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Quarterly Report

Mississippi Regulatory Compliance Group

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STATE DATA PRIVACY LAWS AND REG. P

Page two of the model privacy notice in Reg. P contains a box titled "Other important information." The instructions in the regulation appendix say that use of this box is optional, but if used, only certain information may appear there: (1) state and/or international privacy law information; and/or (2) an acknowledgment of receipt form. Some banks used this space to disclose relevant information about state privacy laws that may apply, particularly, where the relevant state law might be different than federal law. Remember that Reg. P does not supersede state law except to the extent that state law is inconsistent with Reg. P, and then, only to the extent of the inconsistency. In addition, Reg. P provides that a state law is not considered to be inconsistent with the federal law if the state law provides greater protection to consumers as determined by the CFPB.

Recently, we have seen several states, California and Virginia in particular, enact strong data privacy laws giving consumers much greater control over their personal data and imposing significant burdens on the businesses holding that data to protect its confidentiality and to prevent it from being used or sold without the consumer's consent. Coverage of these laws vary, but they are generally written broadly to protect individual residents of the state and apply to many businesses doing business in those states.

Most of us would say our institution does not do business in California or Virginia, so there is no need to be concerned. But some institutions do have a small number of customers who reside in one of those states and may be concerned about whether that state's data privacy law could extend to the bank. That is a legal question best addressed by the bank's legal counsel after consideration of the relevant facts regarding the bank and its ties to one of those states as well as the specific provisions of the state law. These laws are complex and the requirements are too extensive to cover here, but we thought a brief look at the basic coverage of the California and Virginia laws might provide some useful insight.

The history of the California Consumer Privacy Act (CCPA) is quite interesting. It began as a controversial ballot initiative to amend the state constitution to significantly expand consumer privacy rights. To avoid that ballot initiative, the California (CA)

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legislature negotiated with the initiative's sponsor to enact a compromise bill instead. Under a hard deadline to enact the bill in time to withdraw the initiative from the November 2018 ballot, the state legislature revived a previously dead bill dealing with data privacy and drafted the compromise statute which became the California Consumer Privacy Act of 2018. The quick action led to some contradictory and confusing terms, and the law has been amended multiple times since its original passage. The CA AG's office issued regulations effective in August of 2020 which have also been amended since. If that moving target wasn't already hard enough to hit, the sponsors of the original ballot initiative filed a new initiative in 2020 to amend and expand the CCPA, and CA voters approved it last November.

The CCPA provides personal information rights and protections for consumers, defined as natural persons who are CA residents (so, it does not cover information of business entities, for example). The CCPA's obligations apply to a business, which it defines as a for-profit entity (and its affiliates) that collects a consumer's personal information and does business in CA, and meets at least one of the following thresholds: (i) annual gross revenue that exceeds $25 million, (ii) annually buys, receives, shares, or sells the personal information of more than 50,000 consumers, households, or devices for commercial purposes, or (iii) derives 50% or more of annual revenues from selling consumers' personal information.

The CCPA does not define what constitutes "doing business" in CA, so that is a big unknown in determining coverage for out of state businesses. The CCPA does expressly exclude coverage for commercial conduct that takes place wholly outside of CA. To qualify, the business must: have collected the personal information while the consumer is outside of California; ensure no part of the sale of the consumer's personal information occurs in California; and not sell personal information collected while the consumer was in California.

Among other exclusions, the CCPA excludes personal information governed by the federal Fair Credit Reporting Act (FCRA) or the Gramm-Leach-Bliley Act (GLBA) from all provisions of the law except the private right of action for certain data breaches. The data breach provision permits a private right of action for unauthorized access to or disclosure of certain personal information resulting from a failure to implement reasonable and appropriate security procedures. The data breach liability section defines personal information much more narrowly than the general CCPA definition and limits it to an individual's first name/initial and last name in combination with: a unique ID number such as SSN, tax ID or passport number; an account, credit or debit card number, in combination with a PIN, password or other information to access the account; medical or health insurance information; or unique biometric data such as a fingerprint. This appears to be similar to the types of "personally identifiable information" covered by existing data breach laws in most states.

Virginia followed California on March 2, 2021, by adopting a comprehensive consumer data protection law called the Consumer Data Protection Act (CDPA). The Virginia (VA) law generally grants consumers rights over their personal data and defines "consumer" as a resident of VA "acting only in an individual or household context." The law explicitly excludes "a natural person acting in a commercial or employment context."

The VA CDPA applies to businesses, called "controllers," that are located in VA or produce products or services targeted to VA

residents and which control or process personal data of at least 100,000 consumers per year or control or process the personal data of at least 25,000 consumers and derive more than half their gross revenue from the sale of personal data. The Virginia law has important, broad exemptions for entities and data covered by other laws, including HIPAA, Gramm-Leach-Bliley, and FCRA, among others. De-identified data is also generally exempt from the law's provisions.

The Virginia law has many similarities to the CA CCPA. It provides consumers with similar rights and imposes similar requirements on covered businesses to protect personal data and to provide consumers with a privacy policy stating what personal data they collect, what they do with it, how consumers can exercise their rights, and what personal data is shared with third parties. There are differences in the two laws as well. For financial institutions, one of the key differences is the exemption for personal information covered by GLBA. The CA CCPA narrowly exempts personal information collected pursuant to Gramm-Leach-Bliley. The VA CDPA broadly exempts financial institutions or data subject to Gramm-Leach-Bliley, not just data collected pursuant to it.

So, a few things to think about in analyzing whether these laws present concerns for your institution. Are you doing business in one of those states? What constitutes doing business with respect to these laws is not well defined. Having a physical presence in the state or marketing your services there could be key factors. If the only connection to that state is having a handful of deposit account customers who reside there, that would not seem to be enough, but, again, the laws are not clear and the intent of the laws is certainly to protect in-state residents.

If the answer to the doing business question is not clear, then consider whether you could be a covered business under that state's law. Do you meet the specific thresholds for that state? The CA law is different in that the thresholds are in the alternative and one of the alternatives is a $25 million gross revenue threshold that applies regardless of the number of CA consumers the business has as customers. In VA, it seems unlikely that any financial institution would hold the data of more than 100,000 VA residents unless it had a large physical presence in that state.

And if the answer to the covered business question is not clear, then are you otherwise exempt? The GLBA related exemptions are important. If you only collect information about residents of those states that is covered by GLBA and Reg. P, then you should be exempt under both the CA and VA laws. If you collect information about residents of those states other than the types of personally identifiable financial information covered by GLBA and Reg. P, then the question of coverage remains under the CA law. Under the VA law, though, the broader exemption for institutions subject to GLBA may still apply.

Again, these are fact and law specific questions that may require a more thorough analysis. Also, a number of other states are actively considering new personal data protection laws similar to the CA and VA laws, so this is an area that we will need to continue to monitor for developments.

<Cliff Harrison>

PROPOSED PRIVATE FLOOD INSURANCE FAQS

In March 2021, the FDIC, OCC, NCUA, Federal Reserve and Farm Credit Administration (collectively, the "Agencies")

proposed 24 new frequently asked questions (FAQs) and responses regarding private flood insurance to supplement the existing 118 FAQs in the Interagency Questions and Answers Regarding Flood Insurance issued in 2020. The regulators issued these FAQs following the issuance of a final rule in 2019 to implement the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). The original FAQs were issued to clarify various questions lenders have regarding flood insurance requirements but only included 2 FAQs on private flood insurance because the private flood insurance rule had only been in effect for a year. The 24 new FAQs are proposed to address the numerous questions the Agencies received since the issuance of the 2019 flood insurance rule.

The new FAQs are organized into three categories: mandatory acceptance, discretionary acceptance, and general compliance. The proposed rule issuing the new FAQs names each new question according to its category; for example, the first question in the mandatory acceptance category is “Mandatory 1”. We will discuss each category and FAQ in more detail below:

Mandatory Acceptance. The Agencies proposed 9 new questions addressing mandatory acceptance of private flood insurance policies. Mandatory 1 allows lenders to have policies of only accepting flood insurance policies that they are required to accept. In other words, lenders can choose to only accept mandatory private flood policies and reject all discretionary policies or mutual aid policies. Mandatory 2 addresses when a lender must review a private flood policy other than at origination. Private flood policies must be reviewed when a triggering event occurs, such as making, increasing, extending, or renewing a loan. Private flood policies must also be reviewed when they are up for renewal, or when the borrower presents the lender with a new policy.

Mandatory 3 addresses if the private flood insurance requirements require a lender to change its policy of not originating a mortgage in non-participating communities or coastal barrier regions where the national flood insurance program is not available. The flood regulations do not require a lender to originate a loan that does not meet that lender’s underwriting criteria.

Mandatory 4 clarifies that the safe harbor language provided in the 2019 final rule is not intended to act as a conformity clause, but instead it is meant to facilitate the ability of lenders and consumers to recognize policies that meet the definition of “private flood insurance” and to promote the consistent acceptance of policies that meet this definition.

Mandatory 5 provides that a lender is not required to accept a private flood insurance policy solely because the policy contains the safe harbor language if the lender chooses to conduct its own review and determines the flood insurance policy actually does not meet the mandatory acceptance requirements. If a private flood insurance policy does not include the safe harbor language, the lender must still review the policy to determine if it meets the requirements for private flood insurance as set forth in the flood regulations before the lender may choose to reject the policy. Similarly, Mandatory 6 provides that a private flood policy containing the safe harbor language, the lender is not required to conduct any review of the policy to determine if it meets the definition of “private flood insurance.” Mandatory 6 also clarifies that the language of the safe harbor clause must be stated as set forth in the regulations in order for the lender to rely on the protections of the safe harbor clause. However, a lender need

not reject a policy containing the safe harbor clause if the formatting, font, punctuation, and similar stylistic effects that do not change the substantive meaning of the clause.

Mandatory 7 requires a lender to ensure that the flood coverage is at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property and to ensure that other key aspects of the private flood policy are accurate, such as the borrower's name and property address.

Mandatory 8 addresses if a lender may use the discretionary acceptance criteria to determine whether to accept a policy that does not contain the safe harbor provision without first reviewing the policy to determine if it meets the mandatory acceptance provision. Mandatory 8 clarifies that a lender may first review the private flood policy to determine whether it meets the criteria under the discretionary acceptance provision. But, if the policy is not accepted under the discretionary acceptance provision, the lender will still need to determine whether it must accept the policy under the mandatory acceptance criteria. Mandatory 8 also reminds lenders of the requirement to document that a policy provides sufficient protection of the loan if the lender accepts the policy under the discretionary acceptance provision of the regulations.

Mandatory 9 provides that if the safe harbor clause is included on the declarations page, a lender may accept the policy without further review. However, a lender must also ensure compliance with the mandatory purchase requirement.

Discretionary Acceptance. The proposed FAQs add 4 new questions regarding discretionary acceptance. Discretionary 1 provides that the discretionary acceptance criteria in the regulations set forth the minimum acceptable criteria that a flood insurance policy must have for the lender to accept the policy under the discretionary acceptance provision. It is at the lender's discretion to accept a policy that meets the discretionary acceptance criteria so long as the policy does not meet the mandatory acceptance criteria.

Discretionary 2 addresses documentation. The regulations require the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with safety and soundness principles. The regulations do not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, and lenders may include any information that reasonably supports the lender's conclusion following review of the policy.

Discretionary 3 relates to issues regarding an insurer's solvency, strength, and ability to pay claims in order to determine whether an insurance policy provides sufficient protection of a loan, consistent with general safety and soundness principles. Discretionary 3 provides that a lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the state insurance regulator's office of the state in which the property securing the loan is located. A lender can also rely on the licensing or other processes used by the state insurance regulator for such an evaluation.

Discretionary 4 covers the review and documentation of a private flood policy that potentially meets the discretionary acceptance provisions. If a lender accepted a private flood insurance policy in accordance with the discretionary acceptance requirements and the policy is renewed, the lender is required to review the policy upon renewal to ensure that it continues to meet the discretionary

acceptance requirements. Additionally, a lender may rely on a previous review of a flood insurance policy under the discretionary acceptance provision, provided there are no changes to the terms of the policy. A lender will need to document its conclusion regarding sufficiency of the protection of the loan in writing upon each renewal to indicate that the policy continues to provide sufficient protection of the loan.

General Compliance. The proposed FAQs add 11 new general questions, which are designated as Private Flood Compliance 1 through 11. Private Flood Compliance 1 addresses the maximum deductible for a private flood insurance policy for properties located in a special flood hazard area. The answer depends on whether the lender is accepting the flood insurance policy under the mandatory or discretionary acceptance provisions. Under the mandatory acceptance provision, the policy must contain a deductible that is "at least as broad as" the maximum deductible in the standard flood insurance policy under the national flood insurance program, which means that the deductible is no higher than the specified maximum under a standard flood insurance policy for any total coverage amount up to the maximum available under the national flood insurance program at the time the policy is provided to the lender. A policy with a coverage amount exceeding that available under the national flood insurance program may have a deductible exceeding the specific maximum deductible under a standard flood insurance policy. However, for safety and soundness purposes, a lender should consider whether the deductible is reasonable based on the borrower's financial condition, consistent with previously issued guidance and with how deductibles are evaluated under the discretionary acceptance provision. The answer also provides examples to aid lenders.

Private Flood Compliance 1 also provides guidance for accepting private flood insurance policies under the discretionary acceptance provision. The policy must provide sufficient protection of the loan, consistent with general safety and soundness principles. A lender can consider, among other things, whether the policy's deductible is reasonable based on the borrower's financial condition to determine whether a policy provides sufficient protection of a loan.

A lender can accept a private flood insurance policy under the discretionary acceptance provision with a deductible higher than that for a standard flood insurance policy for a similar type of property, provided the lender has determined the policy provides sufficient protection of the loan, consistent with general safety and soundness principles. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance. This principle applies if the lender is evaluating the policy under either the mandatory or discretionary acceptance provisions.

Private Flood Compliance 2 clarifies that a lender may require that the deductible of any private flood insurance policy be lower than the maximum deductible for a national flood insurance program policy under both the mandatory and discretionary acceptance provisions. For mandatory acceptance, the private flood insurance policy must be at least as broad as a national flood insurance program policy, which includes a requirement that the private flood insurance policy contain a deductible no higher than the specified maximum deductible for a standard flood insurance policy. A lender may require a borrower's private flood insurance policy deductible be lower than the maximum deductible for a national flood insurance program policy in connection with a policy

that the lender accepts under the mandatory acceptance provision consistent with general safety and soundness principles and based on a borrower's financial condition, among other factors. For discretionary acceptance, a lender only needs to consider whether the policy, including the stated deductible, provides sufficient protection of the loan, consistent with general safety and soundness principles.

Private Flood Compliance 3 provides that lenders are not prohibited from charging fees to borrowers for contracting with a third party to review flood insurance policies, but lenders should be aware of any other applicable requirements regarding fees and disclosures of fees.

Private Flood Compliance 4 addresses a lender's responsibility to ensure that a private flood insurance policy insurer meets the requirements of the regulations if the policy is not available prior to loan closing. The applicable flood rules and regulations do not specify the acceptable types of documentation for a lender to rely upon when reviewing private flood insurance policies. Lenders should determine if they have sufficient evidence to show the policy meets the requirements under the regulations. If lenders do not have enough information to determine if the policy meets the private flood insurance requirements under the regulations, then they should timely request additional information as necessary to complete their review. The answer also provides suggestions for optional steps that a lender can take to mitigate against closing delays.

Private Flood Compliance 5 provides guidance on whether a declarations page provides sufficient information for lenders to determine whether a policy complies with the flood regulations. The answer depends on the information contained in the declarations page. If the declarations page provides sufficient information for the lender to determine whether the policy meets either the mandatory or discretionary acceptance provisions, or if the declarations pages contains the compliance aid assurance clause, then the lender may rely on the declarations page. If the declarations page does not provide sufficient information for the lender to determine whether the policy satisfies either the mandatory or discretionary acceptance provisions, then the lender should request additional information about the policy to aid in its determination.

Private Flood Compliance 6 provides guidance on a lender's ability to accept multiple-peril policies. A lender may accept multiple-peril policies that cover the hazard of flood under the private flood insurance provisions of the regulations, provided they meet the requirements of the regulations.

Private Flood Compliance 7 addresses how the private flood insurance requirements of the regulations work in conjunction with requirements of secondary market investors, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Lenders must comply with the Federal flood insurance requirements, and secondary market investor requirements are separate from the requirements of the Regulation. Therefore, if a lender plans to sell loans to such an investor, the lender should carefully review the investor's requirements and direct questions regarding these requirements to the appropriate entities.

Private Flood Compliance 8 provides guidance to loan servicers for loans covered by flood insurance mandated by the Act. For loans serviced on behalf of lenders supervised by the Agencies, the servicer must determine whether a private flood insurance policy must be accepted under the mandatory acceptance

provision or may be accepted under the discretionary acceptance or mutual aid provisions. However, for loans serviced on behalf of other entities not supervised by the Agencies, the servicer should comply with the terms of its contract with such an entity. When servicing loans on behalf of Fannie Mae or Freddie Mac, where there are insurer rating requirements specified within those entities' servicing guidance or other relevant authorities that are not included in the regulations, the servicer should adhere to those servicing requirements.

Private Flood Compliance 9, 10 and 11 provide guidance on optional methods for lenders to address questions on whether an insurer is licensed, admitted, or otherwise approved to do business in a particular state, which is one of the factors lenders must evaluate under both the mandatory and discretionary acceptance provisions.

Private Flood Compliance 9 explains how a lender can determine if insurer is licensed, admitted, or otherwise approved in a particular state, or if a surplus lines or non-admitted alien insurer is permitted to issue an insurance policy in a particular state. A lender may review the website of the state insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue insurance in a particular state. A lender could also contact the state insurance regulator directly. The information with respect to surplus lines insurer eligibility may be available in the Consumer Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders also may consult commercial service providers regarding the eligibility of surplus lines insurers in particular states as long as lenders have a reasonable basis to believe that these service providers have reliable information. With regard to non-admitted alien insurers, lenders should review the NAIC's Quarterly Listing of Alien Insurers.

Private Flood Compliance 10 addresses surplus lines insurers for noncommercial residential properties. Lenders may accept private flood policies that are surplus lines insurers for noncommercial residential properties. If the surplus lines insurer is eligible or not disapproved to place insurance in the state or jurisdiction in which the property to be insured is located, lenders may accept policies issued by surplus lines insurers as coverage for noncommercial (i.e., residential) properties. In addition, consistent with applicable flood insurance rules and regulations, the definition of "private flood insurance" and in the discretionary acceptance provision covers private flood policies issued by surplus lines insurers for noncommercial properties.

Within the discretionary acceptance provision, noncommercial residential policies issued by surplus lines carriers are covered as policies that are issued by private insurance companies that are "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."

Private Flood Compliance 11 addresses a hypothetical scenario where a lender receives a private flood insurance policy that includes a safe harbor clause, but also includes a disclaimer that the "insurer is not licensed in the State or jurisdiction in which the property is located." There are circumstances under which lenders may accept a policy issued by an insurer that is not licensed in the State or jurisdiction in which the property is located. A lender would be able to accept a policy issued by a surplus lines insurer recognized or not disapproved by the relevant state

insurance regulator as protection for loan collateral that is a nonresidential commercial property. Also, a lender may accept a policy issued by a surplus lines insurer as protection for loan collateral that includes residential property as a policy issued by an insurance company that is "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."

We encourage you to read the proposed FAQs, which are available on the Agencies' websites. Comments are due May 17, 2021.

<Doug Weissinger>

PREPARING SAR NARRATIVES

Recently, we learned that a few members of our group have faced criticism in exams concerning SAR narratives; so, we thought this would be a good time to revisit the related requirements and guidance. The number of filed SARs greatly increased in 2020 as a result of the COVID-19 pandemic causing closed borders and world-wide shut downs. This increase is the likely cause of the increased scrutiny of SAR preparation as it has become even more important for investigators to be able to quickly identify those SARs that require immediate, further investigation.

In its various guidance, FinCEN has said that a SAR narrative should answer six basic questions in an introductory paragraph, a body and a conclusion. In the introductory paragraph, the preparer should include the purpose of the SAR, the suspected violation, and relevant dates, including dates of any previously filed SARs. If the bank uses an internal investigation number or some other identification number, it should also be included in the introductory paragraph or elsewhere in the narrative. The body of the narrative will be used to answer the following questions, in order, to identify all relevant information related to the suspicious activity: Who? What? When? Where? Why? and How?. While answering these questions, it is important to remember to provide all necessary details while also being concise and presenting the information in chronological order. Some of the most commonly noted issues related to SAR narratives are rambling narratives and narratives with irrelevant facts and detail. A conclusion paragraph should summarize the narrative and include any follow up actions that the bank plans to take such as closing an account, continued monitoring, etc., as well as any additional contact information not previously provided on the SAR form.

FinCEN has provided some examples and guidance on how best to answer the identifying questions in a SAR narrative. First, who is conducting the suspicious activity? This question is used to identify additional details obtained about the suspect(s) including employer and occupation information, the relationship between the suspect and the bank, and the length of the financial relationship. While the suspect information will be on the SAR form itself, additional information should be included in the narrative with any other details and information that can be provided to further describe the actors, relationships, identification numbers, addresses, etc.

Second, address what instruments or mechanisms are being used to facilitate the suspicious transaction(s)? Answering this question should include a description of the suspicious transactions. Were the transactions deposits or withdrawals or both? What instruments were used to conduct the suspicious activity? It is important to include any known account numbers.

Third, identify the date, range of dates or period of time during which the suspicious activity took place. If the suspicious activity occurred only once, then the date of the occurrence should be included. If the activity occurred over a period of time, then the initial date should be included in the narrative. Also, it is important to identify when the suspicious activity was detected by the bank. This is an area we have seen lacking in a lot of reviews as we often see that the date of detection is not documented.

Next, where did the suspicious activity take place? To answer this question, provide the branch location(s) where the activity took place including the name and street address for each location and identify any other banks that may have been involved in the suspicious activity.

After the facts regarding who, what, when and where have been set forth in the narrative, it is important for the filer to relay why the information is considered suspicious and how the suspicious activity was conducted. The first information to provide for these purposes is information regarding your type of institution (bank, number of branches, etc., presence in number of states, etc.). Then, in a concise but detailed manner, fully describe any relevant information about the suspicious activity including how the suspicious transactions were conducted including a complete explanation of the account activity including the source of funds and application of funds. When describing why the activity is suspicious, be sure to include any incriminating statements made by the suspects in the narrative.

When completing a SAR narrative, remember the reader's purpose is to be able to quickly determine exactly what happened, by whom, how, and when, in order to determine the seriousness of the potential crime and the level at which an investigation should continue.

<Memrie Fortenberry>

"ADD-ON" PRODUCT TAKE-AWAYS

I'm sure many of you have been contacted by third-party vendors that want to "partner" with your bank to offer additional products such as ID theft protection or other "account protector" add-on products in connection with the bank's deposit accounts or credit cards. Some of you may also have had these third parties offer to redesign your accounts and create a "catchy" name for accounts that include their add-on products. It is very important to keep in mind when considering or implementing products or services offered to your customers through third party vendors that <u>your bank is ultimately responsible</u> for the content of their direct mailings and their suggested marketing, disclosure and contract materials, as well as the features and functionality of the services offered.

There have been some very sizeable penalties imposed by the federal banking agencies over the last several years – all for unfair and deceptive practices under Section 5 of the Federal Trade Commission Act. Violations included:

- Representing to consumers that they would not be charged a fee for the products if their account had no balances, but actually charging them in those circumstances.
- Misrepresenting the refund process if a product was cancelled in the first 30 days of enrollment.
- Misrepresenting the benefits and costs of the account protector add-on product.

- Misrepresenting that these were free "benefits" rather than products for which a fee would be applied to their accounts.
- Enrolling the consumer without their consent and then charging them for the product.
- Withholding information regarding eligibility requirements for certain benefits.

The misrepresentation or withholding of information is usually not intentional but results from inadequate explanations of the features and terms of the service or product; what it does, how it works, and how and when a fee might be charged.

Here are a few of the add-on products we have seen in reviews and some additional considerations/issues to consider:

- Personal Identity Theft – What is included? Is enrollment automatic or are other steps required? What conditions apply? Are there any exceptions or items not covered? Is there a reimbursement maximum? Is there a time limit for making a claim?
- Cell Phone Protection – What does this cover? Is there a co-payment or deductible for a claim? Are there exceptions or exclusions? Are there any limits on how many claims per year? One statement we have seen is: "If you fail to make a cell phone bill payment in a particular month, your protection is suspended. Coverage is reinstated the first of the month following the phone bill payment." A condition like this is OK, but it needs to be spelled out clearly and conspicuously.
- Health Savings Card – What types of services does this cover? Are there conditions, exceptions or exclusions? Is it limited to certain providers? Here is another statement we have seen in materials that is often hidden in small print: "The discounts cannot be combined with your primary insurance."
- Life Insurance – Is it clear as to whether or not the customer has to take action to sign up or enroll to obtain the insurance? I have personally seen direct mail pieces that are misleading or incomplete as to how to sign up. Are there conditions, exceptions or exclusions? What is required to make a claim?

We have also seen instances where a third-party vendor that is helping redesign the bank's deposit accounts and offering add-on products has provided the bank with account change in terms notices, website language, disclosures, and other materials that did not comply with requirements under Truth-in-Savings. In one case, the vendor provided a change in terms notice that was not in line with TISA requirements. All changes in terms should be grouped together and clear and conspicuous, and the vendor party had interspersed the disclosures regarding changed terms with other materials. We also found incorrect "footnote" references.

We will talk about this further in our meeting. The bottom line is the bank should have procedures in place to review any third-party prepared disclosures and marketing information before they are put in place to ensure that all regulatory requirements are satisfied and there are no signs of potentially unfair, deceptive or abusive acts or practices.

<Patsy Parkin>

CFPB UPDATE

The fact that a permanent director has not yet been confirmed has not slowed the CFPB from taking action and resetting its priorities.

Policy Statements Rescinded. On March 11, the Bureau rescinded its January 2020 policy statement on abusive acts or practices. The Bureau initially issued the policy statement for the stated purpose of providing a common-sense framework on applying the "abusiveness" standard. The statement said the Bureau would generally avoid challenging conduct as abusive if it relies on the same set of facts alleged to constitute an unfair or deceptive act or practice, and that it would decline to seek civil money penalties and disgorgement for certain abusive acts or practices, unless special circumstances were present. The Bureau now says it has concluded that the 2020 policy statement does not actually provide clarity to regulated entities and that it intends to exercise the full scope of its enforcement authority to identify and remediate abusive acts and practices as authorized by Congress.

On March 31, the Bureau also rescinded seven other policy statements issued last year that temporarily provided financial institutions with flexibilities during the pandemic regarding certain regulatory filings and compliance requirements. The Bureau stated that it intends to exercise the full scope of its supervisory and enforcement authority under the Dodd-Frank Act and noted that financial institutions have had a year to adapt their operations to the difficulties posed by the pandemic. The CFPB also rescinded its 2018 bulletin on supervisory communications and replaced it with a revised bulletin describing its use of matters requiring attention (MRAs) to convey supervisory expectations. The rescinded policy statements and MRA Bulletin are:

- Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic (March 26, 2020).
- Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (April 7, 2020) and the Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus (April 14, 2020). The Bureau withdrew as a signatory to these interagency statements which remain in effect as to the other federal banking agencies.
- Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (March 26, 2020). All financial institutions required to file quarterly must do so beginning with their 2021 first quarter data, due on or before May 31, 2021, for all covered loans and applications with a final action taken date between January 1 and March 31, 2021.
- Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers (March 26, 2020). The rescission also provides guidance as to how entities should now meet the specified information collections requirements relating to credit card and prepaid accounts.
- Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act (April 1, 2020). The rescission leaves intact the section entitled "Furnishing Consumer Information Impacted by COVID-19" which states the CFPB's support for

furnishers' voluntary efforts to provide payment relief and that the CFPB does not intend to cite in examinations or take enforcement action against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

- Statement on Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J (April 27, 2020).
- Statement on Supervisory and Enforcement Practices Regarding Reg. Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic (May 13, 2020).
- Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (June 3, 2020).
- Bulletin 2018-01: Changes to Types of Supervisory Communications. The rescinded bulletin is replaced by Bulletin 2021-01 stating that the CFPB will continue to use MRAs and explaining the circumstances under they will be used, and further states that the CFPB will discontinue use of Supervisory Recommendations.

Reg. B Interpretive Rule. On March 9, the CFPB issued an interpretive rule clarifying that the prohibition against sex discrimination in the Equal Credit Opportunity Act and Reg. B includes sexual orientation and gender identity discrimination. The U.S. Supreme Court issued a decision in 2020 in Bostock v. Clayton County, Georgia, holding that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 encompasses sexual orientation discrimination and gender identity discrimination. Consistent with the Bostock decision, the Bureau issued the interpretive rule to address any regulatory uncertainty that may still exist regarding use of the term "sex" in the ECOA and Reg. B. The interpretive rule is effective upon publication in the Federal Register.

Annual Fair Lending Report. On April 14, the Bureau released its annual Fair Lending Report to Congress. The report highlights the Bureau's fair lending work in 2020 which included the following:

- Prioritized assessments conducted by the supervision area to obtain a greater understanding of industry responses to pandemic-related challenges.
- Two public enforcement actions involving fair lending laws.
- Issuance of an interpretive rule related to special purpose credit programs.
- Hosting of a Tech Sprint bringing together stakeholders to discuss innovative solutions to compliance challenges and better understand the intersection of emerging technologies and existing fair lending laws.
- Holding more than 90 outreach events for stakeholders: (1) offering education on fair lending compliance and access to credit issues and (2) hearing their views on the Bureau's work to inform the Bureau's policy decisions.

Notably, the Bureau said that in 2021 and beyond, it will place greater emphasis on fair lending and efforts to address racial equity for underserved communities.

Status of Small Business Loan Data Collection Rule. On February 22, the CFPB filed its fourth status report with a federal court in California on its progress in implementing Section 1071 of the Dodd-Frank Act which requires the Bureau to

collect and disclose data on lending to women and minority-owned small businesses. The CFPB was sued in 2019 by a group of plaintiffs, including the California Reinvestment Coalition, seeking a court order to compel the Bureau to issue a final rule to implement Section 1071. The Bureau files periodic status reports with the court under a settlement agreement in that suit. The status report noted that the Bureau met the following deadlines: (i) last September it released a Small Business Regulatory Enforcement Fairness Act (SBREFA) outline of proposals under consideration; and (ii) it convened an SBREFA panel last October and released the panel's final report last December. The settlement next requires the parties to confer about a deadline for the Bureau to issue a Section 1071 notice of proposed rulemaking. According to the status report, Bureau staff is in the process of evaluating the panel's recommendations and other stakeholder feedback and briefing new Bureau leadership on the legal and policy issues that must be resolved in order to prepare a proposed rule. If the parties agree on a deadline date, they will jointly stipulate to the agreed date and request the court enter that deadline. Bureau acting Director Dave Uejio stated recently that he has pledged full support to the Bureau's Division of Research, Markets, and Regulations to implement section 1071 without delay.

Mortgage Servicing. On April 5, the CFPB proposed temporary changes to the mortgage servicing rules in RESPA Reg. X intended to help prevent foreclosures and add additional borrower protections related to the COVID-19 emergency. The Bureau noted that the number of homeowners behind on their mortgage has doubled since the beginning of the pandemic—6 percent of mortgages were delinquent as of December 2020. More homeowners are behind on their mortgages than at any time since the peak of the Great Recession in 2010. Industry data suggest that nearly 1.7 million borrowers will exit forbearance programs in September and the following months, with many of them a year or more behind on their mortgage payments. The CFPB's proposal, if finalized, would:

- Give borrowers more time: in addition to the existing rule that prohibits starting foreclosure unless the borrower is more than 120 days delinquent, the proposal would add a temporary blanket prohibition on starting foreclosure because of a delinquency until after December 31, 2021. The Bureau is seeking comment on that date and whether there are more limited ways to achieve the same purpose. For example, the Bureau is considering whether to permit earlier foreclosures if the servicer has taken certain steps to evaluate the borrower for loss mitigation or made efforts to contact an unresponsive borrower.
- Give servicers options: The proposed rule would permit servicers to offer certain streamlined loan modification options to borrowers with COVID-19-related hardships based on the evaluation of an incomplete application. Normally, Reg. X requires servicers to review a borrower for all available loss mitigation options at one time, which can mean borrowers have to submit more documents before a servicer can make a decision. Allowing this flexibility could allow servicers to get borrowers into a more affordable payment amount faster. This provision would only be available for modifications that do not increase a borrower's monthly payment and that extend the loan's term by no more than 40 years from the modification's effective date.

- Keep borrowers informed of their options: The Bureau also proposes temporary changes to certain required servicer communications. For example, for borrowers not yet in a forbearance plan at the time of live contact, the servicer would be required to ask the borrower if they are experiencing a COVID-19-related hardship. If the answer is yes, the servicer would be required to describe forbearance programs made available to that borrower and tell the borrower what actions must be taken in order for the borrower to be evaluated for those programs. For borrowers in a forbearance plan, the servicer would be required to provide this information as the existing plan comes to an end.

The proposal would not change the coverage of the mortgage servicing rules, so small servicers (servicer and affiliates service 5,000 or fewer mortgage loans for all of which the servicer and affiliates are the creditor or assignee) would be exempt from the proposed additional requirements. Also, the proposed changes would only apply to loans secured by the borrower's principal residence. The CFPB is requesting comments by May 11, 2021.

Also, in a compliance bulletin issued in late March, the CFPB warned mortgage servicers to dedicate resources and staff to prepare for a surge in requests for assistance. The Bureau stated that it intends to closely monitor how servicers engage with borrowers, respond to borrower requests, and process applications for loss mitigation.

Status of QM Rule Changes. On April 28th, the CFPB issued a final rule to delay the mandatory compliance date of the revised General Qualified Mortgage (QM) Rule from July 1, 2021 to October 1, 2022. Remember that in December of 2020, the CFPB issued two final rules related to qualified mortgage loans. The first amended Reg. Z to revise the definition of a General QM by eliminating the 43% DTI limit and replacing it with bright-line tests based on loan pricing thresholds. The General QM rule change also eliminated automatic QM status for loans eligible for sale to Fannie or Freddie (the GSEs), known as the "GSE Patch." The second change created a new category of Seasoned QMs with a compliance safe harbor for first-lien, fixed-rate mortgages that are held in portfolio by the originating creditor or first purchaser for a 36-month period and which meet certain payment performance requirements and comply with general QM restrictions on product features and points and fees.

The revised General QM Rule took effect on March 1, 2021 with an initial mandatory compliance date of July 1, 2021, which has now been extended to October 1, 2021. For applications received in the interim period between the effective date and the mandatory compliance date, lenders have the option of complying with either the old or the revised QM Rule. In addition, the GSE Patch is only available for applications received before October 1, 2021 (or earlier if the GSEs exit conservatorship before then). The Seasoned QM Rule also took effect on March 1, 2021 and applies to covered transactions where the application was received on or after the effective date, but it does not apply retroactively to loans already in a lender's portfolio.

In making this change, the Bureau expressed concerns that the pandemic may continue to impact the mortgage market for longer than anticipated and additional flexibility may be needed to ensure creditors are able to accommodate struggling consumers." Extending the compliance date will allow lenders to offer QM loans based on either the

old or new QM definitions, including the GSE Patch until October 1, 2022 (unless the GSEs exit conservatorship before that date).

On April 8, Fannie Mae issued Lender Letter LL-2021-09 announcing updates to eligibility for loans subject to the CFPB's revised General QM Rule. Among other things, Fannie noted that to be eligible for purchase (with certain exceptions for government loans), GSE Patch loans that fail to meet to the revised General QM Rule "must have application dates on or before June 30, 2021" and must "be purchased as whole loans on or before August 31, 2021, or in MBS pools with an issue date on or before August 1, 2021." The same day Freddie Mac also issued Bulletin 2021-13, which provides similar updates for loans with application received dates on or after July 1, 2021, and all mortgages with settlement dates after August 31, 2021. Presumably, those dates will be amended now that the Bureau has extended the mandatory compliance date for the revised General QM Rule to October 1, 2021.

<Cliff Harrison>

RESPA SECTION 8 REVISITED (AGAIN)

We last covered RESPA in 2019 in response to the federal banking agencies publishing updated interagency examination procedures for RESPA as well as information that examiners were being trained nationwide on RESPA Section 8 and to expect enhanced reviews for compliance. With the boom in home sales and the fact that banks have seen an increased focus on RESPA in exams, we thought it would be a good idea to review RESPA Section 8 again.

One of the stated purposes of the Real Estate Settlement Procedures Act ("RESPA") was the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of mortgage settlement services. Section 8(a) of RESPA broadly prohibits the payment or acceptance of any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business related to a settlement service will be referred to any person. Section 8(b) of RESPA similarly prohibits fee splitting and states that no person may pay or accept any portion of any fee for a settlement service other than for service performed.

In general, the prohibition against kickbacks and unearned fees under RESPA means:

- No fees may be paid or received by anyone for referral of business that is part of a settlement service, and that includes origination of a mortgage loan. A referral is a non-compensable service; and
- No split of fees or charges for settlement services may be given or received, except for settlement services actually performed.

RESPA broadly defines a "thing of value" to cover a wide range of items including: money, things, discounts, salaries commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services or all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing

obligation. A “referral” may be oral or written and covers pretty much anything that is directed to a person that may influence the selection of a settlement service provider.

RESPA does provide exceptions. Section 8(c) of RESPA, states specifically that “[n]othing in this section shall be construed as prohibiting” payments to attorneys or title companies for services actually rendered, payments by a lender to its agents (for example, employees) for services performed, payments between real estate agents and real estate brokers under cooperative brokerage agreements, and payments under affiliated business arrangements (provided required disclosures are given, the use of the affiliated business is not required, and the only thing of value received, other than payment for actual settlement services provided, is a return on the ownership interest in the affiliated business). There is an additional exception that helps protect against overly broad interpretations of Section 8(a). RESPA Section 8(c) states that nothing in Section 8 prohibits “the payment to any person of…bona fide…compensation for goods or facilities actually furnished or for services actually performed.” Longstanding HUD statements of policy, which predate the transfer of authority over RESPA from HUD to the CFPB, indicate that “bona fide payment” means payment of reasonable market value – the payment bears a reasonable relationship to the market value of the services performed or the goods or facilities provided.

Section 8 issues arise in a variety of ways for banks and mortgage lenders. For example, a mortgage loan originator might want to lease an office or rent a desk in a real estate agent’s office, or they might want to advertise alongside a real estate agent or participate in a marketing event with a real estate agent and pay (or share) the advertising and marketing expenses. The regulators generally look at the big picture in arrangements where services are being provided by or for someone that might also be a referral source. Since a referral is not compensable and only bona fide fees may be paid for settlement services actually provided, any payment, including any payment to a third party for the expense of another person, that exceeds the market value of the services actually provided will be presumed to be payment for referrals.

For example, let’s say a real estate agent sponsors an open house for other agents. The sponsoring agent asks a bank to pay for refreshments for the open house, even though the bank does not plan to attend or even advertise its services. This is a RESPA violation. By paying for the cost of the refreshments and absorbing the expense the real estate agent would otherwise have to pay, the bank has given the real estate agent a “thing of value” that likely would be consideration for the referral of business since there appears to be no other business purpose for the payment. Both the bank and the real estate agent may be liable for RESPA violations since both paying and receiving a referral fee is prohibited. On the other hand, if the bank were to attend the open house and make a presentation or otherwise market its services, the payment may be lawful under RESPA since the bank is paying the (presumably reasonable) costs of marketing its own services.

Another area of substantial risk to mortgage lenders for Section 8 violations is marketing services agreements (“MSAs”). MSAs often involve providers of settlement services in a mortgage loan transaction, such as a lender, real estate agent, broker, or title company and may also include third parties, such as membership organizations. These MSAs are generally framed as payments for advertising or promotional services, but in some cases

may be disguised compensation for referrals. The CFPB generally views all MSAs with suspicion and believes that many are designed to avoid the prohibition on payment of referral fees.

Section 8 violations have been the subject of numerous CFPB enforcement actions, and these actions illustrate how issues may arise. For example, some of the earliest enforcement actions by the CFPB were against MGIC and other private mortgage insurance companies over captive reinsurance arrangements where the mortgage lender, or an affiliate of the lender, re-insured a portion of the PMI company's liability and received a portion of the PMI premium. One of those lenders was PHH Corp. which subsequently appealed the CFPB's findings and challenged the constitutionality of the CFPB. While the CFPB's organization was found to be constitutional, the federal appeals court hearing the case overturned the CFPB's interpretation of RESPA and found that captive mortgage reinsurance arrangements did not violate RESPA as long as the captive reinsurer charged no more than the reasonable market value of the reinsurance, even if referrals were also involved.

Another example of a violation involved a homebuilder who formed a mortgage company jointly owned by the homebuilder and a bank. The homebuilder referred his customers to the mortgage company which, presumably, was the originator of the mortgage loans. However, according to the CFPPB, the mortgage company was a fake entity. The bank actually did all the work, and kickbacks were passed through to the homebuilder in the form of profit distributions and payments under a "service agreement." Similar enforcement actions have been brought by the CFPB involving title agencies structured as joint ventures between title insurance companies and mortgage lenders or between closing attorneys and realtors where the joint venture title agency ostensibly issues the title policy and collects some part of the premium. The CFPB determined that the agency was a sham and that the substantive title policy work was performed elsewhere. The CFPB found that the profit distributions and payments to the so-called "owners" were disguised kickbacks.

Other examples of RESPA violations include the payment of inflated lease payments by a mortgage company to a bank for renting office space within the bank; the payment of title insurance commissions to individuals who were found not to be bona fide employees of the title insurance agency; the payment by a mortgage lender of fees to a veteran's organization for lead generation and licensing services under a marketing services agreement whereby the lender was named as the "exclusive lender" of the veteran's organization; and the payment by a title insurance agency of the cost of providing marketing leads and marketing letters for bank loan officers.

We will cover RESPA in more detail in our next quarterly meeting. Specifically, we will address prohibitions, exceptions to prohibitions, and walk through examples of what you can and cannot do regarding federally related mortgage loans.

<Doug Weissinger>

FAQS ON REG. O AND OTHER REGULATIONS

In March, the Federal Reserve Board published a series of FAQs on several of the Board's longstanding regulations. The FAQs are based on existing legal interpretations which were formulated over time in Board orders, preambles to proposed and final rules, letters to institutions responding to questions,

and other written and verbal guidance. The FAQs do not reflect changes to the regs or new requirements but have been issued as a means of summarizing existing legal interpretations of the rules. FAQs were issued on Reg. H – Membership in the Federal Reserve System; Reg. K – International Banking Operations; Reg. L – Management Official Interlocks; Reg. O – Loans to Insiders; Reg. W – Transactions between Member Banks and Affiliates; and Reg. Y – Bank Holding Companies and Change in Bank Control. The FAQs are staff interpretations not formally approved by the Board, but they provide useful guidance in interpreting the rules. FRB staff intend to update and revise the FAQs from time to time.

The FAQs on Reg. O will be of interest to MRCG and MSRCG members. There are 10 Reg. O related FAQs. Here is a quick summary of a few of the more interesting ones. The complete FAQs include citations to the authority for the answers and may be found at: https://www.federalreserve.gov/supervisionreg/legalinterpretations/reg-o-frequently-asked-questions.htm .

In General:

Q2: When do the requirements of Reg. O apply to extensions of credit to a person that becomes an insider after the member bank made the extension of credit (transition loans)?

A2: Transition loans need not conform to the requirements of Reg. O until they are renewed, revised, or extended, at which time they would be treated as a new extension of credit subject to all requirements of Reg. O. However, transition loans must be immediately counted toward the individual and aggregate lending limits of Reg. O as soon as the borrower becomes an insider. This same treatment applies to extensions of credit to a director or principal shareholder that later becomes an executive officer. Note that this treatment does not apply to extensions of credit made by a bank in contemplation of the borrower becoming an insider or executive officer. In those circumstances, the extension of credit should comply with all requirements of Reg. O at the time it is made.

12 CFR 215.2 (Definitions)

Q2: Could an estate or trust that owns or controls voting securities of a member bank be considered an insider of the member bank?

A2: Yes. If an estate or trust, directly or indirectly, or acting in concert with one or more persons owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank, the estate or trust is a principal shareholder, and therefore an insider, of the member bank.

Q3: Is the executor of an estate that owns more than 10 percent of a member bank a principal shareholder of the member bank?

A3: Yes. A principal shareholder of a member bank is any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the member bank. Shares of a member bank held by an estate are controlled indirectly by the executor of the estate.

12 CFR 215.3 (Extension of credit)

Q1: Would a guarantee by an insider for an extension of credit by a member bank to a third party be treated as an extension of credit to the insider?

A1: Yes. The definition of "extension of credit" in Reg. O includes any evidence of indebtedness upon which an insider may be liable as guarantor. The amount of such an extension of credit to the insider equals the

amount of the indebtedness for which the insider has provided a guarantee.
Q2: When is an extension of credit to an estate or trust treated as being made to a beneficiary of the estate or trust?
A2: The tangible economic benefit rule in Reg. O provides that an extension of credit to a third party will be treated as having been made to an insider to the extent that the proceeds are transferred to, or used for the tangible economic benefit of, an insider. Extensions of credit to an estate or trust inure to the benefit of the beneficiaries of the trust or estate. For purposes of Reg. O, an extension of credit to a trust or estate in which an insider has a present or contingent beneficial interest of 25 percent or more will be treated as made to the insider-beneficiary.

12 CFR 215.4 (General prohibitions)
Q1: How does Regulation O apply to restructurings or workouts of an existing extension of credit?
A1: A renewal, restructuring, or workout of a loan to an insider is an extension of credit that must comply with Reg. O, and must: (i) be made on substantially the same terms as, and following credit underwriting procedures no less stringent than, comparable transactions with non-insiders; and (ii) not involve more than the normal risk of repayment or present other unfavorable features. To comply with these requirements, restructured loans to insiders may, but do not have to, be compared to extensions of credit to non-insiders that are not part of a workout. Instead, restructured loans to insiders may be compared to restructured loans to non-insiders. An extension of credit to an insider does not per se violate the requirements of Regulation O simply because the loan is or becomes classified.

12 CFR 215.5 (Additional restrictions on loans to executive officers)
Q1: What types of properties and how many properties may qualify as a "residence" of an executive officer for purposes of the "residence" exception to the restrictions on extensions of credit to executive officers?
A1: The prohibition on extensions of credit to an executive officer does not apply to an extension of credit used to refinance, purchase, construct, maintain, or improve a residence of the executive officer. This exception is available only for one property of an executive officer, and only for a property used as a residence of the executive officer. The exception may be used for a property that is not a primary residence so long as the executive officer uses the property as a residence and does not use this exception for any other property.

<Cliff Harrison>

MRCG AND MSRCG MAY 2021 MEETINGS

The MRCG and MSRCG will hold combined May meetings on May 20 and May 25, 2021. We will continue to use the Zoom online webinar format, and we will divide the agenda into two sessions each lasting about an hour and a half from 10:00 a.m. – 11:30 a.m. each.

During these sessions, we will have presentations on recent actions by the CFPB, RESPA Section 8 and joint marketing with realtors and other service providers, preparing SAR filings, UDAAP and bank add-on products, flood insurance, and state data private laws.

We ask that you e-mail your registration to Liz Crabtree no later than Friday, May 14, 2021, to give us an indication of how many plan to participate for each session. We will email you in advance with instructions for accessing the webinars.

We look forward to the day, hopefully soon, when we can all be together again in person. In the meantime, we hope to “see” you all online in May. Be well.

<Cliff Harrison>

MRCG-MSRCG COMPLIANCE CALENDAR

02/17/2021 – Exemption from HPML escrow requirements for certain institutions of $10 billion or less effective on publication in Fed. Register	07/15/2021 – MRCG-MSRCG Joint Steering Committee meeting
03/01/2021 – CFPB rule revising standard QM definition effective (07/01/2021 mandatory compliance date);	08/19/2021 – MRCG Quarterly Meeting
03/01/2021 – CFPB rule creating new seasoned loan QM loan category effective	08/24/2021 – MSRCG Quarterly Meeting
04/12/2021 – Comments due on interagency proposal to require prompt notification of any computer-security incident.	09/16/2021 – MRCG-MSRCG Joint Steering Committee meeting
05/03/2021 – CFPB change to Reg. F (FDCPA) regarding debt collectors and tenant eviction notices effective.	09/30/2021 – NFIP expiration date.
05/05/2021 – Comments due on FinCEN advance notice of proposed rulemaking regarding creation of beneficial ownership database.	10/01/2021 – Mandatory compliance date for revised standard QM loans; GSE QM loan category removed
05/10/2021 – Comments due on CFPB proposed pandemic related changes to Reg. X Mortgage Servicing Rule.	11/16/2021 – MSRCG Quarterly Meeting
05/17/2021 – Comments due on interagency proposed changes to Q&As regarding private flood insurance.	11/18/2021 – MRCG Quarterly Meeting
05/20/2021 – MRCG Quarterly Meeting	11/30/2021 – Revised Reg. F (FDCPA) effective.
05/21/2021 – Comments due on CFPB proposal to extend effective date of revisions to Reg. F (FDCPA) to 01/29/2022.	01/01/2022 – HMDA open-end coverage threshold permanently adjusts to 200 loans
05/25/2021 – MSRCG Quarterly Meeting	