REGULATORY INTELLIGENCE BRIEFING — DECEMBER 2017

2017 REVIEW AND 2018 OUTLOOK

Capco Center of Regulatory Intelligence

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EDITORIAL NOTE FROM THE MANAGING DIRECTOR, CENTER OF REGULATORY INTELLIGENCE

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Through its entirety, 2017 provided different challenges to the financial services industry than in recent years. With natural disasters impacting an expiring National Flood Insurance Program (NFIP), cybersecurity breaches dominating media headlines and a new president beginning to staff his administration, the year highlighted issues that need solutions. And in the last half of the year, industry participants and regulators have been working to deliver some solutions.

In Congress, the vow to dismantle Dodd-Frank has continued through legislative initiatives, but none have been passed into law. The House Financial Services Committee reform bill provided for sweeping changes across the industry. The Senate's major financial services reform bill, introduced in November, is considered more targeted in its approach and carries bipartisan support, but it is unclear what will happen if or when it makes its way to the House.

Congress did, however, utilize its power under the Congressional Review Act (CRA) to overturn some Obama Administration rulemakings, and successfully nullified the Consumer Financial Protection Bureau's (CFPB) Arbitration Agreements Rule. The CFPB is one of the last three Obama-appointee led federal financial regulatory bodies. Turnover at other agencies has finally slowed down, as President Donald Trump has filled many key posts. Now, the question for 2018 is what changes will the federal regulators make?

Similar to 2016, cybersecurity remained in the spotlight. A large data breach at a consumer credit reporting agency sent shockwaves through the industry this summer. This led to introduced legislation, congressional hearings and financial institutions' deep evaluation of their cybersecurity programs. Moving into 2018, financial institutions will likely look to push into partnerships with fintechs to utilize developing technologies like artificial intelligence, machine learning and the blockchain. But, those relationships and the agreements governing them, including exit strategies, are now more important than ever following the data breaches of 2017 and the added emphasis on third-party risk management.

Additionally, 2018 is an important year for compliance deadlines for rules. For example, financial institutions have expended substantial resources in preparation for the CFPB's final rule on Regulation C (Home Mortgage Disclosure Act) reporting and FinCEN's Customer Due Diligence final rule. Additionally, there are a slew of other finals rules that take effect throughout the year. How financial institutions reallocate those resources, if at all, and how their processes are tested, reviewed and improved will be critical.

In this special edition of the Regulatory Intelligence Briefing (RIB), we will look forward into 2018, based on critical regulatory, political and economic developments that transpired in 2017.

REGULATORY ROUNDUP

Regulatory and Compliance Alerts

NIST Updates Cybersecurity Framework

On December 5, 2017, the National Institute of Standards and Technology (NIST) published a second draft of the proposed update to the Framework for Improving Critical Infrastructure Cybersecurity. The update attempts to clarify, refine and enhance the framework. Comments are due by January 19, 2018.

BCBS Oversight Body Endorses Basel III Reforms

On December 7, 2017, the Basel Committee on Banking Supervision's (BCBS) oversight body, the Group of Central Bank Governors and Heads of Supervision (GHOS), endorsed the outstanding Basel III post-crisis regulatory reforms. The revised standards will take effect starting on January 1, 2022 and will be phased in over a five-year period.

FRB Announces Plan for New Reference Rates

On December 8, 2017, the FRB announced final plans for producing three new reference rates based on overnight repurchase agreement transactions secured by Treasury securities. The Federal Reserve Bank of New York (FRBNY), in cooperation with the U.S. Office of Financial Research, will produce the three reference rates. The FRB will begin publishing these reference rates in the second quarter of 2018.

Congress Extends SCRA Foreclosure Protections

On December 12, 2017, President Donald Trump signed into law H.R.2810 (National Defense Authorization Act for Fiscal Year 2018). The bill authorizes fiscal year 2018 appropriations and sets forth policies for Department of Defense (DoD) programs activities. Section 557 includes a temporary extension of Servicemembers Civil Relief Act (SCRA) section 303 protections for members of uniformed services relating to mortgages, mortgage foreclosure and eviction. These protections are now set to expire on December 31, 2019.

DoD Updates MLA Interpretive Rule

On December 14, 2017, the DoD amended its interpretive rule for the Military Lending Act (MLA). The interpretive rule amends and adds to the questions and answers published on August 26, 2016. The questions and answers provide guidance on certain questions the DoD has received regarding compliance with the July 2015 Final Rule. The updated interpretive rule became effective on December 14, 2017.

FTC Issues National Do Not Call Registry Data Book for FY 2017

On December 18, 2016, the FTC issued the National Do Not Call Registry Data Book for Fiscal Year 2017. According to the Data Book, at the end of FY 2017, the Do Not Call Registry contained almost 230 million actively registered phone numbers.

LEGISLATIVE OUTLOOK: EVALUATING REGULATORY REFORM THROUGH THE SENATE'S FIX

Despite hope from much of the financial services industry for Congress to adopt a regulatory reform bill in 2017, no such bill came to pass.

The first bill Congress introduced that provided sweeping changes for financial services was the House Financial Choice Act (FCA), H.R. 10. The 600-page bill makes some of the following reforms:

- Eliminating the Orderly Liquidation Authority
- Amending CCAR and DFAST Stress Testing
- Setting more formal cost-benefit analysis and regulatory analysis related to agency rulemaking
- Changing the leadership structure at certain agencies
- Removing "Chevron" deference for financial regulatory agencies
- Lowering certain regulatory thresholds applicable to main street and community banks and exempting those institutions from other regulations entirely
- Overhauling the Consumer Financial Protection Bureau (CFPB) and renaming it the Consumer Law Enforcement Agency (CLEA)
- Repealing the Durbin Amendment

After passing the House in June 2017, the bill has since stalled in the Senate, although it did receive a hearing in the Senate Banking, Housing, and Urban Affairs Committee. However, due to its broad nature, the chances of the FCA passing in its entirety was unlikely.

The Senate formally introduced its financial services reform bill in November 2017. The Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, makes some important changes and provides relief for financial institutions, but does not match the breadth and scope of changes proposed under the FCA. The bill also carries bipartisan support in the Senate, including 11 Democratic Senators co-sponsoring the Republican-introduced legislation.

The Senate Bill is broken down into five titles:

I. Improving Consumer Access to Mortgage Credit

II. Regulatory Relief and Protecting Consumer Access to Credit

III. Protections for Veterans, Consumers and Homeowners

IV. Tailoring Regulations for Certain Bank Holding Companies

V. Studies

I. Improving Consumer Access to Mortgage Credit

The bill eases numerous regulations to make mortgage lending easier for consumers. It does this by creating safe harbors, removing restrictions and exempting certain mortgage originators from requirements. Specifically, the bill makes ten changes:

1. Certain mortgage loans that an insured depository institution or an insured credit union with less than $10 billion in total consolidated assets originates and retains in portfolio will be deemed "qualified mortgages" under Regulation Z (Truth in Lending Act (TILA)) while maintaining consumer protections.

2. Voluntary appraisal services that an appraiser donates to an organization eligible to receive tax-deductible charitable contributions will be considered "customary and reasonable."

3. Certain mortgage loans with a balance of less than $400,000 will be exempt from appraisal requirements under The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) if the originator is unable to find a state certified or licensed appraiser to perform an appraisal after a good faith effort.

4. Small depository institutions (those that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years) will be exempt from certain disclosure requirements under Regulation C (Home Mortgage Disclosure Act (HMDA)) and a study is required on the impact on the amount of data available.

5. The limitation is removed that a 1-4 family dwelling that is not the primary residence of a member will not be considered a member business loan under the Federal Credit Union Act.

6. Individuals will be given temporary authority to act as a loan originator for 120 days if they are (a) a registered loan originator who becomes employed by a state-licensed mortgage company or (b) a state-licensed loan originator who becomes employed by a state-licensed mortgage company in a different state.

7. An employee of a retailer of manufactured or modular homes that does not receive compensation or gain is excluded from the definition of "mortgage originator" under TILA.

8. The CFPB is required to create new regulations related to "Property Assessed Clear energy financing."

9. Certain loans made by an insured depository institution or an insured credit union are exempt from escrow requirements under TILA.

10. The three-day wait period required for combined TILA/RESPA mortgage disclosure is removed if a creditor extends a second offer of credit to a consumer with a lower annual percentage rate. The bill also expresses congressional sentiment that the CFPB should provide clearer, authoritative guidance on TILA/RESPA Integrated Disclosure (TRID) and other areas under CFPB jurisdiction.

COMPARISON TO H.R. 10

The FCA makes many more broad changes to the CFPB. S. 2155 only requires the CFPB to issue more guidance related to TRID. The FCA does make similar changes related to retailers of manufactured homes and safe harbors for loans a depository institution keeps on its balance sheet.

II. Regulatory Relief and Protecting Consumer Access to Credit

The second title of the bill provides similar regulatory relief for financial institutions, like those seen in the past. For example, it requires a community bank leverage ratio of tangible equity to average consolidated assets of between 8 and 10 percent and presumes banks with less than $10 billion in total assets who maintain tangible equity in an amount that exceeds the community bank leverage ratio will be compliant with capital and leverage requirements. The bill also exempts banks from the Volcker rule if the banks have less than $10 billion in total consolidated assets and have less than 5 percent of their total consolidated assets as trading assets and trading liabilities.

Additionally, the bill reduces reporting requirements for depository institutions with less than $5 billion in total consolidated assets that satisfy other criteria, removes naming restrictions related to bank-affiliated investment advisers, raises the consolidated asset threshold of the small bank holding company policy statement from $1 billion to $3 billion, allows well-managed and well-capitalized banks with consolidated assets under $3 billion to qualify for an 18-month examination cycle, requires changes to the National Credit Union Administration (NCUA) budgeting process and streamlines certain requirements for small public housing authorities operating in rural areas.

The bill also eases regulations for certain federal savings associations with less than $15 billion in total consolidated assets, creates an exception for certain reciprocal deposits, gives exemptions from state regulation for listing on securities exchanges, creates new requirements for online banking initiation, establishes the Insurance Policy Advisory Committee at the Federal Reserve Board (FRB) and applies the Expedited Funds Availability Act to different U.S. commonwealths and territories.

COMPARISON TO H.R. 10

The leverage ratio for the FCA's off-ramp is greater than 10 percent, but there is no cap for the size of the financial institution, unlike the Senate's bill. The FCA also fully repeals the Volcker rule, instead of having the requirements set up in S. 2155. Both bills would alleviate some of the reporting requirements for community banks and raise the small company holding policy, although the FCA puts that at $10 billion instead of the $3 billion proposed in S. 2155. Both bills also expand the reach of the Expedited Funds Availability Act to certain U.S. commonwealths and territories and allow federal savings associations to operate with the rights and duties of national banks subject to certain restrictions.

But, the FCA does not address the examination cycles for smaller financial institutions, nor is it as specific in many of its carve-outs. The Senate bill sets firm dollar thresholds for much of its relief, and compared to the FCA, those thresholds appear to be more conservative.

III. Protections for Veterans, Consumers and Homeowners

The Senate bill has a specific title dedicated to protecting consumers. The title's first two sections and last section deal with protecting consumers' credit by providing consumers free freeze and unfreeze alerts as well as requiring fraud alerts' inclusion in a consumer's file under certain circumstances. The bill excludes from consumer report information certain medical debt a veteran incurs as well as establishes a dispute process for consumer reporting agencies regarding veterans' medical debt. The title also allows consumers to request a financial institution remove a reported default of a qualified education loan from a consumer report in certain instances. Additionally, this title:

- Provides protections to helping elders suspected of financial exploitations
- Restores the Protecting Tenants at Foreclosure Act of 2009
- Authorizes the Department of Treasury (Treasury) to remediate lead and asbestos hazards in residential properties
- Continues administration of local Family Self-Sufficiency programs

COMPARISON TO H.R. 10

This section carries little applicability to the FCA. Probably spurred by the 2017 data breach at a large consumer credit reporting agency, discovered after the FCAs introduction, it is not surprising that the Senate bill makes credit reporting a priority. However, both the House and Senate versions carry the Senior Safe Act (H.R. 3758/S. 223).

IV. Tailoring Regulations for Certain Bank Holding Companies

Probably one of the biggest changes covered in the Senate regulatory reform bill is raising the threshold for applying enhanced prudential standards. Specifically, the bill increases the threshold from $50 billion to $250 billion. For bank holding companies with total consolidated assets between $50 billion and $100 million, the exemption applies immediately. Bank holding companies with total consolidated assets between $100 billion and $250 billion will be exempt 18 months after the bill's effective date, but those banks will see additional enhanced prudential standards from the FRB, and unless the FRB exempts the bank, be required to conduct supervisory stress tests.

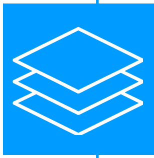
This title also makes changes to the supplementary leverage ratio final rule and directs the Federal Deposit Insurance Corporation (FDIC), FRB and Office of the Comptroller of the Currency (OCC) to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies' Liquidity Coverage Ratio final rule.

COMPARISON TO H.R. 10

The FCA also raises the threshold for applying enhanced prudential standards. Instead of setting a dollar threshold, the application would be based on risk-related factors. The FCA also addresses the supplemental leverage ratio but does not mention the OCC's Liquidity Coverage Ratio final rule.

V. Studies

The last title in S. 2155 outlines three studies for different agencies to perform. First, Treasury must submit a report to Congress on the risks of cyberthreats to financial institutions and the U.S. capital markets. Next, the Securities and Exchange Comission (SEC) must report to Congress on the risks and benefits of algorithmic trading in capital markets. Finally, the Government Accountability Office (GAO) must submit a report to the Senate Banking, Housing, and Urban Affairs Committee and the House Financial Services Committee a report on the regulatory structure of consumer reporting agencies, including an analysis of any gaps in that structure.



COMPARISON TO H.R. 10

The FCA does not require any of the three studies outlined in S. 2155, but does require studies on privacy information collected under HMDA, a study on altering the current prompt corrective action rules and a study on contingent capital.

Looking into 2018

With 2017 in the rear-view mirror, there is now a real question as to how Congress will tackle financial services reform in 2018, if at all. The November elections could potentially be a roadblock to any large reform bills, but it appears S. 2155 has support to make it through the Senate with the 11 Democratic co-sponsors. If the bill were to pass the Senate, the House will have the ability to make changes to the bill, and if it does pass the House with changes, S. 2155 would go to a conference committee where the two houses would work on a financial services compromise. ❖

FOCUS: 2017 REVIEW

- New Presidential Administration
- Cybersecurity and Data Breaches
- FinCEN Increases Its Focus on Real Estate Transactions
- Fintechs
- Flood Insurance
- Elder Financial Abuse
- Debt Collection
- Key Enforcement Trends
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NEW PRESIDENTIAL ADMINISTRATION

President Donald Trump's victory in the 2016 presidential election marked a shift in the American political climate. The national polls and election models used to forecast the 2016 presidential election failed to predict that he would be elected as the 45th President of the U.S., but Trump won in rural and exurban counties where he outperformed expectations among white working-class voters and college graduates in crucial swing states. After a year in office, this section outlines some of the developments Trump has set in motion since taking office, focusing on four major points:

- Regulator Impact
- Executive Action
- Congressional Review Act
- Financial Stability Oversight Council

Regulator Impact

At the forefront of many peoples' minds was one question: what, if at all, policy and regulatory changes will the Trump Administration make? In some cases, we have not yet realized those changes, as Trump is still getting his nominations into a few regulatory agencies. And while term expiration caused some regulatory turnover, there were also a lot of resignations. For example, Richard Cordray stepped down from the Consumer Financial Protection Bureau (CFPB) in November, which sparked a debate over who would run the agency. The following outlines how the leadership at regulatory agencies has come to be.

Federal Reserve Board

At the Federal Reserve Board (FRB) the turnover started early. Governor Daniel Tarullo submitted his resignation in February and served until April. His term was not set to expire until 2022. Stanley Fischer, who entered the year as the vice chairman, announced his resignation in October, followed by Chair Janet Yellen's resignation letter in November.

Also in November, Trump chose Jerome Powell, a governor at the FRB, to be the new chair of the FRB. He has not yet been confirmed. Additionally, Randal Quarles was confirmed as the vice chairman for supervision, a new position. Governor Lael Brainard remains in her role heading into 2018 and there are also two vacant governor positions.

Federal Deposit Insurance Corporation

At the Federal Deposit Insurance Corporation (FDIC), Chairman Martin Gruenberg's term expired in November 2017. Jelena McWilliams has been nominated to replace him. Vice Chairman Thomas Hoenig remains in his position and his term is set to expire in November 2018.

Consumer Financial Protection Bureau

CFPB Director Richard Cordray resigned in November. Following his resignation, the CFPB issued a press release stating that Leandra English, chief of staff for the agency, was to replace Cordray on an interim basis. However, Trump announced Office of Management and Budget (OMB) Director Mick Mulvaney as the acting director of the CFPB. English, acting as a private citizen, filed a lawsuit seeking a temporary restraining order and preventing Trump from appointing an acting director for the agency. The U.S. District Court for the District of Columbia rejected English's suit, allowing Mulvaney to continue acting as director of the agency.

Office of the Comptroller of the Currency

At the Office of the Comptroller of the Currency (OCC) , Thomas Curry served as comptroller until May 5, 2017. His term expired in April 2017. After Curry, Keith Noreika was picked to serve as acting comptroller of the currency until November 27, 2017. Comptroller Joseph Otting was confirmed in November 2017.

Financial Crimes Enforcement Network

Jamal El-Hindi has served as the Financial Crimes Enforcement Network's (FinCEN) acting director since June 2016. He was replaced by Ken Blanco, who was named director of FinCEN in November 2017. Unlike many of the other regulators, FinCEN director is not required to be confirmed by the Senate and is appointed by the Secretary of the Treasury.

Commodity Futures Trading Commission

At the start of 2017, the chairman of the Commodity Futures Trading Commission (CFTC) was Timothy Massad, however his last day with the agency was January 20, 2017. In August, the Senate unanimously confirmed J. Christopher Giancarlo, who was serving as the agency's acting chair. CFTC Commissioner Sharon Bowen announced her resignation in June. Two new commissioners, Brian Quintenz and Rostin Benham were sworn in during August and September, respectively. There are currently two vacant seats at the agency.

Securities and Exchange Commission

Mary Jo White stepped down as the chair of the Securities and Exchange Commission (SEC) on January 20, 2017. She was proceeded by Jay Clayton. Additionally, Kara Stein and Michael Piwowar continue to serve as commissioners, and two new commissioners, Hester Peirce and Robert Jackson, were confirmed in December.

Please see the "Regulatory Leadership" table on the following page.

Regulatory Leadership			
Agency	Title	Appointee as of January 21, 2017	Appointee as of January 1, 2018
FRB	Chair	Janet Yellen*	Jerome Powell
FRB	Vice Chairman	Stanley Fischer*	*Vacant*
FRB	Vice Chair for Supervision	*New Position*	Randal Quarles
FRB	Governor	Daniel Tarullo*	*Vacant*
FRB	Governor	Jerome Powell	*Vacant*
FRB	Governor	Lael Brainard	Lael Brainard
FRB	Governor	*Vacant*	*Vacant*
FRB	Governor	*Vacant*	*Vacant*
FDIC	Chairman	Martin Gruenberg	Jelena McWilliams**
FDIC	Vice Chairman	Thomas Hoenig	Thomas Hoenig
FinCEN	Director	Jamal El-Hindi^	Kenneth Blanco
OCC	Comptroller of the Currency	Thomas Curry	Joseph Otting
CFPB	Director	Richard Cordray*	OMB Director Mick Mulvaney
CFTC	Chairman	*Vacant*	J. Christopher Giancarlo
CFTC	Commissioner	Sharon Bowen*	Brian Quintenz
CFTC	Commissioner	J. Christopher Giancarlo	Rostin Behnam
CFTC	Commissioner	*Vacant*	*Vacant*
CFTC	Commissioner	*Vacant*	*Vacant*
SEC	Chair	*Vacant*	Jay Clayton
SEC	Commissioner	Kara Stein	Kara Stein
SEC	Commissioner	Michael Piwowar	Michael Piwowar
SEC	Commissioner	*Vacant*	Hester Peirce
SEC	Commissioner	*Vacant*	Robert Jackson
*Resigned before term expired			
**Nominated but not yet confirmed			
^Acting FinCEN Director			

Executive Orders and Presidential Memoranda

When talking about executive action, two terms generally get lumped together: executive orders and presidential memoranda. Both are tools granted to the executive from implied constitutional and statutory authority and both can carry the force and effect of law. According to a report from the Congressional Research Service, the difference between executive orders and presidential memoranda appears to be "more a matter of form than substance."

The report also states that historically, presidents have used executive orders on matters that may "benefit from public awareness or face heightened scrutiny" while presidential memoranda have been used to "carry out routine executive decisions and determinations, or to perform duties consistent with the law or implement laws that are presidential priorities." Executive orders must be published in the Federal Register, while presidential memoranda are only published when the president determines that they have "general applicability and legal effect." Executive orders are also numbered while presidential memoranda are not. Some of Trump's executive actions that affect the financial services industry include:

Executive Orders

Reducing Regulation and Controlling Regulatory Costs (link)

Core Principles for Regulating the United States Financial System (link)

Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking (link)

Enforcing the Regulatory Reform Agenda (link)

Identifying and Reducing Tax Regulatory Burdens (link)

Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure (link)

Revising the Seal for the National Credit Union Administration (link)

Presidential Memoranda

Fiduciary Duty Rule (link)

Orderly Liquidation Authority Review

Financial Stability Oversight Council (link)

Probably Trump's most influential executive action for the financial services industry is the Executive Order outlining the Core Principles for Regulating the United States Financial System. The executive order required the Secretary of the Treasury to issue a report auditing how the current financial system adheres to the Core Principles.

The Department of the Treasury (Treasury) released its first of four reports in response to Executive Order 13772, Presidential Executive Order on Core Principles for Regulating the United States Financial System. In the report, Treasury made a plethora of recommended changes for banks and credit unions. About two-thirds of the recommendations were regulatory in nature and the other third would need Congressional action.

In general, the report includes detailed recommendations on a variety of aspects of the U.S. depository system, but there were a few common themes throughout, including:

- Improving regulatory efficiency and effectiveness by critically evaluating mandates and regulatory fragmentation, overlap and duplication across regulatory agencies
- Aligning the financial system to help support the U.S. economy
- Reducing regulatory burden by decreasing unnecessary complexity
- Tailoring the regulatory approach based on size and complexity of regulated firms and requiring greater regulatory cooperation and coordination among financial regulators
- Aligning regulations to support market liquidity, investment and lending in the U.S. economy

In October, Treasury released its second report on capital markets. The Treasury report outlined significant reforms that could be taken, including:

- Streamlining disclosure requirements
- Tailoring requirements, including disclosure requirements, for companies going public based on institution size
- Evaluating regulatory issues between the SEC and CFTC
- Including a more robust economic analysis and public input into the rulemaking process
- Reviewing the roles of self-regulatory organizations

The third Treasury report on asset management and insurance industries came in late October, and identified the following opportunities for reform:

- Ensuring appropriate evaluation of systemic risk and solvency
- Promoting efficient regulation and rationalizing the regulatory framework to decrease regulatory burdens and maximize product and service offerings
- Rationalizing U.S. engagement in international forums to promote the U.S. asset management and insurance industries, and encourage firm competitiveness
- Enhancing consumer access to a variety of relevant products and services.

It is expected that within the first six months of 2018 Treasury will release the fourth and final report on non-bank financial institutions.

Congressional Review Act

After the 2016 elections solidified republican control of Congress and the presidency, the Congressional Review Act (CRA) re-entered the spotlight after ostensible dormancy since President George W. Bush's first term in office.

At its core, the CRA establishes expedited procedures for Congress to disapprove regulatory rules that federal agencies issue. To do so, a joint resolution of disapproval must pass both houses of Congress by a simple majority and the president must sign off. Once a joint resolution of disapproval has successfully passed, the agency-issued rule shall not take effect. Further, an agency may not issue a rule in "substantially the same form" as the disapproved rule, unless it is specifically authorized by subsequent law.

Most of the focus in the beginning of 2017 was on the CRA's ability to overturn Obama-administration rules and regulations issued during the last 60 legislative days (midnight rules) of the 114th Congress. By utilizing the CRA, the new administration overturned 14 Obama-administration midnight rules.

But, three recent developments in the last part of 2017 have shifted the conversation over the CRA, opening the possibility that the impact goes well beyond the ability to overturn midnight rules.

1. Effective November 1, 2017, House Joint Resolution 111 passed both houses of Congress and Trump signed off, repealing the CFPB's Arbitration Agreements Rule.

2. On October 19, 2017, GAO published a report stating interagency leveraged lending guidance is a "rule" subject to the CRA.

3. On December 5, 2017, GAO issued a report finding CFPB guidance "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" is a "rule" under the CRA.

In repealing the CFPB's Arbitration Agreements rule, Congress used the CRA in its traditional form. In 2018, it is expected the CFPB's payday rule could be in Congress' sights through the CRA, as well as the Federal Communications Commission's recent repeal of net neutrality.

However, the last two developments provide a potentially much broader impact. While the GAO has determined that a specific past guidance is a "rule" under the CRA, and if all rules must be submitted to Congress and the Comptroller General, there are a series of questions that can be asked:

- Were the leveraged lending/auto lending guidances ever submitted to Congress and the Comptroller General, accompanied by a report as required under the CRA? If they were found to not have been submitted, it leads directly into the next question.

- Under the CRA in 2017, can the GAO review guidance that agencies issued in previous years? An opinion piece in the Wall Street Journal suggested that, according to the Senate parliamentarian, the GAO's ruling "counts as the official report, and so the [CRA] clock is now ticking…" on the 2013 interagency leveraged lending guidance. If the GAO can review past guidance, this could broadly expand the CRA's reach to almost unimaginable levels.

- If an agency pronouncement is considered a "rule" under the CRA, and was never formally submitted with a report to Congress and the Comptroller General, what impact does that have on enforcement actions, examinations and other negative findings for financial institutions? This question is particularly important, especially for major rules. Essentially, is something really a rule, if it was not submitted in the proper way?

Financial Stability Oversight Council

Developments at the Financial Stability Oversight Council (FSOC) will likely play an important role in the financial services industry. In September, Treasury Secretery and FSOC Chairman Mnuchin presided over a meeting of the FSOC in which the fiscal year budget was approved, cutting funding by 15 percent. Perhaps more importantly, the budget reduces the target staffing from 36 full-time employees to only 18 — a 50 percent cut. Additionally, Mnuchin also issued a report to Trump on FSOC systemically important financial institutions (SIFI) and financial market utilities (FMUs) designations in November, outlining recommendations for change. Some of these changes include: emphasizing risk in the designation process; further defining the benefits to U.S. financial stability opposed to the costs accompanying designation; and improving engagement and transparency in the determinations process.

CYBERSECURITY AND DATA BREACHES

Since October 2017, Congress has held multiple hearings on data breaches and cybersecurity. This comes after a year filled with cyberattacks at magnitudes that shocked consumers and companies alike. Two hearings in early October took place in the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee. During both of these hearings, a current adviser and former chairman and CEO of a consumer credit reporting agency testified.

While much of the hearings focused on the recent breaches and how the consumer credit reporting agencies responded to them, there were many legislative and regulatory themes throughout the dialogue, including data protection, security breach notification laws, social security numbers as the verification standard, the CFPB Arbitration Rule and corporate governance, among others. On November 1, the House Financial Services Committee held a hearing entitled "Data Security: Vulnerabilities and Opportunities for Improvement," followed by another hearing on November 30 before the Congress Subcommittee on Oversight and Investigations focused on "Identity Verification in a Post-Breach World."

Recent breaches and attacks have also led to regulatory developments. The beginning of 2017 saw a multitude of letters from industry stakeholders in response to an advance notice of proposed rulemaking (ANPR) related to enhanced cyber risk management standards that the FRB, the OCC, and the FDIC jointly issued. The enterprise-wide ANPR will affect all institutions, and is broken down into five categories: cyber risk governance; cyber risk management; internal dependency management; external dependency management; and incident response, cyber resilience and situational awareness.

On May 11, Trump signed into effect an Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure. From this, the National Institute of Standards and Technology (NIST) continued to update the Framework and a corresponding roadmap for the federal government. On December 20, NIST held a live webcast to discuss its most current drafts, which focus on five areas: identify, protect, detect, respond and recover.

Other developments have included joint letters such as the December 21 letter from the National Association of Federally-Insured Credit Unions (NAFCU) and six other industry trade groups calling for stronger national data security standards and breach notification requirements.

FINCEN INCREASES ITS FOCUS ON REAL ESTATE TRANSACTIONS

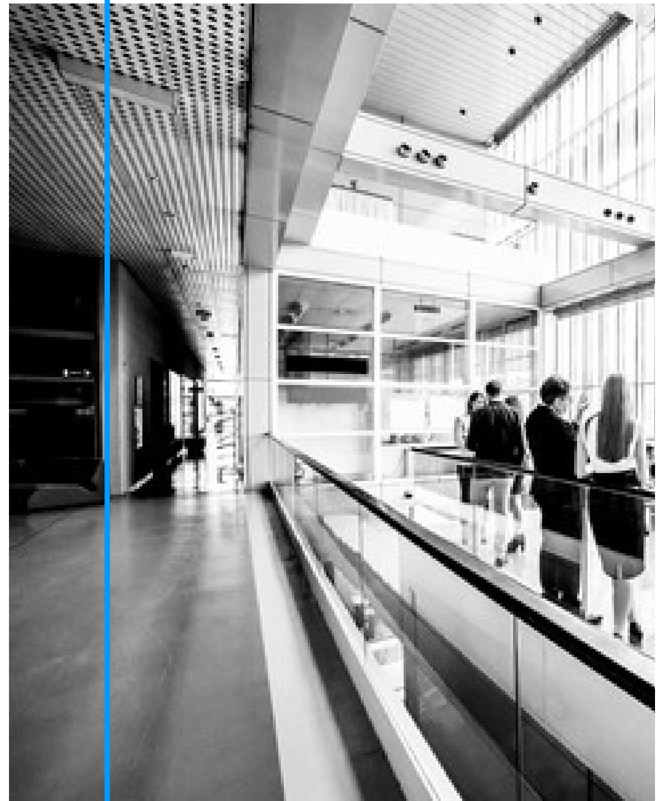
For FinCEN, we've seen a recent shift in the form of real estate-focused Geographic Targeting Orders (GTOs). FinCEN began issuing these GTOs in 2016, temporarily requiring certain title insurance companies to perform customer due diligence (CDD) and identify the people behind high-end real estate all-cash purchases. FinCEN expanded the list of areas in July 2016 to include certain areas in California, Florida, New York and Texas. The agency renewed the GTOs in February 2017, ending August 2017, after finding that about 30 percent of GTO-covered transactions involved a beneficial owner or purchaser representative that had also been the subject of a previous suspicious activity report (SAR). This evidence corroborated FinCEN's expectations.

Most recently, on August 22, 2017, FinCEN announced the issuance of revised real estate-related GTOs which included adding the City and County of Honolulu, HI. Following the recent enactment of the Countering America's Adversaries through Sanctions Act, FinCEN revised the GTOs to capture a broader range of transactions and include transactions involving wire transfers.

FinCEN simultaneously issued an advisory to financial institutions and the real estate industry on the money laundering risks associated with real estate transactions. Through analyzing the Bank Secrecy Act (BSA) and GTO reported data, FinCEN discovered that high-value residential real estate markets are susceptible to money laundering. While financial institutions are subject to suspicious reporting requirements, FinCEN is also urging real estate professionals to file voluntary suspicious activity reports (SARs). The agency's guidance highlights two distinct situations that potentially pose high risk:

1. The use of shell companies to decrease transparency into real estate transactions

2. "All cash transactions," which account for roughly a quarter of all transactions in the U.S.



FINTECHS

2017 marked a shift in the relationship between fintech companies and more traditional financial institutions: there was an increase in cooperation and a more accepting attitude that stands in stark contrast to the now-historic belief that fintechs would be the end of traditional banking.

And while there was also the introduction of new options for fintech firms in 2017, such as the OCC's Special Purpose National Bank charter offering, announcements of high-profile partnerships this year show that both fintech companies and traditional financial institutions rely on each other to create business models and services that reflect the modern customer. A recent Business Insider report stated that 87 percent of banks that have partnered with fintech companies have been able to cut costs and that 54 percent of partnerships increased revenue.

With technology changing and developing at faster rates than any other time in history, partnerships between fintechs and traditional banking institutions mark a real change in the way customers will be able to interact with their financial services.

Some tips for partnering with fintechs:

1. Look at how similarly positioned financial institutions are utilizing new technology and really strive to understand what your customers want. What is already available on the market that your customers want? How are you working to forecast demand? What offerings will maximize returns and customer satisfaction while minimizing risk?

2. Make sure the potential fintech partners are aligned with your institution's culture and that the services they offer are a strategic fit for your business plan. This includes confirming the fintech has a sound business plan that ensures its own financial stability and compliance efforts.

3. Communicate, create agreements beneficial to both parties and understand who owns the intellectual property being used. According to complaints from fintech leaders in 2017, these are some of the biggest concerns fintechs have had in partnering with tier-one U.S. banks.

4. Make sure that your fintech partner maintains built-in compliance and is transparent with both your financial institution and the customer. This includes requiring partners to utilize the same underwriting and CDD standards that your institution implements.

FLOOD INSURANCE

On December 22, the National Flood Insurance Program (NFIP) was extended for the third time since September 30, 2017, as part of a continuing resolution to avoid government shutdown. Now extended until January 19, 2018, we are likely to see new legislation around flood insurance in the new year. The program is currently about $25 billion in debt and the Federal Emergency Management Agency (FEMA) is tapping a $1 billion reinsurance program for Hurricane Harvey recovery.

In the wake of Hurricanes Irma, Harvey and Maria, flood insurance has been a hot topic not only for legislators, but also for financial institutions and their consumers who this year faced the consequences of policies not set in place before the natural disasters struck. While consumers realized they did not have insurance sufficient to recover major losses from the floods, financial institutions suffered penalties for violations of the National Flood Insurance Act and Flood Disaster Protection Act.

Some of the major lessons for financial institutions learned this year include:

- When faced with a scenario in which a client's property is valued higher than the maximum for federal insurance coverage, educate clients regarding the benefits of excess and surplus insurance.
- Try to balance your lending portfolio by lending in non-flood areas and finding lenders with secure collateral that will help offset riskier lending, establishing a diverse portfolio while still complying with Regulation B (Equal Credit Opportunity Act (ECOA)) and the Community Reinvestment Act.
- When communicating with clients in flood-prone communities, explore and analyze as many sources as possible (e.g., local municipalities' flood maps) and provide clients with this documentation. Encourage clients to seek insurance, even if it is not mandated.
- Methodically and periodically review loan files, making sure they are up-to-date, that they have not lapsed and that they remain sufficient.
- Review your institution's internal processes and communications, including audits as a line of defense against flood risk.
- Utilize "Life of Loan" services to receive notifications when a property within the institution's portfolio becomes part of an SFHA. Make sure that your institution's procedures regarding these types of services are streamlined and properly executed.

ELDER FINANCIAL ABUSE

Throughout 2017, legislators and regulators made a profound push to protect older Americans from being victims of elder financial exploitation (EFE). EFE, generally defined as the "illegal or improper use of an older person's funds, property or assets," is one of the most prominent areas of fraud in the U.S. Despite this, only a small fraction of incidents is detected and reported. Elder Americans are targets of fraud because of their access to wealth and their vulnerabilities, such as isolation, cognitive decline, physical disability, health problems and bereavement.

Adding onto efforts made in the past decade to combat this issue, on August 30, the CFPB, Treasury and FinCEN released a memorandum detailing how financial institutions and law enforcement can combat EFE. On the same day, the Department of Justice (DOJ) announced that it plans to fund the National White Collar Crime Center to enhance the ability of state and local law enforcement and respond effectively to complex elder fraud cases, prosecute mass mailing fraud schemes and launch 10 regional Elder Justice Task Forces across the U.S.

On March 30, 2017, the SEC approved FINRA's proposed rules addressing EFE, with an effective date of February 5, 2018. The first rule, "Financial Exploitation of Specified Adults" allows temporary holds on funds and securities disbursements from accounts of customers reasonably believed to be victims of EFE. Amendments to a second rule, "Customer Account Information" require efforts to obtain information for a trusted contact person for a customer's account.

States are also major players in the fight to prevent EFE, with all 50 states previously enacting at least some kind of law to protect elder Americans. In 2017, some states armed financial institutions to help prevent EFE and navigate the frustrating aftermath of its detection. For example, a new Texas law that took effect September 1, 2017, requires any financial institution employee to report when there is "cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the employee shall notify the financial institution of the suspected financial exploitation." The financial institution may then notify a third party "reasonably associated with the vulnerable adult" and place a hold on any transaction that involves an account of the adult's related to the suspected financial exploitation.

According to the National Conference of State Legislatures, in 2017, a total of 39 states and the District of Columbia addressed elder and vulnerable adults' exploitation, while 24 states updated or created new laws or resolutions regarding EFE.

DEBT COLLECTION

According to data from the New York Federal Reserve, almost 14 percent of American consumers have at least one account in third-party collection. Debt collection plays an important role in helping creditors minimize their losses and in establishing the consumer credit market, but remains the top consumer complaint category the CFPB receives, at approximately 27 percent of total complaints. This has made regulators at state and federal levels, who are striving to understand the issues that make debt collection such a hot-button issue, work hard to strike a balance for consumers and collectors. The U.S. Supreme Court has also weighed in on the issue twice in 2017.

On June 18, the U.S. Supreme Court handed down a decision viewed as an industry-friendly opinion on debt purchasing. Judge Neil Gorsuch, in his first opinion and on behalf of a unanimous Supreme Court, upheld a Fourth Circuit Court of Appeals ruling that a "debt purchaser" is not considered someone who "regularly collects or attempts to collect … debts owed or due … another." This language is included in the definition of a "debt collector" in the Fair Debt Collection Practices Act (FDCPA), which generally defines a "debt collector" in one of two ways:

1. any person who "regularly collects or attempts to collect … debts owed or due … another"

2. any person engaged in "any business the principal purpose of which is the collection of any debts"

Of particular importance, the parties to the case did not spend much time litigating the alternative “principal purpose” definition of a “debt collector.” Consequently, Judge Gorsuch did not address it in his opinion. In the opinion, Gorsuch relied on an examination of the FDCPA’s statutory text. The term under question appears to focus on third-party collection agents working for a debt owner, and therefore not a debt owner seeking to collect debts for itself. The opinion then found that a “debt purchaser” is purchasing debts for its own account and therefore does not trigger the definition in dispute.

During 2017 state legislative sessions, legislators also addressed the treatment of debt purchasers. Maine, for example, passed a law requiring debt buyers to be licensed as debt collectors in the state, while Colorado enacted provisions surrounding legal actions by collection agencies bringing action on a debt owned by a debt buyer.

At a Consumer Advisory Board meeting on June 8, a few days before the Supreme Court’s decision, then-CFPB Director Richard Cordray gave a speech in which he addressed how the agency is formulating new rules to govern the debt collection market. After releasing a proposal on third-party debt collectors in 2016, Cordray stated, “Writing rules to make sure debt collectors have the right information about their debts is best handled by considering solutions from first-party creditors and third-party collectors at the same time.” Cordray went on to detail how breaking the issue into pieces was proving to be “troublesome.” The CFPB now plans to consolidate all issues of “right consumer, right amount” into a single rule that will cover first-party creditors, third-party collectors and debt purchasers.

As these developments progress, debt collection continues to be a source of enforcement actions. In April, the CFPB fined a debt collection law firm for falsely representing that attorneys were involved in the collections process. Additionally, a CFPB bulletin from 2013 on the prohibition of unfair, deceptive or abuse acts (UDAAP) in the collection of consumer debts reinforces how the CFPB’s powerful enforcement tool can target collection agencies.

However, under the new leadership of the CFPB by OMB Director Mick Mulvaney, the agency could be moving in a different direction. On November 14, 2017, the CFPB published a request to conduct an online survey of 8,000 Individuals on Debt Collection Disclosures, but in December, the agency withdrew the request, officially stating that “Bureau leadership would like to reconsider the information collection in connection with its review of the ongoing related rulemaking.” Also in November, Congress utilized the Congressional Review Act (CRA) to overturn the agency’s Arbitration Rule, and now the CFPB’s payday lending rule could be next. The rule, which aims to protect consumers from cyclical debt caused by certain payday loans and other debt traps, may also be challenged by the CRA. A bipartisan resolution has already been introduced in the House.

KEY ENFORCEMENT TRENDS

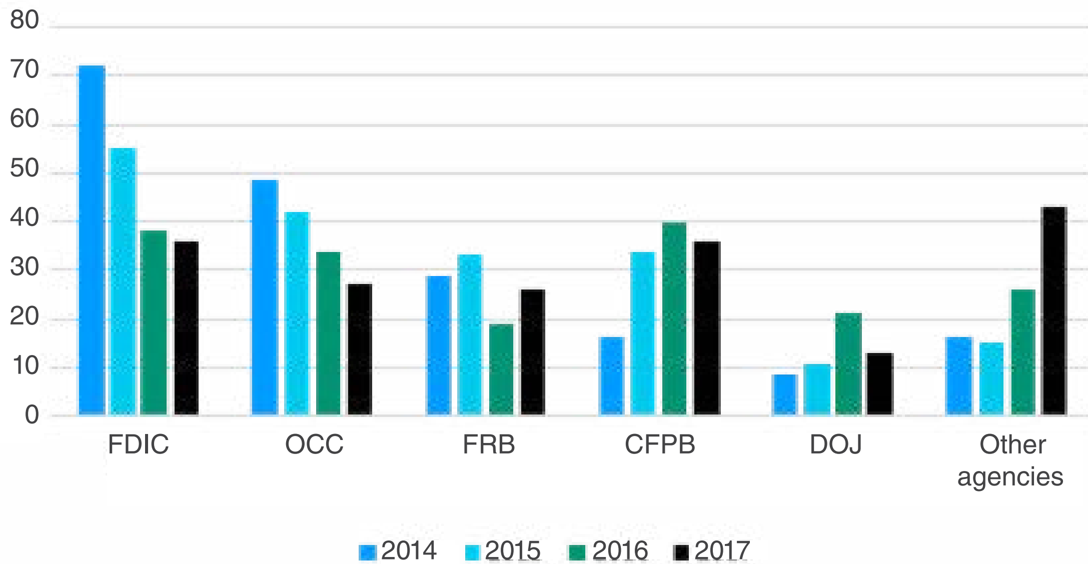
Capco Center of Regulatory Intelligence (CRI) analysts monitor federal enforcement activity and identify trends from year to year. In 2017, the trend from previous years did not demonstrate a significant increase or decrease in activity from the various financial services authorities.

A few topical trends became apparent upon further analysis. First, the federal banking agencies along with FinCEN and OFAC continue to cite institutions for issues related to their BSA, anti-money laundering (AML) and sanctions programs. Related issues included failure to implement and maintain effective, risk-based AML program, failure to conduct due diligence on foreign agents from certain areas of the world and failure to file suspicious activity reports (SARs) in a timely manner.

Another common issue throughout 2017 was failures related to compliance with flood insurance rules. While relatively straightforward, and oftentimes of minimal financial consequence, flood violations bring attention to a compliance program that may have other issues that may be more severe.

As the industry continues into the new year, Capco CRI will continue to monitor these trends, especially after observing a slight slowdown in enforcement activities as the year completed and new leadership came to the forefront of key agencies.

Enforcement Action By Agency



Data for 2017 is projected full-year data based on enforcement actions reported through December 31, 2017.

Totals may not reflect total number of actual enforcement actions due to certain actions filed jointly by multiple agencies.

Source: Research and analysis by Capco Center of Regulatory Intelligence

LITIGATION HIGHLIGHTS

Throughout 2017, the judicial system further shaped the financial services industry in areas such as debt collection and the False Claims Act, but, uniquely, Congress actually may have had as important an impact by helping shape the judicial system through its actions.

As previously detailed, the Supreme Court found that a “debt purchaser” is not considered someone who “regularly collects or attempts to collect … debts owed or due … another” under the FDCPA. This distinction is important, as it keeps separate a debt purchaser and a third-party debt collector.

Additionally, a case in the second circuit from June found that the Telephone Collection Practices Act does not allow a person to unilaterally revoke the bargained for consent to be contacted by telephone. In the case, the plaintiff, when signing a lease for an automobile, agreed to have the automobile financer contact him by various forms of communications, including: manual calling methods, prerecorded messaged, text messages and emails. After the plaintiff stopped making payments, he sent a letter to the financer requesting telephone communication cease. The Second Circuit found that “consent” under the TCPA, unlike some other federal laws, is not revocable unilaterally, but rather requires mutual agreement for recession. The court did note in the opinion that while this may not be fair, the concern is “grounded in public policy considerations rather than legal ones…”

While there are other examples of ways federal courts shaped financial services policy decisions, one of the most important decisions affecting litigation in 2017 did not involve a court at all. The CFPB introduced its Arbitration Agreement Final Rule which codified two important sets of limitations:

1. It prohibits providers from using a pre-dispute arbitration agreement to block consumer class actions in court and requires most providers to insert language into their arbitration agreements reflecting this limitation.

2. It requires providers using pre-dispute arbitration agreements to submit certain records relating to arbitral and court proceedings to the CFPB.

However, on November 1, 2017, Trump signed a joint resolution of disapproval for the Arbitration Agreements Rule authorized under the CRA, that removed the force and effect of the rule. Strong lobbying efforts opposed the rule, and led to an exchange between then-Acting Comptroller of the Currency Keith Noreika and then-CFPB Director Richard Cordray over an OCC-requested delay, which Cordray and the CFPB rejected.

TIMELINE

Below is a timeline of some of the most important effective dates of 2017.

January 1, 2017

Joint Agency Liquidity Coverage Ratio Final Rule

The FRB, OCC and FDIC issued a final rule to strengthen the liquidity positions of large financial institutions. The rule creates a standardized minimum liquidity requirement for large and internationally active banking organizations. The ratio of liquid assets to projected net cash outflow is the liquidity coverage ratio (LCR). This enhanced prudential liquidity standard is consistent with section 165 of the Dodd-Frank Act and is generally consistent with the Basel Committee on Banking Supervision (BCBS) LCR standard. The rule became effective on January 1, 2015, with full compliance expected by January 1, 2017.

January 1, 2017

NCUA Member Business Loan Rule

The NCUA issued a final rule amending its member business loans (MBL) rule, replacing current prescriptive requirements and limitations with a broader principles-based approach. The effective date was January 1, 2017, except for the personal guaranty provision in §723.7(f), which became effective May 13, 2016.

January 17, 2017

Joint Agency Rule Increasing Eligibility for 18-month Examination Cycle

The FDIC, FRB and OCC issued interagency final rules increasing the number of small banks and savings associations eligible for an 18-month examination cycle rather than a 12-month cycle. The rules have been in effect since February 29, 2016, pursuant to the interim final rules previously adopted by the agencies.

January 19, 2017

OCC Framework for Receiverships for Uninsured Federally Chartered National Banks

The OCC adopted a final rule to implement the basic legal framework for receiverships set forth in the National Bank Act (NBA). The final rule will apply to receiverships for any national bank that is not insured by the FDIC and for which the FDIC is not required to be appointed as receiver, such as an uninsured trust bank.

February 6, 2017

NCUA Final Rule to Modernize Field-of-membership Definitions

The NCUA approved a final rule (Part 701) to modernize existing field-of-membership definitions for federal credit unions. Among several other changes, the rule increases flexibility for credit unions to define the communities they serve, including those areas that are considered underserved or rural.

March 6, 2017

FRB Final Rule Updating CCAR Coverage

The FRB finalized a rule adjusting its capital plan and stress testing rules, effective for the 2017 cycle. The final rule removes large and noncomplex firms from the qualitative assessment of the FRB's Comprehensive Capital Analysis and Review (CCAR), reducing significant burden on these firms and focusing the qualitative review in CCAR on the largest, most complex financial institutions.

April 1, 2017

FDIC Final Rule on Deposit Account Recordkeeping

The FDIC approved a final rule establishing recordkeeping requirements for FDIC-insured institutions with more than 2 million deposit accounts. The rule ensures rapid payment of insured deposits to customers in case of institutional failure.

June 9, 2017

DOL Final Fiduciary Rule

The DOL issued a final rule to bring the fiduciary standard to investment advisors offering advice to individuals with retirement plans (such as 401(k)s and IRAs). The original applicability date of April 10, 2017 was later extended to June 9, 2017.

July 21, 2017

FRB Volcker Rule Compliance Period Extended

The FRB acted under section 619 of the Dodd-Frank Act (Volcker Rule) to give banking entities until July 21, 2017 to conform investments in and relationships with covered funds and foreign funds that were in place prior to December 31, 2013. This is the final of the three one-year extensions the FRB is authorized to grant.

Sept. 5, 2017

SEC Updated Settlement Cycle for Securities Transactions

The SEC adopted an amendment to shorten by one business day the standard settlement cycle for most broker-dealer securities transactions, changing it from three to two days, or "T+3" to "T+2." The rule became effective on May 30, 2017, with a compliance date of September 5, 2017.

October 3, 2017

DoD Final Rule to Implement Military Lending Act (Credit Card Accounts)

The DoD issued a final rule to apply the protections of the Military Lending Act (MLA) to a greater number of types of loans and lines of credit. The final rule became effective October 11, 2015, with a compliance date of October 3, 2016. The rule began covering credit card accounts on October 3, 2017.

October 19, 2017

CFPB Amendments to Mortgage Servicing Rules

The CFPB issued a final rule to amend certain mortgage servicing provisions under Regulation X and certain requirements under Regulation Z. The final rule addresses successors in interest, debtors in bankruptcy and cease communication requests under the FDCPA. The rule goes into effect October 19, 2017, with certain provisions effective on April 19, 2018.

November 24, 2017

FFIEC Rule to Implement Collection and Transmission of Annual AMC Registry Fees

The Federal Financial Institutions Examination Council's (FFIEC) Appraisal Subcommittee finalized a rule to implement collection and transmission of appraisal management company (AMC) annual registry fees by state appraiser certifying and licensing agencies that elect to register and supervise AMCs.

December 14, 2017

DoD Updates to MLA Interpretive Rule

The DoD amended its interpretive rule for the MLA, amending and adding to the questions and answers published on August 26, 2016. The questions and answers provide guidance on certain questions the DoD has received regarding compliance with the July 2015 Final Rule. ❖

FOCUS:
2018 OUTLOOK

- Timeline for 2018 Important Dates
- Cybersecurity
- Efficient Delivery of Risk and Compliance
- Home Mortgage Disclosure Act
- Beneficial Ownership Rule
- De-risking
- Third-party Risk Management
- Marijuana
- Virtual Currency
- DOL Fiduciary and SEC Rulemaking

TIMELINE

Below is a timeline of some of the most important effective dates of 2018.

January 1, 2018

Joint Agency CRA Amendments

The FRB, FDIC and OCC amended their respective Community Reinvestment Act (CRA) regulations to conform to the CFPB's changes to Regulation C (Home Mortgage Disclosure Act (HMDA)).

January 1, 2018

CFPB Update to HELOC Threshold in HMDA Rule

The CFPB finalized reporting requirements for banks and credit unions that issue home equity lines of credit (HELOCs). Under rules that are scheduled to take effect in January 2018, on a temporary basis, financial institutions must report HELOCs if they made 500 or more such loans in each of the last two years. This is a change from the previously published rule's threshold of 100 HELOCs in the last two years.

January 1, 2018

OCC Final Rule to Establish Standards for Recovery Planning for Large Institutions

The OCC adopted enforceable guidelines establishing standards for recovery planning by insured national banks, insured federal savings associations and insured federal branches of foreign banks with average total consolidated assets of $50 billion or more. These final guidelines appear as an appendix to the OCC's safety and soundness standards regulations. The effective date of the rule was January 1, 2017, with a compliance date ranging from six to 18 months after the effective date depending on the institution's asset size.

January 1, 2018

CFPB Final Rule on HMDA Data Reporting

The CFPB issued a final rule to amend the mortgage data reporting requirements of HMDA. Changes include new reportable data fields and new requirements for small depository institutions to be exempt from reporting requirements. Most new requirements become effective on January 1, 2018, with other requirements effective between January 2017 and January 2020. *Note: The CFPB proposed amendments to this rule, discussed in another section of this article, on June 9, 2017.*

January 1, 2018

Agency Supplementary Leverage Ratio Final Rule

The FRB, FDIC and OCC adopted a final rule to modify the definition of the denominator of the supplementary leverage ratio for consistency with recent changes to which the BCBS agreed. The revisions apply to all banking organizations subject to the advanced approaches risk-based capital rule. The rule became effective January 1, 2015, with certain provisions requiring compliance by January 1, 2018.

January 1, 2018

Agency Regulatory Capital Rules for Large Bank Holding Companies

FDIC, OCC and FRB adopted a final rule to strengthen the leverage requirements applicable to the largest, most systemically important banking organizations and their subsidiary insured depository institutions. The final rule only applies to U.S. top-tier bank holding companies with at least $700 billion in total consolidated assets or at least $10 trillion in assets under custody and any insured depository institution subsidiary. Some supplementary leverage ratio reporting began in 2015.

January 1, 2018

NCUA Rule regarding the Supervisory Appeals Process and Rule regarding the Procedures Governing the Appeals Process

The NCUA Board finalized a rule to enhance due process in the supervisory appeals process and a rule to provide uniform, comprehensive procedures to govern the agency's process for appealing program office decisions to the board.

April 1, 2018

CFPB Final Rule on Prepaid Accounts

The CFPB issued a final rule to increase consumer protections for prepaid account users. The effective date of the rule was October 1, 2017. On April 20, 2017, the CFPB delayed the effective date of the rule to April 1, 2018.

May 11, 2018

FinCEN Customer Due Diligence Final Rule

FinCEN released a final rule on Customer Due Diligence (CDD) under the Bank Secrecy Act (BSA), including new requirements to identify and verify the identity of beneficial owners of legal entity customers. On September 28, 2017, FinCEN added technical corrections to the rule to eliminate terminology confusion and to fix a reference to a training requirement that was inadvertently removed in 2016.

July 1, 2018

FRB Regulation CC Amendments on Electronic Checks

The FRB issued a finalized amendments to Regulation CC (Availability of Funds and Collection of Checks) to create a framework for electronic check collection and return, and to create new warranties for electronic checks.

October 1, 2018

CFPB Updates to KBYO Mortgage Disclosure Rule

The CFPB finalized updates to the KBYO-TRID rule to formalize guidance in the rule; provide greater clarity and certainty; and help facilitate compliance within the mortgage industry. The changes relate to tolerances for the total of payments calculation, housing assistance lending, cooperatives and privacy. The rule is effective October 10, 2017, with a mandatory compliance date of October 1, 2018.

CYBERSECURITY

In 2017, the average size of a data breach increased nearly 2 percent. Cybersecurity therefore continues to be an imperative and trending field. These are some of the trends that we may see in 2018.

1. Businesses may use artificial intelligence (AI) and machine learning to boost cybersecurity and especially endpoint security. Some of the largest tech companies have already announced plans to develop these types of defenses, but this could mean that the dangers for exploitation of the systems are even higher. Institutions are urged to pair AI and machine learning with human intellect and monitoring to better understand new and changing risks.

2. As ransomware evolves from traditional PC extortion to Internet of Things (IoT), high net-worth users and corporate disruption, businesses will become more proactive about protecting themselves from both external and insider threats (including malicious, opportunist and simple end user error).

3. There will be more data breaches and cyberattacks, and companies will begin to improve their responses. One of the most talked about aspects of 2017's data breaches was the fact that the affected companies' management teams took a long time to notify consumers; in 2018, we are likely to see more expedient notification and better handling of these difficult situations.

4. Regulators and businesses alike will stress patching and application testing, as we learn our lessons from the attacks and breaches of 2017. This should include testing serverless apps, which are likely to both increase in popularity for businesses and create more opportunities for attack.

5. There could be an increase in consumers' mistrust of and frustration with cyberservices. One reason is that many businesses will opt for third-party cybersecurity solutions and users will therefore have to go through more layers of authentication to access systems and data.

6. There will be mass preparation for the General Data Protection Regulation (GDPR), a strict European Union (EU) regulation that gives EU citizens more rights over their data and goes into effect May 25, 2018. GDPR applies to companies that process personal data and whose organizations are operating within the EU and those that process personal data outside of the EU, but who offer their organization's goods or services to individuals in the EU. Fines for companies that breach GDPR are severe, with maximum fines at 4 percent of global annual turnover or €20 million per incident. Regulators will take action against enterprises that do not comply and though there may be a "grace period," it is likely that before the year is through there will be at least one large enforcement action to set an example for the industry.

TAX POLICY

With Congress and Trump pushing through a new tax policy before the close of 2018, on top of the drop in taxation rates for businesses, there are other areas that specifically affect financial institutions.

Whether or not an existing home equity line of credit (HELOC) will have to be consolidated into a new first mortgage for it to remain tax deductible under the new tax laws depends on whether it was "home equity indebtedness" or "acquisition indebtedness."

"Acquisition indebtedness" is mortgage debt used to acquire, build or substantially improve the residence, and will be deductible. "Home equity indebtedness," is money used for anything else, and is no longer deductible. There is also no grandfathering, so an existing HELOC (acquired before December 15) used for both acquisition and indebtedness, must be divided.

Another change affecting financial institutions is that any new mortgage debt treated as acquisition indebtedness will cap at $750,000. But, indebtedness incurred before Dec. 15, 2017 may still use the old $1 million limit if any new refinancing stays below the refinanced indebtedness.

Consumers who want to fold an existing second lien into a new first mortgage might scout their options, comparing costs of the potential single mortgage with the existing costs of first and second liens. Financial institutions should be prepared to help potential and existing clients with these comparisons.

EFFICIENT DELIVERY OF RISK AND COMPLIANCE

Many institutions have expanded risk and compliance budgets in recent years to meet demanding and ever-evolving regulatory requirements. But often, these efforts are not as specific nor efficient as they could be. Trends point toward finding efficiencies through technology and managed services, and in 2018 we are likely to see more of these solutions' implementations and successes.

In order to look forward and measure tangible risk, rather than expending efforts in noncritical areas, we must also look forward with an emphasis on technology and management methods.

Know where you stand.

One of the first steps is to really understand where your institution is. Look at your business units and procedures. Are your three lines of defense truly structured as such? Are responsibilities between the lines clearly defined? Look at where your institution's staff is spending their time. Which line is spending the most resources? Are there labor-intensive areas that you can automate? Are there processes you can streamline or outsource to decrease repetition? All these areas can provide improvements, and lead directly into the next focus area.

Understand your data.

How much data are you capturing, and more importantly, how much data are you using? In many instances, institutions use data-collection measures that are inexact or inadequate, which generates data with ambiguous functionality. These details can blind compliance staff and top management to more critical exposures. To effectively manage risk, it is essential to review metrics and recognize how identified patterns and trends can improve your business; do not simply add new metrics and allow legacy controls to survive. It is also important to note that not all data is going to be quantitative. Understand which of your controls require qualitative data, and build this monitoring into your policies and procedures.

Maintain your systems.

Once you find areas for improvement within the institution and implement automation and controls, be sure to manage the controls and management information systems actively. Systems require periodic attention to evaluate benefits and drawbacks. It is necessary to terminate systems when they are replaceable or no longer effective. Abating duplication and overlap is key to efficiently and effectively managing compliance and supervisory risks.

Banks that can focus on core business processes can more easily reduce compliance gaps and, if there is error, define issues' root causes and implement precise fixes.

HOME MORTGAGE DISCLOSURE ACT

On January 1, 2018, new Regulation C (Home Mortgage Disclosure Act (HMDA)) requirements went into effect that changed the types of institutions subject to HMDA, the types of transactions subject to HMDA, data points required in HMDA collection and processes for reporting and disclosing data.

Institutions Subject to HMDA

In 2018, a depository institution is subject to Regulation C if it meets all the coverage criteria previously in effect (i.e., asset size test, location test, loan activity test and federally regulated test) and it originated at least 25 covered closed-end mortgage loans in each of the two preceding calendar years (both 2016 and 2017) or at least 500 covered open-end lines of credit in each of the two preceding calendar years (both 2016 and 2017). This is a temporary threshold that will be in effect for two years and was part of the August 2017 updates to the Final Rule (the 2015 Final Rule required at least 100 versus 500 covered open-end lines of credit).

A non-depository institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loan or at least 500 covered open-end lines of credit in each of the two preceding calendar years and meets the location test.

Types of Transactions Subject to HMDA

Starting January 1, 2018, there will be 13 new exclusions to the types of closed-end mortgage loans or open-end lines of credit that are HMDA-reportable. This includes an August 2017 addition to the exclusions list for loans or lines of credit that provide or are proposed to provide new funds to the applicant or borrower in advance of being consolidated in a New York state consolidation, extension and modification agreement classified as a supplemental mortgage under New York Tax Law section 255 (NY CEMA), if final action on the consolidation was taken in the same calendar year as final action on the new funds' transaction. This addition raised contention within the industry, but remains excluded from reporting.

In August 2017, the CFPB issued amendments to the HMDA Final Rule, and included an amendment to temporarily raise the reporting threshold related to home equity lines of credit (HELOC) loans. Starting January 1, 2018, financial institutions are required to report HELOCs if the institution made 500 such loans in each of the last two years. The 2017 Final Rule represents only a temporary change, and the reporting threshold is set to revert to 100 beginning in January 1, 2020.

What is Reportable

Starting January 1, 2018, the data fields in which institutions are required to collect, record and report information for their customers have vastly increased. Only seven items remain unchanged, with 14 fields modified and many more added under the Final Rule. The CFPB states that the additional and changed data will better help the agency:

1. Show whether financial institutions are serving the housing needs of their communities;

2. Assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and

3. Assist with the identification of potentially discriminatory lending patterns and enforcement of antidiscrimination laws.

Within the modified fields is the addition of disaggregated information gathering for race and ethnicity. Borrowers may now choose "Korean," as a subcategory to "Asian," for example. Institutions are required to report the main categories and subcategories for up to four main choices, but can only report the five main categories if a borrower chooses all five. Ethnicity must also now provide subcategories.

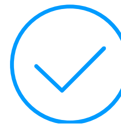
For the fields of Race, Ethnicity and Sex, the reporter is also now required to designate, for applications taken in-person in which the applicant did not provide the information, whether the information was collected based on a visual observation or surname.

HMDA Data Testing for Resubmission

On August 22, 2017, the FFIEC members announced new FFIEC HMDA Examiner Transaction Testing Guidelines (Guidelines) for all financial institutions that report HMDA data. The Guidelines will be the first-ever uniform guidelines across federal HMDA supervisory agencies (CFPB, FDIC, FRB, NCUA and OCC) and will apply to the examination of HMDA data collected beginning in 2018 and reported beginning in 2019.

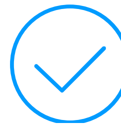
On December 21, 2017, the CFPB issued a public statement announcing that it does not intend to require data resubmission unless data errors are material or assess penalties with respect to errors for data collected in 2018 and reported in 2019 under HMDA. The CFPB also intends to initiate rulemaking to reconsider various aspects of the 2015 HMDA rule. The FDIC, FRB and OCC released similar statements regarding their supervisory and enforcement approaches regarding HMDA.

A Few Tips for Compliance



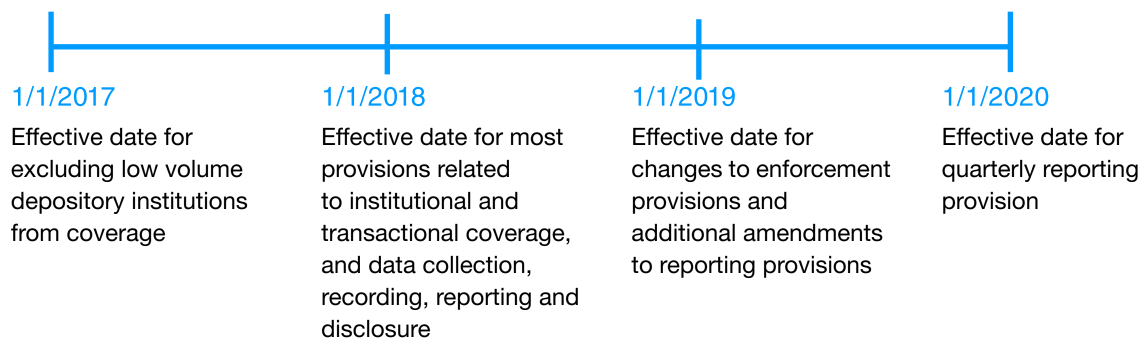
Understand the changes in regulation, and ensure that any loans with a “date of final action” in 2018 comply with the new standards, even if the origination process began in 2107.

Educate and train your staff on the new rules, including the rules surrounding demographic data garnered through visual or surname observation.



Ensure your technology and forms are updated and that your staff is prepared to handle potential transition issues.

A Timeline of Effective Dates



1/1/2017
Effective date for excluding low volume depository institutions from coverage

1/1/2018
Effective date for most provisions related to institutional and transactional coverage, and data collection, recording, reporting and disclosure

1/1/2019
Effective date for changes to enforcement provisions and additional amendments to reporting provisions

1/1/2020
Effective date for quarterly reporting provision

BENEFICIAL OWNERSHIP RULE

Financial Crimes Enforcement Network's (FinCEN) "Beneficial Ownership Rule" becomes effective in May 2018 and does two things: extends CDD requirements under BSA rules to the natural persons behind a legal entity and adds a fifth pillar to the traditional "four pillars" of an effective anti-money laundering (AML) program by requiring covered financial institutions to establish risk-based procedures for conducting ongoing CDD.

To comply with the rule taking effect, institutions must include a method of personally identifying each individual who meets either or both of the following criteria for a legal entity client:

- **"Ownership prong"**: owns 25 percent or more of the equity interests in the legal entity customer
- **"Control prong"**: has significant responsibility to control, manage or direct a legal entity customer, including an executive officer or senior manager or any other individual who regularly performs similar functions

However, many industry participants believe that even though the rule requires beneficial ownership determination at 25 percent or more ownership, an institution should consider lowering that threshold if the institution has previously used a lower percentage or has other reason to believe a customer is high-risk. At the ACAMS conference in October, a representative from the FRB said financial institutions that have determined beneficial owners at lower thresholds should not use the new beneficial ownership rule as an excuse to relax policies and procedures.

Certain exemptions have also required clarification since the rule's release. FinCEN recommends that an institution obtain some information on trust accounts' beneficial owners in some instances, even though institutions are not technically required to do so. Native American tribes are exempt as well, as they qualify for the exemption listed in 1020.315(b)(2) through (b)(5) (domestic government agencies and instrumentalities and certain legal entities that exercise governmental authority).

With the new beneficial ownership rule, an institution must also be wary of its currency transaction report (CTR) process. Increased clarity as to who is behind transactions on behalf of an entity may alert an institution to aggregate certain transactions that previously would not have been aggregated.

Recommendations for ensuring compliance with the new beneficial ownership rule include: revamp your institution's CDD policies, procedures and process; collaborate with the core system processes and AML software; budget for additional staff for CDD maintenance; and risk rate your customer base on an ongoing basis.

DE-RISKING

"Your customer's customer is not your customer." Or is it? This phrase has most likely caused headaches at your institution, or at the very least, led to constant conversation of how to tackle this dilemma.

Recently, the term "de-risking" has been prevalent within the financial world as a way to describe the trend of financial institutions' efforts to simplify business practices and reduce AML risks by terminating certain products or relationships. An increase in both amount and frequency of enforcement actions imposed on banks for AML and sanctions violations has made banks more alert and careful. Many banks have been exiting sectors that pose a high level of risk for compared to potential returns, such as relationships with foreign correspondent banks (FCBs)

While certain U.S. legislation, such as the USA PATRIOT Act, requires financial institutions to mitigate risk, this practice of mass-exiting can have profound and detrimental effects on foreign lenders and their customers. Exiting less-lucrative relationships with smaller FCBs makes sending and receiving international payments more difficult and can lead to the exclusion of entire regions from global trade. This not only jeopardizes these countries' financial stability and growth, but also, according to BCBS, can drive payment flows underground into unregulated shadow markets.

FCB de-risking is also an issue for many non-profit organizations that require funds transfers: Charity and Security Network published a report in February 2017 that showed de-risking had impeded lifesaving assistance during humanitarian crises. The people of these regions are also affected: a parent who needs to send funds for a child's medical fees or a relative trying to wire money to a student may be unable to do so, and the illegitimate and less-regulated methods of money transfer to which individuals are forced to turn can lead to even greater risks for those involved and can actually increase AML risk.

Regulators have begun to ask that financial institutions avoid cutting ties with foreign countries unless government officials have confirmed concrete cause for concern, and in February 2017, the OCC sent a memorandum to examiners explaining these problems with the practice of de-risking. In July 2017, the House Financial Services Committee held a hearing entitled "Managing Terrorism Financing Risk in Remittances and Money Transfers," to discuss some of the top concerns for legislators from the perspective of industry leaders in the field. As the consequences of exiting certain markets becomes more evident and as regulators begin to take note of mass-exiting, we are sure to see developments in the field in 2018.

THIRD-PARTY RISK MANAGEMENT

In October, the OCC released Bulletin 2017-43 on risk management principles related to new, modified or expanded bank products and services. The bulletin, which focuses on risks associated with new products and services and risk management principles, sheds light on what is sure to be a top concern for examiners in 2018.

The risks outlined include strategic, reputation, credit, operation, compliance and liquidity risks. The OCC urges financial institutions to ensure a new product or service is compatible with the institution's risk appetite, strategies, culture, ethics and cash-flow standards, in additon to making certain that any third-party partnership is fully researched and safeguarded within these categories.

In addition to understanding the risks and benefits associated with new activities before entering a third-party relationship, a bank must also amend and, in some cases, create new policies and procedures to incorporate and cohere objectives and processes. A bank should also have an effective change management process in place to control and monitor the implementation of new or modified operational processes and new technologies. This should include setting benchmarks and implementing monitoring processes to help evaluate the new product or service and its compliance with applicable laws, regulations and internal policies, including evaluating for potential UDAAP issues. Hitting a benchmark should trigger changes in the business plan, including commencing an exit strategy when necessary.

OCC Bulletin 2017-43 replaces an older version of risk management principles from May 2004, OCC Bulletin 2004-20. The older bulletin requires that "Management must also implement an ongoing oversight program over the vendor's activities and develop a contingency plan in the event the vendor cannot perform as expected," but does not mention exit strategy plans. The new bulletin adds, "As part of the life cycle, management should develop and maintain a contingency plan in the event the bank must terminate the relationship, a contract expires, the service provider cannot perform as expected, or the provider changes its business strategy." The OCC also warns against relying on service providers' assertions and promotes governing these relationships with written contracts, which should include these clear exit strategies.

In 2018, we are likely to see a strong emphasis on financial institutions' responsibility to evaluate and manage third-party risk related to a new product or service. Institutions should emphasize performing due diligence and receiving the correct approvals; establishing and updating policies, procedures and controls as they pertain to third parties; utilizing change management processes when implementing third-party relationships; and monitoring third parties to evaluate the effectiveness of products and services and the relationships overall.

MARIJUANA

On January 1, 2018, recreational marijuana became legal in Alaska, California, Colorado, the District of Columbia, Maine, Nevada, Oregon and Washington state. It will become legal in Massachusetts in July. However, it remains illegal under federal law and to make matters more complicated, on January 4, 2018, Attorney General Jeff Sessions rescinded the Obama-era Cole Memo, a document on which many in the industry relied for guidance when working with marijuana-related businesses (MRBs).

In February 2017, Trump issued Presidential Executive Order on a Task Force on Crime Reduction and Public Safety and Jeff Sessions assembled the Task Force, a group of prosecutors and federal law enforcement officials. Associated Press reported that after researching the issue, the Task Force concluded the area requires more study that Obama-era rules keeping the federal government out of state marijuana laws should continue.

Sessions did not release the Task Force's results, but he did send letters to the governors of states with legal marijuana. Some governors responded immediately; Washington Governor Jay Inslee and Attorney General Bob Ferguson wrote a letter defending their state's laws, combatting Sessions' claims on the dangers of marijuana and stating Sessions' arguments were "outdated, incorrect, or based on incomplete information." Alaska Governor Bill Walker and Attorney General Jahna Lindemuth also defended supporting the will of the voters in a letter they sent back to Sessions.

Sessions' continued promise to crack down on the marijuana industry and utilize federal abilities to seize assets has made it nearly impossible for MRBs to access banking services. As an attempted solution to this, some municipalities began to propose localized municipality-run financial services institutions to serve their MRBs. For example, California Treasurer John Chiang wants the state to consider creating a government-owned bank that could serve MRBs and Los Angeles has proposed an MRB-serving city-sponsored public bank that will not be insured by FDIC. In Colorado, a prospective state-wide Credit Union tried to gain licensure in 2017 to support local MRBs.

There are also some states that have found certain solutions. In 2016, Washington state got almost all legal marijuana businesses to open bank accounts and pay their taxes with a check or other non-cash method. Hawaii announced a "cashless" system for buying medical marijuana, reliant on online payment technology. But, with the DOJ's recent Cole Memo rescission, there is a lot of uncertainty related to marijuana businesses in the U.S., and what will happen over the coming months and years. Clearly, states have made a large investment in this activity, and it will be up to federal prosecutors which activities they choose to prosecute.

If the DOJ does start prosecuting state-regulated marijuana businesses, the issue may play out through the judicial system. In 2018, we are likely to see the effects of some states' attempts to build their marijuana industry and provide alternative banking systems for MRBs, and the field is sure to have major developments before the year is through.

Some Tips for Working with MRBs

Be sure to research and comply with available guidance. Review the DOJ's rescinded Cole Memo and FinCEN guidance, specifically studying the suggestions for MRB CDD. Ensure you can support your decision to work with MRBs by providing supporting documentation for the decision overall and for each MRB.

Treat all MRBs as "high-risk." File all required documentation, including suspicious activity reports (SARs) cash transaction reports (CTRs) for any cash transaction over $10,000 and FinCEN form 8300, as appropriate. Be mindful of the three different types of marijuana-related SARs, including Marijuana Limited SARs, Marijuana Priority SARs, and Marijuana Termination SARs.

Prepare to invest in advanced AML software; extra security at branches; and new staff trained to run background checks on potential MRB clients and conduct ongoing monitoring, including finance reviews and in-person site inspections.

Be prepared to provide documentation for how your institution defines and classifies "MRBs." Have a written plan in place that addresses if and how you treat MRBs differently depending on their level of involvement with the drug itself and how you ensure sufficient CDD and monitoring at each level.

VIRTUAL CURRENCY

The spotlight on virtual currency shone even brighter in the last few months of 2017 due to the extreme fluctuations in the price of Bitcoin. From Coindesk, Bitcoin was listed at $997.69 on January 1, 2017. Throughout the year, the price of Bitcoin spiked as high as $19,343.04 on December 16, 2017, and rapidly decreased over the rest of December, sitting with a value of $13,412.44 on January 1, 2018. Specifically, the virtual currency's value took a dip on November 12, 2017 to $5,857.32 after steadily rising beginning in July 2017, before intensely skyrocketing to over $19,000 in December. Consumers wanted to enter the market in mass numbers and the fluctuations even attracted Wall Street's attention.

Virtual currencies' regulation has also been confusing, as regulators have taken different approaches in how they define and treat the currencies:

- FinCEN found "administrators" and "exchangers" of virtual currencies likely need to be registered as money services businesses (MSBs), unless certain exceptions in the definition of an MSB apply. [FIN-2013-G001]
- The Internal Revenue Service (IRS) found virtual currencies should be treated as "properties" for U.S. federal tax purposes. [Notice 2014-21]
- The CFTC considers virtual currencies "commodities," and the agency has jurisdiction over virtual currencies when they are used in a derivative contract, or if there is fraud or manipulation involving virtual currencies traded in interstate commerce. [Primer on Virtual Currencies]

The CFTC was particularly active in this space over the last three months in 2017: in October, the agency announced a primer on virtual currency, and in December it both issued a proposed interpretation on virtual currency "actual delivery" in retail transactions and launched a virtual currency resource web page.

FinCEN, in addition to proactively trying to help consumers understand the risks related to virtual currencies, assessed large civil money penalties in July 2017 against a virtual currency exchanger and one of the exchanger's operators for willful violation of U.S. AML laws.

Moving into 2018, Capco Center of Regulatory Intelligence (CRI) believes agencies will be paying even more attention to virtual currencies. Specifically, regulators will need to really understand the complexities and potential problems virtual

currencies cause for all levels of involvement with virtual currency, including anywhere from a single consumer buying less than $500 worth of virtual currency as an investment to a wall street financial institution setting up a virtual currency trading group.

This need to research and understand the field rings true for financial institutions as well. If your financial institution is banking virtual currencies, or knows your customers are involved with virtual currencies, you may want to continually re-evaluate your institution's risk rating for those customers. You may also want set up additional regulator monitoring (including examining harder-to-track sources such as speeches) and reach out your regulators to start a dialogue over virtual currency and what plans, if any, the regulator has to provide more regulation or guidance.

DOL FIDUCIARY AND SEC RULEMAKING

The Department of Labor (DOL) Fiduciary Rule, which seeks to satisfy a 'best interest' standard for investment advice, has begged the question within the industry of why the DOL is the agency advocating rules regarding investor advice, rather than the SEC, which has been regulating investment advisors since the Investment Advisors Act passed in 1940.

The DOL's Fiduciary Rule has been controversial, with some proposed legislation specifically repealing it. And in response to SEC Chairman Jay Clayton's public statement and request for public comments on the subject, it is clear that some in the industry are in support of SEC rulemaking on the conduct of investment advisors and broker-dealers while others are against.

On November 27, 2017 the DOL delayed by 18 months to July 2019 the final implementation of the Fiduciary Rule, leaving an opening to amend or repeal some controversial aspects of the rule. Some view the DOL's extended delay as a sign that the agency wants to collaborate with other federal and state regulators, including the SEC.

There is also an opportunity for the SEC to reach out to the DOL and state legislators and regulators when undertaking its own rulemaking process. And with two new SEC commissioners, Republican Hester Peirce (who has been outspoken against the DOL's rule) and Democrat Robert Jackson, confirmed on December 21, it will be interesting to see how it plays out.

Furthering interest in the SEC's rulemaking, a day after the DOL rule was delayed, Clayton called a fiduciary rulemaking a "priority" for the agency.

It is also possible for individual states to regulate the fiduciary space, alongside the DOL and the SEC. Nevada and Connecticut were the first to act, with Nevada passing fiduciary legislation that became effective within a month of being signed, and more states could follow. Some may take a wait-and-see approach, evaluating how the disclosure requirements passed in those two states impact investment advice. ❖

ABOUT CAPCO

Capco is a global business and technology consultancy dedicated to the financial services industry, plus a dedicated energy division. Capco delivers innovative solutions in Banking & Payments, Capital Markets and Wealth & Asset Management, designed to withstand market forces, continual regulatory change and increasing consumer demand.

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