

THE BANKING AND INSURANCE BOARD MEETING
DIRECTOR'S CONFERENCE ROOM SEPTEMBER 05, 2013, THURSDAY 2:00 PM

AGENDA

- I. Approval of Minutes for meeting held on May 9, 2013.
- II. Old Business
 1. The Secure and Fair Enforcement for Mortgage Licensing Act or Safe Act was approved as P.L. No. 30-151 on May 25, 2010.

The Legislature returned the Regulations to our office for further development. The SAFE Act was enacted under Title 18, Business Functions and not under Title 11 of the Banking Code. A banking activity that is set in the Banking code can be the subject of regulation by the Board. Since mortgage origination is a banking activity, the Commissioner submits the SAFE Act Regulations for the approval of the Board. Thereafter, these regulations shall be transmitted to the Guam Legislative Secretary.

Pursuant to the Board direction, on May 14, 2013, the Regulatory Examiner sent via email to all Board Members a draft of the SAFE Act regulations with the strikeout to remove references to residential mortgage lenders, mortgage lenders & servicers and mortgage servicers. A clean draft of the proposed regulations was also sent.

On July 11, 2013, there a public hearing was held for the SAFE Act Regulations. Mark Fish discussed that a licensed attorney may use the provisions to do numerous residential mortgage loan originations under agreement of an attorney client relationship. After some discussions he commented that the exemption to attorneys be limited to situations where an attorney is appointed by a court to handle mortgage loan origination under a client attorney relationship.

West Cassidy discussed that the surety bond appears to be continuous, non-cancellable even for nonpayment of premium. Commissioner Artemio Ilagan commented that the bond must be in place at the time of issuance and at the time of renewal. After discussions from David Silva and Cesar Garcia, the surety bond form shall be modified to show that the surety shall exist for a period that is synchronized to be in effect at the time of the issuance and at the time renewal of the mortgage loan originator's license.

The Commissioner then instructed the Regulatory Administrator to modify the SAFE Act Regulations and thereafter to circulate the revised language to all members of the Board. The Commissioner stated that the regulations have taken too long and needs to be adopted in August 2013.

As a result of the July 11, 2013 Public Hearing, the following sections were revised to read:

- (1) A residential mortgage loan originator license is not required for a licensed attorney performing activities that come within the definition of a loan originator, provided that such activities are:
- (A) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the Island of Guam;
 - (B) Carried out within an attorney-client relationship;
 - (C) Accomplished by an attorney in compliance with all applicable laws, rules, ethics, and standards; and
 - (D) Pursuant to an attorney-client relationship, a court of Guam had issued an order that the named attorney had been entrusted with the duty to perform residential mortgage loan origination for and in behalf of a named client.

Because of the issues raised on the exemption to the attorneys from securing a mortgage loan origination, it was deemed prudent to adopt the provisions of the SAFE Act law exemption to attorneys. This exemption in 18 GCA Section 36304 (c)(4) is set forth below:

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, *unless* the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(2) An owner of real property who in any twelve (12) consecutive month period makes no more than five (5) mortgage loans to purchasers of the property for all or part of the purchase price of the real estate against which the mortgage is secured.

A copy of the revised Surety Bond Form which is attached to the SAFE Act Regulations is attached.

2. Vincent Insurance Services Corporation. The main issue is whether or not the Commissioner has the authority to retroactively allow and approve the renewal of the certificates of authority. The company did not file audited financial statements in time for each renewal period. The filing was done as follows: Audited Financial Statements for 2004 to 2007 were filed on March 5, 2010; Audited FS 2008 to 2009 were filed on December 16, 2011; Audited FS for 2010 were filed on January 12, 2012.

The decision of the Commissioner and the hearing officer states that Vincent Insurance cannot be issued an insurance license retroactively. Counsel for Vincent Insurance has filed an appeal before the Banking and Insurance Board. A hearing will be held as soon as a hearing officer for the Board can be arranged with the assistance of the Attorney General. The counsel for Vincent Insurance Services Corporation is also asking for a transcript of the records of the administrative proceedings. Without the transcript of records and hearing officer for the Board, the hearing cannot be scheduled.

3. In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks. The first request was sent to AG John Weisenberger on August 4, 2010. A follow up request for opinion was submitted to AG Leonardo Rapadas on April 2, 2013. There is no response at this time.
4. The Patient Protection Affordable Care Act (PPACA) became law on March 23, 2010.

The National Association of Insurance Commissioners (NAIC) has created a working committee for all NAIC members in relation to the establishment or non-establishment of Exchanges for the states and territories. The territories have requested the assistance of the NAIC to identify which provisions of the Affordable Care Act do not apply to the territories including Guam.

The US Virgin Islands has spent the \$1 million grant for a study to determine if the Health Insurance Market (formerly called the Health Insurance Exchange) is feasible. The study found that a small population and a low household income a Health Insurance Market in the US Virgin Islands does not appear to be self-sustaining under current revenue sources.

Guam has also small population. Guam's population also has a low household income compared to other states like Hawaii or California. Guam has until October 1, 2013 to opt in to establish a Health Insurance Market or to opt out.

5. Oceanic Bank Guam has been purchased by the First National Bank of Northern California. The purchased was approved by the FDIC. Effective September 24, 2012, Oceanic Bank Branch in Guam became First National Bank of Northern California. (FNB California). The Guam branch of FNB California has been closed with the approval of the Office of the Controller of Currency effective June 2013. The balance sheet of the Guam branch of FNB California is attached. All deposits have been reduced to Zero. All outstanding loan receivables were transferred to the FNB California Branch.

6. The Guam Branch of Allied Bank has informed the Commissioner that it has merged with Philippine National Bank in February 2013. In the May 9, 2013 Banking and Insurance Board Meeting, the Board was furnished copies of the audited financial statement of both Allied Banking Corporation and Philippine National Bank. On May 2013, Philippine National Bank, the surviving corporation was registered as a foreign corporation. On July 2013, the merger documents were between Philippine National Bank and Allied Banking Corporation was filed. Pursuant to this merger document, the foreign banking license issued in June 2013 to Allied Banking Corporation was canceled and a new foreign banking license was issued to Philippine National Bank.

III. New Business

1. Bank of Hawaii has informed the Commissioner that the following in-store bank branch at Payless Yigo and Payless at Micronesia Mall will be closed effective August 31, 2013. The ATM machines located within the each of the store will remain in place.
2. Sometime in June 2013, card holders with American Express received some form of settlement. The account that arises from the use of credit card is a revolving loan account. The amount of interest that can be charged under a revolving loan account is set forth in the Uniform Commercial Credit Code (UCCC), 14 GCA §3509.

A bank that is licensed in Guam verbally communicated that there might have been non-compliance with the provisions for charging interest on revolving loan accounts.

Lenders can charge interest based on (a) average daily balance of the debt, (b) the unpaid balance of the debt on approximately the same day of the billing cycle or (c) the median amount within a specified range which the daily balance or the unpaid balance of the debt on approximately the same day of the billing cycle, is included. A charge pursuant to a median amount can be made only if the same percentage is applied to all balances within the specified range and if the charge calculated on the median amount is no more than eight percent (8%) greater than the charge that would be calculated on the actual unpaid balance that is computed on average daily balance of the debt or computed on the unpaid balance of the debt approximately the same day of the billing cycle.

If the billing cycle is monthly, the charge may not exceed:

Two percent (2%) of the revolving loan amount from Dollar up to \$500.00.

One and one half percent (1.5 %) on the part of the revolving loan amount which is more than \$500.00.

If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30).

Assuming there is noncompliance with §3509, what is the statute of limitation with regards to noncompliance? This is the question asked by the bank.

There is no statute of limitation that can be found in the Uniform Consumer Credit Code. There is a provision on record keeping.

The records pertaining to any loan need not be preserved for more than two (2) years after making the final entry relating to the loan. (14 GCA §3505). Similar language in the regulations state "cards used in a ledger card system, for at least two (2) years after making the final ledger card entry. (15 GAR §2111). There is no definition of the term "two years after making the final entry relating to the loan or two years after making the final ledger card entry." The question is for a revolving loan account when does the two years after making the final entry to the loan account start?

1. National Bank Act (R.S. Sec. 5198)

This section, in case usurious interest has actually been paid, gives to the borrower the right to recover back twice the amount of interest thus paid from the association taking or receiving the same; provided, that such action is commenced within two years from the time the usurious transaction occurred.

The US Supreme Court has held that the remedy provided the borrower by the statute is exclusive, and further ruled that in an action by a bank to collect the principal debt the borrower cannot set up by way of counterclaim or set-off that the bank has received usurious interest.

[see *Barnet v. Muncie Nat. Bank*, 1878, 98 U. S. 555. The rule established by the Supreme Court has been enforced, in actions by national banks, by the State courts. See *Peterborough Nat. Bank v. Childs*, 1882, 133 Mass. 248; 43 Am. Rep. 509 ; *Central Nat. Bank v. Haseltine*, 1900, 155 Mo. 58; 55 S. W. 1015; 85 Am. St. Rep. 531, (aff. 183 U. S. 132 ; 22 S. Ct. 50); *Nat. Bank v. Lewis*, 1880, 81 N. Y. 15; *Nat. Bank v. Dushane*, 1880, 96 Pa. St. 340. But see *Wachovia Nat. Bank v. Ireland*, 1898, 122 N. C. 571; 29 S. E. 835. See 5 Fed. Stat. Anno. 133, for extensive collection of authorities. The same rule was applied, in *Caponigri v. Altieri*, 1901, 165 N. Y. 255; 59 N. E. 87, to a case arising under a New York statute similar to the National Bank Act.]

3. A consumer has complained that a convenience store requires the purchaser to make a minimum of \$10.00 purchase of goods before the vendor will accept payment by the use of credit card. Do credit card companies require a minimum purchase amount for the use of credit cards or is this merely the requirement of the vendor? What is the fee charged by credit card companies each time a vendor or a merchant accepts a credit card for payment of a purchase of goods or services? What is the fee charged by credit card companies for payments of fees or taxes paid to Government of Guam using credit cards like VISA and MasterCard for payments?