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The Washington Report

for the week ended August 22, 2014

In This Issue

Safety & Soundness

OCC Issues Updated *Merchant Processing* Booklet

The Office of the Comptroller of the Currency (OCC) announced the release of a revised *Merchant Processing* booklet of the *Comptroller's Handbook* on August 20, 2014. The booklet, which replaces the booklet of the same name issued in December 2001, includes revisions to incorporate the OCC's supervision of federal savings associations as well as updated guidance to examiners and bankers on assessing and managing the risks associated with merchant processing activities in the areas of:

- Third party organizations;
- Technology service providers;
- On-site inspections, audits, and attestation engagements, including the *Statement on Standards for Attestation Engagement* (SSAE 16) and the *International Standard on Assurance Engagements* (ISAE 3402);
- Data security standards in the payment card industry for merchants and processors;
- MATCH (Member Alert To Control High-Risk Merchants) list;
- *Bank Secrecy Act*/Anti-Money Laundering compliance programs and appropriate policies, procedures, and processes to monitor and identify unusual activity; and
- Capital levels.

OCC to Host Public Meeting of the Minority Depository Institutions Advisory Committee

The Office of the Comptroller of the Currency (OCC) announced that it will host a public meeting of the Minority Depository Institutions Advisory Committee (MDIAC) on October 7, 2014 in Washington, D.C. The MDIAC meeting agenda will include a review of accomplishments, a discussion of the status of the minority depository institutions, and current topics of interest to the industry. Members of the public may submit written statements to the MDIAC by September 29, 2014.

The MDIAC provides advice to the Comptroller of the Currency about minority depository institutions and assesses the current condition of minority depository institutions, regulatory changes that may ensure the health and viability of minority depository institutions, and other issues affecting these institutions.

Enterprise & Consumer Compliance

Federal Reserve Proposes to Repeal Regulation AA; Agencies Release Guidance on Unfair and Deceptive Credit Practices

On August 22, 2014, the Federal Reserve Board (Federal Reserve) released a proposed rule that would repeal its Regulation AA, which implements its rule writing authority for unfair or deceptive acts or practices (UDAP). Regulatory AA also includes the Federal Reserve's "credit practices rule," which prohibits banks from using certain remedies to enforce consumer credit obligations and from including these remedies in their consumer credit contracts.

The Federal Reserve received its authority to write these rules under Section 18(f)(1) of the *Federal Trade Commission Act* (FTC Act). Section 18(f)(1) was repealed by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), effectively repealing the Federal Reserve's authority to write rules that address UDAP. Comments are requested by the Federal Reserve for a period of 60 days following publication in the *Federal Register*.

Also on August 22, 2014, the Federal Reserve and four other federal agencies (the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau) (collectively, the Agencies) jointly released *Interagency Guidance Regarding Unfair or Deceptive Credit Practices*. With this guidance, the Agencies intend to clarify that the repeal of the Agencies' credit practices rules applicable to banks, savings associations, and federal credit unions (as a result of the Dodd-Frank Act) is not a determination that the prohibited practices contained in those rules are permissible. The practices described in the former credit practices rules could potentially violate the prohibition against unfair or deceptive practices under Section 5 of the FTC Act and Sections 1031 and 1036 of the Dodd-Frank Act, even in the absence of a specific regulation governing the conduct. Further, notwithstanding the repeal of these regulations, the Agencies continue to have supervisory and enforcement authority regarding UDAP, which could include the practices previously addressed in the former credit practices rules. The Agencies also note that the CFPB has the authority to enforce the FTC Act's Credit Practices Rule for entities that are under the CFPB's enforcement authority.

CFPB Issues Bulletin on Mortgage Servicing Transfers

The Consumer Financial Protection Bureau (CFPB or Bureau) announced the release of Bulletin 2014-01 on August 19, 2014 to outline the Bureau's expectations for mortgage servicers that transfer loans. The Bulletin is specifically directed toward mortgage servicers and subservicers (collectively, servicers) as a "compliance bulletin and policy guidance," to highlight the potential risks to consumers that may arise in transfers of residential mortgage servicing rights. The Bureau notes that it continues to monitor this market and may engage in

further related rulemakings. The current Bulletin 2014-01 replaces previous CFPB Bulletin 2013-01.

The CFPB's servicing rule took effect on January 10, 2014. It requires servicers to, among other things, maintain policies and procedures that are reasonably designed to achieve the objective of facilitating the transfer of information during mortgage servicing transfers and of properly evaluating loss mitigation applications. The separate sections in the Bulletin provide guidance on:

- General transfer related policies and procedures that CFPB examiners may consider in evaluating whether servicers have met these requirements successfully;
- The application of the revised Regulation X (implementing the *Real Estate Settlement Procedures Act*, RESPA) on servicing transfers and tips on minimizing compliance risk;
- Additional federal consumer financial laws applicable to servicing transfers and consequences for failing to meet obligations under these laws and their implementing regulations; and
- The CFPB's intent to require certain servicers engaged in significant servicing transfers to prepare and submit informational plans describing how they will be managing the related risks to consumers.

2013 CRA Data for Small Business, Small Farm, and Community Development Lending Now Available

The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, acting under the auspices of the Federal Financial Institutions Examination Council (FFIEC), jointly announced the availability of 2013 data on small business, small farm, and community development lending reported by certain commercial banks and savings associations, pursuant to the *Community Reinvestment Act* (CRA). The information is available in electronic form for each reporting entity as part of an FFIEC disclosure statement. In addition, the FFIEC has prepared aggregate disclosure statements of small business and small farm lending for all of the metropolitan statistical areas and non-metropolitan counties in the United States and its territories. These statements are available for public inspection on the FFIEC Web site.

CFPB Releases Final Rule to Extend Pricing Disclosure Exception under its Regulation E Remittance Rule

The Consumer Financial Protection Bureau (CFPB or Bureau) released a final rule on August 22, 2014, that amends Subpart B of Regulation E, which implements the *Electronic Fund Transfer Act,* and the official interpretation to the regulation (Remittance Rule). The amendment extends, through July 21, 2020, a temporary provision that permits insured institutions to estimate certain pricing disclosures pursuant to Section 1073 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). Absent further action by the Bureau, that exception would have expired on July 21, 2015. The final rule becomes effective 60 days after publication in the *Federal Register*.

The CFPB's Remittance Rule created a comprehensive consumer protection regime for international money transfers. Under the rule, remittance transfer providers are required to disclose certain third-party fees, as well as any exchange rate that will apply to the transfer. The rule also provides consumers with error resolution and cancellation rights.

The Dodd-Frank Act contains an exception that explicitly allows federally insured financial institutions to estimate third-party fees and exchange rates when providing remittance transfers to their account holders for which they cannot determine exact amounts. Insured institutions can only use this exception when they cannot determine the exact amounts for reasons beyond their control. The Bureau states that it believes this exception to be limited and not used for most remittances by insured institutions.

The final rule also finalizes a series of technical and clarifying changes related to error resolution procedures, permissible methods to deliver disclosures, and the application of the rule to U.S. military installations located abroad and the treatment of non-consumer accounts.

Coincident with the release of the final rule, the CFPB released a revised version of its compliance guide.

CFPB Enters into Consent Order with Auto Finance Company for Furnishing Inaccurate Information to Credit Reporting Agencies

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on August 20, 2014, that it had entered into a Consent Order with an auto finance company. The Consent Order requires the company to pay a $2.75 million civil money penalty and to take additional actions to address the CFPB's findings the company violated the *Federal Credit Reporting Act* (FCRA) and the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The CFPB found that the company furnished inaccurate information about its customers to credit reporting agencies for an extended period of time and did not take steps to correct the reported inaccuracies or the system creating the inaccuracies once they were discovered.

In addition to the penalty payment, the company is required to:

- Identify all consumer accounts affected by its reporting errors and fix any inaccuracies. The company must either provide the correct information to the credit reporting agencies, or, in cases where accurate information is not available, the company must delete references to the loan altogether.
- Identify and inform all affected consumers about the actions required under the Consent Order and help all affected consumers receive free copies of their credit reports.
- Change business processes and establish safeguards to ensure that only accurate information about its customers is reported to credit reporting agencies. In addition, the company must ensure it has the staffing, facilities, systems, and information necessary to timely and completely respond to consumer disputes, and establish an audit program to identify any systemic inaccuracies.

In a related statement, CFPB Director Richard Cordray said, "Data furnishers have the legal duty to identify consumers accurately, correctly recount the consumers' payment histories, and keep their own information and record-keeping in order." He also said that data furnishers should: take all necessary steps to ensure they are complying with federal laws; monitor consumer reporting disputes for patterns or indications of systemic inaccuracies; promptly modify or delete inaccurate information when it comes to their attention; and make sure that any products or vendors they use to perform these duties are doing so accurately and legally.

Capital Markets & Investment Management

SEC Approves Amendments to Disseminate Additional Asset-Backed Securities and Reduce Reporting Timeframes

The Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-34 to announce that the Securities and Exchange Commission (SEC) has approved amendments to the Trade Reporting and Compliance Engine (TRACE) rules and dissemination protocols. The amendments are intended to provide for dissemination of transactions in an additional group of asset-backed securities and to reduce the time-frame for reporting such transactions, other than Fixed or List Price and Takedown Transactions. Transactions in asset-backed securities effected pursuant to the *Securities Act* Rule 144A (Rule 144A transactions) also will be disseminated. The amendments will become effective on April 27, 2015.

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The amendments include a re-naming of the current term "asset-backed security" to "securitized products" and a new definition of "asset-backed security" that more narrowly describes the specific class of securitized products to be disseminated under the amendment. FINRA will commence dissemination of this newly defined category of "asset-backed securities" as of the effective date, subject to a dissemination cap of $10 million. The new definition of "asset backed security" specifically excludes:

- Securitized products backed by residential or commercial mortgage loans, mortgage-backed securities, or other financial assets derivative of mortgage-backed securities;
- An SBA-Backed asset-backed security traded to be announced or in a specified pool transaction; and
- Collateralized debt, loan and bond obligations.

SEC Announces Examination Initiative for Municipal Advisors

On August 19, 2014, the Securities and Exchange Commission (SEC) announced that its Office of Compliance Inspections and Examinations (OCIE) is initiating the launch of an examination initiative directed at newly regulated municipal advisors.

Under SEC rules that took effect on July 1, 2014, municipal advisors are generally required to register with the SEC through the SEC's EDGAR system under the final registration process during a four-month phase-in period by October 31, 2014. Over the next two years, OCIE plans to examine a significant percentage of these advisors using an approach that focuses on identified risks. Areas targeted for scrutiny may include the municipal advisor's compliance with its fiduciary duty to its municipal entity clients, books and recordkeeping obligations, disclosure, fair dealing, supervision, and employee qualifications and training.

The SEC is working with the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) to facilitate a coordinated approach to oversight of municipal advisors. OCIE will examine municipal advisors for compliance with applicable SEC

rules and applicable final MSRB rules once the MSRB rules are approved by the SEC and become effective.

SEC Proposes to Extend a Temporary Rule Governing Principal Trades with Certain Advisory Clients

The Securities and Exchange Commission (SEC) has released a proposed rule that would extend by two years Rule 206(3)-3T under the *Investment Advisers Act of 1940*, a temporary rule that establishes an alternative means for investment advisers that are registered with the SEC as broker-dealers to meet the requirements of section 206(3) of the *Investment Advisers Act* when they act in a principal capacity in transactions with certain of their advisory clients. As proposed, the temporary rule would expire on December 31, 2016.

The SEC believes the Rule 206(3)-3T, "coupled with regulatory oversight, will adequately protect advisory clients for an additional limited period of time" while the SEC "considers more broadly the regulatory requirements applicable to broker-dealers and investment advisers." Among these considerations is principle trading by advisers and whether Rule 206(3)-3T should be "substantively modified, supplanted, or permitted to sunset." Comments are requested by September 17, 2014.

SEC Investor Advocate Outlines Areas of Focus and Recommendation for User Fees

On August 19, 2014, Rick Fleming, Investor Advocate of the Securities and Exchange Commission (SEC or Commission), spoke before the Annual Southwest Securities Conference in Dallas, Texas. In his remarks, Mr. Fleming explained his role as the first Investor Advocate at the SEC and the purpose of the new Office of the Investor Advocate, which is "to ensure that the concerns of investors are appropriately considered as decisions are being made and policies are being adopted at the Commission, at self-regulatory organizations, and in Congress."

Mr. Fleming said that the Office of the Investor Advocate intends to focus on the following areas in the coming year:

- Investigating whether equity markets are fundamentally fair to investors;
- Investigating whether investors have fled from the equity markets because of fears related to those markets;
- Encouraging the Commission and self-regulatory organizations to implement reforms designed to benefit investors in the municipal securities markets, and encouraging Congress to the act to the extent legislation is required to improve disclosures and practices in this market;
- Surveying the efforts of the Commission, the exchanges, and market participants to prevent market disruptions and safeguard the assets and private information of investors;
- Exploring possible ways to make financial disclosures by public corporations more effective for investors; and
- Looking for ways to prevent financial abuse of elders or others clients with diminished capacity through tools to be used by financial services professionals to protect clients whenever an adviser or registered representative suspects financial or other abuse of a client.

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Mr. Fleming also said that in his capacity as Investor Advocate, he had recommended Congress authorize the SEC to collect an annual "user fee" from registered investment

advisers and to limit the use of those funds to expenses associated with investment adviser examinations. He stated that the SEC examined only about 9 percent of registered investment advisers in Fiscal Year 2013 and suggested that investors are exposed to fraud and abuse when regulators cannot maintain an adequate regulatory presence. A user fee would provide resources to the SEC to hire additional examiners and to shorten the examination cycle. A shorter examination cycle, he said, would provide a stronger deterrent to fraud and curtail "other unethical practices, including excessive fees, excessive trading, and undisclosed conflicts of interest."

Enforcement Actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC, and the Financial Industry Regulatory Authority (FINRA) recently announced the following enforcement actions:

- The SEC
- FINRA filed a complaint against a California-based securities firm for "systemic supervisory and anti-money laundering (AML)" violations in connection with providing direct market access and sponsored access to broker-dealers and non-registered market participants. FINRA states that despite its obligations to monitor, review, and detect suspicious and potentially manipulative trades, the firm largely relied on its market access customers to self-monitor and self-report such trading without sufficient oversight and controls to detect "red flags." Additionally, the complaint alleges that the firm failed to establish, maintain and enforce adequate AML policies and procedures, and failed to report suspicious and potentially manipulative transactions. FINRA explains the issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. The firm named in the complaint may file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.

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Recent Supervisory Actions against Financial Institutions

Last Updated: August 22, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
FDIC	Banking Entities	Settlement	08/21	The Federal Deposit Insurance Corporation, as receiver for twenty-six failed banks, announced a settlement of more than $1 billion with eighteen related entities of a large bank related to misrepresentations in the offering documents for 155 residential mortgage-backed securities (RMBS) purchased by the failed banks.
Federal Reserve Board	State Member Bank	Written Agreement	08/12	The Federal Reserve Board entered into a (((with a Louisiana state member bank to address deficiencies related to the implementation of a compliance risk management program that includes strengthening board and senior management oversight, developing acceptable consumer compliance and fair lending risk assessments, and a developing a program of interim compliance reviews, risk monitoring, and training sessions.
CFPB	Nonbank Mortgage Lender	Consent Order	08/12	The Consumer Financial Protection Bureau issued a Consent Order against an online mortgage lender, its affiliate, and their owner to address violations of the *Consumer Financial Protection Act*, the *Real Estate Settlement Procedures Act*, the *Truth in Lending Act*, and the *Omnibus Appropriations Act*. The Consent Order requires the company and its servicing affiliate to pay $14.8 million in refunds to harmed consumers and a $4.5 million penalty. The owner will pay an additional $1.5 million penalty.
Department of Justice	Banking entity	Settlement	08/07	The Department of Justice settled a lawsuit against a large banking entity that it alleged had engaged in discrimination on the basis of disability and receipt of public assistance in violation of the *Fair Housing Act,* and the *Equal Credit Opportunity Act*. Under the settlement, the banking entity has agreed to maintain revised policies, conduct employee training, and pay over $1.5 million to compensate victims.
Federal Reserve Board	State Member Bank	Civil Money Penalty	08/05	The Federal Reserve Board issued an Order to Assess Civil Money Penalties against an Iowa-state member bank to address violations of the National Flood Insurance Act.
CFPB, State Attorneys General	Nonbank Consumer Lender	Consent Order	07/29	The Consumer Financial Protection Bureau and 13 state attorneys general issued a Consent Order against a nonbank consumer lender to address violations of the unfair, deceptive, or abusive acts or practices provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and the *Truth in Lending Act*. The Consent Order requires the company to provide approximately $92 million in debt relief to harmed consumers, which included approximately 17,000 U.S. servicemembers and other consumers.
Federal Reserve Board	State Member Bank	Civil Money Penalty		The Federal Reserve Board issued an Order to Assess Civil Money Penalties against an Iowa-state member bank to address violations of the National Flood Insurance Act.

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