



COMPLIANCE UPDATE

FinCEN Releases Second FAQ on Beneficial Ownership and Customer Due Diligence Rule

FinCEN released additional guidance on its 2016 rule on Customer Due Diligence Requirements for Financial Institutions and Beneficial Ownership Requirements for Legal Entity Customers, which carry a required compliance date of May 11, 2018. The 24-page guidance [FIN-2018-G001](#) comprises 37 new questions and FinCEN's answers to each, along with an opening caveat that a "covered financial institution with notice of or a reasonable suspicion that a customer is evading or attempting to evade beneficial ownership or other customer due diligence requirements should consider whether it should not open an account, close an account, or file a suspicious activity report, regardless of any interpretations below." The FAQ is a supplement to the [July 2016 FAQ](#) from the agency, and addresses several industry questions that may have been raised by the earlier document. The new FAQ can be found at https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf.

Mortgage Servicing for Bankruptcy

The Consumer Financial Protection Bureau (CFPB) issued a final rule to help mortgage servicers communicate with certain borrowers facing bankruptcy. The final rule gives mortgage servicers more latitude in providing periodic statements to consumers entering or exiting bankruptcy, as required by the CFPB's 2016 mortgage servicing rule.

The Truth in Lending Act requires mortgage servicers to provide periodic statements to borrowers, and the CFPB has developed sample forms for servicers to use. The 2016 mortgage servicing rule requires that servicers send modified periodic statements or coupon books to certain consumers in bankruptcy starting on April 19, 2018. The rule also addressed the timing for servicers to transition to providing or ceasing to provide modified periodic statements to consumers entering or exiting bankruptcy. After issuing the rule, however, the CFPB learned that certain technical aspects of the timing of this transition may create unintended challenges and be subject to different legal interpretations. Specifically, the final rule provides a clear single-statement exemption for servicers to make the transition, superseding the single-billing-cycle exemption included in the 2016 rule.

The effective date for the rule is April 19, 2018, the same date that the other sections of the 2016 rule relating to bankruptcy-specific periodic statements and coupon books become effective. The final rule on the timing requirements for bankruptcy periodic statements is available at https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing_final-rule_2018-amendments.pdf.

Beneficial Ownership Regulation Reminder

The May 11 effective date is approaching rapidly. Although there are still many unanswered questions, and some aspects of the rule are currently open to interpretation, you need to have plans for implementing the rule. Here are some steps you should be working on if you haven't already done so:

- Don't wait for additional guidance. A two-year rollout period should have allowed you to become fully compliant by May 11.
- Policies and procedures should be in place or near completion and shouldn't be limited to the Bank Secrecy Act policy. Front-line and back-office operations will also require updated policies, procedures, and other guidance documents.
- Start training front-line and back-office personnel for compliance. Create reference guides to cover exceptions to the beneficial ownership requirements and detailed desktop procedures for new systems and processes. Also, consider customer outreach and education initiatives.
- Make sure there are robust compliance monitoring and internal audit processes in place to identify gaps and control failures as soon as possible.
- Consider launching a limited pilot program or aim to go live before May 11 to identify flaws in the process and bring to light new issues that were not previously contemplated.
- Talk to your regulators. They may not be able to interpret the rule or provide concrete guidance, but they are often willing to act as a sounding board and provide examples of processes at peer institutions.
- Talk to your peers. They are facing the same challenges.

Final Rule to Exempt Commercial Real Estate Transactions of \$500,000 or Less from Appraisal Requirements

The federal banking agencies issued a final rule that increases the threshold for commercial real estate transactions requiring an appraisal from \$250,000 to \$500,000. The agencies originally proposed to raise the threshold, which has been in place since 1994, to \$400,000, but determined that a \$500,000 threshold will materially reduce the regulatory burden and the number of transactions that require an appraisal. The agencies also determined that the increased threshold will not pose a threat to the safety and soundness of financial institutions.

For commercial real estate transactions exempted from the appraisal requirement as a result of the revised threshold, banks must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.

Servicemembers Civil Relief Act (SCRA) Notice Updated

The United States Department of Housing and Urban Development (HUD) has finally updated the SCRA notice, which had previously expired on December 31, 2017. The [new notice](#) (Form 92070) is available on the HUD's website and has an expiration date of March 31, 2021. Banks should start using the new form as soon as possible. If you use a vendor, you may want to ensure it is aware of the new form as well. On the form, in the How Does a Servicemember or Dependent Request Relief Under the SCRA? section, make sure you update the first bullet point with your bank's name, address, and contact information.

TILA/RESPA Integrated Disclosures (TRID) Violation Trends

Here are some statistics from recent Federal Deposit Insurance Corporation (FDIC) examinations. In 2016 and 2017, the FDIC conducted over 2,300 compliance examinations in which TRID was tested. TRID violations of some level appeared in 45 percent of those exams. Violations can be categorized by three levels.

The majority of violations were categorized as Level 1, meaning the severity of the violation did not merit mentioning within the Report of Examination. Level 2 violations accounted for approximately 30 percent of those cited. Only 0.7 percent (or 8) of the violations reached Level 3 status. Level 2 and Level 3 violations are cited within the Report of Examination. When the dollar amount of consumer harm exceeds \$10,000, the violation is generally considered a Level 3.

Here is a breakdown of the common issues from the TRID exams:

- Failure to obtain and/or document consumers' intent to proceed prior to imposing a fee
- Failure to completely and accurately disclose projected payments
- Incorrect total of payments
- Failure to accurately disclose the amount payable into an escrow account on the Closing Disclosure
- Failure to provide the Closing Disclosure to the consumer no later than three business days before consummation
- Inconsistencies in disclosing practices related to partial payments
- Missing Nationwide Mortgage Licensing System & Registry numbers in the contact information
- Inconsistent terminology used between the Loan Estimate and Closing Disclosure when describing fees
- Failing to include required payments on the initial interest-only portion of repayment of construction loans in the projected payments table

2018 Home Mortgage Disclosure Act (HMDA) Getting It Right Guide

The CFPB announced that the 2018 edition of *A Guide to HMDA Reporting: Getting It Right!* is now available on the Federal Financial Institutions Examination Council HMDA website. This is the first full rewrite of the guide since 2013, and includes all the changes to Regulation C, covering 2018 HMDA submissions due on March 1, 2019. The guide does not replace the CFPB's Filing Instructions Guide, which remains the definitive source for information regarding the filing requirements.

FinCEN Finalizes New SAR

FinCEN issued a notice regarding updates to the Suspicious Activity Report (SAR) filing format, beginning in June 2018. The announcement says that the revisions adhere to the changes listed in FinCEN's February 2, 2017, *Federal Register* notice. Beginning with the new SAR filings, batch submissions will have to be made in an XML-based file, rather than in the current ASCII fixed-length delimited file format. Other notable changes include the following:

- A new text field to alert FinCEN that a SAR is being filed in response to a current Geographic Targeting Order, an advisory, or other activity
- A new "Cyber Event" suspicious activity type category
- New or modified subtype selections associated with structuring, fraud, gaming activities, money laundering, identification/documentation, other suspicious activities, securities/futures/options, and mortgage fraud
- New text fields with the IP address field to record the date and/or timestamp of the first instance of the reported IP address
- A new category of fields to record up to 99 cyber events associated with the suspicious activity
- New product type selections

-
- New subtype selections for securities and futures institutions

Discrete filers will start using the new online e-filing form in June 2018. Batch filers may start sending XML-based files with the revised fields beginning in June, but must complete their changeover to the new format within six months of the June “go-live” date. ASCII batch files will be accepted until January 1, 2019.

QUESTIONS?

If you wish to discuss these matters in detail, please contact Steve Zanardelli, Tim Schofer, or Frank Antiga at (724) 934-0344 or (800) 580-7738 or email szanardelli@srsnodgrass.com, tschofer@srsnodgrass.com, or fantiga@srsnodgrass.com.