M&M CONSULTING Partners in Risk Management

Volume 10, Issue 1, February 2017

Practical Compliance

M&M Consulting, LLC Compliance Group

Dean Stockford
(207) 458-8559
dstockford@mandm.consulting

Jeffrey Sullivan
(413) 478-4299
jsullivan@mandm.consulting

Edward Bambauer
(774) 275-7017
ebambauer@mandm.consulting

Daniel Capozzi
(781) 507-4579
dcapozzi@mandm.consulting

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

Martha Howell
(207) 604-4454
mhowell@mandm.consulting

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

Kevin Hughes
(603) 339-7088
khughes@mandm.consulting

Deanne Kiilsgaard
(207) 929-0757
dkiilsgaard@mandm.consulting

Eddie Milhorn
(207)653-3015
emilhorn@mandm.consulting

Gary Moore
(207) 400-5121
gmoore@mandm.consulting

Bruce Ray
(207) 712-2587
bray@mandm.consulting

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

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

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

In This Issue

Incentive Programs - "Compensating" Controls 1
Short Clips 5
Good to Know 8
Important Dates 11

Incentive Programs - "Compensating" Controls

The December 2016 edition of *Practical Compliance* included a "Short Clips" item regarding CFPB Bulletin 2016-3, dated November 28, 2016, entitled *Detecting and Preventing Consumer Harm from Production Incentives*. In this article, we discuss the key components of the Bulletin.

Summary of CFPB Bulletin 2016-3

The Bulletin outlines the CFPB's expectations for incentive compensation programs, includes all guidance previously issued by the CFPB on this subject, and provides examples of problem programs it has encountered in its supervisory and enforcement experience. The Bulletin does not provide any new requirements or guidance. It basically reiterates and reinforces the CFPB's concerns and its expectations.

The types of incentive programs utilized by financial institutions vary widely, making oversight of these programs critical. The Bureau acknowledges that properly managed incentive programs can benefit both companies and customers; however, it cautions that inadequate oversight or setting unrealistic goals could lead to consumer harm.

The Bureau expects that financial institutions using incentive programs have proper compliance management systems (CMS) in place to monitor and quickly respond to any potential violations of consumer protection laws. The CFPB does not require the use of any particular compliance management system; rather, it recommends that the CMS be appropriately tailored to reflect the risk, nature and significance of the institution's incentive programs.

Risks to Consumers from Incentives

The CFPB has found that when incentive programs are not carefully and properly implemented and monitored, they may also create incentives for employees or service providers to pursue overly aggressive marketing, sales, servicing, or collections tactics.

Through its supervisory and enforcement programs, the CFPB has taken action where:

- employees have opened accounts or enrolled consumers in services without consent;
- employees or service providers have misled consumers into purchasing products that the consumers did not want, were unaware would harm them financially, or came with an unexpected ongoing periodic fee (i.e., steering).

 © M&M Consulting LLC 2017, All Rights Reserved

Depending on the facts and circumstances, certain incentives may lead to outright violations of Federal consumer financial law, and raise other potential risks to institutions, such as public enforcement, supervisory actions, private litigation, reputational harm, and potential alienation of existing and future customers.

You don't have to look back too far to find cases involving such incentive practices. For example:

- In August, 2016, the CFPB ordered First National Bank of Omaha to provide $27.75 million in relief to roughly 257,000 consumers harmed by illegal practices with credit card add-on products. The bank used deceptive marketing to lure consumers into debt cancellation add-on products and it charged consumers for credit monitoring services they did not receive. First National Bank of Omaha will also pay a $4.5 million civil money penalty to the CFPB.
- In September, 2016, the CFPB fined Wells Fargo Bank, N.A. $100 million for the widespread illegal practice of secretly opening unauthorized deposit and credit card accounts. Spurred by sales targets and compensation incentives, employees boosted sales figures by covertly opening accounts and funding them by transferring funds from consumers' authorized accounts without their knowledge or consent, often racking up fees or other charges.
- In September, 2016, the CFPB took action against the parent company of TitleMax, TMX Finance LLC, for luring consumers into costly loan renewals by presenting them with misleading information about the deals' terms and costs.
- In January, 2017, the CFPB filed suit against TCF National Bank for tricking consumers into costly overdraft services. Banks cannot charge overdraft fees on one-time debit purchases and ATM withdrawals without a consumer's consent.
- In January, 2017, the CFPB took action against Equifax, Inc. and its subsidiary (Equifax Consumer Services LLC) and TransUnion and its subsidiaries (TransUnion Interactive, Inc. and, TransUnion, LLC) for deceiving consumers about the usefulness and actual cost of credit scores they sold to consumers, and for luring consumers into costly recurring payments for credit products.

Examples of Problem Incentives

The Bulletin lists the following as examples of problem incentives:

- Sales goals that may encourage employees, either directly or indirectly, to open accounts or enroll consumers in services without their knowledge or consent. Depending on the type of account, this may further result in, for example:
  - Improperly incurred fees;
  - Improper collections activities; and/or
  - Negative effects on consumer credit scores.
- Sales benchmarks that may encourage employees or service providers to market a product deceptively to consumers who may not benefit from or even qualify for it;
- Paying compensation based on the terms or conditions of transactions (such as interest rate) may encourage employees or service providers to overcharge consumers, to place them in less favorable products than they qualify for, or to sell them more credit or services than they had requested or needed;
- Paying more compensation for some types of transactions than for others that were or could have been offered to meet consumer needs, which could lead employees or service providers to steer consumers to transactions not in their interests; and
- Unrealistic quotas to sign consumers up for financial services may incentivize employees to achieve this result without actual consent or by means of deception.

 © M&M Consulting LLC 2017, All Rights Reserved

As previously noted, the determination as to whether such practices violate Federal consumer financial law will depend on all relevant facts related to the practices encouraged by the incentives.

The Bulletin provides additional detail on the Bureau's work and findings in the following areas:

- Credit Card Add-On Matters

  The CFPB resolved 12 different cases involving improper practices to market credit card add-on products, or to retain consumers once they were enrolled. Incentives increased the risk that banks would engage in such improper practices. In some cases, employees or service providers received incentives, and a lack of proper controls allowed deceptive marketing practices to continue unchecked for many years.

  Tapes of sales calls showed that employees and service providers deviated from the prepared call scripts in order to market the add-on products more aggressively, and often deceptively, to sign up more consumers. In all these matters, the companies' compliance monitoring, vendor management, and quality assurance programs failed to prevent, identify, or correct these practices in a timely manner.

- Overdraft Opt-in Matters

  Incentives played a role in at least one matter where consumers were deceived into opting in to overdraft services. The Bureau found that, as a result of incentives for hitting specific targets, a bank's telemarketing service provider had deceptively marketed overdraft services and enrolled certain bank consumers in those services without their consent.

- Unfair and Abusive Sales Practices

  In a public enforcement action, a Bureau investigation revealed that thousands of bank employees had opened unauthorized deposit and credit card accounts to satisfy sales goals and earn financial rewards under the bank's incentives. The Bureau found that employees: (1) engaged in "simulated funding" by opening hundreds of thousands of deposit accounts without consumers' knowledge or consent, which caused consumers to incur improper fees; and (2) issued tens of thousands of unauthorized credit cards that incurred improper fees, opened debit cards and created PINs to activate them without consumers' knowledge or consent, and enrolled consumers in online banking services using false email addresses.

The CFPB's CMS Expectations

The information and examples provided in the previous section illustrate why effective oversight of incentive programs is critical. The CFPB states that, based on its experience, an effective incentive compensation CMS typically contains the following components:

- Board of directors and management oversight;
- Compliance program, which includes:
  - Policies and procedures;
  - Training; and
  - Monitoring and corrective action;
- Consumer complaint management program; and
- Independent compliance audit.

To limit incentives from leading to violations of law, the CFPB expects supervised entities to incorporate these components, as applicable, into their incentive compensation CMS to ensure it is effective. The CFPB Bulletin includes examples of specific actions that can be taken in each of these areas.

 © M&M Consulting LLC 2017, All Rights Reserved

Next Steps

The issuance of CFPB Bulletin 2016-3, which reiterates and reinforces the CFPB's concerns and its expectations relating to incentive compensation, and the growing list of actions taken by the Bureau in this area, indicate that regulators will be placing increased emphasis on such programs in their examinations going forward.

As a first step, an institution should take a fresh look at its current incentive programs, as well as the level of oversight and compensating controls it has in place, to get a fair assessment of where it presently stands, and to identify which CMS components may need attention.

The next step for the institution is to determine what actions or controls are needed to strengthen a particular component or its overall CMS program. If you're not sure where to start, we suggest that you review the examples of specific actions provided in the Bulletin (and conveniently hyperlinked at the bottom of Page 3). Even if you don't use them, they should get you thinking in the right direction.

You will likely find that your institution already has certain control and monitoring mechanisms in place that can also be utilized for incentive compensation CMS purposes without having to recreate the wheel. For example:

- Your institution should already be tracking and monitoring customer complaints. You can enhance this process by taking another look at recent complaints and /or reviewing complaints received going forward, and evaluate whether any relate to a particular product, service, or practice which have incentives associated with them.

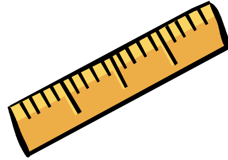
  If any such issues are identified, you have the opportunity to address and correct them by such measures as revising or eliminating the particular incentive, providing additional training to applicable staff to that they are clear as to what practices are acceptable / nonacceptable, and avoiding similar complaints going forward. Remember, these complaints may not come directly to your institution. The may very well be submitted to your state or federal regulator, as applicable, or to the CFPB itself. If such complaints are in their database, there is a greater potential for an investigation down the road.

- Your institution should already be reviewing and reevaluating all incentive programs on an annual basis. Management and the Board can strengthen this process by giving consideration to whether particular incentives may also have the unintended consequence of having employees take actions that will increase their incentive compensation that may not be in the best interests of consumers, and perhaps even be financially harmful to them. As an additional control measure, management could assign compliance personnel to review these incentive programs to identify any such potential concerns before these incentive plans are finalized and submitted to the Board for approval.

We recognize that we have just scratched the surface as far as identifying existing control and monitoring mechanisms at your institution that can also be utilized for incentive compensation CMS purposes. But we believe we've given you the thought process to move forward. Between the examples provided in the CFPB Bulletin, and the examples of existing processes we mentioned that could be incorporated into your CMS, we believe that you have the tools necessary to take the next steps toward building or strengthening the incentive compensation CMS at your institution that meets the CFPB's expectations.

 © M&M Consulting LLC 2017, All Rights Reserved

Short Clips



Fed Provides Update on "Faster Payments" Project

On January 26, 2017, the Federal Reserve (Fed) yesterday released a status update on its "faster payments" initiative, reporting progress on five key strategies: stakeholder engagement, faster payments, payment security, payment efficiency and enhanced Fed services. The report documents actions taken by the Fed's Faster Payments Task Force and Secure Payments Task Force. A final report with recommendations on faster payments is due in mid-2017.

OCC Issues Third-Party Risk Management Exam Procedures

On January 24, 2017, the Office of the Comptroller of the Currency (OCC) issued a set of exam procedures to help examiners assess banks' third-party risk management programs. The exam procedures supplement previous guidance issued by the OCC in 2013.

FinCEN Issues Advisory on the FATF-Identified Jurisdictions with AML/CFT Deficiencies

On January 19, 2017, the Financial Crimes Enforcement Network (FinCEN) issued an advisory to financial institutions regarding the Financial Action Task Force's (FATF) updated list of jurisdictions identified as having strategic anti-money laundering/counter-terrorist financing (AML/CFT) deficiencies. The changes in the List may affect U.S. financial institutions' obligations and risk-based approaches regarding relevant jurisdictions.

Fed Issues Final Rule Adjusting its Maximum Civil Money Penalties for 2017

On January 18, 2017, the Fed announced that it had issued a final rule adjusting the Board's maximum civil money penalties, as required by law, for institutions under its jurisdiction.

The maximum civil money penalty limits depend on several factors, including the severity and type of violation. Additionally, the law dictates the annual adjustment formula for federal agencies. A civil money penalty is a fine imposed by a federal agency as a result of misconduct.

The final rule increases the maximum civil money penalty limits for 2017 by the amount required by law. The new penalty amounts apply as of January 15, 2017, for violations that occurred on or after November 2, 2015.

DOL Publishes 2nd Round of Fiduciary Rule FAQs

On January 13, 2017, the Labor Department (DOL) released a second set of frequently asked questions on its final rule which redefinines who qualifies as a fiduciary under the *Employee Retirement Income Security Act (ERISA)* and the *Internal Revenue Code*. The FAQs address questions received by DOL from the industry subsequent to the issuance of the final rule, and provides additional clarity about the rule and what institutions must do to comply. Specific areas of focus include exemptions relating to investment recommendations, investment education, general communications, independent fiduciaries and platform providers.

FDIC Issues List of Banks Examined for CRA Compliance

On January 4, 2017, the Federal Deposit Insurance Corporation (FDIC) issued its list of state nonmember banks recently evaluated for compliance with the Community Reinvestment Act (CRA). The list covers evaluation ratings that the FDIC assigned to institutions in October 2016.

CFPB Updates HMDA Resources

On January 4, 2017, the Consumer Financial Protection Bureau (CFPB) published additional resources to help banks comply with the Home Mortgage Disclosure Act rule filing requirements. The additional resources include a 2017 loan/application register formatting tool, an updated technology preview, a filing instructions guide, and a frequently asked questions document.

 © M&M Consulting LLC 2017, All Rights Reserved

IRS Issues Guidance for Information Reporting De Minimis Rule

On January 4, 2017, the Internal Revenue Service (IRS) issued Notice 2017-09, which provides guidance to implement changes made by the *Protecting Americans from Tax Hikes Act of 2015 (PATH Act)*, P.L. 114-113. The Act addresses the de minimis error safe harbor from information reporting penalties under sections 6721 and 6722 of the Internal Revenue Code (Code), when filing information returns required to be furnished after December 31, 2016.

Under the safe harbor, an error is not required to be corrected, and no penalty is imposed, if the error results in a reporting difference of $100 ($25 in the case of an error related to tax withheld) or less. The Act also allows for a payee to elect that the de minimis error safe harbor not apply to them.

The IRS guidance also provides background on the operation of the rules and indicates that formal regulations will be issued in the future. Comments on the notice are requested by April 24, 2017.

2017 Loan–Volume Threshold for Depository Institutions Subject to HMDA

On January 1, 2017, the scope of depository institutions subject to Regulation C narrowed. A depository institution will not be subject to Regulation C in 2017 unless it: (1) meets the current Regulation C tests relating to asset-size, location, being federally related, and loan activity; and (2) has originated at least 25 home purchase loans, including the refinancing of home purchase loans, (as those terms are currently defined in Regulation C) in each of the two preceding calendar years A 2017 HMDA institutional coverage chart illustrates how to determine whether an institution is covered by Regulation C in 2017, and is available on the CFPB website.

OCC Revises Comptroller's Handbook

On December 30, 2016, the OCC revised the "Internal and External Audits" booklet of its Comptroller's Handbook, which provides guidance to examiners assessing audit exposures, associated risk and risk management practice. The booklet supersedes the previous version, and also replaces two sections of the Office of Thrift Supervision Examination Handbook on external and internal audit.

CRA Asset–Size Thresholds Increase Slightly

On December 29, 2016, the OCC, FRB, and the FDIC announced a joint final rule regarding the annual adjustment to the asset-size thresholds used to define the terms "small bank", "small savings association", "intermediate small bank", and "intermediate small savings association" under the Community Reinvestment Act (CRA) regulations.

The annual adjustments to these asset-size thresholds, required by the CRA rules, are based on the change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

As a result of the 0.84 percent increase in the CPI-W for the period ending in November 2016, the definitions of "small" and "intermediate small" institutions for CRA examinations for 2017 are as follows:

- A "small" bank or savings association means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than $1.226 billion.
- An "intermediate small" bank or savings association means a small institution with assets of at least $307 million as of December 31 of both of the prior two calendar years and less than $1.226 billion as of December 31 of either of the prior two calendar years.

These asset-size threshold adjustments became effective upon publication in the *Federal Register* on January 18, 2017.

CFPB Adjusts Asset–Size Exemption Thresholds for HMDA Reporting

On December 21, 2016, the CFPB issued a final rule amending the official commentary to Regulation C that interprets the requirements for the asset size exemption threshold for banks reporting under the Home Mortgage Disclosure Act and Regulation C. The asset-size threshold for 2017 remains at $44 million. Thus, banks and savings associations with assets under $44 million

© M&M Consulting LLC 2017, All Rights Reserved

as of December 31, 2016 are exempt from collecting HMDA data in 2017.

OCC Finalizes EGRPRA–Related Regulatory Changes

On December 23, 2016, a final rule from the OCC was published in the Federal Register that makes several regulatory adjustments, as part of the agency's efforts under the Economic Growth and Regulatory Paperwork Reduction Act to reduce unnecessarily burdensome or outdated banking rules.

Most notably, the changes allow national banks to offer investment advice for a fee without having custody of the client's assets either directly or through a sub-custodian, as currently required in 12 CFR 9.13.

In addition, the final rule includes changes to licensing rules, bank director oath requirements, fidelity bond activities, reporting requirements, electronic activities and recordkeeping requirements.

CFPB Outlines Fair Lending Priorities for 2017

On December 16, 2016, the CFPB announced that it will increase its efforts in 2017 to prevent credit discrimination and improve credit access, according to a blog post published on the CFPB website. Specifically, the Bureau indicated that it will investigate "redlining" issues to determine whether lenders have intentionally avoided lending in minority neighborhoods. In addition, the Bureau indicated that It will evaluate whether women and minorities have experienced discrimination when applying for credit, or have experienced greater difficulty when attempting to work out payment arrangements with servicers for student loans or home mortgages.

FinCEN Extends FBAR Filing Deadline

On December 16, 2016, FinCEN announced that it will extend the deadline for certain filings of Form 114, the *Report of Foreign Bank Account (FBAR)*, in light of the Notice of Proposed Rulemaking it issued in March 2016 to clarify who is exempt from filing the report under the Bank Secrecy Act. The original deadline for FBAR filing was April 15, 2017. The new deadline for FBAR filing is April 15, 2018. FinCEN also announced that it will maintain April 15 as annual FBAR filing due date going forward.

FFIEC Updates CRA Data Entry Software

On December 16, 2016, the FFIEC updated its Community Reinvestment Act data entry software for 2017. The software is designed to help respondents automate the filing of their CRA data, and includes editing features to help ensure data accuracy. FFIEC also updated its CRA file specifications for 2017.

CFPB Releases New Consumer Credit Tracking Tool

On December 15, 2016, the CFPB released a new web-based tool to help consumers monitor developments in consumer lending markets, including mortgage, credit cards, auto loans and student loans. The Consumer Credit Trends tool, which pulls its data samples from the credit records of one of the top three nationwide credit bureaus, will be updated regularly with new information and analyses on notable findings, the CFPB said. Director Richard Cordray added that the bureau will use this information to track consumer financial markets and identify trends that could warn of another crisis.

The first set of data, which examined consumer lending activity between August and October, showed a year-over-year uptick in mortgage originations and in credit card lending, particularly among lower-income consumers. Higher-risk auto loans decreased overall, and student lending was also down 1.3 percent over the same period last year.

CFPB Updates Mortgage Servicing Compliance Guide

On December 1, 2016, the CFPB published an updated version of small entity compliance guide for mortgage servicing. The revised guide incorporates the changes to Regulation X and Regulation Z that were made as a result of the bureau's servicing final rule issued earlier this year.

 © M&M Consulting LLC 2017, All Rights Reserved

Good to Know

Send your questions to the
answerperson@mandm.consulting

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

Q: We do not put a customer's actual account number on an outgoing wire via *FedLine*. I have asked several other banks what they do, and have found that some use the customer's actual account number, while others do not. Is there a requirement for recording the actual account number on the wire?

A: If a wire transfer is subject to the Travel Rule (i.e., $3,000 or more), the originator's account number is required. The following excerpt ***(emphasis added)*** is found on Page 111 of the FFIEC's *Bank Secrecy Act/ Anti-Money Laundering Examination Manual*:

> Travel Rule Requirement
>
> *For funds transmittals of $3,000 or more, the transmittor's financial institution must include the following information in the transmittal order at the time that a transmittal order is sent to a receiving financial institution (1010.410(f)(1)):*
>
> - *Name of the transmittor, and, **if the payment is ordered from an account, the account number of the transmittor**…*

I also found nothing specific to wire transfers that is "comparable" to the Reg. E provision that for the use of truncated account numbers on electronic terminal receipts.

Q: Our LOS, *Remote Lender*, produces a QM Certificate. In this case, we are looking at one that was produced for a Fixed Rate Home Equity Loan. The Bank pays all of the fees on this product. The fees and points portion of the QM Certificate shows a total of $0.00, however it does itemize the hazard tracking, the tax service fee and the flood cert fee below, even though we pay those fees. Do we have to list the fees associated with the transaction even though we are paying for them? Or are we safe to have them removed since the total is already $0.00?

A: The only references to lender paid items as far as ATR / QM requirements is in §1026.32 of Regulation Z, *Requirements for high-cost mortgages*.

Based on §1026.32(b)(1)(i)(D) and Comment §1026.32(b)(1)(i)-2(iv), the charges you've described would be excluded from the "points and fees" totals.

- §1026.32(b)(1)(i)(D) states:

  For purposes of this subpart, the following definitions apply:

  1. *In connection with a closed-end credit transaction, points and fees means the following fees or charges that are known at or before consummation:*
     - i. *All items included in the finance charge under § 1026.4(a) and (b), except that the following items are excluded:*
       - D. *Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in points and fees under paragraph (b)(1)(i)(C), (iii), or (iv) of this section.*

- Comment §1026.32(b)(1)(i)-2(iv) [Creditor-paid charges] states:

  Charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. See §§ 1026.32(b)(1)(i)(A), 1026.4(a), and comment 4(a)-(2).

Thus, it appears that you can remove / exclude these charges from the QM Certificate.

Q: We have a loan where the Loan Officer collected the applicants' GMI based on visual observation after the application was complete. Regulation C states that GMI should be collected at application, and the Commentary states we are not required to collect GMI if the in-person meeting happens after application. So while collecting the applicants' GMI in this case was not required, is it permissible to report it on the LAR, or should we correct the LAR to reflect information not provided by the applicant?

A: Based on the information provided, it appears that (1) the initial application was not taken face-

 © M&M Consulting LLC 2017, All Rights Reserved

to-face, and (2) the application process was considered complete when the subsequent face-to-face meeting occurred.

If those assumptions are correct, the most appropriate course of action, in my opinion, would be not to report the GMI for this application. I base this on the fact that the GMI is based on the Loan Officer's visual observation, which is only required for a face-to-face application where the applicants have not provided (or chosen not to provide) their GMI.

The concern in reporting the GMI for this application is the potential inconsistency in reporting. if you do not collect GMI on other applications where the borrowers do not initially provide their GMI, and who subsequently meet with their respective loan officers, you could be cited for not applying the same methodology to all applications.

Q: I'm reviewing a narrative for a SAR that my analyst wrote, and I was thinking it was a requirement that we write the dates of the repeat SARS and their BSA ID# (from FinCEN) in the narrative for the previously filed SARs. Did I dream that up? I can't find reference to this requirement in the online manual anywhere.

A: I, too, was under the impression that both the date and BSA ID# of previously filed SARs needed to be included in the narrative. The only "definitive" statement I found on the subject was in the April 2005 edition of The SAR Activity Review, *Trends, Tips & Issues*. However, the language used on pages 32-33 of this publication was to "reference" previously filed CTRs.

I came across other articles / items that indicated only the BSA ID# was required, but I couldn't consider them as authoritative. Thus, there appears to be no clear cut answer as to whether a sufficient "reference" consists of just providing the prior SAR BSA ID#, or providing a combination of the prior SAR BSA ID# and the date it was filed.

Q: We are working to comply with new MAPR rules. Do you have any guidance or insight on how other banks verify whether a consumer is member of the armed forces? Several whitepapers mention an MLA database search, but they do not mention where that system is. Is this a website, software, or service provided by a credit bureau?

A: The Department of Defense recently moved its search site to https://scra.dmdc.osd.mil/. Also, some credit bureaus are offering this search as part of their services. You should check with your provider, if that process work better for you than the manual search of the DoD site.

Q: We are having conversations over the potential of eliminating mailing a first day overdraft notice. We know that there is no regulatory requirement to mail the customer a notice. It is our understanding that it is more of a courtesy notice which the customer receives three days or later after the overdraft has occurred.

Our compliance person believes this may be a UDAAP issue for "omission of information" where others here believe we meet the requirements because the overdraft appears on the customer statement which is delivered monthly. We would like your opinion on the regulatory requirement.

A: There is no specific regulatory requirement for this, but it is more of a best practice under the Joint Guidance on Overdraft Protection Programs. The following is stated at the bottom of page 10 in the Joint Guidance:

> ***Promptly notify consumers of overdraft protection program usage each time used.***
>
> *Promptly notify consumers when overdraft protection has been accessed, for example, by sending a notice to consumers the day the overdraft protection program has been accessed. The notification should identify the date of the transaction, the type of transaction, the overdraft amount, the fee associated with the overdraft, the amount necessary to return the account to a positive balance, the amount of time consumers have to return their accounts to a positive balance, and the consequences of not returning the account to a positive balance within the given timeframe. Notify consumers if the institution terminates or suspends the consumer's access to the service, for example, if the consumer is no longer in good standing.*

So not providing a notice when an overdraft occurs would probably be cited by a regulator as not being consistent with best practices. Also, I agree with your compliance person that there are also potential UDAP concerns if you rely on the monthly statement as your method of initial notification.

 © M&M Consulting LLC 2017, All Rights Reserved

Q: For closed end first mortgage transactions, we provide a copy of the appraisal in accordance with Reg. B. We collect the cost of the appraisal at closing. When a loan doesn't close, we send a letter to the borrower requesting reimbursement for the cost. They usually just ignore the request. Is there any issue with us sending a letter that threatens to send the amount owed to a collection agency?

A: There could be a UDAP issue in sending such letters. Comment §1002.14(a)(3)-2 of Regulation Z (see below) indicates that while the bank can impose a reasonable fee for reimbursement of appraisal costs, §1002.14(a)(3) does not obligate an applicant to pay it.

Comment §1002.14(a)(3)-2, Reasonable fee for reimbursement, states **(emphasis added)** that.

> *Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under § 1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11).* ***Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees.*** *Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).*

To protect the Bank from potential UDAP claims, I'd advise against sending such a letter.

Q: Is FDIC FIL 52-95, which highly encourages bank employees be away from work a minimum of 14 consecutive days each year, still in force? I believe it is, but don't know where to check. It is an interesting dilemma; how does one define "away" in 2017 when everyone checks emails?

A: It looks like the FDIC still "encourages" their two consecutive week vacation / time away policy. The matter is discussed on Page 4 of Section 4.2 (Internal Routine and Controls), last revised in March 2015, of the FDIC's Risk Management Manual of Examination Policies. At present, the FDIC appears to allow for some limited flexibility in this area, but there are caveats attached. However, even if followed, deviation from the policy could still impact the Management component rating in an Exam.

Q: Does the flood insurance escrow requirement for condominiums also apply to commercial condominiums? I have a customer who is purchasing two commercial condo units; one is an office building and the other is a restaurant. Also, is there a minimum required deductible for commercial transactions?

A: The flood insurance escrow requirement for condominiums applies only to residential condominiums.

With respect to commercial flood insurance deductibles, there does appear to be a minimum deductible, ranging from $1,000 - $2,000; the exact amount of the deductible is based on the amount of flood insurance involved and whether the structure is pre- or post-FIRM. See the Flood Insurance Deductibles table below:

a. Minimum:
   i. Pre-FIRM (Flood Insurance Rate Map):
      A. Flood Insurance equal to or less than $100,000.00 = $1,500.00
      B. Flood Insurance greater than $100,000.00 = $2,000.00
   ii. Post-FIRM (Flood Insurance Rate Map):
      A. Flood Insurance equal to or less than $100,000.00 = $1,000.00
      B. Flood Insurance greater than $100,000.00 = $1,250.00
b. Maximum:
   i. Residential = $5,000.00
   ii. Non-Residential = $50,000.00

Q: Is the fee for a *Closing Protection Letter* considered a prepaid finance charge?

A: Based on our research into the proper treatment of Closing Protection Letter fees, M&M has been advising clients to treat such fees as prepaid finance charges. This particular "service" does not, in our opinion, fall within the types of services finance charge exclusions outlined in §1026.4(c)(7) of Regulation Z. Further, most settlement company sites we've reviewed that address the topic share this opinion.

 © M&M Consulting LLC 2017, All Rights Reserved

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.)

01/01/2017 CFPB, Reg. Z Adjusted Dollar Thresholds for Certain Credit Transactions. Effective date.
01/01/2017 NCUA, Final Member-Business Lending Rule. Provides CUs greater business lending flexibility.
01/01/2017 HMDA, Regulation C. Low volume institutions further excluded from coverage.
01/06/2017 Flood Insurance Regulations. End of Comment Period for private flood insurance joint NPRM.
03/17/2017 FFIEC, Consumer Compliance Rating System. Applies to exams starting on/after this date.
04/24/2017 IRS, Guidance for Information Reporting de minimis Rule. End of Comment Period.
09/29/2017 NACHA Rule on Registration of Third Party Senders. Effective date for compliance by ODFIs.
10/01/2017 Military Lending Act Regulation. Sections on credit card accounts become mandatory.
10/01/2017 CFPB, Prepaid Accounts Rule. Mandatory compliance date for most Reg. E & Reg. Z changes.
01/01/2018 HMDA, Regulation C. Revised transaction coverage and expanded fields effective.
05/11/2018 FinCEN, CDD / Beneficial Ownership Rules. Mandatory compliance date.
10/01/2018 CFPB, Prepaid Accounts Rule. Mandatory compliance date for most other PAR requirements.
01/01/2019 HMDA, Regulation C. Effective date for changes to enforcement and reporting provisions.
10/01/2019 CFPB, Prepaid Accounts Rule. Mandatory compliance date for remaining PAR requirements
01/01/2020 HMDA, Regulation C. Quarterly reporting for high volume reporters starts.

© M&M Consulting LLC 2017, All Rights Reserved