

January 15, 2015

Regulatory Compliance E-News

Your source for guidance on regulatory issues and updates that may impact your organization.

Important Regulatory Dates

2015

January 20 - The National Credit Union Administration ("NCUA") amendments to appraisal rules become effective

July 1 - Rhode Island mortgage servicer licensing rules take effect

July 18 - Certain Higher Priced Mortgage Appraisal Exemptions for existing manufactured homes expire

August 1 - The Truth in Lending Act ("TILA") and Real Estate Settlement Procedure Act ("RESPA") Disclosure Integration rules become mandatory

December 31 - Sunset of Servicemembers Civil Relief Act ("SCRA") foreclosure protections that were extended from ninety days to one year following a period of active duty

2016

January 1 - Flood Escrow rule changes take effect

Upcoming Events & Webinars

2015

Events

January 23 - [BankWorld 2015](#)

Various Annual Asset Size and Other Dollar Adjustments Take Effect



With the start of the new year on January 1, 2015, various regulators have announced updated dollar amount thresholds. These updates include the following:

- On December 29, 2014, the Consumer Financial Protection Bureau ("CFPB") amended the Home Mortgage Disclosure Act ("HMDA") asset-size exemption threshold for banks, savings associations and credit unions.

The adjustment from \$43 to \$44 million represents the annual percentage change in the Consumer Price Index. Institutions that meet the threshold for exemption as of December 31, 2014, are exempt from collecting data in 2015.

2015 CRA/HMDA Software Released

The Federal Financial Institutions Examination Council ("FFIEC") has issued the 2015 version of the CRA/HMDA software. The software is to be utilized for HMDA data from 2015, which must be reported by March 1, 2016.



The software can be found [here](#).

2015 HMDA Reporting Guide Letter Issued

On December 29, 2014, the CFPB released an updated Informational Guide Letter.



• On December 19, 2014, various federal agencies including the Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”) and Federal Reserve Board, announced the annual adjustment to the asset-size thresholds used to define “small bank,” and “small savings association,” as well as the “small-intermediate” designation of each institution type under the Community Reinvestment Act (“CRA”).

This annual adjustment is required by CRA rules as financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification.

Effective January 1, 2015, “small” banks or savings associations will have total assets equaling less than \$1.221 billion as of December 31st of either of the prior two calendar years.

“Intermediate-small” banks or savings associations are institutions with assets of at least \$305 million as of December 31st of both of the prior two calendar years, and less than \$1.221 billion as of December 31st of either of the prior two calendar years.

• On December 17, 2014, various regulatory agencies, including the OCC, the Federal Reserve and the CFPB published a final rule amending the loan amount threshold under which creditors are exempt from requiring appraisals on Higher Priced Mortgage Loans (“HPMLs”).

The threshold, adjusted based on the change in the Consumer Price Index, is now \$25,500. This rule is effective on January 1, 2015.

• On December 29, 2014, the CFPB published a final rule adjusting the small-creditor asset cap for 2015 from \$2.028 billion to \$2.06 billion.

This threshold is one of many criteria which must be met for an institution to be exempt from the requirement to establish an escrow account for a HPML. The rule is effective on January 1, 2015.

The various announcements and rulings can be found at the following locations:

HMDA - [here](#)

CRA - [here](#)

Reg Z HPML - [here](#) and [here](#)

The letter contains reminders of previously released HMDA updates effective for calendar year 2015.

In particular is the \$44 million exemption threshold for 2015 and geographic changes in the 2015 FFIEC Census file. The letter also references the 2013 Guide to HMDA Reporting as the resource for guidance on collection and reporting 2015 HMDA data that will be submitted by March 1, 2016.

The letter can be found [here](#).

Executive Order Imposes Sanctions Against North Korea

On January 2, 2015, President Obama signed an executive order which, among other things, adds three entities and ten individuals to the Specially Designated Nationals (“SDN”) List, for being agencies or officials of the North Korean government.



This sanction comes as a result of the recent cyber-attack which targeted Sony Pictures Entertainment.

The United States Treasury press release can be found [here](#).

Federal Reserve Issues Fourth Quarter 2014 Consumer Compliance Outlook Publication

The Federal Reserve has issued the fourth quarter 2014 edition of its Consumer Compliance Outlook publication. The publication contains articles on subject such as transitioning from a small bank to large bank under CRA and compliance risk assessments.



The publication also includes news on various regulatory updates and recent court cases, a listing of webinars, and a regulatory calendar.

The publication can be found [here](#).

FDIC Consolidates Flood Regulations



On December 19, 2014, the FDIC adopted a final rule amending its flood insurance regulations. The final rule rescinds one of the FDIC's flood regulations while amending another.

This has been done to ensure the integration of flood insurance regulations for state nonmember banks and state savings associations due to the elimination of the Office of Thrift Supervision ("OTS") as required by the Dodd-Frank Act.

The rule does not contain any new flood insurance requirements. It becomes effective on January 20, 2015.

The Federal Register publication can be found [here](#).

Massachusetts Division of Banks Updates State TILA Regulation



The Massachusetts Division of Banks has made final amendments to 209 CMR 32, the state's Truth in Lending regulation. The amendments took effect on January 2, 2015.

The amendments structure the regulation such that by complying with provisions in the federal Regulation Z as implemented by the CFPB, lenders will be in compliance with the state regulation.

As such, the state regulation will incorporate federal changes to the regulation while still maintaining any state specific rules that are more protective of the consumer.

The amendments can be found [here](#).

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FDIC Issues Guidance on Deposit Brokers

On January 5, 2015, the FDIC issued Financial Institutions Letter ("FIL") 2-2015. The FIL provides guidance via frequently asked questions on deposit brokers. The Federal Deposit Insurance Act, FDIC regulations and Call Report impose rules on institutions with respect to deposit broker activity.



The guidance provides information to institutions on various topics to help ensure compliance. This includes defining and identifying deposit brokers, acceptance of deposits, listing services, interest rate restrictions, reporting, and other matters.

The FIL can be found [here](#).

Court of Appeals Rules on Case with FDCPA and MA UDAP Implications

The United States Court of Appeals has ruled on the case *McDermott v Marcus, Errico, Emmer & Brooks P.C.* In this case, the Plaintiff became delinquent on his condo association payments. The condo association hired the Defendant law firm to collect the debt which consisted of both monthly payments and late charges.



All parties agree that the Defendant violated the Fair Debt Collection Practices Act ("FDCPA") due to having direct contact with the Plaintiff after he had retained counsel, although there were no "unfair or deceptive acts" or bad faith.

The lower court originally ruled that the FDCPA violation constituted a *per se* (automatic) violation of the Massachusetts General Law ("MGL") Chapter 93A Unfair and Deceptive Acts and Practices ("UDAP") law, but then reversed itself based on the argument that the FDCPA violation failed to meet the UDAP liability requirement that the violation was unfair or deceptive.

The Appeals Court reversed this ruling and opined that the FDCPA violation does constitute a *per se* violation of the MGL Chapter 93A UDAP law.

The Appeals Court stated that violations of some state laws automatically impose *per se* Ch. 93A liability, just as federal courts have stated that the FDCPA, by explicit language, provides that a violation of its provisions are deemed unfair or deceptive acts in violation of the Federal Trade Commission Act ("FTC Act"), which is the federal equivalent of Ch. 93A. As such they are *per se* violations.

The Appeals Court further concluded that because Ch. 93A "wholly incorporates" the FTC Act and its interpretations within its purview, it therefore follows that a violation of the FDCPA not only *per se* violates the FTC Act, but also constitutes a *per se* violation of Ch. 93A.

As a *per se* violation, 93A liability attaches automatically without the plaintiff having to satisfy the Ch. 93A requirements to have standing.

The decision can be found [here](#).

This information in this newsletter is based on our preliminary analysis of the regulatory language. It is communicated with the understanding that the Firm is not rendering legal services. If legal advice is required, the services of an attorney should be sought.

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