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The

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From the Commissioner's Desk

The holiday season is again upon us with all the good and bad that brings. On the good side are the gatherings with family and friends, the exchanging of gifts with loved ones and spreading good cheer with both friends and strangers. On the bad list are shopping for those gifts, preparing for end of year reports (many of them that go to regulators!) and, for some of you, preparing renewal applications.

We at the Banking Department hope that the good things of the season will be yours and the extra duties of the season are not too onerous.

Happy Holidays to all. We look forward to working with you in the New Year.

New Personnel in the Banking Department

The department added three new staff members. Jo Lacoy is joining the department as a new examiner in the Consumer Credit Division. Rebecca Stone and Teresa Moulton have joined the licensing section of the Consumer Credit Division.

BANKING DIVISION

Annual Reports

You have probably already received the annual report forms from us. Once again we have revised the annual reporting requirements to make them more efficient. We made some minor changes to certain forms and removed portions of others. The only major change was the removal of the detailed reporting required of credit unions on their investments, allowance, and capital accounts.

Please remember that original signatures are needed on all forms that require a signature. All forms should be typewritten originals, authenticated copies, or computer duplicates. All filings need to be received by our office on or before January 30, 2005. A statutory fine of \$25 per day will be assessed for each day delinquent.

If you have any questions do not hesitate to contact Chief Bank Examiner Chuck O'Connor. All the state forms are available on our website.

New State Chartered Entity

On October 25, 2004 the Bank Commissioner authorized State Street Bank and Trust Company of New Hampshire, Nashua, N.H. to open as a non-depository trust company.

Branch Applications

All FDIC insured institutions and Non Depository Trust Companies chartered by the State of New Hampshire Banking Department are required to comply with the requirements of RSA 384-B:2 regarding branch applications. Compliance with the statute includes completing the Branch Application form. Applications must be typewritten, signed in ink and forwarded to the Banking Department. A separate application form must be filed for each location. All information provided must be certified by an authorized officer.

The \$1,500 fee for each branch must accompany the application and be sent to the Department.

An exception exists for well-capitalized banks with a composite rating of 1 or 2. These institutions may establish a branch if the bank does not exceed 30 percent of the dollar volume of the total deposits, time and savings, and demand of all banks, national banks, and federal savings and loan associations in the state (see RSA 384-B:2-e) by giving written notice to the Bank Commissioner at least 30 days in advance of the opening of the new branch and by paying the required \$1,500 fee.

Applications may be downloaded from the Department's web site, by selecting Branch Application Instructions and Branch Application Forms. Also, FDIC insured institutions may submit their applications to the FDIC and send a copy of the submission to the Banking Department.

The Department is working with the FDIC to become part of the electronic submission process in place at the FDIC.

Account Information At-a-Glance

We send the form (NHBD-10) out in December and June. Submission of the form is required by all state chartered depository institutions by January 1st and July 1st of each year. BAN 705, available on our website, is the governing regulation. In addition, the form is required to be posted in the lobby of the institution's main office as well as all branches. The form is available on our website and can be emailed to NHBD@banking.state.nh.us when it is complete or you can mail it.

Interest on Escrow Accounts

We send out the form in December and June of each year to all state chartered depository institutions. From the information received we calculate the interest rate payable on escrow accounts for the next six month period. RSA 384:16-c and RSA 384:16-e, available on our website, are the governing laws. The form is available on our website and can be emailed to NHBD@banking.state.nh.us when it is complete or you can mail it in.

Bank Secrecy Act and Related Issues

Just a reminder to state chartered financial institutions, Bank Secrecy Act (BSA) related issues are rising in importance and resultantly in regulatory attention. We will provide tips on BSA related compliance in this and coming issues of the Department's "Newsletter". As a basis to ensuring BSA compliance, all financial institution employees need a solid understanding of BSA requirements and intent and select institution employees need a thorough understanding of the entire BSA program. This thorough understanding should cover all the requirements of the Bank Secrecy Act, Office of Foreign Asset Control (OFAC), and the USA Patriot Act.

This quarter's newsletter will address some aspects of Suspicious Activity Reporting (SAR).

All state-chartered financial institutions that experience suspicious activity are required to file SAR Form TD F 90-22.47 in its entirety and forward a copy of all SAR's to the NH Banking Department.

Front line employees should receive extensive training to identify what constitutes suspicious activity. It is important to understand that money laundering can involve multiple branches, multiple persons, and multiple transactions and occur over multiple days. Money laundering can involve customer transactions, cash management, currency exchange, lending, monetary instruments, safe deposit boxes and wire transfers. The Department will be offering "Red Flags" for each of these areas in this and upcoming newsletters.

SARs are required to be filed no later than 30 calendar days from the date of initial detection of the suspicious activity. If no suspect can be identified, the time period for filing is extended to 60 days. Institutions should report continuing suspicious activity at least every 90 days.

The narrative section of the report is the key. Narratives should be carefully written so the described activity is clearly understood. SAR's that do not specify the suspicious activity or fail to provide an explanation as to what led the institution to become suspicious are of minimal value to law enforcement and regulators.

Also remember, not to attach any supporting documents to the SAR. Instead provide a detailed description of the documentation in the narrative and retain the documentation for five years. When forms are received at the IRS Detroit Computing Center (DCC), only information in narrative format is keypunched, thus other financial information is not included in the narrative.

Federal law prohibits the notification of any person that is involved in the activity being reported on a SAR. In addition, management is reminded that while SAR's need to be reviewed by an institution's board of directors, identification of suspects should be excluded from all board minutes.

Money Laundering Red Flags: Customer Transactions

- Reluctance or withdrawal (all or a portion of) a transaction after being informed that a CTR will be filed, or that the purchase of a monetary instrument will be recorded.
- Reluctance or refusal to provide identifying information when opening an account, cashing a check, recording the purchase of a monetary instrument, or providing information for a CTR.
- Individuals or groups may attempt to avoid BSA requirements by breaking up, or structuring a currency transaction or purchase of monetary instruments in amounts less than \$10,000. May be conducted with multiple branches, tellers,

and accounts and/or on different days in an attempt to avoid reporting requirements. Look for related, but non-reportable transactions.

- Numerous transactions are conducted in even dollar amounts. Money laundering and check kiting have very similar characteristics.
- The financial institution may be asked to process internal debit or credits containing minimal or no description in an attempt to "separate" a transaction from its account and lose the paper trail.
- A large increase in the number of or amount of transactions involving currency or non-cash items, the purchase of monetary instruments, wire transfers, may indicate potential money laundering.
- Transactions not consistent with the customer's business or income level.
- Multiple accounts with numerous deposits under \$10,000.
- Numerous cash deposits under \$10,000 in a short period of time including deposits at the ATM.
- Accounts with high volume of activity, low balance or frequently overdrawn.
- Accounts with large deposits and large balances with little or no apparent justification.
- Deposits and the immediate request for wire transfers or cash shipments.
- Numerous small incoming wires or monetary instruments followed by a large outgoing wire.
- Account appears to be a temporary repository of funds that will be transferred out of the financial institution. There is little account activity.
- Funds deposited into several accounts, transferred to another account and then transferred outside of the United States.
- Disbursements of certificates of deposit are made by multiple checks, each under \$10,000.
- Certificates of deposit are redeemed early.
- Inconsistent deposit and withdrawal activity by a customer with a retail business account.
- Deposits of large amounts of currency, wrapped in currency straps stamped by a financial institution.
- Large amounts of food stamps not consistent with the customer's legitimate business.
- A non-customer conducts or attempts to conduct transactions such as currency exchanges, or the purchase or redemption of monetary instruments for no apparent legitimate reason.

CONSUMER CREDIT

2005 Renewals

The renewal packets were sent out to all licensees on October 25. The packets consisted of the two-page renewal form applicable to whatever type of license is held by the licensee. If you hold both a first mortgage and a second mortgage license, you will receive two renewal forms in the same packet. The renewals must be received at the Banking Department on or before December 1, 2004. The procedure has not changed from last year. Complete the renewal form, making sure all of the information is correct. If there are any branch offices being renewed, be sure to complete the applicable section of the form. If you are paying for more than one renewal for the same company, you may combine your payment in one check payable to "State of New Hampshire."

Remember, if your license was issued at any time during the 2004 year – even if only recently – it *will* expire on December 31, 2004 and must be renewed. There is no provision in our law that enables us to issue an extended license when a license is issued close to the expiration date.

You need not submit anything other than the renewal form(s) and fee(s). All licensees who are required to have a surety bond on file should have the continuous bond in effect at this time. This matter was addressed last year. It is not necessary to submit a renewal bond to this Department although you are required to pay a renewal premium to your insurer.

Finally, please do not co-mingle applications for *new* branch office licenses with the renewal applications. Remember also that you *do not have* out-of-state branches licensed. Only those with New Hampshire locations are licensed and renewed.

The renewal procedures are explained in the attachment to your renewal forms. Please read it carefully, and you should be able to find the answer to any questions you may have.

Annual Reports

On February 1, 2005, all licensees (except retail sellers and mortgage servicers) must file an annual report of business conducted in New Hampshire for any period of time that a license was held during 2004. An annual report must be filed for each type of license that your company holds. You will also report information about the company such as its officers, directors and owners and if it is an out-of-state company, the name and address of the New Hampshire registered agent. Mortgage brokers and bankers will have to report information about all mortgage originators who worked for them during any period in 2004. It is very important to include the end dates of their employment if they no longer work for you because originators can only work for one company at a time. The form is now on the website. It is very important to file the report in a timely manner because it must reach us on or before February 1, 2005. As in the past, a statutory penalty of \$25-per-day accrues for each day each report is late, which can quickly become very expensive. Accuracy of the information is imperative. The reason for the strictness of this entire provision in the law is that the Bank Commissioner must make a consolidated report of such information to the Governor and Executive Council. Further, the accuracy of the information is important because it will be used by this Department if assessment calculations are needed.

If you were issued a 2004 license even for only a short period of time prior to renewal, you are still required to file an annual report even if no business was done. You can get detailed information on how to complete the annual reports for 2004 in addition to the form itself from our website at www.nh.gov/banking/consumercredit.html.

Please note: *The NH Banking Department annual report filing is not to be confused with the annual report filing for businesses registered with the NH Secretary of State's office. Their annual report is due on or before April 1. If you receive a card in the mail reminding you to send an annual report, it will more than likely be from the Secretary of State's office, not the Banking Department.*

New Procedures for Background Checks

Effective October 15, a new procedure was instituted which enables the Department to obtain a more comprehensive background check on individuals associated with new applicants

or any person who is being appointed to a new position with an existing licensee who would require a criminal background check (individual owners, investors or beneficiaries of 10% or more; each principal officer; manager (senior vice president or higher); LLC member; partner in a partnership; director; trustee or NH branch manager of the applicant.)

Previously, the NH Department of Safety Criminal Records Division provided a service to agencies with licensing authority to run background checks on their applicants at no charge. The Department was notified that effective October 15, this free service would no longer be provided. We are now part of a compact which enables us to receive a background check in 21 other states in addition to New Hampshire. There is a charge of \$39 for each background check requested by us which must be accompanied by the Department of Safety's criminal background release form and a fingerprint card.

This new requirement is only for those individuals referenced in paragraph one above. The new form is posted on the Department's website and will be made part of each application packet that will require it. You may make additional copies of the form as needed. The check must be made payable to "*State of NH – Criminal Records*" and submitted to this Department as part of your application filing. You may combine fees for multiple individuals into one check. ***Please do not make your check payable to the Banking Department or incorporate it into your other application fees.*** We will then submit the form(s) and fee(s) to the Department of Safety.

You may have your fingerprints taken at your local police or sheriff's department. However, you must first obtain the fingerprint cards from this Department. You may contact the Licensing Department at 603-271-8675 or e-mail at licensing@banking.state.nh.us. Indicate the number of cards needed and the address where they should be sent and we will send the cards out to you right away. These, of course, cannot be made available through the website.

Please be aware that the *Release Authorization* form for this criminal background check *is not taking the place of* the current Banking Department Authorization/Release form but rather, *is in addition to* it. Make sure that both forms are completed and submitted as part of your application packet or filing to add or change a new company principal or branch manager.

Although this new requirement may be viewed by some as being burdensome, it is just one more step that is being taken to protect your clients who are also the consumers of the State of New Hampshire.

Pre-qualification and Pre-approval – What is the difference?

By: Andrea J. Boudreau, Staff Attorney

A. What do the terms mean?

At a recent Mortgage Bankers Association seminar many of the folks I spoke with had the recurring question "What is the difference between pre-qualification and pre-approval?" Pre-qualification describes an informal process where a loan officer determines the maximum amount an individual is eligible to borrow. Required information, such as income and debt are taken verbally and are not independently verified. "Pre-qualification" letters are issued solely for information purposes for the borrower and they are not binding.

When a lender offers a "pre-approval" they are offering a more formal process in which the lender verifies some of the information

the borrower provides. Often the borrower will be asked to provide documentation to substantiate their verbal statements (such as pay stubs, W-2s, etc). Pre-approvals usually allow the borrower to convert the pre-approval to an application with less additional work. In some cases, it may be converted to an application by simply identifying the subject property.

B. Who can issue “pre-qualification” and “pre-approval” letters?

Common sense dictates that a broker may be able to help a borrower determine the maximum amount that they could borrow and issue a “pre-qualification” letter. The broker has a general knowledge on what types of programs the lender he or she works with offers, and what the qualifications are. Further, prequalification letters are non-binding and do not carry as much weight in the industry as “pre-approval” letters. Because “pre-approval” is a more formal process it would be necessary to have the lender issue the “pre-approval” letter.

Privacy Laws – Is your business in compliance?

By: Andrea J. Boudreau, Staff Attorney

The Federal Trade Commission (FTC) promulgated “Standards for Safeguarding Customer Information” (16 CFR 314).

These rules implement sections 501 and 505(b)(2) of the Gramm-Leach Bliley Act. These rules apply to all financial institutions over which the FTC has jurisdiction. For the NHBD Consumer Credit Division that is all of our licensees.

In general, each company must have a written information security program that is readily accessible and contains administrative, technical and physical safeguards that are appropriate to the size and complexity of your business. Please review the rules for specifics.

The rules became effective May 23, 2003. At this point all companies should be in compliance with these regulations. If you are not familiar with these regulations they are available on the web. Type “16 CFR 314” into www.google.com and you should find multiple copies of the regulation. Lastly, if you can not locate the regulations you may contact NHBD for assistance. Other helpful resources: National Automobile Dealers Associations publication “A Dealer Guide to Safeguarding Customer Information”. NADA sends a free copy of their publications to every member and additional copies are available at a reasonable cost by contacting them at 1-800-252 NADA ext. 2 or www.nada.org/mecatelog. For mortgage bankers and brokers a good source is the Mortgage Banking Magazine’s article “The FTC’s Information Safeguard Rule” (February 2003).