August 2021 FREE COMPLIANCE NEWSLETTER

INTERAGENCY CRA PRESS RELEASE

It's officially here! The joint Federal Agencies put out a joint statement to reinforce that they are committed to working together to jointly strengthen and modernize regulations implementing the Community Reinvestment Act. The agencies have broad authority and responsibility for implementing the CRA. Joint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.

On the same day, the OCC issued a statement on Rescinding its 2020 CRA ACT.

This falls in line with the joint statement mentioned above. The agencies want to work together to put forward a joint rulemaking that strengthens and modernizes the CRA. This is just a proposal right now but appears that it will become final sometime in the future. OCC banks – stay tuned.

FDIC PROPOSES DEPOSIT INSURANCE SIMPLIFICATION

The FDIC announced a proposal to simplify aspects of the agency's deposit insurance coverage rules. A few items mentioned in the proposal are: Simplifying deposit insurance coverage for deposits held in connection with certain trust accounts, and amend the rule that governs coverage for mortgage servicing accounts to allow principal and interest funds advanced by a mortgage servicer to be included in the calculation.

Comments on the proposed rule are due 60 days after publication in the Federal Register. The Notice of Proposed Rulemaking can be found here and a fact sheet can be found here.

PROPOSED GUIDANCE FOR THIRD-PARTY RELATIONSHIPS

The joint Federal Agencies announced a request for public comment on proposed guidance designed to help banking organizations manage risks associated with third-party relationships, including relationships with financial technology-focused entities. The proposed guidance is intended to assist banking organizations in identifying and addressing the risks associated with third-party relationships and responds to industry feedback requesting alignment among the agencies with respect to third-party risk management guidance. Comments must be received within 60 days of the proposed guidance's publication in the Federal Register. Comments are due by September 17, 2021.

The Federal Register publication of the proposal can be found here. The Federal Reserve's Memo and Executive Summary can be found here. The joint proposal can be found here.

FEDERAL HOUSING FINANCE AGENCY PUBLISHES POLICY STATEMENT ON FAIR LENDING

FHFA issued a policy statement on Fair Lending to communicate the agency's general position on the monitoring and information gathering, supervisory examinations, and administrative enforcement related to the Equal Credit Opportunity Act, the Fair Housing Act, and the Federal Housing Enterprises Financial Safety and Soundness Act. The FHFA is also soliciting comments on its application. Comments must be received on or before 60 days after publication in the Federal Register. The FHFA release can be found here.

FINCEN ISSUES NATIONAL AML PRIORITIES

On 6/30/2021, the Financial Crimes Enforcement Network (FinCEN) issued a set of government-wide priorities for anti-money laundering and countering the financing of terrorism policy. The Priorities identify and describe the most significant AML/CFT threats currently facing the United States and include: corruption, cybercrime, domestic and international terrorist financing, fraud, transnational criminal organizations, drug trafficking organizations, human trafficking and human smuggling, and proliferation financing. FinCEN also issued two statements to provide guidance to covered institutions on how to approach the Priorities.

In their release, FinCEN explains that it will update these Priorities to highlight new or evolving AML/CFT threats at least once every four years, as required by the AML Act. In addition, FinCEN explains that covered institutions are not required to make any immediate changes to their risk-based AML programs in response to these Priorities as FinCEN will propose implementing regulations in the coming months. Furthermore, FinCEN explained that they, the Federal functional regulators, and State regulators will not examine any covered institution for the incorporation of the Priorities into their risk-based AML programs until implementing regulations have been promulgated. Nevertheless, in preparation for any new requirements when those final rules are published, covered institutions may wish to start considering how they will incorporate the AML/CFT Priorities into their risk-based AML programs.

FinCEN's press release can be found here. FinCEN's AML/CFT priorities can be found here. The interagency statement can be found here. FinCEN's statement can be found here.

CFPB IMPLEMENTS FORECLOSURE SAFEGUARDS INTO REGULATION X

The CFPB issued a final rule to amend certain provisions in Regulation X regarding additional assistance for borrowers experiencing a COVID-19-related hardship. This rule becomes effective on August 31, 2021, though a servicer may voluntarily take certain actions discussed in the 2021 Rule before this date for certain provisions. Such pre-effective date actions can be used to establish compliance with the 2021 Rule after the effective date. Additionally, the Bureau does not intend to take supervisory or enforcement action against servicers that offer a borrower a streamlined loan modification based on an incomplete application prior to that date, so long as the modification meets the criteria outlined in the 2021 Rule.

As explained in the CFPB release, the rule will:

- **Give borrowers a meaningful opportunity to pursue loss mitigation options.** As borrowers exit forbearance, they need time to process their current options and consider next steps. As such, to ensure that borrowers can pursue foreclosure avoidance options, servicers must meet temporary special procedural safeguards before initiating foreclosures for certain mortgages through the end of the year.
- **Allow mortgage servicers to help borrowers faster.** Under the new temporary rule, servicers can offer streamlined loan modifications to borrowers with COVID-19-related hardships without making borrowers submit all the paperwork for every possible option. These streamlined loan modifications cannot increase borrowers' payments and have other protections built into them. With this flexibility, servicers can get borrowers into affordable mortgage payment plans faster, with less paperwork for both the servicer and the borrower.

- **Tell borrowers their options.** Servicers will be required to increase their outreach to borrowers before initiating foreclosure and tell borrowers key information about their repayment or other options when they communicate with borrowers who are exiting forbearance or struggling to make mortgage payments.

With these rule changes in place, homeowners exiting forbearance will have the time and support to make the decision that best fits their individual and family needs. Generally, borrowers will have at least three options to bring their mortgages current and avoid foreclosure.

Borrowers may:

- **Resume regular mortgage payments.** Servicers can move a borrower's missed payments to the end of the mortgage, commonly called "deferral."
- **Lower their monthly mortgage payments.** Loan modifications can change the interest rate, principal balance, or length of the mortgage.
- **Sell their homes.** For homeowners with sufficient equity, a sale may be a possibility. However, long-term forbearance may have significantly eroded borrowers' equity, and home prices may dip if the market is inundated with home sales.

In some cases, foreclosures are not avoidable. Under the CFPB's rule, foreclosure will be able to start if the borrower:

- Has abandoned the property;
- Was more than 120 days behind on their mortgage before March 1, 2020;
- Is more than 120 days behind on their mortgage payments and has not responded to specific required outreach from the mortgage servicer for 90 days; or
- Has been evaluated for all options other than foreclosure and there are no available options to avoid foreclosure.

The CFPB release can be found here.