



COMPLIANCE UPDATE

SAME-DAY AUTOMATED CLEARING HOUSE (ACH) COSTS

Pass along this information to your ACH or Cash Management Coordinator, from an article in the recent [FedFlash](#). Effective September 23, 2016, with Phase 1 implementation of the Same Day ACH Rules change, a current-day or stale-day date in the effective entry date field of a credit entry will trigger same-day processing (provided the other requirements are also met).

Every ACH network participant should be aware of the Same Day Entry Fee of 5.2 cents per transaction that will be assessed to Originating Depository Financial Institutions (ODFIs) and credited to Receiving Depository Financial Institutions (RDFIs). Effective September 23, 2016, provided all other requirements are also met, each stale-dated credit entry that comes into the network will be processed and settled as a same-day ACH and will result in a fee of 5.2 cents being charged to the ODFI.

Between now and September 2016, it may be worthwhile for ODFIs to determine how much stale-dated transaction volume they may be originating and to work with their originators to address the situation before it costs them.

The impact could be significant. An analysis of FedACH volume from October 2015 revealed the following:

- Nearly 3,200 ODFIs, with 28,000 distinct company names, had stale-dated batches.
- In a sample size of approximately 156,000 batches, 45 percent were processed at a time that would result in same-day settlement after September 23, 2016.
- With more than 70,000 credit entries in the analysis eligible for same-day settlement, approximately \$3,600 in fees would have been passed from ODFIs to RDFIs had Phase 1 of Same Day ACH been implemented.

With just over six months remaining until the Phase I implementation, we encourage all FedACH customers to begin reviewing their origination volumes, to avoid any unwelcome surprises on their billing statements for September 2016 and beyond.

FDIC UPDATES FLOOD INSURANCE VIDEOS

FDIC FIL-18-2016 announces the update of the agency's technical assistance videos on flood insurance. The new videos provide financial institution management, compliance officers, and staff members with resources for a better understanding of federal flood insurance laws, regulations, and compliance responsibilities. The updated videos include information about the changes to federal flood insurance compliance requirements brought about by the Biggert-Waters Flood Insurance Reform Act, the Homeowner Flood Insurance Affordability Act, and the agency's final rules on flood insurance. They reflect changes in federal flood insurance laws, including

changes regarding escrowing of flood insurance premiums and fees, insuring detached structures, and force-placed insurance. They also address other key requirements of the federal flood insurance regulations, common flood insurance violations, frequently asked questions, and elements of an effective compliance management system.

REGULATORS CLARIFY EXPECTATIONS FOR USE OF PROPERTY

The Federal Reserve Board, FDIC, and OCC have issued guidance to clarify their expectations for the use of property evaluations by banking institutions. The guidance responds to questions raised during outreach meetings held by the agencies last year pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). It also addresses the use of alternative valuation approaches, methods, and other information that financial institutions may use to develop an evaluation in areas with few, if any, recent comparable property sales in reasonable proximity to the subject property. Regardless of the approach or method used to estimate the market value of real property, an evaluation report should contain sufficient information and analysis to support the value conclusion and the institution's decision to engage in the transaction. See <http://www.federalreserve.gov/bankinfo/reg/srletters/sr1605a1.pdf>.

ABANDONED FORECLOSURE GUIDANCE ISSUED BY FDIC

FDIC FIL-14-2016 has been issued to clarify supervisory expectations in existing guidance for institutions' risk-management practices involving decisions to discontinue foreclosure proceedings after initiating such actions, commonly referred to as abandoned foreclosures. Institutions should have appropriate policies and practices pertaining to decisions to discontinue foreclosure actions.

BANK SECRECY ACT (BSA) INTERAGENCY GUIDANCE TO ISSUING BANKS ON APPLYING CUSTOMER IDENTIFICATION PROGRAM (CIP) REQUIREMENTS TO HOLDERS OF PREPAID CARDS

The federal banking agencies and FinCEN issued guidance to clarify existing CIP requirements for banks that issue prepaid cards.

- This guidance clarifies existing CIP requirements with respect to the issuance of certain prepaid cards.
- The applicable CIP requirements are derived by, first, determining whether an Account (as defined) is created and, second, identifying the Customer (as defined).
- An Account is created when a Customer exercises the ability to reload funds onto the prepaid card, or accesses the prepaid card's credit or overdraft features.
- Depending on the nature of the prepaid card program, the Customer could be either the cardholder or the third-party card provider.
- A bank's CIP requirements should be applied to the Customer.

The guidance also reiterates a bank's responsibility of entering into well-constructed, enforceable contracts with third-party program managers. See FIL-21-2016 at: https://www.fdic.gov/news/news/financial/2016/fil16021.html?source=govdelivery&utm_medium=email&utm_source=govdelivery.

CONSUMER FINANCIAL PROTECTION REAU (CFPB) ISSUES RULE LOWERING THE RURAL /UNDERSERVED HURDLE

The CFPB issued an interim final rule on March 22, 2016, to dramatically lower the requirements for meeting the key "rural or underserved" criterion for small creditors, making it possible for many small creditors to continue making qualified mortgage ("QM") balloon-payment loans, just days before many of those creditors would no longer be able to make balloon-payment loans as "QMs." The CFPB acted under the Helping Expand Lending Practices in Rural Communities Act (HELP) Act, enacted in December 2015. Effective March 31, 2016, the interim final rule will replace the current "rural or underserved" test—which requires that more than half a creditor's first-lien covered transactions be made in rural or underserved areas—with a requirement that the creditor had made one such loan in a rural or underserved area in the previous calendar year (or, if an application is received before April 1, in either of the previous two calendar years).

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.