

Compliance Check Up

August 1, 2024



Friends,

Welcome to another edition of the Compliance Check Up.

This summer is certainly heating up as we approach election season and the latter part of the year! July featured a final rule and guidance on Automated Valuations Models (AVMs) and Reconsiderations of Value (ROVs). Jeff Thompson's article details these actions.

The overturn of *Chevron Deference* in late June has impacts to our industry yet to be determined. The FDIC published Q&A about the official signs and advertising rule, but trades continue to battle the January 1, 2025 compliance date of those changes. The CFPB continues to go after mortgage servicer fees and communications, and in the wake of the Synapse failure, regulators continue to remind banks of third-party risk management and are seeking comments and proposing a rule to determine appropriate oversight of Fintechs and deposit broker relationships.

The agencies have collaborated and proposed a joint rule to align with FinCEN's June proposal to modernize AML/CFT program requirements, and the OFAC seeks to extend recordkeeping requirements to ten years. FinCEN also published a BOI registry tool to provide to inquiring customers.

Enforcement actions continue to be significant financially and reputationally to banks across the nation, and this issue's Hotline Question of the month addresses the surge in check fraud related to business accounts.

Thank you for subscribing to our newsletter. Please share this [link](#) with those at your organization or peers who aren't already signed up for the Check Up. If you have any questions or concerns, call us or email your questions to our [Compliance Hotline](#).

Sincerely,

The UBB Compliance Services Team
614-400-2699

Understanding the New AVM and ROV Rules **By Jeff Thompson, CRCM**

In July, the prudential regulators, the Bureau and FHFA issued quality control standards when ordering and relying upon automated valuation models (AVMs) in the context of primary dwelling financing. The regulators also issued guidance on how to manage reconsiderations of value (ROVs) in the context of residential real estate valuations. Both of these actions represent the agencies' continued efforts to reduce appraisal bias and comply with applicable regulations.

Automated Valuation Models (AVMs)

For purposes of this new rule, an AVM is defined as any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling. While these rules also apply to secondary market

issuers of mortgage-secured bonds, we will concentrate on the portion of the rules that apply to mortgage originators. The new regulations require models do the following:

- Ensure a high level of confidence in the estimates produced;
- Protect against the manipulation of data;
- Seek to avoid conflicts of interest;
- Require random sample testing and reviews; and
- Comply with applicable nondiscrimination laws.

Any mortgage originator that employs AVMs in the context of credit decisions is required to adopt policies, practices, procedures, and control systems designed to ensure the models are meeting the above requirements. It is important to point out these same controls are not necessarily required for institutions that use AVMs solely for the purpose of portfolio management. In addition, a mortgage for purposes of this rule is defined as “a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer’s principal dwelling.” This will include HELOCs and other junior lien mortgages.

Control systems include internal and external audits, as well as risk, quality control, and quality assurance reviews. Based on the wording in the final rule, we expect these new requirements will be effective on October 1, 2025.

Reconsiderations of Value (ROVs)

On July 18, 2024, the prudential regulators along with the CFPB issued final Guidance regarding the Reconsiderations of Value (ROVs). The Guidance will become effective when it is published in the Federal Register, so immediately for all intents and purposes.

A Reconsideration of Value (ROV) is a process wherein a financial institution requests that appraisers or others establishing the value of property reconsider when the valuation is considered deficient.

“Deficient valuations” include prohibited discrimination, errors or omissions, valuation methods, assumptions, data sources, or conclusions that are otherwise unreasonable, unsupported, unrealistic, or inappropriate. These deficiencies may arise from the bank’s own internal review process or information provided by the consumer.

The Guidance, which is limited to ROVs related to transactions secured by 1-4 family residences, applies to consumer and commercial loans. The Guidance directs banks to incorporate processes and controls into existing risk management functions, such as third party risk management, appraisal reviews, and consumer complaints. The Guidance provides examples of policies, procedures and controls that banks might adopt to identify, address and mitigate the risks associated with deficient valuations. The examples include:

- Roles and responsibilities of business units processing ROV requests;
- Processes for identifying, managing, analyzing, escalating and resolving valuation-related complaints and inquiries across business lines and from various channels and sources;
- Consumer communication on how to raise value concerns, preferably early in the underwriting process before a final credit decision is made; and
- Training to identify “deficiencies” throughout the valuation review process.

While many of the policies, procedures and controls contemplated in the Guidance may already exist within your institution, we recommend a thorough review of your program in relation to the Guidance, and improving the program if necessary.

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LENDING

July 1 – The CFPB and FHFA [published](#) updated loan-level data through the National Survey of Mortgage Originations for a sample of mortgage borrowers from 2013 to 2021. New data reflects details on appraisals, willingness to move, and disability accommodations.

July 2 – The CFPB [published](#) the 34th edition of *Supervisory Highlights* that covers violations of law and harm in the area of auto and student loan servicing and debt collection. The findings reflect exams completed from April 1 to December 31, 2023.

July 10 – The CFPB [proposed](#) a new rule that would amend Regulation X regarding responsibilities of mortgage servicers and ‘help homeowners avoid foreclosure.’ According to the CFPB, if finalized, it would stop dual tracking and limit fees, reduce delays by streamlining paperwork requirements, improve borrower-servicer communications, and ensure borrowers receive critical information in languages they understand.

July 11 – The FHFA announced Fannie Mae and Freddie Mac are making historical *VantageScore 4.0* credit scores available to approved users to support transition to the updated credit score and credit report requirements. Data sets can be found on [Fannie](#) and [Freddie](#) websites.

July 11 - The FFIEC [published](#) data on 2023 mortgage lending transactions reported under HMDA by 5,113 financial institutions. The *Snapshot National Loan-Level Dataset* containing data since May 1, 2024 was also released.

July 17 – The [OCC](#), [FRB](#), [FDIC](#), [CFPB](#), and FHFA adopted a final [rule](#) to implement quality control standards for automated valuation models (AVMs) used by mortgage originators and secondary market issuers in valuing residential real estate. The CFPB also released [Fast Facts](#) about the final rule. On July 22, the FDIC [published](#) a Financial Institution Letter (FIL).

July 18 – The [OCC](#), [FRB](#), [CFPB](#), and [FDIC](#) issued final regulatory [guidance](#) on reconsiderations of value (ROV) of residential real estate (RRE). The final guidance highlights the risks of deficient RRE valuations, outlines applicable statutes, regulations, and existing guidance that govern ROVs, explains how ROVs can be incorporated into existing risk management functions, and provides examples of policies and procedures.

July 18 – The FFIEC [released](#) the *2024 U.S. Census Flat File* used to create *HMDA and CRA Aggregate and Disclosure Reports*, which reflects changes to MSAs and metropolitan division boundaries and CRA distressed/underserved census tracts.

DEPOSITS

July 16 – The FDIC [published](#) questions and answers related to the FDIC's *Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo Final Rule*.

July 19 – The IRS [finalized](#) its rule on required minimum distributions, including those for an IRA, during the life of a retirement employee and after the death of an employee. The rule is effective September 17, 2024.

AML/CFT & FRAUD

July 9 – Several states have adopted or are considering legislation that may conflict with federal laws intended to combat ML/CT. The [letter](#) from three House lawmakers to the Treasury argues that state laws that prevent banks from denying or closing customer accounts for political or other reasons may pose “significant challenges” to compliance with BSA/AML regulations.

July 10 - Acting Comptroller of the Currency Michael J. Hsu [discussed](#) ways banks can assist their customers in avoiding fraud and scams in remarks during the Financial Literacy and Education Commission's Public Meeting.

July 11 – FinCEN [issued](#) FIN-2024-Alert002, a supplemental

alert highlighting additional red flags regarding financing of *Israeli extremist settler violence against Palestinians in the West Bank*.

July 16 – FinCEN, OFAC, and FBI [issued](#) FIN-2024-NTC2 on timeshare fraud associated with Mexico-based transnational crime organizations. The notice covers methodologies, financial typologies, red flag indicators, and SAR instructions. Approximately 6,000 U.S. victims have reported nearly \$300 million in losses.

July 19 – The FDIC, FRB, and OCC [proposed](#) a joint rule and interagency [statement](#) that would align each agency's BSA compliance program requirements with the proposed AML/CFT requirements proposed by FinCEN as a result of the AML Act of 2020. The FDIC published [FIL-42-2024](#) and OCC published [Bulletin 2024-19](#). The agencies said the proposal would require banks to identify, evaluate, and document their ML/TF and other illicit finance activity risks, as well as consider FinCEN's published national AML/CFT priorities.

July 22 – OFAC [released](#) guidance to announce an anticipated interim final rule that would extend recordkeeping requirements from five years to ten years, which would allow OFAC to commence an enforcement action within ten years of the latest date of a violation if after April 24, 2019.

July 24 – FinCEN [updated](#) Beneficial Ownership Information (BOI) FAQs again for entities disregarded for U.S. tax purposes.

July 24 – The FTC [warned](#) young adults about social media fake check scams where 'artists' asks for permission to paint photos for thousands of dollars.

July 26 – FinCEN [issued](#) a notice to provide to bank customers to help them understand new BOI reporting rules. The notice clarifies that banks collect information under separate regulatory requirements from FinCEN, and charts compare the requirements.

MISCELLANEOUS

June 28 – The Supreme Court [overturned](#) the *Chevron Deference*, which instructs courts to defer to a federal agency's reasonable interpretation of an ambiguous statute. The majority

ruled that courts must instead rely on their independent judgment when deciding whether an agency has acted within its statutory authority.

June 28 – A Federal court in Texas [issued](#) a preliminary injunction partially blocking the DOL's overtime final rule, effective July 1st, against Texas (as an employer) only.

July 1 - The Supreme Court [ruled](#) the six-year period allowed for lawsuits against the U.S. government under the Administrative Procedures Act begins accruing when an injury begins, not when regulatory action is finalized. The decision stemmed from a convenience store's challenge to debit interchange fee caps set in 2011 on the Federal Reserve's Regulation II.

July 1 – The OCC [released](#) CRA evaluations that became public during June 2024. Of the 21 evaluations, 20 were rated satisfactory or outstanding, and one was rated needs to improve.

July 5 – The White House [released](#) its *Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions*. The agenda includes proposed rules addressing FCRA and mortgage servicing and final rules on NSF fees, 1033 data rights, and OD fees, as well as AML/CFT rules applicable to investment advisers and certain real estate professionals, CDD, and 314(b) information sharing.

July 8 – The FDIC [announced](#) its monthly list of banks examined for CRA compliance.

July 10 – The FDIC [updated](#) its Risk Management manual, specifically Section 3.2 – Loans related to the issuance of 'Express Determination' letters.

July 11 – The FDIC [released](#) materials pertaining to Call Reports for June 30, 2024 and provided guidance on certain reporting

issues.

July 17 – The U.S. Department of the Treasury and Financial Services Sector Coordinating Council [published](#) resources to share on effective practices for banks' secure cloud adoption journeys.

July 18 – The Federal banking agencies [released](#) the 2024 list of distressed or underserved nonmetropolitan middle-income geographies where certain bank activities are eligible for CRA.

July 18 – The Government Accountability Office (GAO) [published](#) recommendations to help ensure bank regulators consistently assess potential and actual effects of rules. The GAO study revealed banking regulators conducted for many of the 22 major capital and liquidity rules issued in the wake of the 2007-09 financial crisis, through 2021, did not consistently reflect leading practices.

July 24 - The CFPB published [Circular 2024-04](#) on whistleblower protections, stating financial firms that require employees to sign sweeping nondisclosure agreements may risk violating the Consumer Financial Protection Act (CFPA) if those agreements do not clearly permit employees to communicate or cooperate with law enforcement.

July 25 – The FDIC published [FIL-44-2024](#) encouraging banks to voluntarily conduct and submit self-assessments of their diversity practices and policies by October 31, 2024.

July 25 – The FDIC, FRB, and OCC [announced](#) a second notice requesting comment to reduce regulatory burden. The agencies will hold a virtual public outreach meeting on September 25, 2024 as part of their review. Register [here](#).

July 25 – The FDIC, FRB, and OCC issued a

joint [statement](#) reminding banks of potential risks associated with third-party arrangements to deliver bank deposit products and services. The agencies also [published](#) a Request for Information (RFI) seeking information and comment on bank-financial technology (fintech) arrangements and risk management implications. The FDIC released [FIL-45-2024](#), and the OCC released [Bulletin 2024-21](#) and [Bulletin 2024-20](#).

July 25 – A Texas court judge [granted](#) a nationwide stay until further order of the Court of the DOL's *2024 Fiduciary Rule* that expands fiduciary status to nearly all financial service providers.

July 30 – The FRB [published](#) its latest issue of the *Consumer Compliance Outlook* that highlights Complaint Management Programs and more.

July 30 – The OCC [announced](#) registration is open for community bank director and senior management workshops scheduled for August and September 2024 in Wisconsin, Minnesota, and Missouri.

July 30 – The FDIC board met to discuss various proposed and final rules. A recording of the webcast and related materials is available [here](#).

July 30 – The FDIC [approved](#) a notice of proposed rulemaking to address the relationship between a bank, a depositor, and a third party intermediary, and the risks the relationship may pose as illustrated by the recent failure of the nonbank deposit broker Synapse.

ENFORCEMENT ACTIONS

July 1 – The Federal Reserve [fined](#) a California bank \$43 million for deficiencies in monitoring transactions related to crypto

assets in compliance with AML/CFT laws.

July 9 – The CFPB took [action](#) against repeat offender Fifth Third Bank for forcing vehicle insurance on borrower who had coverage. The activities result in the bank paying \$20 million in penalties to approximately 35,000 consumers.

July 10 – The OCC [amended](#) the enforcement action against Citibank and assessed another \$75 million civil money penalty related to deficiencies in ERM, compliance risk management, data governance, and internal controls (2020 Order).

July 18 – The OCC [announced](#) actions for July 2024, including the Citibank order and deficiencies related to BSA/AML/OFAC, board oversight, strategic planning, and more.

July 19 – The Federal Reserve [fined](#) Green Dot \$44 million for unfair and deceptive practices and deficient AML/CFT and consumer compliance risk management programs.

July 19 – The Federal Reserve [issued](#) an enforcement action with a San Francisco bank holding company of a Minnesota bank for deficiencies related to capital planning, earnings, strategic planning, cash flow, and liquidity.

July 26 – The FDIC [published](#) June enforcement actions, including several orders taken against and CMPs posed to former bankers/individuals for embezzlement, misuse of position, and fraud schemes.

July 26 – OFAC and FinCEN [announced](#) settlements for over \$24 million and \$29 million, respectively, with Bittrex, a virtual currency exchange based in Washington for violations of multiple sanctions programs, of the BSA, and SAR reporting requirements.

HOTLINE QUESTION OF THE MONTH

Q: I am looking for some guidance regarding late returns. We have had a couple of instances over the last month where a business customer had an altered item clear their account. They notified us, completed an affidavit of forged/altered item and we returned the item to depository bank. These returns were done more than a week after the check had cleared our customer's

account.

We received notices back from the depository bank stating they are late returns and are requesting the funds be returned as soon as possible. Reg CC Subpart C Section 229.30 requires an 'expeditious' return of checks. A paying bank returns a check expeditiously if it returns the check to the depository bank within two business days of presentment. Does this always apply, even when there is fraud involved?

Our disclosures state that the customer has to notify us within 30 days of their statement of any discrepancies. Would you agree that these are outdated and need to be updated if we are indeed not able to return a check beyond two business days? I've read several other banks disclosures and they vary significantly.

A: In the instance you describe, you'll have to work it out with the other bank, because the automatic limit dates passed before you tried to return the items. You actually only have 24 hours after presentment for the automatic returns, and you might get caught holding the bag on these altered items. However, you might be able to work with the other bank, particularly in identifying who altered the checks. Then you can go after them if you or your customer has a case to do so. The 30-day language is fairly standard in the industry and stems from Section 4-406 of the Uniform Commercial Code.

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