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SUMMER 2022

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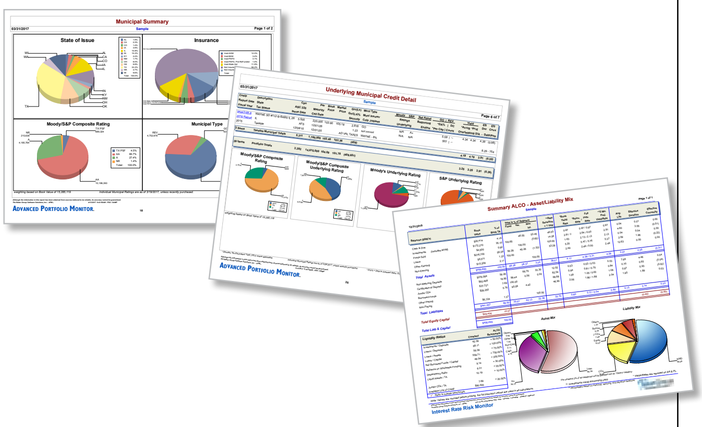

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A MESSAGE FROM **THE CHIEF EXECUTIVE:**

By Sally Cline

2022 Young Banker of the Year Award

As bankers, we know and understand that a career in banking continues to be one of the most challenging, competitive and rewarding careers in the corporate world. Moreover, our industry covers a diverse collection of job positions that include nearly every skill set, experience level, and career goal.

What is so exciting about our industry is that banking is constantly changing and evolving. Today's banking environment is not what it was 20 years ago, and it will not be the environment of the future. From a talent management perspective, the workforce is transforming too. Baby boomers are beginning to retire in increasing numbers, and Generation Xers are moving into senior management positions. The next group, Generation Y or millennials, are now far enough in their careers to have gained some meaningful experience, with a number having been identified as up-and-coming leaders.

In order to preserve West Virginia's existing network of banks, it is imperative that we cultivate the next generation of bank leaders. As announced late last year, the Future Leaders Council presented to Association leadership an idea to recognize high-potential bankers under the age of 40 through a Young Banker of the Year Award. WVBankers received nine nominations from six-member banks. Each of the nominees is impressive and has clearly demonstrated a deep commitment to his/her organization, the industry and the local community.

I am pleased to announce that the WVBankers Board of Directors, through a blind selection process, selected Elisha "E.J." Hassan, AVP and Senior Portfolio Manager at United Bank, as our inaugural Young Banker of the Year. He, along with his fellow nominees, exemplifies what it means to be a banker. Congratulations to all the nominees for this special recognition. With your enthusiasm and determination, the future of banking looks bright.

I would also like to congratulate United Bank, as well as the other banks that participated in our Young Banker of the Year initiative, for creating an environment that allows and encourages employees to grow and develop. Talent and Leadership Development programs are integral to that process. If your bank does not offer its own internal training program, please look to the offerings at WVBankers.

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In order to preserve West Virginia's existing network of banks, it is imperative that we cultivate the next generation of bank leaders.

A priority of WVBankers is to help you, your employees, and your institution thrive so that your customers and communities will too. We offer workforce training built for today but focused on tomorrow. You and your bank's employees can reskill, upskill, and hone your expertise with our wide range of in-person and virtual training and events. Our training and education offerings span the many diverse roles and opportunities today's world of banking offers. I encourage you to explore our options for various areas of focus.

From an entry-level perspective, WVBankers has partnered with ABA to offer basic facilitated banking courses such as Banking Fundamentals, Money and Banking, and General Accounting. Once an employee has advanced to a first-level officer, they are encouraged to attend the West Virginia School of Banking, a one-week program held in May of each year. This educational program has been around for 75 years, and it is constantly updated to provide relevant and timely content. The challenging curriculum is taught by a faculty with excellent teaching credentials and vast experience. Students obtain a broad and fundamental understanding of significant banking, economic, and monetary issues, as well as a better understanding of day-to-day banking operations. Twenty-seven students graduated from the two-year program this spring. In 2001, we added a third year for returning students to take graduate-level classes with a more challenging curriculum as well as advanced bank simulation. Training then progresses to the Emerging Leaders Forum and the Graduate School of Banking at LSU.

As bankers, you also recognize that challenges lie in developing the key leadership requirements for institutional success and in the navigation of the managerial challenges that lie ahead. Because we know that success as an institution requires thoughtful, forward-looking leadership, I am pleased to announce that WVBankers has joined with other State Bankers Associations across the country to offer the Society of Bank Executives, which provides a platform by which your executive team can actively engage with peers outside your market to address real-world challenges. Included in this magazine is an article submitted by the Academic Director of the Society, Dr. Paul Godfrey, where you can learn more about this empowering network.

Training programs that focus on talented younger employees in the organization are important, but none of us should become complacent in our jobs. We each have an obligation to grow and learn. The future of our industry depends on it. ■


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A Conversation with EJ Hassan – 2022 West Virginia Young Banker of the Year

What contribution have you made in your career that is the most meaningful to you?

The most meaningful contribution I have made in my career was the time spent helping customers navigate the pandemic. In a time of extreme uncertainty that was felt across the entire state, it was an extremely humbling and rewarding experience to play the role of financial first responder. We worked around the clock to process PPP loans and provide other assistance for customers who were concerned about their financial future and ability to continue operating their businesses and paying their employees.

What is your greatest career accomplishment?

My greatest career accomplishment is leading teams responsible for managing the PPP process throughout the bank. The process was new to everyone and became even more difficult to navigate as additional funding rounds were open concurrently with forgiveness processing. Additionally, United Bank was in a unique situation. We were onboarding customers and lenders associated with two mergers and expanding the bank into the new geographical territory. Our team provided consistent guidance and direction to lenders across the entire footprint and worked within various specialized areas responsible for efficient processing. We processed more than 100 paper applications daily at times and eliminated any application or technical issues that might stand in the way of a borrower and the funding they needed.

I am so grateful for the trust that the bank put in me to help lead us through this program. It allowed me to truly impact our entire business while building connections and relationships with PPP team members and lending teams across West Virginia and the bank's footprint.

What motivates you to work?

I am motivated to work, specifically in banking, because our industry is the financial backbone of the communities we serve. As part of the commercial lending group, I understand that my team's work helps to drive economic activity within the Huntington market. I take ownership of that responsibility when I come into the branch each day to work.

What is your favorite thing about living in West Virginia?

My favorite thing about West Virginia is its natural beauty. Time tends to move a bit slower here than in other parts of the country, giving West Virginia a unique, peaceful charm that makes it a great place to build a family and career.

Who is the most influential person in your life, and how have they influenced you? Why has this person been so important to you?

The two most influential people are my wife and mother. They are the most important women in my life. Each of them has always been there at critical points in my life, pushing me to be the best version of myself and allowing me to unlock my full potential.

What is a fun fact about yourself?

I love to camp! My wife, our two dogs and I have developed a true love for the outdoors and spend as many weekends as we can at our wonderful state parks here in West Virginia and other destinations across the east.

What is some advice you would give your teenage self?

The best advice I would give my teenage self would be to trust my gut and be confident. As I have continued to grow, have more opportunities, and work with many great entrepreneurs in Huntington, I have learned that success is truly defined by the individual and that we set our own limits for ourselves. Those who continue to push outside their comfort zone with confidence understand that failure is just an opportunity to learn. It is OK to trust yourself and learn from your mistakes and successes!

What are you most excited about for the future?

I am most excited about the opportunity to be in West Virginia, continuing to build my career and family. I am grateful to have an incredible company behind me in United that has challenged me to be my best and provided me opportunities to build on my skills and become a solid banker and community partner. I can't wait to continue to build on these skills in the place I've called home for nearly all of my life. United is a strong, growing company that has seen my potential for the past five-and-a-half years. The sky is the limit!

The most meaningful contribution I have made in my career was the time spent helping customers navigate the pandemic. In a time of extreme uncertainty that was felt across the entire state, it was an extremely humbling and rewarding experience to play the role of financial first responder. We worked around the clock to process PPP loans and provide other assistance for customers who were concerned about their financial future and ability to continue operating their businesses and paying their employees.

2022 Young Banker of the Year Award Nominees

Gabrielle "Gabby" Newcomer

FNB Bank
Residential Lending Officer
Years in Banking: 15

Gabby was brought on board at FNB Bank on Jan. 5, 2015, with the goal of resurrecting our consumer Mortgage Services department. At this point in time, this business segment was a major challenge for our bank. Gabby had previously worked in community banking and also had experience with a compliance consulting firm. Fast forward seven years later and Gabby holds the title of Residential Lending Officer. In her role, she manages a team of four, which operate under the strictest regulatory environment. Her team and coworkers look up to her for her diligence, knowledge, efficiency and discernment. Under Gabby's leadership, our consumer mortgage portfolio has grown from $44 million to $88 million in seven years, while also managing our secondary market avenues. FNB Bank's relationships with realtors, attorneys and home builders are as strong as ever through the work being performed by FNB's Mortgage Services. Gabby does all of this with a positive attitude and a pleasant personality that our staff, service providers and customers have come to know and expect.

Gabby has completed the WVBA Future Leaders Program and serves locally on the Hampshire County Community Foundation and the Calvary Christian Academy PTA. Gabby is the mother of Charlotte & Emma, and the wife of a full-time farmer, Luke, in Mineral County, WV.

What is your greatest career accomplishment?

I believe my greatest career accomplishment is the FNB Mortgage Department I manage. When I came on board at FNB, Senior Management gave me the opportunity to build the department and create a team in the way I envisioned would create success. I have worked hard over the last seven years to create this envisioned success and my work has paid off. My department is so successful because our customers and community know we provide efficient and unmatched customer service. Our federal exams and auditor reports also prove we are compliant with the stringent rules and regulations that govern mortgage lending. I believe being able to provide such a high level of efficiency and customer service while also staying compliant with the regulatory requirements speaks volumes.

Kim Zwier

Fifth Third Bank
Vice President Business Relationship Manager
Years in Banking: 14

Excellence, drive, and dedication define Kim in her day-to-day performance to exceed banking and personal goals. While Zwier is a graduate of Ohio State University, with a Bachelor of Science in Animal Science with a minor in Agribusiness, she has lived and worked in West Virginia for most of her career. Her banking career spans over 14 years, holding a broad range of positions. Currently, Zwier is among the top 10% of business banking relationship managers in the company.

In July 2012, Kim started at Fifth Third Bank in Charleston, WV, where she continues her banking career today and she is a top performer. Kim was a 2013 President's Circle Winner, and processed the highest number of PPP loans for her customers, including assisting other Fifth Third regions. Kim's dedication to the West Virginia community is a priority to her. She is a part of several community organizations and holds volunteer positions in the Charleston Lions Club, United Way, Generation Charleston, YMCA, Education Elevators, Charleston Rotary and Buckskin Council (Boy Scouts).

Kim is a 2019 graduate of WV Banker's Association Emerging Leaders, and 2013 graduate of Leadership Kanawha Valley. Kim is viewed by management, as well as her colleagues, as a "force of nature" in the banking and financial services business.

What motivates you to work?

I really enjoy helping people, whether it's helping someone with a loan to start their dream business or connecting/referring other business partners. When my clients value a strong/good/true business banking relationship it also really helps me want to work hard for them to exceed their needs and expectations. Sometimes, certain things with banking have a process and can take time and I enjoy walking clients through those steps to meet their goals. For example, sometimes I can't say yes on day one for a loan request, but I can provide them with the right steps and information needed to get to a "yes" in the future. I'm also motivated because I'm competitive, enjoy a challenge, and enjoy winning.

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Kayla Addison

City National Bank
Vice President/Dual Branch Manager
Years in Banking: 15

Kayla began her career at City National Bank in 2007 as an IRA specialist in the operations center and worked her way up to her current position of Vice President/Branch Manager. Kayla is a graduate of West Virginia State University and the West Virginia School of Banking. She also attended WVBA Branch Management School. Kayla is the treasurer for the Kanawha City Community Association. She is also involved with various other non-profit organizations. Kayla is a wife and mother of two children.

What motivates you to work?

I am motivated by the relationships I have built throughout the years, both with customers and coworkers.

Being in banking allows me to get to know people on such a personal level. I have customers who I have known now for more than a decade and consider my close friends. I have been able to celebrate retirements, weddings, and new babies with them, mourn with them when they experience the loss of a loved one, and help them make plans for their futures.

I have built relationships with new bankers and had the opportunity to develop and encourage them. It's one of my biggest sources of joy to watch their careers take off and celebrate their accomplishments.

Morgan Hodge

City National Bank
VP, Regional Manager, Allegheny East Region
Years in Banking: 9

Accountability, passion and community are just a few words most often used to describe Morgan Hodge. With nine years of experience in the banking industry, Morgan has established herself as a leader among her peers and a trusted advisor to her customers.

In her current role at City National Bank, Morgan leads strategic business development and customer engagement while guiding the success of a high-performing team. Morgan's success comes through her effective communication skills and the determination to remain customer-centric. Those qualities earned her the respect of clients and peers alike.

Morgan has built and developed a successful professional career. She has increased her span of responsibility from a Personal Banker to Regional Manager with oversight of seven bank branches totaling assets of $98MM. She continues to take on additional roles within the bank, and in the Lewisburg community, to expand her experience and acumen.

Advice I would give my teenage self?

You need to trust yourself before others can trust you – trust has been a key component in my career. Forget what people think about you; all that matters is what you think about yourself. Whatever you decide to do in life, do it because it makes YOU happy.

Jennifer Moore

City National Bank
Vice President, Branch Manager
Years In Banking: 14

Jen is a dual branch manager, leading our Hurricane and Winfield offices since 2012. She has been awarded branch of the year (top branch out of 95 offices) and consistently finishes in the top 10. In 2020, both her branches finished in the top 10 of our organization, a feat no other dual role manager has accomplished. She has coached two of our company's top loan producers and groomed them both for their current manager roles. Jen is a graduate of Marshall University and the West Virginia School of Banking. She is an active member of our local Chamber of Commerce's Network of Women and Generation Putnam. You can often find Jen donating time for our local United Way and community service initiatives throughout Putnam County.

In your career, what is your greatest accomplishment that is the most meaningful to you?

I'm finally at a point in my career where I'm getting to watch the seeds I've nurtured grow. I'm getting to watch employees I've had on my team step into their own leadership roles. A company is only as good as its people and it's rewarding to me to watch them flourish in their new roles.

Joe Hager
Summit Financial Group
Chief Audit Executive
and Chief Risk Officer
Years in Banking: 6

Joseph Hager is the Chief Audit Executive and Chief Risk Officer at Summit Community Bank. With almost 20 years in financial, accounting, and professional services, Joe has established himself as a trusted leader and advisor not only at Summit, but in the entire West Virginia banking sector. Having served distinguished organizations such as PwC and Arnett Carbis Toothman, Joe holds both CPA and CGMA designations which have allowed him to not only deliver strategic analysis but excel at risk management and driving corporate audit and risk operations toward success and profitability.

Who is the most influential person in your life, how have they influenced you, and how he or she is important?

Recently, my mentor John Gianola passed away. He was a selfless leader, a visionary, and a driving force in my professional development. John saw my talents and abilities, even before I did, and pushed me to be a better person. His zeal for life was an inspiration to be passionate in any endeavor worth pursuing.

Jesse Holston
City National Bank
Assistant VP – Digital
Channels Manager
Years in Banking: 9

Jesse is a life-long West Virginian. She was a National Scholar's Honor Society student at Sissonville High School and earned her Bachelor of Business Administration in Marketing with a minor in Communications from Marshall University. In her free time, Jesse can be found at the Winfield youth ball fields where she's served as a volunteer, coach, and board member. She is a strong supporter of the United Way of Central West Virginia, participating in its Day of Caring for many years. Jesse joined City in 2013 in the Electronic Banking area. Since then, she's been promoted regularly to her current role as Digital Channels and Credit Card Manager.

In your career, what is your greatest accomplishment that is the most meaningful to you?

In June 2020, we rolled out our new mobile banking app. This project is something I worked on for several years, and it felt great to finally make it available to our customers. The response we received was overwhelmingly positive, and it meant a lot to me that I was involved in something that truly benefited and was appreciated by our customers.

Amy R. Bradlyn
First Neighborhood Bank
President/CEO
Years in Banking: 7

Amy started as a PT teller 14 years ago while attending college. She returned to the bank full-time as a credit analyst in 2015. She became a lender and was named Chief Lending Officer in 2019 and was named President & CEO Jan. 1, 2022. Amy was appointed to our Board of Directors in March 2022. She is a graduate of the WV School of Banking and will graduate this June from the Graduate School of Banking at LSU. She is also a board member of the Wood County/Parkersburg Area Development Corporation.

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Are Your Borrowers Getting What They Paid For?

By Michelle Walker, Investors Title Insurance Company

As foreclosures resume after pauses due to the COVID-19 pandemic, a predictable uptick in lender title claims has followed. Spotting trends in these claims can help us identify common traps for the unwary. One recurring category of claim issues seen recently is an incomplete legal description that fails to include all of the parcels the parties intended to convey, often resulting in a significant encroachment or even lack of title to the parcel where the intended residence is located.

Of particular note for mortgage lenders, a lender's title policy may not provide coverage for failure to receive a valid lien on an intended parcel. The Covered Risks set forth in the 2006 ALTA Loan Policy provide coverage for defects in title to the estate or interest described in Schedule A as of the date of the policy. Schedule A typically provides that the policy insures a mortgage encumbering a fee simple interest in the "Land," which is defined as the land described in Schedule A and affixed improvements that by law constitute real property. The definition of "Land" goes on to explicitly state that "the term 'Land' does not include any property beyond the lines of the area described in Schedule A." This framework can result in a lack of coverage for failure to receive a lien on an intended parcel if the lender did, in fact receive a valid lien on the land identified in Schedule A of the policy.

Seeing how things can go wrong gives us insight into strategies for avoiding these issues on the front end.

A closer should be sure to identify the source of title for all parcels listed in the purchase agreement. In many claims, a purchase agreement (or even MLS listing) will identify two or more parcels by reference to the county's tax identification number, but only the parcel containing the residence will be searched. While county geographic information systems (GIS) are not a substitute for a title search or professional land survey, they can be helpful in identifying the parcels intended to be conveyed and sometimes their source of title as well.

Similarly, lenders should take care to confirm that the precise parcels listed in the purchase agreement are evaluated in the origination appraisal, then check the parcel information against the legal description contained in the mortgage to the extent possible.

Attorneys should also confirm that the new conveyance deed includes a complete legal description derived from all deeds vesting title to the intended land in the seller. We often see tracts of land that have been created over time through acquisition of neighboring parcels. The seller may have even combined the parcels for tax purposes so that they are identified by one tax identification number. If the legal description is pulled from only the most recent deed into the seller, the borrowers and their mortgage lender may be missing title to a portion of the land intended to be purchased.

While lack of title to an intended parcel can be addressed by obtaining a deed for the missing parcel, getting cooperation from a borrower to encumber a missing parcel may be challenging in a foreclosure context. If they become necessary, legal actions take time and may delay the foreclosure process. In the words of the namesake for the "Benjamins" changing hands in a real estate transaction, "an ounce of prevention is worth a pound of cure." ■

As claims counsel, Michelle Walker identifies and resolves major claims for Investors Title. Prior to joining Investors Title, Ms. Walker was a bankruptcy and litigation attorney at Parry Tyndall White in Chapel Hill, North Carolina. Ms. Walker is a Board Certified Specialist in Business and Consumer Bankruptcy Law by the North Carolina State Bar Board of Legal Specialization. She has frequently served as a speaker on bankruptcy topics for legal practitioners and law students in continuing education and classroom settings.

Student Loans: Stressors and Pitfalls as Repayments Begin and CFPB Actions Against Alleged Fraudulent Conduct

By Angela L. Beblo, Spilman Thomas & Battle, PLLC

On March 13, 2020, near the beginning of the pandemic in the U.S., the CARES Act included a pause for all federal student loans. Nearly 90 percent of student borrowers accepted "the option of pressing the pause button on their" student loans. Thus, the U.S. Department of Education ceased loan payments, applied a 0% interest rate, and stopped collection on defaulted loans (including garnishments). That pause has been extended repeatedly, and borrowers for certain student loans have not been required to make payments for nearly two years.[1] Despite the pandemic pause, the CFPB has actively been engaged in investigation and enforcement activity relating to student loans.

Payments Resume

As the deadline for payments to resume nears, many experts are sounding the alarm that borrowers are unprepared to restart payments on their student loans. A recent survey of 23,000 borrowers found that 93% of borrowers are "not prepared to resume payments" on their student loans.[2] "Even before the pandemic, the country's outstanding student loan debt balance exceeded $1.7 trillion and posed a larger burden to households than credit card or auto debt. Roughly a quarter of borrowers, or 10 million people, were estimated to be in delinquency or default."[3] According to the president of the Student Debt Crisis Center, "The ongoing pandemic combined with unprecedented inflation are huge obstacles for borrowers who are, by and large, not ready to resume payments, struggling to afford basic needs, and confused about their options moving forward."[2]

The Government Accountability Office report found an increased risk of delinquency for up to half of federal student loan borrowers as repayment begins.[3] Part of this increased risk results from outdated contact information, making communications about payments more difficult.[3]

The good news is that "the amount due will be largely the same since interest on most federal student loans was suspended during the government's payment pause."[2] While borrowers are not facing increased student loan payments, borrowers are still facing rising inflation and an increased cost of living that occurred while payments were paused.[2]

For those who cannot afford to restart payments, exploring options, including income-driven repayment plans, *For those who cannot afford to restart payments, exploring options, including income-driven repayment plans, forbearance, or deferment, may help to address the impending restart of payments.*

forbearance, or deferment, may help to address the impending restart of payments.

This is important for a couple of reasons. First, given the potential for repayment problems, servicers should expect that a potentially large number of borrowers will be contacting servicers to discuss repayment terms, repayment programs, and other options. Servicers should review policies and procedures and prepare for a potential deluge of borrowers seeking information and assistance. Second, borrowers should ensure contact information is current and, if hardship may occur due to the upcoming payment restart, should proactively be prepared to contact their servicers for assistance, options, and, potentially, more time.

CFPB Enforcement

While the pause in federal student loan payments has occurred, the CFPB has actively been engaged in enforcement activity relating to student loan debt.

Enacted in 2007, the Public Service Loan Forgiveness ("PSLF") program is a federal student loan forgiveness program for people devoted to careers in nonprofit and public organizations. The PSLF provides parameters for the cancellation of student loan debt if a borrower meets certain criteria relating to payments and years of service for a qualifying employer.[4] The loan program has proven complicated for borrowers to navigate, and several large student loan servicers recently left the program. Given the historical complaints about the PSLF program and the numerous current proposals on changes to the federal student loan programs and payments, it is no surprise that the CFPB has increased scrutiny of servicers regarding the PSLF program.[4]

"Through its supervision of student loan servicers, the CFPB has found that servicers made deceptive statements to borrowers about their ability to become eligible for PSLF. When servicers fail to provide accurate and complete information, they mislead borrowers about their ability to benefit under PSLF, which can lead to tens of thousands of dollars in loan payments that should have been canceled."[4]

A new waiver program from the Department of Education addresses these issues. The CFPB has issued clear guidance that servicers are expected to comply with federal consumer financial protection laws while administering the new waivers. "The CFPB plans to prioritize student loan servicing oversight work in deploying its enforcement and supervision resources in the coming year with a specific focus on monitoring engagement with borrowers about PSLF and the PSLF Waiver."[4]

The CFPB is not focusing only on the servicing of student loans; it has also investigated student loan lending during the pandemic pause. In one case, the CFPB entered a consent order with a company that provided "income share agreements (ISAs) to finance postsecondary education."[5] The companies used the ISA agreement in an attempt to circumvent disclosure requirements under Reg Z and TILA.[5] "The CFPB alleged that the financing companies misled students by characterizing ISAs as neither 'credit' nor 'private education loans,'" when, in fact, the ISAs were "credit" requiring certain federal disclosures.[5]

The CFPB has indicated clearly it will be focusing investigation and enforcement activity on student loans, and the servicing of student loans, for the foreseeable future. Servicers should routinely review announcements and bulletins from the CFPB on areas of focus, inquiry, or concern, then review policies and procedures to ensure compliance.

1. https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-may-1-2022
2. https://www.cnbc.com/2022/02/26/93percent-of-student-loan-borrowers-arent-prepared-to-restart-payments-survey-finds.html
3. https://www.cnbc.com/2022/02/25/half-of-student-loan-borrowers-at-increased-risk-of-delinquency-gao-finds-.html
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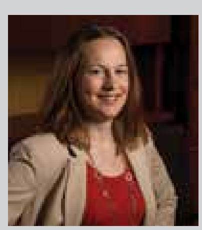
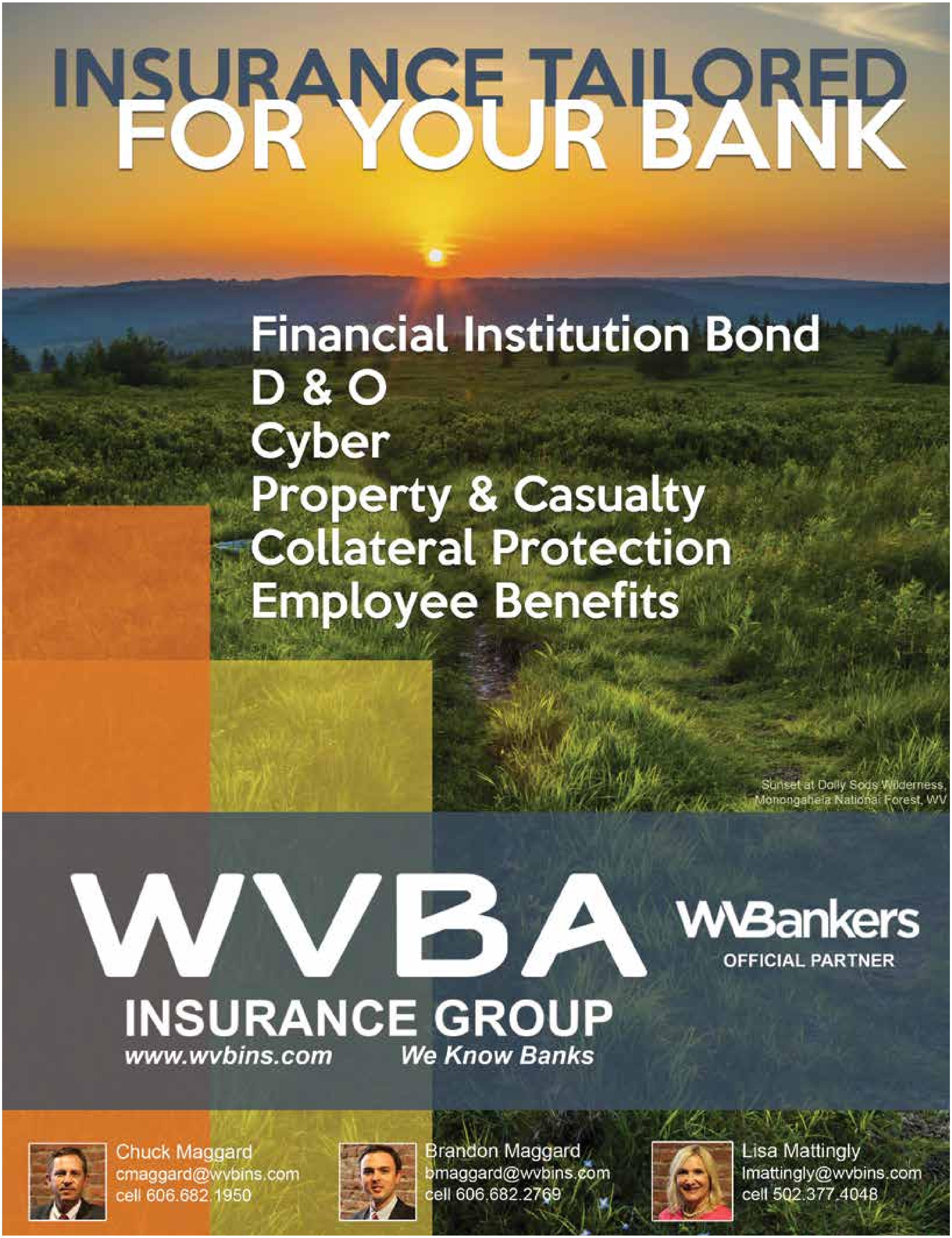


Angela L. Beblo is a Counsel attorney based in Spilman's Charleston, West Virginia office. Her primary areas of practice are consumer finance and litigation. She can be reached at 304.340.3852 or abeblo@spilmanlaw.com.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CECL is Finally Here

What to Know as We Approach Implementation

By Kelly Shafer, Suttle & Stalnaker, PLLC

The effective date for the current expected credit loss (CECL) standard is fast approaching for all financial institutions that have not yet implemented it.

While most of us have been holding out hope for yet another extension, in November, the Financial Accounting Standards Board (FASB) all but guaranteed that CECL will move forward as planned with an effective date of Jan. 1, 2023, for non-public companies. This realization came after FASB denied a request for another two-year extension, indicating they no longer see the COVID-19 pandemic as a barrier to implementation.

As we approach the January date, banks should be past the planning stage and well on the way to implementation. The following are a few practical considerations as we enter the home stretch:

The Process Can Be Outsourced, Not the Responsibility

Outsourced solutions have become increasingly popular, especially for smaller banks. A few years ago, discussions centered on whether to develop a CECL model internally or purchase third-party software to handle the leg work.

As we approach the January date, banks should be past the planning stage and well on the way to implementation.

As more software models hit the market, it became clear that the affordability and ease of use made this option preferable to the time and effort it would take to develop an in-house model.

While software can automate much of the process, management still bears the ultimate responsibility for the estimate. Key duties of management include evaluating and setting risk characteristics of the bank's loan pools, developing qualitative factors and forecasts, understanding the methodology used, and identifying how changes to inputs impact the estimate. Good software can make the process easier, but it can't replace your knowledge about your bank, your customers, and your risks.

Another important consideration when outsourcing is the control environment of the vendor providing the software. A service organization control (SOC) audit report can be obtained from vendors providing CECL software and reviewed for areas of concern. Items to look for include issues with vendor controls that may materially impact the CECL calculation and complementary user controls identified in the report. Complimentary user controls are those the vendor recommends the bank has in place to properly use their software. If the vendor's SOC report identifies significant control deficiencies, it may be necessary to reconsider the reliability of the vendor's model.

Conduct Trial Runs

If your bank is not yet conducting trial runs of your CECL model, now is the time to start. It is best practice to run the ALLL and CECL models concurrently for at least two quarters to assess the impact CECL will have on the allowance leading up to implementation. This will help identify weaknesses and refine sensitivities in the calculation. Many banks may need to adjust their approach based on the initial results of the calculation.

Be Ready on Day One

The implementation date for CECL is January 1, and the impact of implementation should be reported on the first-quarter call report. Banks will need to run the CECL calculation Jan. 1, 2023. The result of the calculation is compared to the bank's ALLL calculation Dec. 31, 2022, with

Continued on page 22

Unlike the incurred loss model, the CECL model does not specify a minimum threshold for recognition of an allowance. Therefore, banks will need to evaluate expected credit losses on these assets even if there is a low risk of loss. In some cases, the resulting loss may be zero.

Continued from page 21

the difference recorded directly to retained earnings as a cumulative-effect adjustment for the adoption of CECL. After this initial adjustment to retained earnings, future changes in the CECL estimate will be recorded through the income statement in the same manner as the ALLL.

It is also important for banks to work with their auditor on the front end to identify information required for financial statement disclosure under the new CECL requirements. New disclosure information can be accumulated throughout the year to ensure adequate data is available when the time comes to prepare financial statements.

Document All Components

The CECL calculation is comprised of three components: historical loss rate, qualitative factors, and reasonable and supportable forecasts. While the historical loss rate is the base for the calculation, qualitative factors and forecasts are equally as important. FASB has identified qualitative adjustments and forecasts as significant judgments in the calculation that require proper support and documentation. They have also made it clear that there is no cookie-cutter approach to CECL, affording banks a broad latitude in how they develop and document these two components. While this flexibility allows banks to tailor the calculation to their own risks, the lack of a standard approach can make it difficult to evaluate these factors.

Auditors and regulators will hone in on these specific areas. Expect questions as they work through the calculation and gain an understanding of your methodology. The key is robust documentation and the ability to back up each element of the calculation.

CECL Isn't Only About Loans

For banks, the primary focus has been the impact on the loan allowance calculation but CECL also applies to a number of other financial instruments carried at amortized cost, including:

- Held-to-maturity debt securities
- Trade receivables
- Receivables related to repurchase agreements
- Finance leases
- Off-balance sheet credit exposures such as loan commitments, standby letters of credit, and financial guarantees

If your bank holds these assets don't be caught unprepared. Unlike the incurred loss model, the CECL model does not specify a minimum threshold for recognition of an allowance. Therefore, banks will need to evaluate expected credit losses on these assets even if there is a low risk of loss. In some cases, the resulting loss may be zero.

While the CECL model does not apply to available-for-sale debt securities, the standard made targeted changes to existing accounting for available-for-sale debt securities that are impaired. Most notably, removing the "other-than-temporary" impairment concept and requiring the use of an allowance when security is impaired as opposed to permanently writing down the cost basis. Expect expanded financial statement disclosures in this area but no significant change in accounting for available-for-sale debt securities unless specific securities are identified as impaired. ■

If you would like additional information on CECL implementation please contact Kelly Shafer at kshafer@suttlecpas.com or 304-343-4126.

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The Society of Bank Executives:

The Power of Peer Networks

By Dr. Paul Godfrey, BYU Marriott School of Business

As you know, leading a bank today has never been more challenging; to borrow a phrase from an old General Motors advertisement, "It's not your father's bank." You and your team work harder than ever to generate income through traditional lending activities and a growing portfolio of services, and as if that isn't difficult enough in a post-pandemic, politically-charged, inflationary environment, you find yourself swimming in change, from climate investing and disclosures to cryptocurrencies to ever-evolving ransomware risks.

Bank leaders need to sharpen a different set of skills to master today's challenging environment, and successful leaders understand the critical role a vibrant peer network plays in providing perspective, identifying solutions, and accelerating learning.

We've engineered the Society of Bank Executives around the connection between meeting today's challenges and creating a vibrant peer network that leads to solutions and success.

The Art of Running a Bank

The training bank executives receive on the way up the organizational ladder typically focuses on "blocking and tackling"— the hard skills that constitute the "science" of running a bank. But the challenges that keep you up at night require knowledge and skill in the "art" of leading a bank — things like building teams, trust and culture, motivating, mentoring and coaching, and creating and deploying strategy.

The Society of Bank Executives helps you develop and expand these critical skills, not just amass information. This development happens the same way we truly learn any skill — through an intentional, peer supported process that engages us "many times in many ways." We host premier content experts virtually to expand your knowledge of the art of leadership. Then we hold a two-day in-person event, where you'll apply the skill in simulated and real situations. We'll put you in a group setting where you'll work with other bank executives on a skill-based case study, and you'll create an action plan for your bank to focus on over the next month. You can leverage your peer group for advice and feedback, and you'll return the favor by helping them formulate realistic and robust plans. You'll complete the process by reflecting on your experience with that same peer group. This simple, iterative process of Learn-Apply-Reflect forms the foundation

We've engineered the Society of Bank Executives around the connection between meeting today's challenges and creating a vibrant peer network that leads to solutions and success.

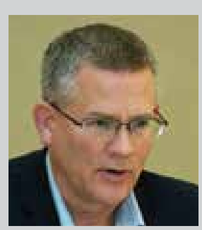
of the Society's development program. The Society spreads this process over a six-month period, covering two skills per calendar year.

The Power of an Intentional Network

We all have a loose network of people we turn to for advice. Fewer of us have a vibrant professional network with executives who understand and have experienced the challenges we face in banking, and who we can be open with and turn to because they are non-competing peers. A vibrant network doesn't grow out of random or one-off connections; it comes about as we intentionally develop meaningful relationships with others, grounded in solving real problems and challenges. In today's hyper-busy world, you don't build a vibrant network by attending cocktail parties or networking events, but rather through sustained interactions where you work on creating change, both in yourself and in your bank.

The aforementioned in-person event — held twice annually in conjunction with our skill development program — will help you expand this vital network. In small group settings, you'll work with other bank executives on applying the skill and creating a plan to continue to develop it in the future. In your peer group, you'll seek and provide advice and feedback, as well as strengthen your own network. Peer groups will rotate on a regular basis to further strengthen your opportunity to network with other executives in meaningful ways. You'll also have the opportunity to deepen those relationships through participation in joint activities, meals, and informal discussions over the two days.

If you are not managing "your father's bank," then your father's approach to developing peer networks and executive skills probably won't lead to success in today's banking environment. The goal of the Society is to help you, your executive team, and your bank to learn, grow, and thrive in an ever-changing and complex marketplace.



Dr. Paul Godfrey is the Development Advisor to the Society of Bank Executives. Learn more and apply now at executives.bank.

I Said, "Stop!" ... or at Least I Thought I Did

Borrower Complaint Letters That Trigger a Duty to Respond

By Russell Jessee and Sarah Ellis, Steptoe & Johnson, PLLC

Home loan servicers in West Virginia (and the other states covered by the U.S. Court of Appeals for the Fourth Circuit – Maryland, North Carolina, South Carolina, and Virginia) now have more clarity about borrower complaint letters that trigger a duty under the Real Estate Settlement Procedures Act (RESPA) and Regulation X to respond to the complaints.

Under RESPA, a loan servicer has a duty to respond to a "qualified written request" (QWR) received from a borrower "for information relating to the servicing of a loan." RESPA states that a QWR is "written correspondence" that "includes, or otherwise enables the servicer to identify, the name and account of the borrower" and includes a statement explaining why the borrower believes that "the account is in error."

RESPA requires that servicers "take timely action to respond to a borrower's requests to correct errors" related to servicing, such as "errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties."

Regulation X clarifies that "[a] servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower's mortgage loan account, and the error the borrower believes has occurred." Regulation X lists 11 specific categories of errors – for example, failure to accept payment, imposition of unreasonable fees, failure to provide an accurate payoff balance when requested – and a catchall of "any other error relating to the servicing of a borrower's mortgage loan."

Borrowers, however, don't study RESPA and Regulation X, so their complaint letters are not always models of clarity. This frequently leaves home loan servicers questioning whether their duty to respond has been triggered.

In a recent decision, *Morgan v. Caliber Home Loans, Inc.*, the Fourth Circuit provided guidance on what is and is not a QWR. The court considered letters to a servicer from two different borrowers, Rogers Morgan and Patrice Johnson. The trial court, the U.S. District Court for the District of Maryland, concluded that neither letter was a QWR that triggered the servicer's duty to respond.

A letter from Rogers Morgan asked Caliber to correct the amount it reported he owed to credit reporting agencies (CRAs). Caliber reported that Mr. Morgan owed more than $30,000 on his loan, but he attached a "report from D.C. Gov[ernment] stating as of 10/13/2015, I owe Caliber $16,806." Mr. Morgan alleged that Caliber continued

> *RESPA requires that servicers "take timely action to respond to a borrower's requests to correct errors" related to servicing, such as "errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties."*

reporting adverse loan information to CRAs even after receiving his letter.

A letter from Patrice Johnson challenged Caliber's refusal of a loan modification because of a priority lien by a solar panel company. Ms. Johnson's letter challenged the existence of "title issues" from the solar panel company's lien. While Caliber eventually modified Ms. Johnson's loan, Caliber declined to stop reporting adverse information to CRAs about Ms. Johnson's purported delinquent payments on her home loan during the time period before her loan was finally modified.

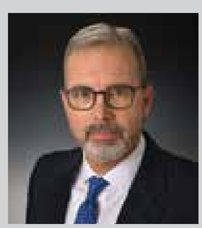
On appeal of the trial court's ruling, the Fourth Circuit concluded that if Mr. Morgan could prove his alleged facts, his letter was, indeed, a QWR to which Caliber should have responded. The trial court found that because the letter did not specifically identify disputed payments, it was not a QWR, and dismissed Mr. Morgan's complaint. The Fourth Circuit concluded that the trial court erred.

Specifically identifying disputed payments is not required for a complaint letter to be a QWR. "[T]he Morgan Letter include[d] the name, account number, and other information that would 'enable[ ] the servicer to identify' the account, and it includes 'reasons for the belief of the borrower, to the extent applicable, that the account is in error.'" The letter "also detail[ed] conflicting balance information received from [Caliber] and the credit reporting service." While Mr. Morgan did not tell Caliber which amount he thought he actually owed, "this type of discrepancy is sufficient to indicate a dispute exists as to the servicing of [the] loan."

On the other hand, the Fourth Circuit agreed with the trial court that Ms. Johnson's letter, which contested Caliber's denial of her loan modification, was not a QWR. The Fourth Circuit distinguished between a servicing complaint covered by RESPA and a contractual dispute about a loan modification.

"A loan modification is a contractual issue, not a servicing matter," the Fourth Circuit stated. Because "[t]he only error alleged in the Johnson Letter is denial of the loan modification based on title issues regarding the solar panel company lien," the complaint "[did] not fall within the ambit of 'servicing' so as to trigger RESPA's protections against providing adverse information to credit reporting agencies."

In sum, determining whether a borrower's complaint letter is related to servicing and provides enough information to trigger a duty to respond to the complaint is tricky. With the Morgan decision, the Fourth Circuit has given home loan servicers some welcome clarity. ■



Russell Jessee is a member of the Charleston office of Steptoe & Johnson, PLLC. He heads the firm's Business Litigation Group. Russell defends banks and other businesses in all manner of disputes, and he strives to reach resolutions that make business sense for his clients. He does not litigate for the sake of litigation. Rather, he seeks efficient resolutions so clients can focus on what they do best – running their businesses. He can be reached at Russell.Jessee@Steptoe-Johnson.com or 304-353-8103.

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The Educated 3(16) Fiduciary

By Richard Rausser, Pentegra

Many financial organizations tout the benefits of their ERISA 3(16) fiduciary services, and, frankly, many of these messages can sound irresistibly compelling. But buyer beware; not all 3(16) fiduciary services are created equal. In today's increasingly litigious environment, it is imperative for plan sponsors to be educated consumers of 3(16) fiduciary services.

Running a qualified retirement plan for employees is like running a business for clients. Just as with a business, the administrative responsibilities and liabilities of operating a plan are significant. The Department of Labor (DOL) views all business owners who sponsor retirement plans for employees as "3(16)" fiduciaries under federal law [ERISA Section 3(16)]. A 3(16) fiduciary is responsible for ensuring the plan is operated in compliance with the rules of ERISA day in and day out. One can say "the ERISA buck stops here" on the 3(16) plan administrator's desk.

As fiduciaries, plan sponsors are held to the highest standard of care and must operate their plans in the best interest of participants. That means their actions with respect to their plans will be judged against the "Prudent Person" rule, which says that all decisions and acts must be carried out " … with the care, skill, prudence, and diligence … " of a knowledgeable person. The DOL assumes plan sponsors know what they are doing when it comes to running a plan, and if they don't, they should seek out competent support or be at risk of a fiduciary breach. From an ERISA standpoint, a plan's "Jack of all trades" must be master of all – not none.

The DOL can hold plan sponsors personally liable for failing to fulfill their fiduciary obligations to their plan participants. Plan fiduciaries who fail in their duties can also face costly civil and criminal penalties. Perhaps even jail time. This makes a strong argument for seeking expert help in running a qualified retirement plan. Thank goodness ERISA allows plan sponsors to outsource their 3(16) fiduciary responsibilities by formally appointing another entity to assume some of their plans' administrative functions.

By engaging a 3(16) plan administrator, the plan sponsor shifts fiduciary responsibility to the provider for the services specifically contracted (e.g., plan reporting, participant disclosures, distribution authorization, plan testing, etc.). It

is important to note that a plan sponsor may never fully eliminate its fiduciary oversight responsibilities for the plan and remains "on the hook" for the prudent selection and monitoring of the 3(16) plan administrators.

There are lots of organizations out there that offer outsourced 3(16) fiduciary services (e.g., TPAs, trust companies, RIAs, etc.). The process of selecting a 3(16) outsourced solution must be carried out in a prudent manner and solely in the interest of the plan participants. The DOL requires the plan sponsor to engage in an objective process designed to elicit information necessary to evaluate candidates considering, but not limited to, the following:

- Qualifications of the service provider;
- Whether it has a consistent track record of service;
- Its professional "bench-strength" and tenure of staff;
- The quality of services provided; and
- Reasonableness of the provider's fees in light of the services provided.

In addition, such a process should be designed to avoid self-dealing, conflicts of interest or other improper influence.

In the delicate area of plan administration, it's prudent to go with an experienced professional. Pentegra is a "fiduciary first" and has been for over 75 years. Pentegra's 3(16) Fiduciary Solutions are comprehensive, proven and flexible.

Richard W. Rausser has more than 30 years of experience in the retirement benefits industry. He is Senior Vice President of Thought Leadership at Pentegra, a leading provider of retirement plans and fiduciary outsourcing to organizations nationwide. He holds an M.B.A. in Finance from Fairleigh Dickinson University and a B.A. in Economics and Business Administration from Ursinus College.

Crypto-Related Activities

Ask Before You Leap

By Mark Mangano, Jackson Kelly, PLLC

"Crypto"-related innovation in financial services is expanding at a dizzying pace. Before 2009 when the first Bitcoin was "mined" into existence, cryptocurrencies did not exist. Now there are over 19,000 cryptocurrencies with a market capital of over $1.2 trillion.[1] As much as 22% of the U.S. adult population owns Bitcoin.[2] Bank core processing vendors are announcing relationships with Fintechs to add cryptocurrency functions to banks' service offerings.[3]

"Crypto" related innovation extends well beyond digital currencies. The term has come to embrace technological and operational innovations supported by blockchains, distributed ledgers, and other technical solutions to disintermediate transactions, including contracts.

Against this backdrop, there has been relatively little regulatory guidance for community banks considering whether to adopt "crypto" solutions. In April 2022, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter FIL-16-2022, "Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities" (Crypto FIL).[4] It is important for bankers to understand three issues related to the Crypto FIL: Definitions, Risks, and Notification.

Definitions

The Crypto FIL applies to "crypto-related activities," which the FDIC defines as "acting as crypto-asset custodians; maintaining stable coin reserves; issuing crypto and other digital assets; acting as market makers or exchange or redemption agents; participating in blockchain and distributed ledger-based settlement or payment systems, including performing node functions; as well as related activities such as finder activities and lending. "Crypto asset" is defined as any digital asset implemented using cryptographic techniques.

Unfortunately, these are not exhaustive definitions. The FDIC notes that the definitions are "based on known existing or proposed crypto-related activities engaged in by FDIC-supervised institutions, but given the changing nature of this area, other activities may emerge that fall within the scope" of the Crypto FIL.

Risks

The FDIC highlighted significant risks of crypto-related activities, including safety and soundness, financial stability, and consumer protection. The FDIC further acknowledged that other significant risks may be associated with specific crypto-related activities.

Safety and soundness

The innovative and largely unregulated nature of crypto-activities makes their integration into bank services offerings extremely challenging. With respect to offering crypto-asset account services, the FDIC is concerned about a broad range

The FDIC expressed concern regarding how banks can offer cryptocurrency products while ensuring consumers do not confuse the risks related to such products with the protections and insurance associated with deposit products and services.

of operational risk issues, including liquidity, market, pricing, anti-money laundering, information security, information privacy, and technological reliability risks.

For those banks considering extending credit reliant on crypto-assets, the FDIC raises a host of concerns. Some concerns relate to assessing the asset's structure, quality, credit risk, value, and liquidity. The FDIC also notes that accounting, auditing, and financial reporting related to crypto-assets are evolving. Additional risks include confirming asset ownership and lien perfection.

Financial Stability

The FDIC expressed concern regarding two separate threats to financial system stability. First, the FDIC is concerned that crypto market events such as runs on crypto assets could destabilize banks connected with those markets. Second, the FDIC is concerned that bank operational failures could destabilize individual institutions.

Consumer Protection

A significant appeal of many cryptocurrencies is their unregulated and often speculative nature. The FDIC expressed concern regarding how banks can offer cryptocurrency products while ensuring consumers do not confuse the risks related to such products with the protections and insurance associated with deposit products and services. Exposure to claims about unfair or deceptive acts or practices related to crypto-related activities is of particular concern.

Notification

The FDIC directs banks to promptly notify their FDIC Regional Director if they engage in or plan to engage in crypto-related activity. The notice should include a description of the activity and the proposed timeline for engaging in the activity. In response, the FDIC may request information to assess the safety and soundness, financial stability, and consumer protection considerations related to the proposed activity. The burden will be on banks to demonstrate their ability to conduct crypto-related activities in a safe and sound manner.

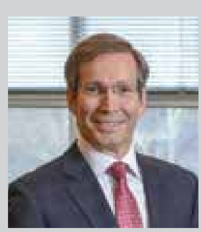
Compliance Recommendations

If we assume that the Crypto FIL applies strictly to activities involving cryptocurrencies, it would seem easy to identify when a bank needs to notify the FDIC. However, the "crypto-related activities" definition is somewhat vague and subject to continuous expansion. Many activities that are not strictly related to cryptocurrencies will likely come under the notice requirement, such as dealing with nonfungible tokens, Metaverse properties, distributed ledger activities, or smart contracts. As banks continue to work with Fintech partners to expand their service options and streamline their operations, they may find themselves engaging in crypto-related activities.

To ensure compliance with the Crypto FIL, bankers should take two steps. First, bankers should understand and keep abreast of developments related to cryptocurrency, blockchain, distributed ledger technology, and crypto-assets. Second, bankers should ensure that their vendor management process includes detailed questions about whether and how technology vendors use technologies or processes that could be considered crypto-related activities.

Many of the technology innovations backing cryptocurrencies promise benefits for financial institutions. The challenge will be safely and intentionally integrating them into the bank's existing operating models. ■

[1]https://coinmarketcap.com/historical/20220605/
[2]https://explodingtopics.com/blog/blockchain-stats
[3]https://assets-global.website-files.com/614e11536f66309636c98688/61e19d5fed306648a6a13991_NYDIG%202021%20Year%20Review.pdf
[4]https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html



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