WEST VIRGINIA BANKER

SUMMER 2021

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Banks: The Path to Service Quality and Managing Costs for the Future

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CRBs, and HRBs, and MRBs, Oh My: Navigating the Intricacies of Cannabis Banking

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Five Pillars Supporting Community Bank Independence

THE BAKER GROUP'S

2021 Investment Strategy Conference

October 20-22, 2021

Oklahoma City, OK
The Skirvin Hotel

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- Best Practices for Interest Rate Risk Management and Liquidity Risk Management
- Developing an Investment Strategy Process to Successfully Deploy Excess Liquidity
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- Mortgage Market Prepays and Cash Flow Analysis: The Good, the Bad, and the Ugly

Featured Speaker

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Financial institutions' CEOs, CFOs, investment officers, board members, and those who are directly or indirectly responsible for financial management functions will benefit from this seminar. ***There is no cost for this seminar.***

For your convenience, register online at GoBaker.com/oklahoma. Call Skoshi Heron at 888.990.0010 for more information.

Agenda

Wednesday	Thursday	Friday
Golf (Twin Hills)	Breakfast Seminar Lunch Seminar Dinner	Breakfast Seminar Conclusion (Noon)

Hotel

You are responsible for your own hotel reservations. Deadline is September 20, 2021.

The Skirvin Hotel: Call 1-800-HILTONS and use Booking Code: BAKER. Hotel info: Deluxe $159 + tax.

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The West Virginia Banker magazine was recognized with an Award of Distinction in the Overall Design Category.
The Communicator Awards are the leading international creative awards program honoring creative excellence for communication professionals. Founded over two decades ago, The Communicator Awards are an annual competition honoring the best in advertising, corporate communications, public relations and identity work for print, video, interactive and audio. The 24th Annual Communicator Awards received over 6,000 entries from top ad agencies, interactive agencies, production firms, in-house creative professionals, graphic designers, design firms, and public relations firms around the world.

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A MESSAGE FROM THE CHIEF EXECUTIVE

By Sally Cline

Moving Forward

As bankers, you are accustomed to external forces that transform the way you do business. Disruptions to your business model, including, but not limited to, new regulations, intensifying competition, emerging technologies, and changing customer expectations, have become a way of life. To succeed, you and your leadership team must frequently pivot to accommodate the changing needs of the marketplace and your stakeholders.

The global pandemic is a recent and obvious example of an unplanned interruption. The impact of COVID-19 was unavoidable on your business, your local economies and your communities, and your flexibility in responding to the pandemic was tested beyond measure. The challenges of the past 16 months have provided a new lens by which to view the strengths, vulnerabilities, and resiliencies of our industry. Banks that offered consumer-friendly technology while still maintaining close personal ties to their customers and communities by phone, video conferencing, or scheduled appointment were best positioned to thrive during these unprecedented times.

While the pandemic brought out the best in bankers and the banking system as a whole, it could also, unfortunately, serve as an accelerant for further consolidation. To no one's surprise, the pandemic hastened the demand for digital banking services. Even your most senior customers were forced to bring out their digital devices and learn to become more tech-savvy with the help and encouragement of family and friends. Although some of your customers, young and old alike, will go back to banking the way they used to, it will not be near the numbers pre-pandemic.

Another issue that could drive further consolidation within our borders is the state's changing demographics. According to the census data released earlier this year, West Virginia, one of three states to lose population since 2010, had the largest percentage loss of any state at 3.2%. According to census results, though there have been some years with slight upticks, the population has been on an overall decline since the 1950s.

It has been shown that median age and the net migration rate are particularly relevant to community banks within their markets. West Virginia's net outflow of residents combined with an aging population is likely to hinder bank asset growth compared to banks headquartered in states with a net inflow of residents and a younger population. It has also been shown that community banks headquartered in net outflow states often have lower commercial lending volumes than other institutions. Combined, slower balance sheet growth and lower commercial lending portfolios could feed into higher consolidation rates in the future.

Community banks have a profound economic and social impact within the state of West Virginia by using their resources, expertise, and philanthropic spirit to improve and give back to the places where their employees live and work.

As the CEO of a trade association, I am the last person to want to see more bank consolidation, but it is the reality of what is happening. Since joining the Association in 2015, I have witnessed 13 bank sales, with another expected to close by year-end. Over a six-year period, the number of banks headquartered in WV declined from 60 to 47, while the number of market participants declined from 78 as of June 30, 2015, to 68 as of June 30, 2020,. Over the same period, the number of offices within West Virginia declined from 657 to 598.

Many market watchers indicate the time is ripe for a new wave of bank consolidation. Still, I believe community banks can successfully emerge from the health crisis and continue to be successful despite depopulation and other disruptors threatening your business model. Those that survive the wave over the next 10 years must continue to focus on improving operational efficiencies, enhancing fintech capabilities, strengthening customer relationships, planning for management succession, and building resilience to future crises. To grow your loan pipeline, expansion into higher growth markets should also be a consideration.

The pandemic is another example that illustrates how valuable the banking system is in providing services and stability to our communities. Community banks have a profound economic and social impact within the state of West Virginia by using their resources, expertise, and philanthropic spirit to improve and give back to the places where their employees live and work. I hope the information we have learned through the pandemic serves to deepen our understanding of the evolving community bank business model and the vital role of community banks in our financial system. ■

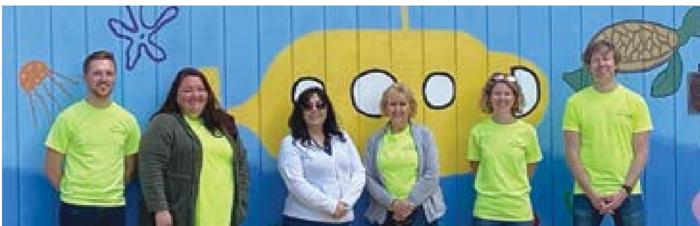
CLEAR MOUNTAIN BANK

At Clear Mountain Bank, each employee is given one paid day off per calendar year to volunteer for a cause of their choice through the Clear Mountain Cares program.

Bo Burnside volunteered with Trout for Cheat and helped stock the Cheat River in Preston County.

Audra Jones volunteered with the Coopers Rock Foundation and helped clear drainage ditches on the hiking trails at Coopers Rock State Forest.

Tonya Stottlemyer spent her day cleaning her church to get ready for visitors coming to an event there.



A group teamed up to help the Shack Neighborhood House in Monongalia County prepare its facilities and supplies for the upcoming summer programming for children.

A group teamed up in Kingwood to help with a mobile food pantry that Food for Preston holds each month.

PEOPLES BANK

Peoples Bank Parkersburg Division Street Branch Manager, Melissa Shaffer, delivered a donation to Boys & Girls Club of Parkersburg as part of the Give Local MOV campaign. Pictured from left to right are Melissa Shaffer and Lynn Reins, CEO of Boys & Girls Club of Parkersburg.

Peoples Bank had the honor to sponsor the 43rd Tyler County, WV Schools Academic Awards Ceremony. Peoples Bank has sponsored the event since 2012. Pictured are Peoples Bank associates who attended the event. Pictured from left to right in the front row are Carissa Smith, Andrea Gregg, Danielle Allphin, and Ann Helmick. Pictured in the back row are Tiffany Blatt, Shawna Moore, April Pierce, Marci Davis, Ashley Brown, and Tom Frawley.

Peoples Bank associates Shawnte Watson, Amanda Mott, and Melissa Shaffer delivered snacks and Peoples Bank swag to Hometown Heroes at the Parkersburg Police Department.

PENDLETON COMMUNITY BANK

In March 2020, Pendleton Community Bank (PCB) began processing Paycheck Protection Program (PPP) loans to mitigate the impact of the global pandemic in the communities they serve. Since the pandemic began, PCB is honored to have provided aid to 930 small businesses in retaining 4,313 local jobs.

PCB donated a total of $15,000 to three different community nonprofits. To determine the selected nonprofit organizations, the PCB team recruited help from local businesses that received PPP funding through the institution. Three businesses, drawn at random by the PCB team, were asked to select a nonprofit serving their community. PCB then made a donation to these nonprofits in honor of the three businesses and staff. The list is as follows:

- $5,000 to Harrisonburg Downtown Renaissance
- $5,000 to Petersburg Volunteer Fire Company
- $5,000 to Pocahontas County Family Resource Network

The entire team at PCB has been actively involved in both the first and second rounds of PPP lending. In total, the institution has assisted in obtaining $50.4M in funding for small, local businesses. ■

Christina Branham (Regional Retail Manager) with a member of the Petersburg Volunteer Fire Company

Lauren Dunbrack (Regional Retail Manager), Rebecca Campbell (Family Resource Network), and Kendall Beverage (AVP; Business Development Officer)

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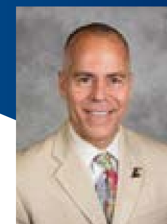

Matt Evans
President and CEO

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Banks:

The Path to Service Quality and Managing Costs for the Future

Banks must look forward to when the economy stabilizes, employment returns to normal levels, and people embrace everyday routines. To secure a long-term and stable customer base, banks will need to grow by catering to a younger demographic while still providing superior service to their clients.

By Bryan T. Di Lella, ICI Consulting

Throughout the pandemic, households have accumulated significant savings. Banks, awash in deposits and with interest rates still at low levels, have increased lending while working through the many challenges of the past year, including maintaining services to existing customers. Despite the pandemic's operational obstacles, most financial institutions have managed to attract new customers, further aiding the growth in asset size for institutions nationwide. The Paycheck Protection Program (PPP) has also contributed substantially to this growth.

While the economy gradually adjusts from heavy government stimulus and returns to growth levels seen before the pandemic, banks adapt to new ways of serving their customers. Beyond the logistical challenges of in-person meetings and modifications to branch operations to maintain service quality to customers, banks have mostly resorted to bolstering the use of digital channels to continue to operate and thrive throughout the pandemic.

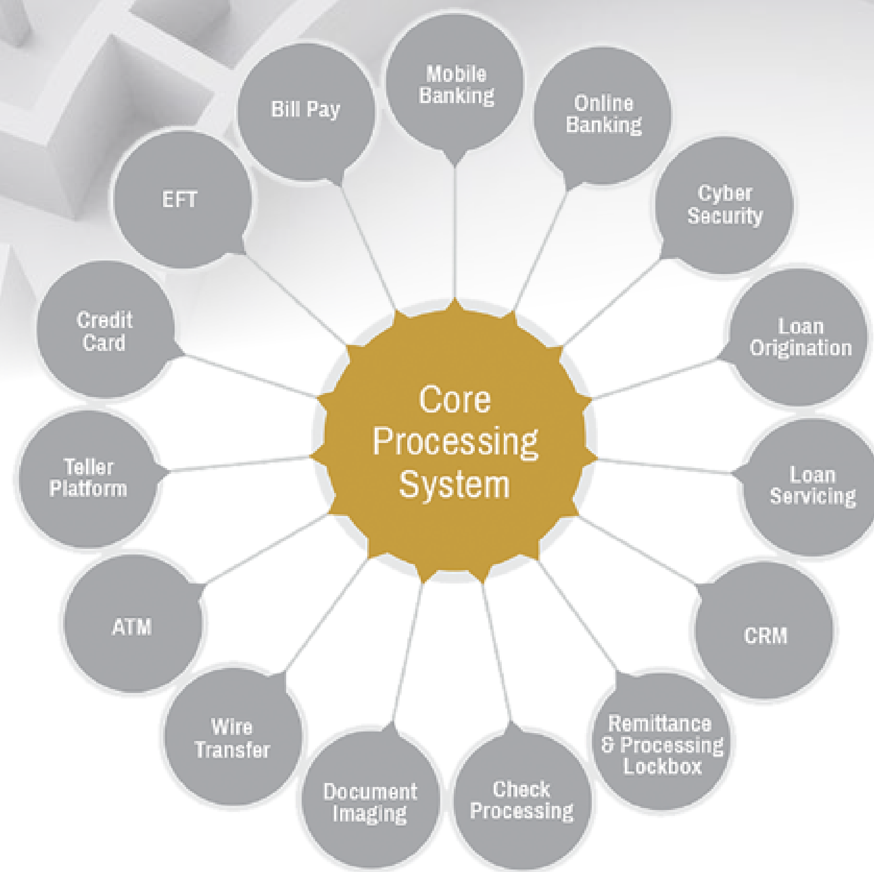
The rapid adoption of digital banking has exacerbated the need for banks to have responsive and innovative digital and mobile offerings. Among a rising set of customers – those who may not have interacted with their financial institution in this manner before – the pandemic accelerated the use of such channels. For banks tuned into their user base, it is evident that effective digital channels must be a part of current and future strategy, a contemporary path to service quality for those banks, and they are prepared to invest in it.

Notably, service quality is primarily the result of the management and philosophy of the bank. As with most any business, customers want to see that their bank cares, values the customer relationship and understands needs, regardless of where and when the interaction occurs. If banks embrace this intense customer focus, they will forge new paths to service quality. One ICI consulting client kept its branches open and boldly stated, "We never had to ask our customers to make an appointment to visit a branch."

In part, service will only be as good as the software tools banks use to implement digital banking. Therefore, a comprehensive survey of the institution's requirements and a rigorous evaluation of current offerings is demanding the attention of bank executives to be competitive in the market, responsive to existing customers and in a position to attract new ones. Banks must look forward to when the economy stabilizes, employment returns to normal levels, and people embrace everyday routines. To secure a long-term and stable customer base, banks will need to grow by catering to a younger demographic while still providing superior service to their clients. Attracting and servicing future generations will require innovative new products and services delivered through digital channels. Banks must also anticipate the likely challenges ahead and prepare for a time when growth levels; when this happens, one of the most dependable actions will be to control costs.

With few exceptions, data processing expenses are among the top three expenditures – along with salary and benefits, premises and fixed assets – that a financial institution incurs on an ongoing basis. Data processing expenses, including an institution's spending on core processing & ancillary systems, are easily addressable cost reduction targets.

The ancillary systems are vital applications surrounding and interacting with the core system. They include essential services, such as ATM/EFT, credit card, online banking, mobile banking, loan origination and servicing, payments, wire transfer, cash management, document management, BSA/AML, IT security, check processing, among others. These ancillary systems are as critical as the core system because they support the institution's key business functions and serve as touchpoints for customers.



We also see banks aggressively pursuing new strategies to expand and emphasize digital channels – many that shrewdly started such projects before the onset of the pandemic. In modernizing their Digital Channels, banks are not only reaching more customers, but they are also doing so with more innovative and integrated applications while potentially reducing data processing spending. Furthermore, banks are making a sound investment in what will become a vital channel to serve customers in the future.

Banks are also changing the digital channel to address a shifting mix of commercial or consumer business, integration to the core system, and variable vendor product and support plans. When reviewing data processing systems contracts, ancillary grouping products serving the digital channel with other essential applications – especially the core system – will naturally increase the bank's purchasing power and negotiation leverage. We commonly recommend this holistic approach to our clients as it tends to yield the best results.

Banks will provide excellent service to their customers and shareholders by closely examining and monitoring data processing costs. There is a wide range of pricing models in the industry. The best way to gain insight into comparable market prices is to conduct a competitive evaluation of alternatives. The banks taking time to start the process 24 to 30 months before contract expiration will see the best outcome in finding solutions that effectively serve customers and address the institution's business requirements at the best price and terms.

Banks can achieve this goal by either negotiating new technology contracts or renegotiating existing ones. While some executives deem the technology review process painful, it remains an integral part of appropriate due diligence by the institution in a vital area that is the foundation of efficient and cost-effective operations. Unless the bank enjoys annual contracts, most banks or credit unions maintain multi-year contracts with core processing and ancillary systems vendors. With the opportunity to review alternative solutions and address costs only every five, seven or 10 years, it is wise to take advantage of the typical contract cycle to review these business-critical applications carefully. If not then, when? ■

Since 1994, ICI Consulting has been a leading bank and credit union advisor nationwide. ICI is a consulting firm supporting financial institutions by providing core processing assessments, gap analyses, vendor evaluations, contract negotiation and conversion services. ICI Consulting is well known for saving clients time and money during core processing and ancillary systems evaluations and negotiations with the providers of these business-critical solutions. They can be reached at ici-consulting.com.

Bryan T. Di Lella has more than 30 years of information technology industry experience in the financial, regulatory and federal government sectors. Bryan earned his Bachelor of Science degree in Computer Science at Saint Bonaventure University and his Master of Business Administration degree from the George Washington University. He is certified as an Arbitrator with the Financial Industry Regulatory Authority (FINRA) Dispute Resolution Board of Arbitrators. Mr. Di Lella can be reached at bryan.dilella@ici-consulting.com.

Three Ways the Legislature Has Redefined Consumer Litigation in West Virginia

By Nicholas P. Mooney II, Spilman Thomas and Battle

During the 2021 legislative session, the West Virginia Legislature once again amended the West Virginia Consumer Credit and Protection Act, one of the primary statutes under which consumers sue creditors, collectors and others.

For years, the Act stood substantially in its original form since its 1974 passage. In 2015, the Legislature began amending the Act every year to do the following, among other things:

- Reduce the statute of limitations;
- Reduce the number of penalties per violation;
- Impose explicit call volume caps;
- Impose qualifications on how consumers give notice of being represented by an attorney; and
- Impose a pre-suit notice requirement.

This year, the Legislature considered several bills aimed at further amending and in some instances, restricting the Act. Some of those bills did not pass, but one significant bill did, and its provisions became effective June 16, 2021. It changes consumer litigation in three critical ways.

1. Guidance on Awarding Attorney's Fees

The Legislature has brought clarity and guidance to trial courts deciding whether to award a party attorney's fees and expenses in action brought under the Act. Before the new law, the Act merely told trial courts they could award "reasonable" attorney's fees and expenses to a consumer and award the same to a defendant if it was a bad faith action brought for the purpose of harassment. The new law requires trial courts to conduct a "lodestar" analysis and examine the following factors in determining the amount of fees and expenses to award:

- The time and labor required;
- The novelty and difficulty of the questions;
- The requisite skill to perform the legal service properly;
- Preclusion of other employment by the attorney due to acceptance of the case;
- The customary fee;
- Whether the fee is fixed or contingent;
- Time limitations imposed by the client or the circumstances;
- The amount involved and the amount of the judgment and any nonmonetary relief obtained;
- The experience, reputation and ability of the attorneys;
- The undesirability of the case;
- The nature and length of the professional relationship with the client; and
- Awards in similar cases.

2. Revisions to the Pre-Suit Notice Requirement

Before the new law, the Act included a provision that required a consumer to give pre-suit notice to a defendant and allow that defendant to make a cure offer. If the cure offer was not

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Beth Bumgarner
bbumgarner@suttlecpas.com

Erica Fuller
efuller@suttlecpas.com

Kelly Shafer
kshafer@suttlecpas.com

Chris Deweese
cdeweese@suttlecpas.com

Natalie Luppold
nluppold@suttlecpas.com

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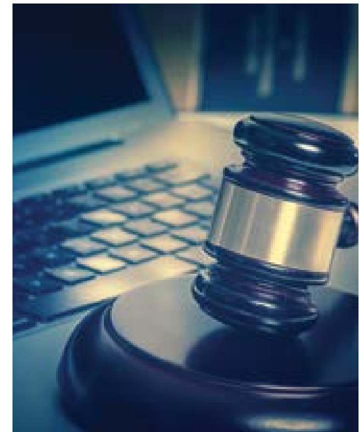
This year's amendments to the Act clarify calculating an award of attorney's fees and foster attempts to resolve lawsuits, both before they are filed and, if not then, before trial. The imposition of the lodestar analysis brings the Act on equal footing with other areas of West Virginia law conducting the same study.



accepted and the consumer received less than the cure offer at trial, the defendant would not be liable for the consumer's attorney's fees and expenses. That provision applied to actions brought under part, but not all, of the Act. A separate pre-suit notice requirement existed for lawsuits alleging unfair or deceptive acts or practices ("UDAP") in trade or commerce.

The new law combines both pre-suit notice requirements. Whereas the prior version of this requirement appeared to allow a defendant to tell the jury that it provided a cure offer to the consumer, the new version seems to remove that opportunity. Instead, a defendant is permitted to introduce the cure offer in a proceeding before the court (not the jury) to determine an award of attorney's fees and expenses.

3. Creation of New Provisions on Offers to Settle and Frivolous Claims and Defenses

There is a lot to unpack here. The new law creates a new section of the Act that addresses two issues: offers to settle and motions to determine a claim or defense to be frivolous.

In the first part (offers to settle), the new law supplements the procedures already in place in Rule 68 of the West Virginia Rules of Civil Procedure that allow a party to make an offer of judgment in exchange for resolving the lawsuit. Experience teaches that many defendants are not interested in making that offer because they are required to report a judgment entered against them when they apply for insurance, license renewals or license issuance.

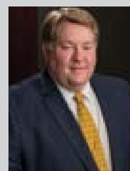
The new law creates procedures that allow either party to make an offer to settle and dismiss all or some of the claims in a lawsuit. Significantly, the offer is not required to include the fact that a judgment will be entered. If the offer is rejected, the party making the offer is not required to pay the other party's attorney's fees and expenses (assuming specific criteria in the section are met). Further, an offering party may be awarded its attorney's fees and expenses if it shows the other party acted without substantial justification or without good faith in rejecting the offer.

In the second part (motions to determine a claim or defense to be frivolous), the new law allows either party to move the court to determine a claim or defense asserted by the opposing party is frivolous. The court is required to hold a hearing and may award damages, including attorney's fees and expenses, against the party presenting the frivolous claim or defense.

West Virginia already has a provision in Rule 11 of the West Virginia Rules of Civil Procedure that permits awarding sanctions for actions taken without a good faith basis. This new provision of the Act seems to supplement Rule 11. An interesting point to note is that, while this new portion of the law is titled, in part, "damages for frivolous claims or defenses," its provisions apply not only to claims and defenses but also to "other positions." It is unclear what actions will presume to be "other positions," and it likely will be some time before any court decisions clarify this. However, for defendants facing claims they think are frivolous, this portion of the new law provides them a way to bring a focused challenge to those claims with the actual outcome. The consumer may be required to reimburse them for the damages (including attorney's fees) they incurred in dealing with the frivolous claim.

Conclusion

This year's amendments to the Act clarify calculating an award of attorney's fees and foster attempts to resolve lawsuits, both before they are filed and, if not then, before trial. The imposition of the lodestar analysis brings the Act on equal footing with other areas of West Virginia law conducting the same study. The changes to the pre-suit notice requirement may continue to resolve some claims before filing suit. If suit is filed, the new offer of settlement provisions incentivizes parties to settle claims. If they don't resolve them, the new frivolous claims and defense provisions may penalize them. ■



Nicholas P. Mooney II is a member attorney in Spilman Thomas & Battle's Charleston, West Virginia office. His primary range of practice is consumer financial services litigation in federal and state court, devoting more than 20 years to that practice area. He can be reached at (304) 340-3860 or nmooney@spilmanlaw.com.

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304-233-5030 / www.zplcaccounting.com

3 Tips for Bank Leaders in Today's Environment

By Steve Kinner, IntraFi Network

With the pandemic ebbing and the economic situation still uncertain, banks are trying to figure out how to position their institutions for the future.

In a recent webinar, I spoke with Darling Consulting Group President, Matt Pieniazek and Abrigo Managing Director, Dave Koch about how bank leaders can capitalize on the current environment. While we discussed an array of topics – from the need to reimagine what asset-liability committees can and should be to the importance of thinking differently about pricing – my top three takeaways were:

1. Focus on developing relationships with new customers

At the start of the pandemic, deposits at some banks swelled by as much as 20%. Today, excess liquidity remains a concern. However, just over a year ago, many banks had high loan-to-deposit ratios and were wondering from where their next dollar would arrive.

Bank leaders can think of their balance sheets as two separate financial statements: a traditional balance sheet and a COVID balance sheet comprised of assets and liabilities from new customers. Hidden in those latter financial statements, one layer below the numbers is a huge opportunity. Given the correlation between core deposits and franchise value, bank leaders can bolster their institutions for years to come by taking steps to develop strong, lasting relationships with new customers today. Sure, those customers could withdraw their funds as soon as the economy improves. But even if they do, banks will be closer to winning their loyalty than they were before an economic downturn. During periods of financial or economic hardship, people have a way of remembering who was in their corner.

It is also important to remember that, in an average year, bank leaders would have to spend marketing dollars to attract these same individuals and businesses to their institutions. The fact that new customers are already customers (not prospects) represents an opportunity in and of itself. However, if banks do not act now to cultivate loyal relationships, they risk losing their new customers when the economy turns.

2. Derivatives deserve a closer look

Many bank leaders are reluctant to embrace swaps. Some think them too complex, others don't want to deal with the associated regulatory burdens, and others are concerned about exposure to credit risk or risks unseen. At the same time, more bankers are using them and finding them beneficial.

In a healthy economy, loans outgrow deposits – the question is when and by how much. If banks suddenly find themselves in a situation where money is going out the door, they may need to replace deposits with funds that offer a spread. Many will not want to exit certain asset positions.

Swaps offer pricing flexibility and can free up capacity for fixed-rate lending. They enable banks to hedge against rising rates and give customers what they want. For instance, while banks may prefer variable-rate positions, particularly in a low-rate environment, customers tend to demand long-term, fixed-rate loans. With an interest-rate swap, both outcomes are effectively possible.

Now is a good time for bank leaders to reevaluate the use of swaps at their institutions. By modeling different scenarios with swaps on their balance sheets, they can start to understand when it makes sense to use them. If they aren't using swaps, they should explain why and the conditions under which they would.

3. Review sources of wholesale funding

In a healthy economy, loans outgrow deposits – the question is when and by how much. If banks suddenly find themselves in a situation where money is going out the door, they may need to replace deposits with funds that offer a spread. Many will not want to exit certain asset positions.

Of course, wholesale funding is also an excellent tool for managing interest-rate risk – much more so than retail deposits. Given that we are in a once-in-a-century funding environment, now is the time for bank leaders to take a harder look at their sources of funds and funding strategies. They could find ample opportunities to lock in low rates, refinance higher-cost funding and diversify their funding sources.

Now is the time to prepare. The current environment poses many challenges. However, with COVID-19 vaccinations growing throughout the population and new case numbers falling by the day, bank leaders should be taking steps to prepare for a potential rebound. They should be mindful that often the most significant risk to an institution is the risk of doing nothing. This axiom holds particularly during times of economic uncertainty, which can cause business disruptions and also have a paralyzing effect on decision-making.

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Steve Kinner is the Senior Managing Director at IntraFi Network responsible for directing sales. He has more than 27 years of banking industry experience. Formerly, Mr. Kinner was Senior Vice President of Sales and Marketing at Federal Home Loan Bank of Des Moines. Before that, Mr. Kinner was President of the Financial Services Division at Oswald Financial, LLC. Earlier in his career, he was Managing Director/Senior Vice President, Asset Management at KeyCorp. Mr. Kinner joined IntraFi Network in 2002. Contact Mr. Kinner at skinner@promnetwork.com.

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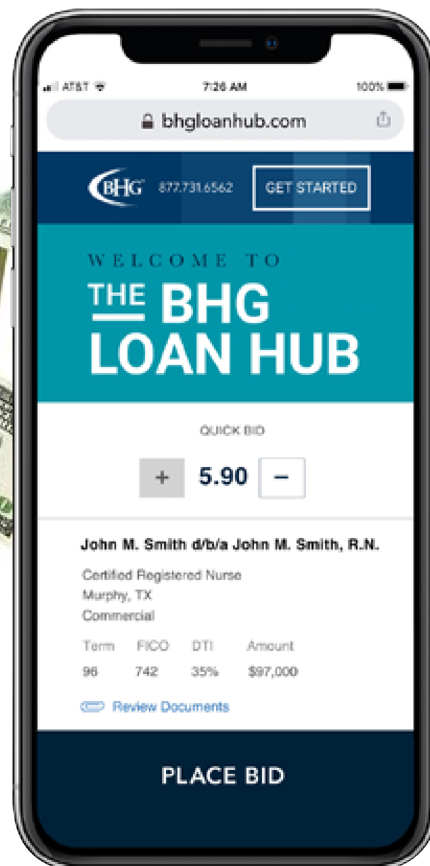

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The Loyalty Factor:
Translating Relationships into Non-Interest Income

By Achim Griesel and Sean Payant, Haberfeld

2020 has challenged our industry in ways previously unknown. We began the year expecting our biggest challenge would be continued growth of deposits at reasonable rates. Today, we face three challenges: a prolonged low-rate environment with continued margin compression, the challenge of keeping branches open and serving our communities, and an increasing number of customer transactions moving to the digital arena.

Much has been written lately regarding the validity of the branch in the current environment. Has community banking been changed forever based on consumers' digital behaviors? Possibly. Is some of this for the best? Definitely. Does the branch still have value? Absolutely! Community banking is about community support. It is about being present and accessible. Unless your strategic plan is to shutter your branches and vacate your communities, we encourage you to keep reading.

Margin compression is real. So, what can you do? You can offset a portion of it by shifting your deposit mix toward low- or non-interest-bearing deposits. Low-rate deposit relationships should always be the foundation of any strategy looking forward, and community bank data shows your branches are the key to shifting your deposit mix.

While new core relationships are strategic in managing and maintaining your margins, they are also a key driver of additional non-interest-income (NII), a critical component in the shorter term. Financial institutions must increase their NII to offset some of the interest income/margin side challenges. To accomplish growing those new relationships, you must do three things:

1. Bring more new customer relationships into your organization.

2. Serve all your customers better than any other financial institution has previously.

3. Make them loyal customers by increasing relational intensity over time

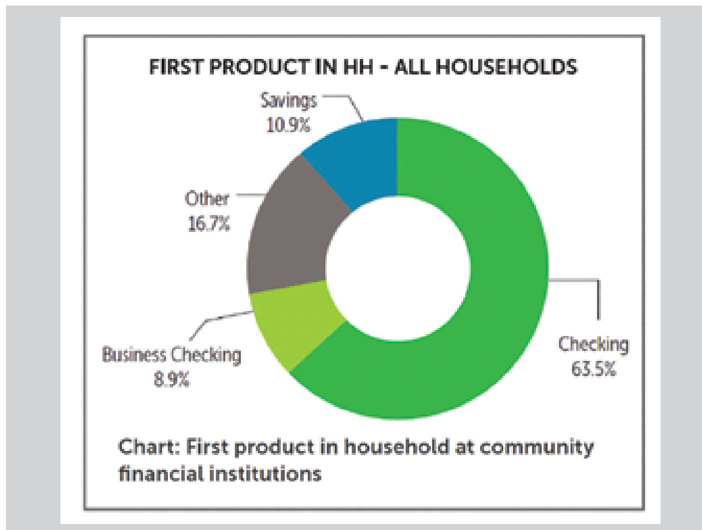

Chart: First product in household at community financial institutions

The Loyalty Factor

Bringing in more relationships should be data-driven, and the data shows the checking account and the branches are key. Data from over 100 community-based financial institutions and over 2.5 million households/businesses illustrate this point.

The vast majority, or 72%, of consumer and business relationships at community financial institutions begin with a checking account. In other words, the checking account provides the best opportunity to create customer loyalty; it is the gateway to primary financial institution status (PFI), allowing your bank first right of refusal on other products and services 68% of the time. In addition, customers who have checking accounts with your bank outpace other customers regarding products and services, generating additional NII.

Even during the pandemic, and with limited access to community-based financial institution branch networks, client data shows over 90% of new PFI relationships have come through branch channels (in-person, appointments, drive-thru, telephone). The value of your branches cannot be ignored.

The more customer loyalty you build, the more interest income and NII they generate. Consumer and business customers have almost six products and services with their primary financial institution – the math works. Most importantly, the more loyal customers you have, the better your bank will perform, now and in the future.

Years household has been with institution	Annual NII per household	Lifetime NII per household
<1 year	$166	$81
1-3 years	$206	$480
3-7 years	$233	$1,362
7+ years	$218	$4,241

Segmenting data from several million customers based on their tenure with the community financial institution shows that loyal customers, over their lifetime, generate dramatically more NII.

In addition, annual NII contribution peaks once customers have been with their PFI for a few years. Further analysis of the data explains why the checking account revenue stream does not continue to grow. Customer age demographics drive it. In general, more mature customers tend to stimulate more checking deposits than checking NII.

Creating Loyalty

Your organization must position itself to capture new customers when they are ready to switch; this creates customer loyalty. The data shows up to 12% of current retail and business customers are consistently changing financial institutions. A recent study published by The Financial Brand indicated this number could be as high as 22% post-COVID, driven primarily by the failures of the big banks to adequately serve customers during the pandemic.

So how do you position your organization for growth?

1. Checking Product: You need to get your checking product right. A confusing product does not create value or in turn, develop customer loyalty.

2. Processes: You must remove barriers. Your account-opening policies and customer identification program (CIP) practices often inhibit growth rather than encourage it. Read them for yourself.

3. Promotion: Community financial institutions have an audience that needs to be maximized and optimized within a defined footprint. If your bank is not using targeted, data-driven print and digital marketing to grow PFI customers, you are missing too many growth opportunities.

4. People: Equip your team members with the skills and the product knowledge to develop authentic relationships with customers – customer loyalty is created through customer connections.

The Bottom Line

1. To create loyalty, get the new customer first.

2. The checking account is the key to the PFI relationship.

3. Once you have the customers, products, processes, promotion and people move up the loyalty ladder.

4. The longer customers stay, the more they will contribute.

5. You can do much to accelerate that growth.

6. Customers are not all the same. You must understand their lifecycle journey with your bank.

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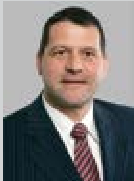
Continued from page 19

As with any strategy, there is no silver bullet; but rather, your bank should be looking for a long-term loyalty payoff. ■



Griesel

Payant

Achim Griesel is President and Dr. Sean Payant serves as the Chief Strategy Officer at Haberfeld, a data-driven consulting firm specializing in core relationships and profitability growth for community-based financial institutions. Achim can be reached at (402) 323-3793 or achim@haberfeld.com. Sean can be reached at 402.323.3614 or sean@haberfeld.com.

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CRBs and HRBs and MRBs, Oh My:

Navigating the Intricacies of Cannabis Banking

By Gwyneth LoCascio, Arnett Carbis Toothman, LLP

A new cash crop is finally coming to fruition in West Virginia: medical marijuana. This is not breaking news considering medical marijuana was legalized in West Virginia in 2017, the same year the Secure and Fair Engagement (SAFE) Banking Act was introduced in Congress.

Financial institutions may not have to fear federal repercussions for Marijuana-Related Businesses (MRBs) in the near future. In April of this year, the U.S. House of Representatives passed the SAFE Banking Act. While the Act has an uphill battle of passing the U.S. Senate, this is a clear indicator that attitudes toward marijuana are changing. During a virtual town hall event held in March 2021, Governor Jim Justice expressed openness to legalizing recreational marijuana if it means generating more tax revenue for West Virginia.

Given the rapidly changing stance on marijuana, it is expected that West Virginia will continue to see an increase in MRBs. Not only will MRBs be more prevalent, but there are other acronyms on the scene: Hemp-Related Business (HRB) and CBD-Related Business (CRB). Marijuana, hemp and CBD, derived from the same plant family, all fall under the metaphorical umbrella of cannabis. The differentiation of marijuana, hemp, and CBD is their level of tetrahydrocannabinol, more commonly referred to as THC.

The main compound in cannabis, THC and how much of it is the critical factor in what makes a business illegal in the eyes of the federal government. Hemp contains less than 0.3% of THC, and marijuana contains 0.3% or more. CBD is a secondary compound found in cannabis and does not have psychoactive properties. CBD products may contain more or less than 0.3% THC, depending on where it is sold.

With the changing views toward marijuana comes an emphasis on "know your customer" procedures, tasks and requirements for all financial institutions. Even if your institution does not have any customers directly producing marijuana, hemp or CBD, you may already have customers who generate revenue in one of the three businesses mentioned earlier. It could be the gas station that sells CBD capsules, a shop selling hemp textiles, or a sole proprietor who prepares a tax return for one or more MRBs.

It is essential to know your customer and your customer's business thoroughly. This would be the year to ensure your Cannabis Banking policy is in order, as examiners will likely scrutinize it due to the updates to Anti-Money Laundering (AML) and Customer Due Diligence (CDD).

In January of this year, Congress passed the National Defense Authorization Act, and with it came the AML Act. This Act strengthens the requirements when it comes to CDD, specifically beneficial owners of businesses. The public comment period – for implementing a practical ownership database that government agencies may use – closed in May 2021.

With all these new regulatory changes, how do you ensure your financial institution has its bases covered? For starters, if your financial institution does not have a written Cannabis Banking policy, consider developing one now. The policy should include several essential items, such as the three different MRB tiers.

- Tier 1 – businesses that are directly involved with producing and selling marijuana
- Tier 2 – businesses that assist in producing marijuana (i.e., process payments, sell marijuana farming supplies, etc.)
- Tier 3 – businesses that provide services to Tier 1 or Tier 2 businesses, such as legal representation or accounting services

Tier 1 MRBs would be considered the highest risk of MRBs. Risk levels should decrease for Tier 2 and Tier 3 MRBs, with Tier 3 having the lowest risk.

Issued FinCEN guidance, the 2018 Farm Bill, and state laws such as West Virginia's SB 386 are all tools that may offer further in-depth advice when constructing an MRB policy that aligns with the financial institution's risk appetite.

Financial institutions should revisit their current Know Your Customer (KYC) procedures and Customer Identification Procedures (CIP). This will mitigate the chances of any surprises for new customers and their potential involvement

with MRBs and other cannabis-related businesses. In anticipation of updates to beneficial ownership procedures, additional training and reviewing practical ownership requirements can alleviate the stress of whether all necessary information was obtained before account opening.

Internal updates to CIP may be as simple as implementing a questionnaire where the prospective customer attests to the nature of their business. The questionnaire may include the following:

- Have the customer identify under which tier their business falls.

- Have the customer disclose if any of their revenue is generated from sales or manufacturing of THC products.

- Require the customer to attest to the level of THC in their products to assist financial institutions in identifying MRBs, HRBs or CRBs.

- Dates and signatures on these questionnaires will substantiate pertinent information before account opening.

- The opening of an account is just the beginning, as ongoing monitoring and Suspicious Activity Report (SAR) submissions will need to be conducted for the totality of the relationship.

- Despite the rescinding of the Cole Memo in 2018, it is still used as an evaluation standard for filing the three MRB-related SARs.

- Marijuana Limited SAR: An MRB does not raise any red flags outlined in the Cole Memo nor violate state law.

- Marijuana Priority SAR: An MRB may raise red flags outlined in the Cole Memo or it may violate state law.

- Marijuana Termination SAR: An MRB raised red flags outlined in the Cole Memo or violated state law.

SARs for MRBs still need to be completed if the state legally licenses the business. The 2018 Farm Bill made hemp no longer a Schedule 1 controlled substance. With hemp's demotion came issued guidance stating SARs no longer would need to be filed on hemp-related business solely due to the nature of their business.

While it is up to each financial institution to determine whether they want to take the risk of banking cannabis, your policies and monitoring procedures addressing your stance will need to be made tangible. Possible future federal protections and West Virginia looking to generate more tax revenue should highlight the need for financial institutions to proactively take the steps now to prepare for this rapidly evolving industry. ■

Gwyneth LoCascio is a Senior Associate at Arnett Carbis Toothman, LLP with over four years of experience in public accounting. Ms. LoCascio's direct experience in servicing financial institutions includes financial statement audits, internal audits, loan review and regulatory compliance consulting. Ms. LoCascio can be reached at (304) 346-0441 or gwyneth.locascio@actcpas.com.

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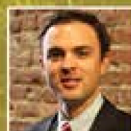
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Five Pillars Supporting Community Bank Independence

By Mark Mangano, Jackson Kelly PLLC

Most community bank boards aspire to maintain long-term independence. Supporting that aspiration requires a commitment to five distinct pillars: Performance, Shareholders, Management, Leadership and Vision. A consistent focus on all five pillars can significantly increase the bank's chances of remaining independent or supporting a high price for being acquired. Neglecting any one pillar will undermine the bank's value and decrease the chances of staying independent.

Community bank directors face increasingly complex challenges. They continually receive general admonitions to maximize shareholder value and specific demands from regulators to oversee operational, planning and compliance issues. But between these two extremes, bank directors are left to fend for themselves. Neither general admonitions nor explicit instructions provide a framework for boards seeking long-term independence.

Most boards justifiably concentrate most of their attention on performance. Performance is the lynchpin of independence. Achieving a safe, sound and profitable operation is essential. But remaining independent is about the future promise of the bank. For a variety of reasons unrelated to performance, high-performing banks are sold out of existence every year. Boards with aspirations to remain independent must broaden their focus beyond performance.

Five Independence Pillars

Performance

Performance encompasses every element impacting the creation of consistently acceptable returns. Performance includes all safety and soundness considerations as well as compliance with consumer and banking regulations. Beyond ensuring growth and strong returns, performance must focus on increasing demands to improve technology, risk management and operational efficiency.

Community banks today are generally excellent at addressing performance. Passing through the crucible of the great financial crisis honed board and management skills in designing and maintaining safe, sound and profitable business models. Community bankers have shown remarkable abilities to adapt to constantly evolving business challenges.

Shareholders

A bank's independence is dependent on its shareholders' willingness to hold the bank's stock in the face of many other options. A community bank shareholder's definition of value is some combination of the following elements:

- Bank performance
- Share liquidity
- Share value appreciation
- Cash flow
- Sentimental attachment
- Commitment to the community bank mission

The relative importance of each of these factors is different for every shareholder and every shareholder group.

Boards must constantly focus on retaining quality managers while developing or recruiting the managers and leaders who can carry the bank's mission into the future. Boards must also continually assess the technical and leadership qualities of the bank management team.

Remaining independent requires continuous focus on addressing the elements most important to the bank's significant shareholders and the entire shareholder base. How shareholders value the stock can change over time.

Management

Boards must constantly focus on retaining quality managers while developing or recruiting the managers and leaders who can carry the bank's mission into the future. Boards must also continually assess the technical and leadership qualities of the bank management team. This pillar requires board commitment to succession planning, compensation programs, staff and manager development and planning.

Leadership

Board leadership is a crucial determinant of longevity. The demands of corporate governance today are more significant than ever. High-performing boards are composed of directors with a combination of talent, experience and commitment. Maintaining and improving the board of directors should be a constant priority. Boards should not wait until a group of directors is ready to retire before recruiting and repopulating the board. It often takes several years for new directors to understand their role in the bank thoroughly.

In addition, boards should work toward improving and adapting corporate governance practices. Corporate governance is a dynamic discipline. Boards should continually evaluate whether the board's time, attention, and resources are devoted to the most important determinates of long-term success.

Vision

Vision is the most commonly neglected pillar of independence. Every bank should have a stated vision of the bank's future value proposition. Vision must be something more than an abstract concept. A strong vision places the daily decisions of a board and management team in the context of the board's chosen path to increasing shareholder value.

A clearly articulated vision can bind the board, management, and staff to pursue a goal more significant than the sum of their daily activities. It also provides a framework for the board to model its definition of future shareholder value.

Using the Pillars as a Structure for Making Decisions

Board agendas should reflect pillar considerations

Including discussions of all five pillars in monthly or quarterly board agendas can keep critical priorities before the board. We are what we do routinely. Boards that choose to prioritize all five pillars are much more likely to take actions that create a holistic approach to their bank's future.

Recognize that the process is never complete

Corporate governance should constantly evolve. The best boards embrace the knowledge that the banks they lead are dynamic and changing. The board's response should be to adapt governance practices to match that dynamism.

Benefits

Boards that prioritize all five pillars have a greater sense of the bank's actual value for their shareholders. A board's evaluation of the five pillars ensures a forward-looking approach to bank leadership. With a focus on the five pillars and a little good fortune, shareholders will continue to value investment in the bank over other investment opportunities. ■

Mark Mangano is Counsel with Jackson Kelly PLLC. Mark is a former community bank CEO and owner. He focuses his practice on assisting clients with strategic planning, corporate governance, banking regulation, and mergers and acquisitions. Contact Mark at (304) 670-0441 or mark.mangano@jacksonskelly.com.

Good Things Come to Those Who Wait:

Interagency Proposed Flood Q&As

By Elizabeth K. Madlem, Compliance Alliance

The Agencies (OCC, FRB, FDIC, FCA, and NCUA) have recently proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance. The purpose of this proposal is to supplement the July 2020 proposed Q&As, which only contained two proposed questions on private flood insurance. These new proposed Q&As are formulated based on questions received by the Agencies regarding private flood insurance rules that went into effect July 1, 2019, and include 24 proposed Q&As on private flood insurance.

In attempts to provide additional clarity on requirements, the proposed Q&As use the term "Act" in reference to the National Flood Insurance Act of 1968 (NFIA) and the Flood Disaster Protection Act of 1973 (FDPA), as well as "Regulation," to refer to each Agency's current flood insurance rule.

The new proposed Q&As are divided into three main categories regarding private flood insurance:

1. Mandatory Acceptance (9 proposed Q&As)

2. Discretionary Acceptance (4 proposed Q&As)

3. General Compliance (11 proposed Q&As)

So, what does this mean for financial institutions?

Mandatory Acceptance Key Takeaways

Anytime renewals, or when a borrower presents a new private flood insurance policy regardless of whether a MIRE event occurred (making, increasing, renewing, or extending of a loan), the lender is required to review the policy to determine if it meets the mandatory purchase criteria. If it does not, the lender may still accept the policy if it meets the discretionary acceptance criteria. If a lender has a policy to not originate mortgage loans in nonparticipating communities or coastal barrier regions where NFIP is not available, private flood insurance requirements are not going to require the lender to change its policy.

Lenders are not required to accept private flood insurance policies solely because the policy contains the compliance aid assurance clause when the lender reviews it and determines the policy actually does not meet the mandatory acceptance requirements. But that does not alleviate the lender from reviewing a policy that does not contain the compliance aid assurance clause to determine whether it meets the requirements for private flood insurance before rejecting the policy. The policy must contain the compliance aid assurance clause language in the policy or an addendum before the bank accepts without conducting a review. Even if that is true, the lender must still ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the loan

There are additional requirements when it comes to mandatory Acceptance or discretionary Acceptance and deductibles when it comes to coverage amounts exceeding or not exceeding the amount available under the NFIP. Additionally, lenders are not prohibited when using a third party to review private flood insurance policies from charging a fee to the borrower.

or the maximum amount of the coverage available under the Act for the type of property and that other key aspects of the policy are accurate, like the borrower's name and address.

Lastly, if a policy lacks the compliance aid assurance clause, the lender is still free to review the policy to determine if it meets the criteria under discretionary Acceptance from the Regulation. But it must still determine, even if the policy does not meet the requirement for discretionary Acceptance, whether they are still required to accept under mandatory Acceptance.

Discretionary Acceptance Key Takeaways

Under the discretionary acceptance test, lenders must evaluate the sufficiency of the insurer's solvency, strength, and ability to satisfy claims under general safety and soundness principles. They may obtain information from a State insurance regulator for the State where the property is located and rely on licensing and other processes used by the State insurance regulator for such an evaluation.

Additionally, if a lender has previously accepted a private flood insurance policy under the discretionary acceptance requirements and that policy is renewed, the lender still must review the policy to ensure it continues to meet the discretionary acceptance requirements. A conclusion to this fact must be documented in writing.

General Compliance Key Takeaways

There are additional requirements when it comes to mandatory Acceptance or discretionary Acceptance and deductibles when it comes to coverage amounts exceeding or not exceeding the amount available under the NFIP. Additionally, lenders are not prohibited when using a third party to review private flood insurance policies from charging a fee to the borrower. Disclosure requirements regarding the fee do come into play, however.

If a declarations page provides enough information for the lender to make a determination on mandatory or discretionary Acceptance, or if the declarations page contains the compliance aid assurance clause, lenders are free to rely on the declarations page to determine if the policy complies with the Regulation but should request additional information about the policy if not able to make that determination. Lastly, servicers must comply with the Regulation as well when determining whether private flood insurance may be accepted under the mandatory or discretionary acceptance provisions if the lender is supervised by the Agencies. ■

Elizabeth K. Madlem, Associate General Counsel
Elizabeth has come back to Compliance Alliance as Associate General Counsel and Compliance Officer. Elizabeth will be handling C/A document reviews, participating in the Education department, and contributing as a featured author. She is looking forward to assisting members with their compliance and regulatory questions. Contact Membership Development Team at (888) 353-3933 or info@compliancealliance.com.

Is Opportunity Cost Hurting Our Bottom Line?

By Greg Tomaszewicz, The Baker Group

As the U.S. economy continues to work its way out of the recession brought on by the COVID-19 pandemic, many economists debate what the future will hold. With inflation, asset bubbles, rising rates, and the effect of fiscal spending being hot topics during board and ALCO discussions, the question becomes this: What should we do to prepare our balance sheet for what may come? However, for all these discussions about potential future challenges to earnings, seldom do boards and ALCOs discuss the revenues lost due to opportunity cost.

Opportunity cost lurks as a silent killer of margins, especially given the current abundance of liquidity in financial institutions. While tax returns and stimulus checks continue to add to the excess of liquidity, the earnings on those dollars remain at near zero. With all the uncertainty in the economy, many financial institutions fall victim to sitting on the sidelines waiting for a clearer picture to emerge and are missing out on the current opportunity the market is giving them.

3-Month UST vs. 10-Year UST

Source: Board of Governors of the Federal Reserve System (US)/FRED

While the official start of the current recession was February 2020, the downturn in economic activity began much earlier with the Federal Reserve acting quickly to soften the blow and lower rates. The drop in short-term rates was quick. The 10yr treasury followed suit, dropping from 1.60% at the start of the recession to a low of 0.55% by August 2020. Following that low, the 10yr started moving higher and currently sits around 1.60% at the time of this writing, a significant level given the behavior of past recessions.

Upon the beginning of recovery following the previous two recessions, the 10yr regained its pre-recession levels and saw minimal gains from that point. At the same time, short-term rates continued to either decline or remained lower for a prolonged period. The early 2000s recession, known as the dot-com bubble, saw the 10yr at 5.00% and eight months later hit 4.90% at the recession's official end. During the Great Recession, which lasted more than twice as long, the 10yr entered at 3.90% and hit around 3.60% at the beginning of the subsequent recovery.

In both cases, the 10yr saw most gains initially jump to start the recovery, with very little if any increase beyond that. While the current recession is ongoing, the 10yr has already reached its pre-recession levels. With Federal Reserve pledging to continue keeping rates low, the opportunity for financial institutions to recoup lost margins is now.

The best way we can tackle both the pressures of future economic uncertainty and opportunity costs is to actively manage the risks to our balance sheet through sound asset-liability management. While many will claim they already do this, the fact remains that a large number of financial institutions only manage parts of their balance sheet, leaving others on autopilot. The best-performing institutions take advantage of all the tools available to properly manage risks regardless of what the economy and interest rates are doing.

Stabilizing Funding

One of the most significant fears examiners have put into financial institutions is the idea that without warning, we may face a large run-off in our deposit portfolios. All too often this fear causes many institutions to overcompensate by holding on to more liquidity than is necessary. Looking at current call report data as deposits soar to record levels once again, many institutions find themselves questioning whether this liquidity is here to stay or is on the way out as quickly as it arrived.

Maintaining excess cash levels to have sufficient liquidity is not only inadequate risk management, it is also the most expensive method from an opportunity cost standpoint. Proper liquidity management means having adequate cash flows and contingent liquidity sources to meet any loan demand or deposit withdrawals.

The better performing institutions tend to use opportunities in wholesale funding from a source such as the Federal Home Loan Bank. With borrowing rates remaining low, the opportunity exists to make a positive spread on loans. So rather than waiting for loan demand to use our excess cash, we can now deploy those funds to avoid lost income due to opportunity cost. In the worst case, if we are short on funds when loan demand comes in, we can borrow and still maintain positive margins.

Managing and Diversifying Loans

In a similar way to deposits, loans often fall victim to an autopilot management style where loan demand ebbs and flows based both on volume and the types of loans, with seemingly little we can do about it. In reality, the loan portfolio can be diversified and managed similarly to the investment portfolio through loan participation. Selling loans can help us to manage excess flows in a particular loan type, alleviating concentration risk while also generating some off-balance-sheet revenue through servicing income.

Purchasing loan participations can help fill the gaps in the loan portfolio where retail demand falls short, allowing us to diversify the loan portfolio and potentially hedge against prepayment or geographic risks. The relevant example is the large amount of refinancing seen recently in the mortgage market, which caused mortgage-heavy institutions to experience faster than expected turn-over in their loan portfolios, resulting in a loss of income.

Investment Portfolio Management

Perhaps the biggest victim of opportunity cost is the investment portfolio, especially during rising rates and the effect of falling market values. Frequently, boards and ALCOs will put these unrealized losses on investments under a microscope and pause to purchase more investments while seeking to understand what has happened. However, we tend to ignore the fact that the drop in valuation also affects our loans, a big part of interest rate risk, but more importantly, this is generally good for the balance sheet as a whole.

Lower market values on our investments mean there is an opportunity for maturing investments to move into higher rates, allowing our portfolio income to grow and cash invested at a higher spread. The current investments will continue to generate revenue for us and, unless we choose to sell them before maturity, that loss will eventually disappear as the investment matures.

No one can predict precisely where the economy will go from here and waiting to get a clear direction will only cause us to fall victim to opportunity cost. The only way to adequately address these uncertainties is to have solid asset-liability management and take advantage of all the available tools to cultivate a well-diversified balance sheet and actively managed it across deposits, loans, and investments. In this way, we ensure that we manage our institutions to the risks we know instead of the unknowns. ■

Greg Tomaszewicz is a Senior Financial Strategist with The Baker Group. Before joining the firm in 2018, Greg spent 12 years working for a fixed-income broker/dealer in New York. He helped financial institutions across the country evaluate their balance sheet risks and opportunities. In addition, he worked to develop new analytics to aid those clients in meeting the challenges of an ever-changing economic environment. Greg holds a bachelor's degree in economics from Stony Brook University. Contact Greg at (800) 937-2257 or gregt@GoBaker.com.

WVCCPA Finds Its Equilibrium

By David E. Chaney and Peter J. Raupp, Steptoe & Johnson PLLC

On March 29, 2021, Governor Jim Justice signed into law Senate Bill 5, which amended the West Virginia Consumer Credit and Protection Act ("WVCCPA"). The amendments were met with optimism by businesses in West Virginia as they provide enhanced procedures intended to deter frivolous lawsuits. Initially enacted in 1974, the stated purpose of the WVCCPA was to "protect the public and foster fair and honest competition." However, since its enactment, the WVCCPA has been criticized for its notoriously consumer-friendly application. As amended, the WVCCPA provides (1) criteria for a court to evaluate reasonable attorney's fees and expense awards to the consumer; (2) an explicit process for an offer to settle or offer of judgment; (3) an avenue for the recovery of attorney's fees from plaintiffs in the event for finding a claim was frivolous or made in bad faith or upon rejection of a settlement without justification; and (4) a unified mechanism for pre-suit notices of violation and offers to cure.

The new amendments to the WVCCPA intend to help equalize the positions of the consumer plaintiff and defendant in claims brought under the WVCCPA in several ways.

First, the amendments provide 12 factors a court should examine to determine reasonable attorney's fees and expenses to the consumer plaintiff. The court will utilize these 12 factors when determining reasonable attorney's fees and expenses for the defendant when a plaintiff consumer has brought a claim in bad faith or for harassment.

Second, the amendments provide a mechanism to make an offer of judgment. The amendments seek to penalize a consumer plaintiff who rejects a reasonable offer of judgment. If the final judgment is one of no liability or if the final judgment, inclusive of all actual damages, civil

Based on the risk of the new penalties imposed under the amendments, parties will need to think twice before asserting claims or defenses in actions under the WVCCPA. Further, the penalties provided in the amendments will likely impact settlement negotiations.

penalties, and any other monetary or equitable relief, is less than 75% of the offer, the defendant may recover attorney's fees and expenses. From the date of the offer through the entry of judgment, the consumer plaintiff may be barred from recovering attorneys' fees and costs.

Third, the amendments address instances in which a frivolous claim or defense has been made against the prevailing party. Under the new amendments to the WVCCPA, a party prevailing after a judgment has been entered may move the court to determine whether the opposing party presented a frivolous claim or defense. Following the motion, the court holds a separate bifurcated hearing to determine if the frivolous claim or defense was asserted and, if the claim or defense was frivolous, to award damages against the party presenting those claims.

Under the amendments, the term "frivolous claims" is quite broad in its scope. Specifically, a "frivolous claim" lacks substantial justification, is not made in good faith, is made with malice, is made with a wrongful purpose, is made without any reasonable belief that a court would accept the claim, or a claim interposed for delay or harassment.

Fourth and finally, the amendments help codify a unified mechanism for pre-suit notices of violation and offers to cure. Before being amended, the nature of the claim determined which section of the WVCCPA governed the claim. Instead, the amendments provide a unified mechanism for consumer plaintiffs to transmit required notices and defendants to transmit offers to cure. More specifically, a consumer plaintiff must inform the defendant of the alleged violation 45 days before bringing any action under the WVCCPA. Once receiving notice of the alleged violation, the defendant has 45 days to make a cure offer if received by the agent or at the principal place of business, and 20 days to make a cure offer if a cause of action has already been filed. A consumer plaintiff then has 20 days from receipt of the cure offer to accept or refuse.

Based on the risk of the new penalties imposed under the amendments, parties will need to think twice before asserting claims or defenses in actions under the WVCCPA. Further, the penalties provided in the amendments will likely impact settlement negotiations. Defendants can utilize offers of judgments to leverage their positions when negotiating with consumer plaintiffs. When an offer of judgment is sent to consumer plaintiffs, they need to incorporate the risk that they may not recover their attorney's fees and costs. Additionally, they may have to pay the defendant's fees and costs should a final judgment be entered below 75% of the offer.

In summation, the amendments to the WVCCPA are an essential step to ensure a balanced equilibrium between consumer plaintiffs and defendants. The amendments provide penalties for which plaintiffs and defendants will need to be aware as they may expose their clients to fees and costs not recoverable before the enactment of the amendments. Consumer plaintiffs will need to be especially careful, as the new amendments appear to target frivolous claims and thus, may require consumer plaintiffs to ensure claims brought have merit.

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David E. Chaney is an associate in the Bridgeport office of Steptoe & Johnson PLLC. He is a member of the Business Litigation Practice Group and Energy Litigation Practice Group. David seeks to help business clients understand the impact of legal proceedings they may face during their work. He can be reached at David.Chaney@Steptoe-Johnson.com or (304) 933-8188.

Peter Raupp is a member of the Charleston office of Steptoe & Johnson PLLC. Peter focuses his litigation practice on commercial litigation, general litigation, professional liability, civil rights and appellate law. He can be reached at Peter.Raupp@Steptoe-Johnson.com or (304) 353-8125.

2021 Calendar of Events

(All events scheduled are live and have a recorded backup online)

July

25 - 27	WVBankers/Ohio Bankers League 2021 Joint Convention

August

31 & Sept 1	Branch Management School Series (Stonewall)

September

16	Human Resource Management for Bankers (Sam Bowling)
24	Disaster Preparedness (Stonewall Resort)

October

4 & 5	BSA/AML School Fundamentals (Stonewall)
6 & 7	BSA/AML School Advanced (Stonewall)

November

8 - 9	CEO Conference
15 & 16	Consumer Lending Conference (Beginner) (Four Points)
17	Consumer Lending Conference (Advanced) (Four Points)
TBD	CFO Conference

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