Volume 37, Issue 11 | NOVEMBER 2020

DISCLOSURE

A MONTHLY COMPLIANCE REVIEW PUBLISHED BY THE IOWA BANKERS ASSOCIATION

Making the Most of Your COMPLAINT PROGRAM

ALSO IN THIS ISSUE

SAFE ACT COMPLIANCE: IT'S TIME FOR A REVIEW

IOWA BANKERS ASSOCIATION

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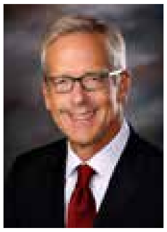

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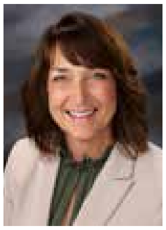

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REGULATORY UPDATE

NOTES OF INTEREST

COMPLIANCE FORUM

SAFE ACT COMPLIANCE: IT'S TIME FOR A REVIEW

JACKIE OSTRANDER, CRCM, CCBCO

The Secure and Fair Enforcement (SAFE) Act establishes federal registration requirements for an individual who acts as a residential mortgage loan originator (MLO) and is employed by a federally-regulated institution. The SAFE Act, as implemented by Regulation G, has been in effect since 2010 and regulated financial institutions should be well aware of the need to register MLO's before they act in the capacity of a residential MLO on behalf of the institution. However, the ongoing responsibilities of the SAFE Act are often overlooked, especially when institutions are facing more pressing matters like record high mortgage volume during a national pandemic.

What ongoing responsibilities related to the SAFE Act? The MLO annual renewal process, right? Yes, but it's more than that. Part 1007.104(f) of Regulation G requires an institution to include in its written policies and procedures, annual independent testing of its SAFE Act program. As we approach the end of 2020, has your institution completed its annual review of your compliance with the SAFE Act? If not, the following are key checkpoints that should be included in your annual review.

- **Annual Independent Review.** As stated above, the SAFE Act requires institutions to complete an annual review of its SAFE Act program. The audit needs to be completed by someone independent of the SAFE Act function at your institution, or an outside party.
- **Policy and Procedures.** Institutions are required to have a *written* SAFE Act policy that is approved by the Board of Directors. Procedures are also a vital part of the institution's SAFE Act program. The policy and procedures should, at a minimum, address:

1. A process for identifying which employees of the institution are required to be registered as MLOs.
2. Compliance with the unique identifier requirements.
3. A process to confirm the adequacy and accuracy of employee registrations, including updates and renewals, by comparison with the institution's own records. Be sure that procedures identify triggers for registry updates and information to be maintained/renewed on annual basis.
4. Tracking systems for monitoring compliance with registration and renewal requirements and procedures describing this process.
5. Appropriate action in the case of any employee who fails to comply with the registration requirements or the institution's internal related policies and procedures, including prohibiting such employees from acting as MLOs or other appropriate disciplinary actions.
6. Reviewing employee criminal history background reports and taking appropriate action consistent with applicable federal law, including section 19 of the Federal Deposit Insurance Act.
7. That any third party with which the institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act.
8. The de-minimis exception (if applicable) for an unregistered officer acting as an MLO for five or fewer loans in a rolling 12 month period.

- **Annual Renewal.** Institutions are required to renew the institution's registration as well as the registration of active personnel registered with the Nationwide Mortgage Licensing System (NMLS) on an annual basis between Nov. 1 and Dec. 31. The annual review is a good time to ensure that all MLOs are identified and registered on the NMLS registry.
- **Maintaining the NMLS Registry.** Regulation G also requires MLOs to update their registry information within 30 days of certain triggering events. As a result, the annual review should ensure updates are made when required, and on a timely basis. For example, the NMLS should be updated when an MLO changes his/her address, name, or primary branch location; thus, verify the NMLS registry was updated within 30 days of these triggering events. Also, ensure the status of MLOs who leave your organization were updated within 30 days of their termination date. Remind your Human Resources department that the appointed NMLS primary point of contact and system administrator at your institution needs to receive timely notification of these staff changes to ensure the NMLS Registry is updated within the required timeframes.
- **Disclosure of Institution and MLO NMLS ID Numbers.** Regulation G, Section 1007.105, requires covered financial institutions to make the unique identifier(s) of its registered MLOs available to consumers in a manner and method practicable to the institution. Regulation G also requires an MLO to provide his or her unique identifier to a consumer 1) upon request, 2) before acting as a MLO, and 3) through the originator's initial written communication with a consumer, if any, whether on paper or electronically. In addition, Section 1026.36(g) of Regulation Z requires the name and NMLS ID of institution and name and NMLS ID of the individual loan originator on 1) the credit application, 2) the disclosures required by 1026.19(e) and (f) — the Loan Estimate and Closing Disclosure, 3) the note or loan contract, and 4) the security instrument (mortgage or deed of trust). The annual SAFE Act review should ensure NMLS ID numbers are being made available to consumers as required by Regulation G. Many institutions also use the SAFE Act review as an opportunity to check for compliance with Regulation Z's rule related to disclosure of the NMLS ID number as well; of course that would be an optional add-on step to your review.
- **Annual Training.** The SAFE Act requires that all MLO's be informed periodically of the registration requirements of the SAFE Act, be instructed on how to comply with such requirements and of the institution's procedures. In addition, Regulation Z, Section 1026.35(f)(3)(iii) requires registered MLO's be "qualified" and receive periodic training covering Federal and State law that apply to the individual MLO's activities. Best practice is to provide a MLO training session annually to review the registration requirements and institution procedures as well as any new or changed regulatory requirements that impact the MLO's daily responsibilities. The annual SAFE Act review should include a review of training records, including attendees as well as the training materials.

Following the guidelines provided in this article will ensure you are meeting all of the requirements of compliant SAFE Act annual review. If you are in need of assistance with your annual review, SAFE Act reviews are part of the services performed by the Iowa Bankers Compliance team for IBA member institutions. Please contact Shelley Hardisty **shardisty@iowabankers.com** to inquire about scheduling a future annual review.

FEATURE

MAKING THE MOST OF YOUR COMPLAINT PROGRAM

KRISTINA REITER, CRCM, CBAP

Complaint management is not new. If you were in banking in 2011 or before, you may recall the heightened regulatory focus on complaints and the term "consumer harm" that coincided with the formation of the Consumer Financial Protection Bureau's (CFPB) in 2011. The CFPB's primary mission is protecting consumers and a key component in that mission is monitoring consumer complaints. So to say the least, complaint management is not a new compliance topic, however it has evolved over the last several years, and is still a critical component of an institution's Compliance Management System (CMS).

In the IBA Disclosure articles from **2012** and **2014**, recommendations were made to create a written complaint policy, develop procedures for your bank's complaint process and monitor complaints to identify trends and weaknesses. So, what has changed in regards to complaint management since those articles … A LOT!

CFPB 2019 CONSUMER RESPONSE ANNUAL REPORT

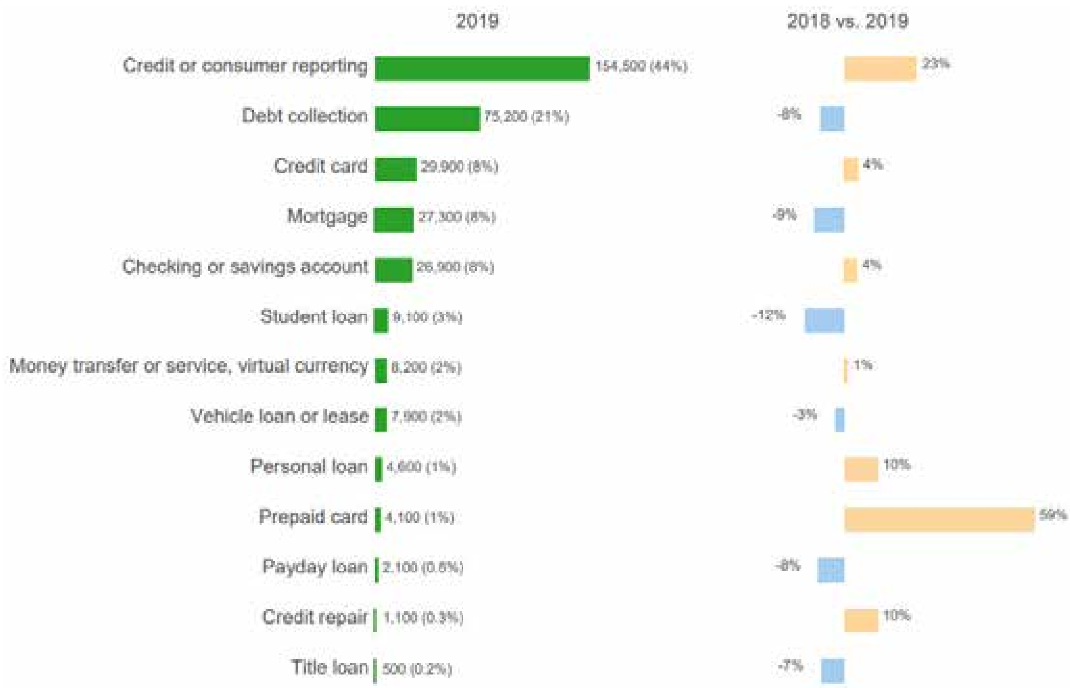
In March 2020, the CFPB released its 2019 Consumer Response Annual Report[1] based on complaints received on its Consumer Complaint Database. When an online complaint is received by the CFPB it is quickly sent (along with any supporting documentation) to the named company and/or federal agencies on average within one day or less. Once the CFPB routes a complaint about a financial product or service to a company, they work to get consumers a timely response, generally within 15 days. After the consumer receives a response to their complaint, the consumer can provide feedback on the company's response by completing an optional survey within 60 days. When reporting complaints to the CFPB, the consumer frequently reported that they had attempted to resolve their issue with the company prior to submitting the complaint to the CFPB.

Here are a few high-level recaps from that report:

- In 2019, the CFPB received approximately 352,400 consumer complaints.
- The CFPB sent approximately 285,400 (or 81%) of these complaints to companies for review and response, referred 14% of complaints to regulatory agencies, and found 5% to be incomplete.
- Of those 352,400 complaints received, approximately 83% were submitted on the CFPB's website, 7% by calling the CFPB's toll-free telephone number and the remaining 10% via postal mail, fax, or referral.
- More than 3,200 bank and nonbank companies responded to their customer complaints through the CFPB's complaint process.
- Companies provided a timely response to about 99% of the approximate 285,400 complaints that were sent to them for response.
- Approximately 4,200 complaints did not receive a timely response.

FEATURE

COMPLAINT VOLUME BY FINANCIAL PRODUCT OR SERVICE[12]



Above is a graph that was included in the CFPB report showing the complaint volume by product or service along with a comparison of 2018 vs. 2019. This graph includes approximately 89% of all the complaints received by the CFPB in 2019. The data reflects credit or consumer reporting complaints remain high and increased by 23% from 2018.

The CFPB is continuing to work to add data visualization and trend analytics tools to the Consumer Response database. Trend analytics tend to enable stakeholders to explore the data and quickly review the data.

According to the conclusion of the Consumer Response Annual Report, "Complaints help the CFPB in its work to regulate consumer financial products and services under existing federal consumer financial laws, enforce those laws judiciously, and educate and empower consumers to make better-informed financial decisions to reach their own life goals." The CFPB indicates in the report some of the most valuable information within the complaint process is found in the narrative text that both consumers and companies provide. If the CFPB finds this information valuable, your bank too can benefit from a closer look at your complaints. And if you think the CFPB's findings don't pertain to Iowa banks and consumers, think again! Of those 352,400 consumer complaints reported in 2019, 1,308 respondents indicated their location was Iowa. Those 1,308 respondents indicating they were from Iowa logged complaints on similar matters as seen nationwide:

- 435 respondents logged complaints on credit or consumer reporting matters.
- 367 respondents reported debt collection issues.
- 136 credit card complaints were filed.
- 99 consumers logged mortgage-related complaints.
- 71 complaints were related to checking or savings accounts.
- 61 student loan complaints were received.
- 35 vehicle loan or lease matters were reported.
- 31 money transfer or service, virtual currency complaints were made.
- An additional 30 prepaid card complaints were logged.
- The balance of complaints ranged on subjects from credit repair, payday loans, personal loan and more.

From these categories you can see that the credit or consumer reporting and debt collection complaints far outweighs the other categories. So, this should give your bank an idea where to first look for some trending problem areas.

TAKE A CLOSER LOOK AT YOUR COMPLAINT PROGRAM

Has your complaint management process kept up with these changes? Has your complaint management program been recently examined by your federal regulator? If so, how did they grade your complaint management process? Were weaknesses identified? Are employees well trained when it comes to handling complaints? Do employees know where complaints should be directed?

In most institutions, the compliance officer oversees the complaint management process to ensure they are aware of the complaints received and a timely resolution is achieved. Even though the compliance officer may oversee the complaint process, there should be many business line leaders who take an active part in the complaint investigation and resolution process. Remember, all staff are playing for the same team, so finger pointing isn't helpful.

Complaints should be viewed as valuable feedback and areas where improvements may be possible within your institution. It doesn't matter what you think of the complaint being received, what matters is how you acknowledge it and respond to the complaint. When complaints are actively managed, they can help identify weaknesses, be used to strengthen underlying compliance controls, enhance training and detect customer service flaws while avoiding the potential for regulatory fines or reputation damage. You can't manage what you don't know and complaints put you "in the know."

A comprehensive complaint management process, incorporated as a component of a solid CMS, can aid you to more easily identify strengths, weaknesses and heightened risk for regulatory action. You may have heard of the phrase "garbage in, garbage out" or "quality in, quality out." Well, these phrases apply to an institution's complaint management process as well all other data the institution collects and stores. An early warning system is only as strong as the complaint intake process that supplies the complaint information and documentation. For an institution's complaint management process to be effective, the institution should consider investing in high-quality complaint intake systems that are commensurate with their size, complexity and complaint volume across all channels (including all business lines, platforms, websites and social media, etc.) as a prerequisite to developing strong detection capabilities. Institutions complaint systems may range from a centralized spreadsheet on which all complaints are logged to an automated solution customized to the bank's products, services, customers and geographies, analyzed to identify root cause, and then tracked. Institutions may need to look at complaints in a new light as understanding the value of complaint data and appropriately addressing complaints has never been more critical.

> "You can't manage what you don't know and complaints put you "in the know."

PROACTIVELY MANAGE COMPLAINTS

In order for an institution to proactively manage complaints, it must do more than simply respond to customers and remediate complaints on an ad-hoc basis. According to an article, The Power of Complaints — Unlocking the Value of Customer Dissatisfaction,[2] "Leading institutions assign business value to complaints by developing a complaints management program that aligns with their overall strategy, which provides a fundamental part of the customer experience and helps generate and protect earnings." This article further details, "Failing to act strategically with regard to complaint management can mean missing product and service enhancement opportunities, negative impacts to revenue from regulatory fines, and damage to the institution's reputation." Getting serious about customer complaints and learning to use complaints to the benefit of the institution often requires a shift from the historical mindset of customer complaints being negative and identifying the institutions' flaws. It may take cultural change to view complaints as "a good thing" and to view the complaint analysis process as a critical component in driving cultural change in key areas.

A typical compliance examination includes assessing an institution's CMS, which includes an evaluation of that institution's complaint data. There is a growing industry awareness that regulators make inquiries and other such communications part of the complaints review and compliance examination process as well. The examiners rationale for this is inquiries often develop into expressions of dissatisfaction and may provide other information that is very useful from a business or compliance perspective, such as misleading marketing materials, customer confusion about a product or a service, customer service breakdowns, etc. By evaluating the institution's inquiry and complaint data, examiners are able to better determine the institution's strengths, weaknesses, and potential compliance risks. So it only makes sense for the institution to know and analyze their own complaint data to self-identify their own strengths, weaknesses, and compliance risks and monitor their own trends prior to their examination.

You are not done once you gather and analyze your complaint data. That data should be acted on! Examiners expect to see the bank not only resolve/respond to individual complaints but determine the root cause of the complaint and make the necessary adjustments to ensure the issue causing the complaint is resolved so the complaints are not ongoing. Look for similar issues in other products or services the bank offers to see if the root cause giving rise to the complaints carries across other business lines. For example, if your bank received complaints related to billing errors on your credit card product asserting you were assessing late fees when the payments were not actually late and the same billing system is used for your HE LOCS, review the HE LOC billing statement process to ensure the same error is not occurring within that product. If necessary, when systemic matters are found, resolve them with all affected customers, not just those who complain. Going back to our billing error example, this could include reimbursing all customers who were charged late fees when payments were not actually late, not just those who recognized it and complained.

Lastly, examiners expect banks to track complaints, track resolution and implement controls to ensure the issue doesn't resurface in the future. Due to the importance of the complaint process, institutions should dedicate adequate and qualified resources to increase their capacity for managing inquiries/complaints in order to get ahead of the curve.

NEXT STEPS

After reviewing your institution's complaint process and monitoring trends, determine your next step. Here are few questions to contemplate when considering enhancements to your complaint management process:

- Is your institution's definition of complaint broad to align more closely with regulatory expectations?
- Is your bank capturing complaints in the areas that the CFPB has identified?
- Does your bank have data around your complaints and what is being done with that data?
- Does your complaint process need an overhaul?
- Does staff need additional training?
- Should your bank consider a web-based complaint form, especially since more customers rarely visit a bank location in person?

The IBA compliance team has created tools to aid complaint management efforts. On the **Bankers Compliance Resource** page of the IBA website, in the Compliance Management section, a Complaint Resolution Form and Complaint Tracker are available. In addition a sample **Complaint Policy** is available in the Sample Policies section of the Bankers Compliance Resources. While these tools are not a one-size fits all resource, they provide a good starting point to customize your own program or resource against which to measure your similar tools.

While complaints are never fun, they provide excellent feedback on how banks are doing in meeting their customers' needs and expectations. As stated earlier, you cannot manage what you don't know and you can never know too much when it comes to what your customers think and are saying about your bank! So use your bank's complaint data to your advantage!

Footnotes:

[1]See **https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf**

[2]**https://www2.deloitte.com/content/dam/Deloitte/us/Documents/regulatory/us-aers-the-power-of-complaints-042115.pdf**

REGULATORY UPDATE

CFPB FINALIZES GSE QM 'PATCH' EXTENSION

On Oct. 20, 2020, the Consumer Financial Protection Bureau (CFPB) issued a **final rule** amending the Ability-to-Repay/ Qualified Mortgage Rule (ATR/QM Rule) by extending the GSE QM Patch expiration which was set to expire in January 2021. The final rule removes the January 2021 sunset date and replaces that date with the date on which the CFPB amendments to the General QM definition become effective. In a separate rulemaking process, the CFPB has proposed to amend the definition of a General QM, removing the 43% DTI limit and required use of Appendix Q verification standards and replacing it with a priced-based threshold test.

It is important to note, while the final rule extends the sunset date for the Temporary GSE QM category, it does not amend the provision stating that the Temporary GSE QM loan category expires when the GSEs exit conservatorship. Thus, under the final rule, the Temporary GSE QM category will expire *on the earlier of:* (1) the mandatory compliance date of the final rule amending the General QM loan definition; or (2) the date that the GSEs exit conservatorship. This final rule provides that the Temporary GSE QM loan category is available for a loan if the creditor receives the consumer's application before the mandatory compliance date of a final rule amending the General QM loan definition and the loan is consummated before the GSEs exit conservatorship.

The CFPB has provided an **executive summary** and an **unofficial redline** of the final rule.The final rule is effective Dec. 28, 2020 and can be found in the **Oct. 26, 2020 Federal Register**.

NEW RESPA SECTION 8 FAQ

The Consumer Financial Protection Bureau (CFPB) released a set of **frequently asked questions** (FAQ) that provide an overview of the provisions included in Section 8 of the Real Estate Settlement Procedures Act and the respective anti-referral fee sections in Regulation X. Highlights of the FAQ include:

Gifts. The FAQs note that if a gift ("thing of value") is given or accepted as part of an agreement or understanding for referral of business related to a real estate settlement service involving a federally related mortgage loan then it is prohibited under Section 8. The FAQs emphasize that the agreement or understanding need not be in writing or oral and can be established by a practice, pattern, or course of conduct.

Promotional activities. The FAQs state that promotional or educational activities connected to a referral source would be allowed under Regulation X if the activities (i) are not conditioned on referral of business; and (ii) do not involve defraying expenses that otherwise would be incurred by the referral source. The FAQs describe these conditions in more detail and provide example of activities that meet and do not meet Regulation X's conditions.

Marketing Services Agreements (MSA). The FAQs emphasize that MSAs that involve payments for referrals are prohibited, whereas MSAs that involve payments for marketing services may be permitted, depending on certain facts and circumstances. MSAs are lawful under RESPA when structured and implemented as an agreement for the performance of actual marketing services and the payment reasonably reflects the value of the services performed. The FAQs provide examples of prohibited MSAs including (i) agreements structured to provide payments based on the number of referrals received; or (ii) the use of split charges, either being paid to a person that does not actually perform the services or the amount paid exceeds the value of the services performed by the person receiving the split. The CFPB also rescinded a 2015 compliance bulletin on RESPA compliance and MSAs upon issuance of these FAQ.

REGULATORY UPDATE

AGENCIES FINALIZE APPRAISAL DEFERRAL RULE

The OCC, Federal Reserve Board, and FDIC (collectively, the agencies) have finalized the interim final rule originally released by the agencies on April 17, 2020, making temporary amendments to the agencies' regulations requiring appraisals for certain real estate-related transactions. This **final rule** adopts the deferral of the requirement to obtain an appraisal or evaluation for up to 120 days following the closing of certain residential and commercial real estate transactions, excluding transactions for acquisition, development, and construction of real estate. The final rule maintains the interim rule's Dec. 31, 2020 sunset date.

The final rule adopts the interim final rule with one revision in response to comments received by the agencies on the interim final rule. The final rule clarifies that transactions for acquisition, development and construction of real estate, for the purpose of this rule, includes:

- Loans secured by real estate made to finance land development (e.g., the process of improving land – laying sewers, water pipes, etc.) preparatory to erecting new structures, or the on-site construction of industrial, commercial, residential, or farm buildings; (The term "construction" as used in this paragraph (f)(2) includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.)
- Loans secured by vacant land (except land known to be used or usable for agricultural purposes);
- Loans secured by real estate to acquire and improve developed or undeveloped property; and
- Loans made under Title I or Title X of the National Housing Act that conform to the definition of "construction" as defined above and are secured by real estate.

NEW FINCEN ADVISORIES

On Oct. 13, the Financial Crimes Enforcement Network (FinCEN) issued an advisory alerting financial institutions to unemployment insurance (UI) fraud observed during the COVID-19 pandemic. The advisory contains descriptions of COVID-19 related UI fraud, associated financial red flag indicators, and information on reporting suspicious activity. **Read FinCEN Advisory 2020-A007.**

On Oct. 15, FinCEN issued a separate advisory related to identifying and reporting human trafficking. This advisory supplements FinCEN's 2014 **Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking — Financial Red Flags.** Since the 2014 Advisory, FinCEN collaborated with law enforcement to identify 20 new financial and behavioral indicators of labor and sex trafficking, and four additional typologies. This latest advisory provides new information to assist in identifying and reporting human trafficking, illustrative recent case studies and SAR filing instructions. The 2014 Advisory remains relevant, and provides information related to human smuggling, in addition to human trafficking. **Read the Oct. 15 advisory.**

CIP EXEMPTION FOR CERTAIN LOANS

The Financial Crimes Enforcement Network (FinCEN) posted to its website on Oct. 9, an **order** granting an exemption from customer identification program (CIP) requirements for loans extended by banks (and their subsidiaries) to customers to facilitate purchases of property and casualty insurance policies, referred to as "premium finance loans." The order clarifies premium finance loans provide short-term financing to business and non-business borrowers to facilitate their purchases of property and casualty insurance policies. According to FinCEN, these types of loans present a low risk of money laundering because of the purpose for which the loans are extended and limitations on the ability of a customer to use such funds for any other purpose. Moreover, according to FinCEN, property and casualty insurance policies themselves are not an effective means for transferring illicit funds.

NOTES OF INTEREST

IOWA NOTARY TRAINING REQUIREMENTS AMENDED

On Oct. 13, 2020, the Administrative Rules Review Committee approved a proposed amendment by the Iowa Secretary of State's office to Chapter 43, Notarial Acts, of the Iowa Administrative Code, that revises the training requirements for existing and newly-commissioned traditional notaries providing in-person notarial acts. The revised rule removes the training requirement for persons performing in-person, traditional notarial acts prior to their application for notary commission and at renewal of their commission if their commission had lapsed. While the Secretary of State will still offer online training opportunities for traditional notaries, and highly recommends the training, the training is no longer required by the Iowa Administrative Code, effective immediately, for in-person notaries.

The training requirements remain in place for persons wishing to provide remote notarial services. Those persons wishing to perform remote notarial acts must complete a training course approved by the Iowa Secretary of State's office in the six month period preceding their first performance of a remote notarial act and then provide evidence of training with their application to the Secretary of State to provide remote notarial services. Remote notaries must also repeat this training as prerequisite to renew their remote notary commission every three years, during the six month period preceding their commission renewal.

More information related to Iowa's rules for both traditional and remote notarial acts can be found on the **Secretary of State's website**.

OCC RELEASES ADDITIONAL CRA GUIDANCE

On Oct. 1, the day the Office of the Comptroller of the Currency's (OCC) revised Community Reinvestment Act (CRA) became effective, the OCC posted on its **CRA webpage** three publications intended to assist national banks in implementing the new rule:

- A **small bank compliance guide**;
- An initial **illustrative list** of qualifying CRA activities; and
- A **form** to request the addition of an item to the list of qualifying activities.

The small bank compliance guide explains the rule's various effective and mandatory compliance date for several rule provisions. The compliance guide also addresses what activities qualify for CRA consideration, the illustrative list of qualifying activities, the process for qualifying activities for CRA confirmation, assessment area delineations, and data collection requirements for OCC-regulated small banks (those with assets of $600 million or less, adjusted annually, in four of the previous five calendar quarters).

NACHA EXTENDS COVID RELIEF MEASURES

Approximately six months ago, the National Automated Clearing House Association (Nacha) issued several automated clearing House (ACH) operations bulletins and frequently asked questions announcing relief from a variety of requirements of the Nacha operating rules due to the impact of the coronavirus pandemic. On Oct. 19, Nacha announced extension of many of those measures indefinitely, including relief form the signature/similar authentication requirements for Written Statements of Unauthorized Debits. **Read ACH Bulletin #7-2020.**

HMDA REFERENCE CHART UPDATED

The Consumer Financial Protection Bureau (CFPB) has published a new Home Mortgage Disclosure Act (HMDA) reporting reference chart banks can use as a reference for the data points that are required to be collected under Regulation C in 2021. **Download the updated chart.**

NOTES OF INTEREST

CRA WEBSITE UPDATE

The **FFIEC CRA website** has recently been updated to include the **2020 CRA Data Entry Software Release 2**. The free CRA Data Entry Software was developed to assist respondents in automating the filing of their CRA data and includes editing features to help verify and analyze the accuracy of the data. The data file created using this software, can be submitted by one of the available submission methods listed in the software.

The second release of the 2020 Data Entry Software includes the annual 2020 census update, and an enhancement to the "Submission via Web" data export option. For more information on using the FFIEC's CRA DES, refer to **DES frequently asked questions**.

IRS EXEMPTS REPORTING OF PPP LOAN FORGIVENESS

The IRS has issued new guidance directing lenders not to file information returns or furnish statements to borrowers to report the amount of qualifying loan forgiveness for covered loans made under the Paycheck Protection Program.

Generally, forgiveness of debt is considered taxable income for a borrower. However, under provisions in the CARES Act, PPP forgiveness income is not includible in the gross income of the eligible recipient. The Internal Revenue Code generally requires a lender to file form 1099-C when debt is forgiven, regardless of the potential taxability of the income. This announcement however, clearly states, "When all or a portion of the stated principal amount of a covered loan is forgiven because the eligible recipient satisfies the forgiveness requirements under section 1106 of the CARES Act, an applicable entity is not required to, for federal income tax purposes only, *and should not,* file a Form 1099-C information return with the IRS or provide a payee statement to the eligible recipient under section 6050P of the Code as a result of the qualifying forgiveness." **Read IRS Announcement 2020-12.**

NEW RANSOMWARE MITIGATION TOOL

The Conference of State Bank Supervisors, the Secret Service and the Bankers Electronic Crimes Taskforce released a **self-assessment tool** for banks to determine how susceptible they are to ransomware attacks. The tool consists of 16 questions to help banks identify security gaps and assist in assessing efforts to control and mitigate risks associated with ransomware.

FTC REPORTS JUMP IN SOCIAL MEDIA SCAMS, LAUNCHES NEW WEBSITE

Newly released data from the Federal Trade Commission (FTC) reveal that there has been a surge in reports from people who say they lost money to a scam that started on social media, including a spike of these complaints in the spring at the height of the COVID-19 pandemic. Data released by the FTC shows that the number of complaints about scams that started on social media more than tripled in the last year. People reported losing more than $117 million to this type of scam in just the first six months of 2020 compared to $134 million for all of 2019, according to the FTC's latest **Consumer Protection Data Spotlight**.

Online shopping topped the list of complaints from consumers who reported a scam to the FTC that originated on social media. Of these consumers, many were responding to an ad they saw on social media and reported that the item they ordered never arrived. Most of those consumers (94 percent) who identified the social media service in their complaint cited Facebook or Instagram as the platform they used.

In response, the FTC launched **ReportFraud.ftc.gov**, a new website that makes it easy for people to report fraud, scams, and bad business practices. The FTC has also developed a separate page on this website, **ReportFraud.ftc.gov/partners** that banks and other businesses can use to inform consumers of the FTC resources and warn consumers about current scams. This webpage has tools including images and videos that can be shared on social media or added to bank websites. (The site is also available in Spanish at **ReporteFraude.ftc.gov**.)

COMPLIANCE FORUM

Q. How are business days counted for the purpose of providing a copy of the appraisal three business days prior to consummation for Regulation B? Do we use the general business day definition, the days the bank is open for substantially all banking functions, or the precise definition, counting all calendar days except Sundays and certain federal holidays?

A. The Consumer Financial Protection Bureau (CFPB) provided a compliance fact sheet that addresses Reg. B appraisal delivery rules that will help answer this question. The factsheet explains that Reg. B does not provide a definition of "business day

However, the factsheet reminds us that Reg. Z has a similar requirement to provide a copy of the appraisal for Higher Priced Mortgage Loans (HPMLs) and directs the reader to the CFPB's Small Entity Compliance Guide for TILA's HPML Appraisal Rule. The CFPB's Small Entity Guide states creditors should use Reg. Z's "general business day" definition for purposes of the HPML appraisal provisions.

In summary, creditors should use the general business day when providing appraisal copies on loans that are subject to Reg. Z requirements for HPMLs. For loans that are not HPMLs but are subject to Reg. B, the factsheet states a bank can apply their own reasonable definition which may include Saturdays.

The Compliance Forum is not intended to be a definitive analysis of the subjects discussed or a substitute for personal legal advice.

Q. We are national bank. Did the recent CRA rule changes make revisions to the notice we must post in the bank?

A. National banks are still required to post a CRA Notice that informs the public of the availability of the bank's CRA Public File and opportunity to comment on the bank's CRA performance to the OCC. The new CRA Notice (found on the IBA's Bankers Compliance Resources webpage under the Compliance Management section) is similar to the existing notice, with some slight modifications. There is no separate version of the CRA Notice for branch locations; thus, the same notice can be used at all locations.

Regarding placement of the notice, the revised regulation no longer specifies how and where a bank must post its CRA Notice; only that the notice must be "available to the public." The notice should however, be visible and readily available for public viewing. It is also permissible to include the CRA Notice on the bank's website. The revised CRA rule became effective Oct. 1. OCC-regulated banks that have not already done so, should update all existing notices with the revised notice as soon as possible.

Q. Did the OCC CRA rule change also impact the CRA Public File requirements?

A. Yes. The final rule also includes minor changes to the content requirements for the CRA Public File. The revised rule:

- Eliminates the requirement for large and intermediate size banks to include their CRA Disclosure Statement in the CRA Public File.
- Removes the requirement for HMDA reporting banks to include the notice about the availability of the HMDA Disclosure Statement from the CFPB's website in the Public File.
- Eliminates the requirement for small banks to include their quarterly loan-to-deposit ratios for the prior calendar year in the Public File.
- Requires the map of each assessment area must show the boundaries of the area and identify the counties or county equivalents (rather than census tracts).

Similar to the notice requirements, the regulation requires the Public File be available to the public but leaves the location details to the bank to decide. This provision in the final rule was also effective Oct. 1, 2020; however, the CRA Public File is required to be updated by April 1 each year and the final rule does not clarify if the Public File need to be updated prior to the normal April 1 deadline.

Q. Can you please explain Iowa's mortgage release rules? Do the requirements differ if the mortgage is open- versus closed-end?

A. Yes, the rules do differ based upon whether the mortgage has as open-end clause. Iowa Code Chapter 655.1 was revised in 2018 requiring a mortgage be released by the creditor within 30 days of payment in full on the debt secured by the mortgage. However, a provision was added to this code section that states, *"... if the mortgage secures a revolving line of credit, future advances, or other future obligations, the mortgagee is not required to file a satisfaction upon payment in full unless the mortgagor makes a written request to the mortgagee that the mortgage be released and, if such written request is made, the mortgagee shall file the release within thirty days after payment in full or such written request is made whichever occurs later."* As a result, if the mortgage has an open-end feature and secures a revolving line of credit or the mortgagor and mortgagee intend to use the mortgage for future credit obligations, the creditor is not required to the release the open-end mortgage within 30 days of payment in full of the debt secured by the mortgage, unless the mortgagor (borrower) requests in writing the creditor release the mortgage. This change in the Iowa Code negates the need for the practice many creditors have used in the past in which they keep $1 advanced on a line of credit in order to keep the mortgage filing in place.

Q. We received notice from our flood vendor that an area has been remapped and several collateral properties that were not previously located in a special flood hazard area, have now been remapped into a higher risk zone requiring flood insurance. We have notified our impacted borrowers and are working with them to ensure they have adequate flood insurance in place. Our question is, are we required to escrow for the flood insurance premiums when an area is remapped? We do not qualify as a small servicer and understand we must escrow for flood insurance when we make, increase, renew or extend credit secured by a residential property located in a special flood hazard area, but we are not sure if remapping also triggers the flood escrow requirement.

A. The preamble to the **final rule** (top of page 34) establishing the flood insurance escrow requirements addressed this very topic. It stated, *"Another financial institution commenter requested that the Agencies clarify that a flood map change on or after Jan. 1, 2016, that causes a building, which had not previously been located in an SFHA, to be located in an SFHA would not impose a duty on a lender to begin escrowing flood insurance premiums and fees for a loan that is secured by such building. Section 102(d) of the FDPA, as amended, applies to loans that experience a triggering event on or after Jan. 1, 2016. Because a map change is not a triggering event, lenders would not be required to escrow flood insurance premiums and fees based solely on that change."*

Thus, the bank is NOT required to establish an escrow on an existing loan where flood insurance is now required due to a map change. However, once the bank makes a new loan secured by that property, or increases, renews or extends the existing the loan secured by the property, you must establish an escrow account.