policyholder; and
   - Not contain conditions that narrow the coverage provided in an SFIP.
2. Include the following four criteria:
   - A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured; and to the lender that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;
   - Information about the availability of flood insurance coverage under the NFIP;
   - A mortgage interest clause similar to the clause contained in an SFIP; and
   - A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and
3. Contain cancellation provisions that are as restrictive as those contained in an SFIP.

What are “Mutual Aid Societies”?

A mutual aid society is defined as an organization:

- Whose members share a common religious, charitable, educational, or fraternal bond;
- That covers losses caused by damage to members’ property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and
- That has a demonstrated history of fulfilling the terms of agreements to cover losses to members’ property caused by flooding.

A lender may accept a plan issued by a mutual aid society to satisfy the flood insurance purchase requirement provided that the following four criteria are met:

- The lender’s primary Federal supervisory agency has determined that such plans qualify as flood insurance;
- The plan must provide coverage in the amount required by the flood insurance purchase requirement;
- The plan must cover both the mortgagor(s) and the mortgagee(s) as loss payees; and
- The plan must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender must document its conclusion regarding sufficiency of the protection

of the loan in writing.

Compliance Aid Acceptance Provision

The Rule contains a compliance aid provision that a lender may rely on, without having to perform a further review of the policy, to determine whether it meets the definition of "private flood insurance". Specifically, the policy is deemed to meet the definition if the policy or an endorsement to the policy includes the following statement:

> ***"This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."***

However, a lender is not required to rely on the above statement in determining whether a policy meets the definition of "private flood insurance"; and could choose instead to make its own determination.

Conversely, a lender may not reject a policy that meets both the definition of "private flood insurance" and fulfills the flood insurance coverage requirement, but which does not include the compliance aid statement.

Discretionary Acceptance Provision

The Rule contains a discretionary acceptance provision that facilitates a lender's ability to accept flood insurance policies issued by private insurers that do not satisfy the definition of "private flood insurance. Specifically, this provision allows a lender to accept such policies if they satisfy the following four criteria:

- Provide coverage in the amount required by the flood insurance purchase requirement;
- Are issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;
- Cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;
- Provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender must document its conclusion regarding sufficiency of the protection of the loan in writing.

Safety & Soundness Considerations

While the Rule does not list specific factors lenders must consider in determining whether a private insurance policy or mutual aid plan is consistent with safety and soundness, it does list some factors lenders may consider in determining whether they provide sufficient protection of a loan, including whether:

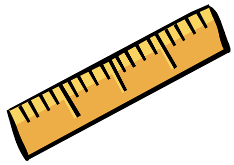
- Deductibles are reasonable, given the borrower's financial condition;
- The insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary;
- The terms and conditions regarding payment per occurrence or per loss, and the aggregate limits are adequate to protect the lender's interest in the collateral;
- The flood insurance policy/mutual aid plan complies with applicable State insurance laws; and
- The insurance company/mutual aid society has the financial solvency, strength, and ability to satisfy claims.

Final Thoughts

The Private Insurance Acceptance Rule is now a reality, and these policies are likely to become more commonplace. Institutions must be prepared to properly review and evaluate them in accordance with the requirements of the Rule, as well as better safeguarding your institution.

Hopefully, this "refresher" article has helped bring you back up to speed with the requirements and provisions of the Rule; and provide you with a quick reference resource, if needed, going forward.

Short Clips



CFPB Issues ANPR on 2021 QM 'GSE Patch' Expiration

On 07/31/19, the CFPB's Advance Notice of Proposed Rulemaking (ANPR) seeking feedback on the 2021 expiration of the temporary QM provision was published in the Federal Register. This provision applies to certain mortgage loans eligible for purchase or guarantee by the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac. The CFPB plans to allow the "GSE patch" to expire in January 2021, as scheduled, or after a short extension.

The CFPB is also seeking comments on possible changes to the ability-to-repay rule, including whether to revise the QM definition; and is asking for input on the current debt-to-income ratio, and potential alternatives for determining borrowers' ability to repay. Comments will be due by September 16, 2019.

OCC Updates Comptroller's Handbook

On 07/25/19, the OCC issued two updated booklets of the Comptroller's Handbook; a fully revised edition of the "Corporate and Risk Governance" booklet and an updated "Internal and External Audits" booklet.

NCUA Issues Controversial Appraisal Final Rule

On 07/24/19, the NCUA's controversial Final Rule regarding commercial real estate appraisals was published in the Federal Register. The Final Rule raises the threshold at which credit unions must obtain appraisals for commercial real estate transactions from $250,000 to $1 million; a level above the $500,000 CRE appraisal threshold set by other federal financial regulators. The Final Rule is effective October 22, 2019.

Agencies Issue Proposal on HVCRE Treatment of Single-Family Land Development Loans

On 07/23/19, a Notice of Proposed Rulemaking (NPRM) issued by the OCC, Federal Reserve (Fed), and FDIC was published in the Federal Register. The NPRM addresses the treatment of loans financing the development of land for one-to-four-family residential properties. The latest proposal seeks to clarify the agencies' September 2018 proposal for high-volatility commercial real estate acquisition, development or construction loans. The agencies are seeking input on whether such loans should be excluded from the definition of HVCRE in their regulatory capital rule.

The proposal would add language to the definition of HVCRE exposure providing that the one-to-four-family residential property exclusion would not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes and similar improvements to land without any construction of one-to-four-family structures. Comments on the proposal are due by August 22, 2019.

FDIC Issues Final Rule on Joint Deposit Account Recordkeeping

On 07/22/19, the FDIC's Final Rule to Part 330 of its regulations to update the requirements for verifying participants in joint deposit accounts was published in the Federal Register. This rule applies to all banks. Existing rules require banks to rely on physical signature cards or electronic signatures to authenticate account holders. Under the final rule, banks may accept usage of the account as verification. This Final Rule is effective on August 21, 2019.

Agencies Finalize Volcker Rule Exemption for Community Banks

On 07/22/19, a Final Rule issued by the federal financial regulatory agencies implementing a section of the S. 2155 regulatory reform law that grants an exclusion from the Volcker Rule for certain community banks was published in the Federal Register. The rule is effective immediately.

To qualify for the exemption, community banks and their controlling entities must have $10 billion or less in total consolidated assets and total trading assets and liabilities equal to 5 percent or less of total consolidated assets.

The agencies confirmed that a bank or savings association seeking to determine its exclusion may rely on its most recent Call Report for its consolidated assets and total trading assets and liabilities. The agencies also confirmed that securities appropriately classified as available-for-sale and excluded from trading assets on the call report will not count toward an institution's trading assets and liabilities threshold.

Agencies Efforts to Improve Transparency of Risk-Focused BSA/AML Supervision

On 07/22/19, the Office of Terrorism and Financial Intelligence, federal bank regulatory agencies, and FinCEN issued a Joint Statement as part of their ongoing efforts to improve transparency in their risk-focused approach to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) supervision.

The risk-focused approach assists examiners in scoping and planning the examination and initially evaluating the adequacy of the BSA/AML compliance program. Using this approach, the agencies can generally allocate more resources to higher-risk areas, and fewer to lower-risk areas in BSA/AML examinations.

The Joint Statement outlines common practices for assessing an institution's money laundering / terrorist financing risk profile; and does not establish any new requirements. A risk-based compliance program also enables a financial institution to allocate its compliance resources commensurate with its risk.

CFPB Recommends Reporting Suspected Financial Exploitation of Older Adults

On 07/17/19, the CFPB issued an updated Advisory to financial institutions urging them to report to the appropriate local, state and federal authorities whenever they suspect that an older adult is the target or victim of financial exploitation. The CFPB also recommended that financial institutions file Suspicious Activity Reports (SARs) with the federal government when they suspect elder financial exploitation (EFE). The updated Advisory builds on the CFPB's earlier recommendations based on the results of a recent study of 180,000 elder financial exploitation SARs; which reflected an average loss of $41,800 among adults over 70, with 7% losing over $100,000. The updated Advisory also contains voluntary best practices to help financial institutions prevent and respond to EFE.

New Treasury Guidance Offers Greater Flexibility for High-Deductible Health Plans

On 07/17/19, the Treasury Department and IRS issued Guidance expanding the preventative care benefits that may be provided by high-deductible health plans linked to Health Savings Accounts for a range of chronic conditions.

Agencies Delay Action on Foreign Funds Under Volcker Rule

On 07/17/19, the FDIC, Fed, and OCC issued a Joint Statement announcing that they would defer taking action related to restrictions for certain foreign funds that may have been unintentionally covered under the Volcker Rule for an additional two years. The delay comes as the agencies contemplate significant reforms to the rule. The rule, set to go into effect on 07/21/19, will be deferred until July 21, 2021.

FDIC Approves Deposit Recordkeeping Proposal for Large Banks

On 07/16/19, the FDIC approved a Final Rule amending Part 370 of its regulations, requiring banks with at least two million deposit accounts to upgrade deposit recordkeeping, enabling the FDIC to use a bank's system to make deposit insurance determinations in the event of failure. The final rule provides an optional one-year compliance extension from the rule's original deadline of April 1, 2020.

EEOC Opens Pay Data Collection Portal

On 07/15/19, the U.S. Equal Employment Opportunity Commission (EEOC) opened its online portal to receive EEO-1 "Component 2" survey data on employees' pay and hours worked. Banks and other employers with 100 or more employees are required to submit Component 2 data for calendar years 2017 and 2018 by Sept. 30, 2019.

The EEOC also issued FAQs on the submission of Component 2 data. The FAQs clarified that employers, including federal contractors, with fewer than 100 employees are not required to submit Component 2 data; and also clarified how employers can determine if they met the 100-employee threshold for 2017 and 2018.

FinCEN Updates List of AML/CFT Jurisdictions

On 07/12/19, FinCEN released Advisory FIN-2019-A004, containing a revised list of the jurisdictions that are subject to countermeasures or enhanced due diligence due to anti-money laundering and counter-terrorist financing deficiencies, as well as jurisdictions with AML/CFT deficiencies that are working to correct them.

The Advisory indicates that Iran remains on the enhanced due diligence list; North Korea remains in the countermeasures required category; Panama has been added to the list of jurisdictions working to remedy AML/CFT deficiencies; and Serbia has been removed from the list.

FHFA Publishes Replacement Mortgage Index

On 07/09/19, the Federal Housing Finance Agency (FHFA) published a notice in the Federal Register requesting comments on its new "PMMS+" index, which banks may use in place of its Monthly Interest Rate Survey, was terminated on 05/29/19. The new data is derived from Freddie Mac's 30-year FRM Primary Mortgage Market Survey, with adjustments made by FHFA. The agency will continue publishing this replacement "PMMS+" index for the foreseeable future on the final Thursday of each month. Comments are due by 09/09/19.

Agencies Issue Final Amendments to Reg. CC

On 07/03/19, a Final Rule to Regulation CC, the Expedited Funds Availability Act, issued by the Fed and the CFPB was published in the Federal Register. The Final Rule adopts a method for making inflationary adjustments to the dollar amounts in Regulation CC every five years as required under the Dodd-Frank Act (DFA) by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The amendments apply in circumstances ranging from next business day withdrawal of certain check deposits to setting the threshold amount for determining whether an account has been repeatedly withdrawn.

The first set of adjustments are based on CPI-W data from July 2011 to July 2018. Adjustments to the dollar amounts will always be zero or upward, never downward, and will be rounded to the nearest multiple of $25. To ensure that institutions have sufficient time to implement the adjustments, the compliance date for the adjusted amounts is July 1, 2020. The Final Rule is effective on September 3, 2019.

HMDA Data Points Comment Period Extended

On 07/03/19, the CFPB published an ANPR in the Federal Register, extending the comment period for its May Home Mortgage Disclosure Act (HMDA) ANPR from July 8, 2019 to October 15, 2019.

The extension will give interested parties an opportunity to review the Bureau's annual overview of residential mortgage lending based on the HMDA data financial institutions collected in 2018. In late summer, the FFIEC will release the national loan level dataset and the CFPB will release an overview of that dataset.

CFPB Plans to Reopen Comment Period on HMDA Coverage Thresholds

On 07/03/19, the CFPB announced that it plans to issue a Federal Register notice to reopen the comment period on certain aspects of its May 2019 HMDA NPRM regarding coverage thresholds under the HMDA rules through October 15, 2019. The proposed action is intended to facilitate additional comments based on the public's review of the release of the national loan level data set. As of this writing, no such Federal Register Notice has been issued. The original comment period for the NPRM had closed on June 12, 2019.

OCC Issues HOLA Flexibility Rule Resources

On 07/01/19, the OCC's HOLA flexibility rule went into effect. Under the final rule, federal savings associations with total consolidated assets of $20 billion or less as of Dec. 31, 2017 may, at any time, elect to become covered associations. This election will remove portfolio asset restrictions that have limited some banks' ability to respond to changing needs in their communities. It will also subject those institutions to the same duties, restrictions, penalties, liabilities, conditions and limitations that apply to national banks without requiring a charter conversion.

To help bankers understand the new rule and provide guidance to institutions wishing to elect to become "covered associations", the OCC has published a set of FAQs about the final rule; a Comparison Document outlining key differences in requirements for national banks, federal savings associations and covered savings associations; and an accompanying Chart summarizing the powers of national banks and federal savings associations.

Private Flood Insurance Rule Takes Effect

On 07/01/19, the financial regulatory agencies'

Joint Rule on Private Flood Insurance Acceptance went into effect. The rule implements the 2012 Biggert Waters Act provision requiring federally regulated lending institutions to accept private flood insurance policies that meet certain statutory criteria, in satisfaction of the mandatory purchase requirement.

CFPB Updates Payday Rule Compliance Guide

On 06/28/19, the CFPB updated the Small Entity Compliance Guide for its 2017 final rule governing short-term, small-dollar loans. The updated guide reflects the recent finalization of a delay in the compliance date for the mandatory underwriting provisions in the 2017 rule.

The CFPB has not delayed the August 19, 2019 compliance date for the rule's payment provisions; however, those provisions are also currently stayed due to a federal district judge's order in litigation brought by two payday lender trade associations. Nonetheless, lenders are encouraged to comply with the rule's payment provisions by the established compliance date.

OCC Rescinds Previous Guidance, Issues 'Core Principles' on Higher-LTV Loan Programs

On 06/19/19, the OCC issued Bulletin 2019-28, rescinding its 2017 guidance for banks seeking to develop programs to offer home loans with loan-to-value ratios of over 90 percent (i.e., "higher-LTV" loans); and replacing the guidance with a set of "core lending principles" which provide more flexibility to a bank's higher-LTV programs.

The principles emphasize safety and soundness; consumer protections and compliance; effective monitoring, tracking and risk management; sound underwriting policies and practices; as well as consistency with the bank's standards for review and approval of exceptions.

The Bulletin discusses the need for compliant and transparent consumer disclosures; and lists several areas that bank policies and processes generally should address (e.g., safe and sound underwriting, review and approval standards; aggregate portfolio limits, and proper risk management and oversight).

List of Areas Eligible for CRA Credit Released

On 06/17/19, the federal banking agencies released the 2019 list of distressed or underserved nonmetropolitan middle-income areas in which banks participating in revitalization or stabilization activities will be considered for Community Reinvestment Act (CRA) credit. The 2019 Distressed or Underserved Nonmetropolitan Middle-income Geographies list is now available on the FFIEC CRA website.

FCC Adopts Call-Blocking Ruling With Key Provision for Legitimate Callers

On 06/06/19, the Federal Communications Commission (FCC) adopted a ruling permitting voice service providers to automatically enroll customers in a call-blocking program designed to identify unwanted calls. The ruling requires that customers be able to opt out of the program. The final ruling includes a requirement that phone companies provide a mechanism for banks and other legitimate callers to report when their calls are erroneously blocked, and to have those blocks removed. The ruling is effective immediately.

CFPB Extends Compliance Date of Payday Rule Underwriting Provisions

On 06/06/19, the CFPB extended the compliance date for the mandatory underwriting provisions of its Payday Rule, which governs short-term, small-dollar loans (e.g., payday loans, auto title loans, deposit advances and longer-term loans with balloon payments) from August 19, 2019, to November 19, 2020. The rule includes a complete exemption for banks and other depository institutions that made 2,500 or fewer small-dollar loans in each of the current and previous years and for which these loans account for less than 10 percent of revenues. The CFPB has separately proposed rescinding the underwriting requirements.

CFPB Issues TRID FAQs

On 05/31/19, the CFPB issued a set of FAQs on the TILA-RESPA Integrated Disclosures. The FAQs address corrected closing disclosures and when they impact the three business-day waiting period before consummation; model forms; and construction loans.

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: I am filing a report for money laundering which including $26,000 in cash deposits to a savings account, then a $23,000 collateral loan secured by those cash deposits, and $22,500 in credit card payments made using the loan funds.

My AML SAR prep system is coming up with an amount of $71,500 to report, the total of all three transactions, even though the original cash amount is only the $26,000. Which should I report as the filing amount?

A: You should report the total of the three amounts ($71,500) and to provide the details of the transactions in the narrative. FinCEN FAQ, Item #23, addresses this topic, stating:

> *"Multiple amounts will be aggregated, and the total recorded in Item 29. This requirement applies even when the amounts involve different transaction types, such as when some are deposits, and some are withdrawals. All amounts are aggregated and recorded as the total amount."*

Q: At a recent Audit Committee meeting, we discussed Private Flood Insurance. When I noted that we would be required to accept private flood insurance policies under certain circumstances, one Committee member, who previously worked for an insurance agency, stated that we should be checking the insurance company's A.M. Best's rating prior to accepting policies to ensure it has an "A" rating; indicating that it is financially sound. While he is looking at this from a safety and soundness perspective, I have never heard this rating mentioned from a compliance perspective. Based on the regulations, I don't believe that we can deny a policy based on this rating; we can only do so if the policy is not as broad as the NFIP policies. Is that correct?

A: I've reviewed the final rules and found no reference to the "A.M. Best Rating". Obviously, this global rating issued by the credit agency may help mitigate risk in the result of loss. The bank may consider such ratings in determining whether an insurance company is able to provide "sufficient protection of a loan"; however, it is not required to do so. Further, there is no guidance as to what would be considered the minimum acceptable rating.

However, as the SFHA provisions are designed to protect the borrower, I'd recommend that you encourage your borrowers to obtain quotes from different insurers, and to evaluate their options based on both the cost of premiums and the stability of the insurer. The borrower can ask the insurance company for its rating. This is important, as it enables the borrower to better assess whether the company would be able to handle claims in the event of a major disaster. However, I do not believe the company is obligated to provide this information to the bank.

Q: Our internal auditor is questioning the late fee language in our Home Equity Line of Credit Agreement and Disclosure Statement; which states: *"On any payment not received within 15 days of the due date, a fee of the lesser of $10.00 or 10% of the outstanding principal balance of the account will be charged".*

MGL Chapter 140 Section 114B states that:

> *"A creditor may, pursuant to an open-end credit plan, charge, receive and collect a delinquency charge on any payment not paid in full within fifteen days of its due date in an amount equal to ten percent of the outstanding balance or ten dollars, whichever is less; provided, however, that no such delinquency charges shall be charged, received or collected unless the creditor, at least thirty days prior thereto, shall have mailed a notice informing its borrowers of the change in terms of such plan providing for the charging, receiving and collecting of a delinquency charge and disclosing the amount of such delinquency charge that may be imposed as part of said open-end credit plan".*

At issue is whether the term "outstanding principal balance" utilized in our Agreement has the same meaning as the term "outstanding balance" utilized in §114B. Our auditor interprets the MGL term "outstanding balance" as the payment amount due, while we interpret it as meaning the "outstanding principal balance" on the account. Can you help clarify this matter?

A: I could not find a formal definition of the term "outstanding balance" anywhere in the MGL. However, in all cases where the term was used, it related to the outstanding principal balance. Further, with respect to your auditor's interpretation that the term reflects the payment amount due, I noted that the MGL applies this type of late charge calculation to 1st and 2nd lien closed-end mortgages, as provided in Chapter 183, Section 59, which states in part:

> *"In no event, in assessing a penalty because of the delinquency in making all or any part of a periodic payment under a mortgage note, shall the penalty or late charge exceed 3 per cent of the amount of principal and interest overdue, and in calculating the penalty or late charge, any amount of the periodic payment representing estimated tax payments required by the terms of the mortgage note or deed shall not be included."*

As the language in this section clearly indicates that the late charge for these loans is based on *"the amount of principal and interest overdue"*, I would expect comparable language to be utilized, if applicable, to describe the late charge calculation for other types of credit.

Based on the results of the research described above, in my opinion, your interpretation of the term "outstanding balance" in MGL Title XX Chapter 140 Section 114B is correct.

Q: We have identified several rental properties located in moderate-income areas within our lending area (based on geocoding). Is there any further documentation we would need to have for the file for these to qualify as CRA loans? For example, we can calculate average rents based on projections or tax returns provided by borrower. Would this be enough? With respect to tenant income, we do not have this information. Is it needed for the file?

A: Unfortunately, the regulation itself does not specifically define what type of documentation is required to support the determination that a loan qualifies as a Community Development Loan. It is up to the lender to use the Community Development Loan criteria to establish adequate documentary support in the loan file.

If the Bank has determined this loan qualifies as a Community Development Loan on the basis that the loan is financing a multifamily dwelling for low-to-moderate income families, the Bank should ensure that the loan file is supported with as much documentation as possible regarding how the Bank confirmed the property type and that tenants of the subject property met the definition of low-to-moderate income, etc.

Q: We recently became aware that our ARM disclosures needed updating in two areas (i.e., add the 210-240 notification details to the disclosure, and correct the existing 60-120 notification details in the disclosure.

The following is a draft of the updated language for these two areas within the *How Your Payment Can Change* section of our ARM disclosure. Can you confirm the language within these bullets are compliant with the regulation?

- *You will be notified in writing on your payment change at least 210, but no more than 240, days before your first payment change date. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.*
- *You will also be notified in writing at least 60 days, but no more than 120, days before a payment change date. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.*

A: The proposed language appears fairly consistent with the requirements of §1026.20(d) and §1026.20(c)(2); However, the phrase *"days before… payment change date"* in each bullet should be modified slightly to state *"before the first payment at the adjusted level is due"*.

Q: We are considering changing our policy for obtaining signatures on Debit Card Disputes. Currently we require all customers to sign their debit card dispute and will deny a dispute if we do not receive a signature within 90 days of the customer notifying the bank of an error. We are curious how other banks are handling this and what you recommend.

A: §1005.11(b)(1) of Regulation E specifies that a consumer's notification of an error can be provided either orally or in writing. However, §1005.11(b)(2) provides that an institution can, in their policy, require that written confirmation be provided by the consumer within 10 days of oral notification. An institution shall inform the consumer of this requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. However, neither the regulation or Commentary require that a written notification be signed.

Consequently, you should be able to modify or remove the signature and/or written notice requirement from your policy and remain in compliance with Regulation E. However, if the Bank retains any type written confirmation policy, you should ensure that it fulfills the requirements of §1005.11(b)(2).

Q: In reviewing other financial institution websites, I noted that not all used the model "boxed/color coded" Privacy Notice with the "Yes/No" questions, etc. Is the model notice format mandatory, or does the Notice just require specific language? We are not proposing to change any language in our Privacy Notice, just the layout of the Notice on our website. If we did this, would we also be required to send a new Privacy Notice out to all members?

A: As you are a state chartered Credit Union, I first reviewed the guidance provided by the Maine Bureau of Financial Institutions under MRS Title 9-B, §241, sub-§13, Maine defers to the obligations set forth by the federal Gramm-Leach-Bliley Act and its interagency implementation under Regulation P regarding the privacy of consumer information.

Regulation P does not require use of the model privacy form contained in Appendix to Part 1016—Model Privacy Form. However, use of the model form within its formatting guidelines provides a safe harbor for institutions that utilize it.

Consequently, if the content of the website specific Privacy Notice complies with the content requirements outlined in §1016.6 of the regulation, you should not have any real compliance issues. However, you should be aware that this version of the Privacy Notice would be subject to regulatory scrutiny / criticism, as there is no safe harbor, since it would not mirror the Model Privacy Notice. Also, as you have indicated that your Privacy Policy and practices are not changing, there would be no need to provide new Privacy Notices to all members. Management should consider all of these factors in order to make an informed business / risk-based decision on how to proceed.

Q: I'm looking for some guidance regarding the Driver's Privacy Protection Act of 1994 (DPPA) and if it pertains to banks storing scanned images of drivers' licenses. We are reviewing a vendor contract and noted the contract contains a section on the DPPA. We have not previously seen reference to it. However, we want to ensure that we are in compliance, if we are subject to it.

A: Based on my understanding of the DDPA, the legislation came about after personal information was obtained from a state's Department of Motor Vehicles records regarding a licensed driver, a celebrity, and that information was later used to track the individual down and harm them.

The DDPA is currently codified as 18 U.S. Code § 2721 "Prohibition on release and use of certain personal information from State motor vehicle records". The Act only pertains to the obligations / restrictions of State motor vehicle registries / departments regarding the release of personal information of its licensed drivers. However, you may want to reach out to the vendor to clarify how the DDPA applies to this contract.

Q: Fannie Mae has stated that any private insurance policy "*for the insurable improvements of the property securing any first-lien mortgage loan, including master policies for condo, co-op, and PUD projects, must be written by a carrier that meets one of the rating requirements in the following table.*" The table lists four rating agencies and what the rating category must be.

We were recently presented with private flood insurance policies, and we are trying to determine which company we are supposed to look up. One of the policies lists the following:

Originating Producer: Company A

Surplus Lines Producer: Company B

Coverage Underwritten by: Company C

Are we correct that Company B, the Surplus Lines Producer, is the entity we should look up?

A: Based on my research and my understanding of Fannie Mae's definition of "carrier" in this context, I believe they are referring to "Company C", the "Originating Producer". The "Originating Producer" is typically the insurance broker, while the "Surplus Lines Producer" is typically a company that takes on additional financial risk that is either too high or too unknown for a regular insurance company to take on.

However, to ensure that you look up the correct entity, I recommend that you use the contact information within the policy documents to call and confirm the actual "carrier" of this policy.

Q: We have a "travel club" where people can go on organized tours/ trips with the bank. While bank customers get first dibs, and a better price, it is not limited to only customers. Annually we send out a survey to our "active Guaranty Tour travelers" asking them questions about past trips, and interest in potential places for upcoming trips. If they return the survey, they are entered into a drawing for a gift certificate towards the cost of their next trip. (in prior years it was $50). This year we wanted to up the gift certificate to $500 (towards the cost of their next trip), and it would be sponsored by CFSG (the investment company the bank owns a portion of).

As an FDIC regulated bank, is this a prohibited "lottery", or is it ok? Does upping the amount from $50 to $500 have an impact on the matter?

A: I do not believe this is considered a lottery based on the definition. The dollar amount has no bearing on it. Section 20(c)(2) of the Federal Deposit Insurance Act states that:

2. *The term "lottery" includes any arrangement, other than a savings promotion raffle, whereby three or more persons (the "participants")* ***advance money or credit*** *to another in exchange for the possibility or expectation that one or more but not all of the participants (the "winners") will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes--*
   - *(A) a random selection;*
   - *(B) a game, race, or contest; or*
   - *(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.*

Q: I am training new staff on HMDA and Counteroffers, which can be very confusing and I'm wondering if you have some clarifying tips/guidelines; especially with respect to when to use "approved not accepted" vs. "denied".

Example: Initial application received for $191,398 at 4.25%. Due to loan level price adjustments, the rate disclosed on the LE was 6.75%. Due to a low appraisal, a counteroffer was made for $185,600 at 6.75%. The applicant did not accept the counteroffer, as they modify the floor plan of the modular home to make the loan work. Should the action taken be reported as "Approved not accepted", listing the terms initially requested (191,398 @ 6.75%) or as "Denied"?

A: A counteroffer is always a denial if the applicant does not accept the terms of the counteroffer. Comment 4(a)(8)(i)-9 of Reg C, *Action taken—counteroffers,* states:

"If a financial institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant declines to proceed with the counteroffer or fails to respond, ***the institution reports the action taken as a denial on the original terms requested by the applicant****. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume a financial institution makes a counteroffer, the applicant agrees to proceed with the terms of the counteroffer, and the financial institution then makes a credit decision approving the application conditional on satisfying underwriting or creditworthiness conditions, and the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness. The financial institution reports that the action taken as application withdrawn in accordance with comment 4(a)(8)(i)-13.i. Similarly, assume a financial institution makes a counteroffer, the applicant agrees to proceed with consideration of the counteroffer, and the financial institution provides a conditional approval stating the conditions to be met to originate the counteroffer. The financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)-13 regarding conditional approvals."*

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.)

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.
07/12/2019 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.
07/22/2019 Agencies, Final Rule on Volcker Rule Exemption for Community Banks. Effective Date of Final Rule.
08/19/2019 CFPB, Proposal to Amend Regulation F, Debt Collection Practices. End of Comment Period.
08/19/2019 CFPB, Payday Rule Payment Provisions. Revised mandatory compliance date.
08/21/2019 FDIC, Final Rule on Joint Deposit Account Recordkeeping. Effective Date of Final Rule.
08/22/2019 Agencies, NPRM on HVCRE Treatment of Single-Family Land Development Loans. End of Comment Period.
09/03/2019 Agencies, Regulation CC (Funds Availability), Final Rule. Effective Date of Final Rule.
09/09/2019 FHFA, Replacement Index for Mortgage Rates. End of Comment Period.
09/16/2019 CFPB, Reg. Z – QM Definition After 2021 "GSE Patch" Expiration. End of Comment Period.
09/30/2019 EEOC, EEO-1 Pay Data Collection Filing. Due Date for 2017 and 2018 Expanded Data Filing.
09/30/2019 National Flood Insurance Program (NFIP) Extension. End of current Temporary extension period.
10/15/2019 CFPB, Extension of ANPR on HMDA Data Point Changes. End of Extended Comment Period.
10/22/2019 NCUA, Commercial Real Estate Appraisals, Final Rule. Effective Date of Final Rule.
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.
07/01/2020 Agencies, Regulation CC (Funds Availability), Final Rule. Mandatory compliance date for use of the first set of inflationary adjustments to dollar amounts.
11/19/2020 CFPB, Payday Rule Underwriting Provisions. Revised mandatory compliance date.
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.
07/21/2021 Agencies, Volker Rule - Action on Certain Foreign Funds. Deferred effective action date, from 07/21/19).

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.

