ASK KENNEDY
January 5, 2022

Topics Covered:

- Special Guest Rick Clayburgh, NDBA President
- Call to Action
- Member Questions
- Flood Insurance and Cross-Collateralization
- FDIC Chair Resignation
- CFPB Strategic Plan 2022-2026
- BankBeat's Banker of the Year 2022---Brenda K. Foster

Special Guest Rick Clayburgh

- Reflecting on 2021, what were some notable NDBA accomplishments and/or achievements to be carried into the new year?
- Looking forward to 2022, what are some of NDBA's goals for the upcoming year?
- Are there any expected state and/or federal laws or regulations to be aware of for 2022?

Call to Action: Bureau of Consumer Financial Protection's Proposal to Collect and Report Small Business Lending Data Under ECOA, Regulation B

All bankers are urged to comment in response to the CFPB's proposal to implement Dodd-Frank Act Section 1071. Section 1071 amended the Equal Credit Opportunity Act to require lenders to collect and report data on small business credit applications. The data collection is intended to facilitate the enforcement of fair lending laws and community development efforts. There are some concerns that this data collection will increase the cost of small business lending while also limiting the flexibility of loan applications which is crucial to small business lending. Ultimately, the data collection requirement of 1071 may reduce the availability of credit and increase its cost. As such, all bankers are encouraged to take the time to comment and voice any concerns about the impact of this proposal. Recommendations for improvement and specific examples of how the proposal will impact your bank are strongly encouraged. **Comments are due by Thursday, January 6, 2022.**

Below are some of the topics that may be addressed:

- Express your commitment to small business lending and the objectives of 1071
- Urge the Bureau to require the collection and reporting of ONLY the 13 data of the Dodd-Frank Act

- Urge the CFPB to increase the threshold for reporting from 25 covered loans in each of the next two years
- Urge CFPB to eliminate requirements of lenders to identify race and ethnicity of principal owners
- Advocate for any other changes that may put smaller banks at a disadvantage to large lenders

Follow the links below to write and send a comment letter on Section 1071

- Click this link for download attachment for letter template
- After editing comment letter to your preferences, it may be submitted here: https://www.regulations.gov/commenton/CFPB-2021-0015-0002

Follow the links below to see CFPB material on Section 1071

- Summary of Proposed Rulemaking: September 2021 Proposal Regarding Small Business Lending Data Collection (consumerfinance.gov)
- WBA-Toolkit-CFPB-Proposal-to-Collect-and-Report-Small-Bus-Lending-Data.pdf (wisbank.com)

Member Questions

Question #1: In regard to CDs, what are some of the bank requirements when a customer passes away? *May beneficiaries add to a designated CD before maturation?*

Response: **Upon death of the customer the CD belongs to, the designated party and the rights of the survivor will be dictated by the terms of the CD. Generally, in POD-designated multiple-party accounts, the sums on deposit belong to the surviving parties, while in a POD-designated single-party account the sums on deposit belong to the surviving beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.**

Check to see what the terms of the CD say about continuation of the CD after death and transfer to the POD survivor, as well as what the terms say about adding to a CD before maturation. It is important to note that POD property is not governed by a will or the laws dealing with estates.

Flood Insurance and Cross-Collateralization

FDIC-supervised institutions are prohibited from making, increasing, extending, or renewing any loans secured by buildings or mobile homes located or to be located in areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.[1]

The amount of flood insurance required is the lesser of:

- The outstanding principal balance of the loan; or
- The maximum amount available under the National Flood Insurance Act of 1968 (NFIA) for the particular type of property serving as collateral.

When the lender considers the "outstanding principal balance of the loan" to determine the amount of flood insurance required, an issue may arise if there is a cross-collateralization clause in the mortgage.

Cross-collateralization clauses provide that the real property securing a particular loan also secures all current and future indebtedness of the borrower. Thus, the "outstanding principal balance of the loan" may change.

If the indebtedness is increased, and the outstanding balance changes, the lender should technically reevaluate the amount of flood insurance required. Failure to do so could cause the lender to fall out of compliance with the minimum coverage requirement.

Regulators have been dinging banks regarding these types of clauses when it comes to flood insurance requirements, so it is recommended you work with legal counsel to review your mortgage and structure your cross-collateralization clauses to ensure compliance.

FDIC Chair Resignation

FDIC Chairman Jelena McWilliams unexpectedly submitted her resignation last Friday following a months-long struggle at the bank regulator, in a move that will give Democrats control of the agency in the coming weeks. Her departure, effective Feb. 4, means that FDIC board member Martin Gruenberg will become acting chair, following multiple attempts by Gruenberg and other Democrats on the agency's board to take control from McWilliams, whose term was not scheduled to end until June 2023.

Her upcoming exit opens up yet another key position for Biden to fill, and it means none of the three federal banking agencies will have a Senate-confirmed official serving in their top regulatory job. Throughout his tenure as a board member under McWilliams, Gruenberg dissented regularly against actions by McWilliams to loosen rules on banks of all sizes. As such, McWilliams' departure could lead to the reversal of some of those moves.[2]

[1] *See* 12 C.F.R. §§ 339.1(c) and 339.3(a); *see also* 12 C.F.R. § 339.2 (for definition of "designated loan").
[2] https://www.cnn.com/2022/01/01/politics/fdic-jelena-mcwilliams-resignation/index.html

CFPB Strategic Plan 2022-2026

The Consumer Financial Protection Bureau (CFPB) has released for public feedback its draft Strategic Plan for FY 2022-2026. The strategic plan outlines the CFPB's mission, strategic goals, and objectives for the next five years. Goals are:

1. Implement and enforce the law to ensure consumers have access to fair, transparent, and competitive markets that serve consumers' needs and protect consumers from unfair, deceptive, and abusive practices, and from discrimination.
2. Empower Consumers to live better financial lives, focusing on traditionally underserved people.
3. Inform public policy with data-driven analysis on consumers' experiences with financial institutions, products, and services.
4. Foster operational excellence and further commitment to workforce equity to advance the CFPB's mission.

BankBeat's Banker of the Year 2022

Congratulations to First Western Bank & Trust's own Brenda K. Foster on being named BankBeat's Banker of the Year for 2022. BankBeat is an online source for community banking news. To read the article, please click on the link below.

Banker of the Year 2022: Brenda K. Foster - BankBeat