



COMPLIANCE MONTHLY

April 2018

Compliance Monthly is intended to keep you informed of regulatory changes in advance of their effective date so your institution can have the necessary policies, procedures and processes in place to be compliant at the time of enactment. Information contained in Compliance Monthly is not intended to provide specific advice and guidance. You should consult your own professional services provider in connection with matters affecting your own interests.

Finalized Rules:

CFPB Adjusts Mortgage Servicing Rule for Borrowers Facing Bankruptcy

The CFPB issued a final rule to help mortgage servicers communicate with certain borrowers facing bankruptcy. The rule gives mortgage servicers more latitude in providing periodic statements to consumers entering or exiting bankruptcy, as required by the CFPB's 2016 mortgage servicing rule. The rule will become effective April 19, 2018, along with other servicing rule amendments affecting consumers in bankruptcy and successors in interest that go into effect that day.

This final rule replaces the single-billing-cycle exemption for periodic statements and coupon books with a single-statement exemption when servicers transition to providing modified or unmodified periodic statements and coupon books to consumers entering or exiting bankruptcy. The rule provides a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide, regardless of when in the billing cycle the triggering event occurs.

The CFPB also released updated Mortgage Servicing FAQs that address certain bankruptcy-related topics.

For more information, call

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FDIC Board Approves Appraisal Threshold Increase for CRE Transactions

The FDIC approved a final rule to raise the appraisal thresholds for commercial real estate transactions from \$250,000 to \$500,000. This is an increase from the original proposal, which called for the appraisal threshold to be raised to \$400,000. The threshold for loans secured by one-to-four family residential properties will remain at \$250,000; however, residential construction loans secured by multiple one-to-four residential properties would be considered CRE transactions. The final rule must now be approved by the Federal Reserve and the OCC; once approved by the agencies, it will be effective 30 days after publication in the Federal Register.

Proposed Rules:

Fed Proposes Regulation J Amendments

The Federal Reserve Board has requested comment on proposed amendments to simplify Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire) and to make it conform more closely with Regulation CC (Availability of Funds and Collection of Checks). The proposed amendments are intended to align the rights and obligations of parties with the Board's 2017 amendments to Regulation CC, which reflected the evolution of the nation's check collection system from one that is largely paper-based to one that is virtually all electronic. The proposed amendments would clarify and simplify provisions of Regulation J, remove obsolete provisions, and improve consistency between Regulation J and Regulation CC. The proposed amendments would also clarify that electronically-created items (check-like items created in electronic form that never existed in paper form) are not "items" that the Reserve Banks are authorized to handle under Regulation J.

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The Board has also proposed amending Regulation J to clarify that financial messaging standards for Fedwire funds transfers, such as the international common format standard ISO 20022, do not confer or connote legal status or responsibilities with respect to Fedwire funds transfers. Comments are due by May 14, 2018.

Other Compliance News:

Senate Passes Regulatory Reform Bill

The Senate passed a regulatory reform bill. The bill includes several provisions that would:

- Exempt banks and credit unions that originate less than 500 open-ended and 500 closed-end mortgages from the additional data requirements under the new HMDA rule
- Provide Qualified Mortgage designation for mortgages held in portfolio by banks with less than \$10 billion in assets
- Raise the threshold for designation as a systemically important financial institution from \$50 billion in assets
- End stress tests entirely for banks with under \$100 billion in assets
- Simplify capital calculations for community banks
- Provide relief from appraisal requirements for smaller mortgages (under \$400,000) in rural areas
- Institute longer exam cycles for community banks
- Provide charter flexibility for federal thrifts with less than \$20 billion in assets
- Restore the Protecting Tenants at Foreclosure Act
- Eliminate mandatory escrow accounts for high-cost mortgages for lenders with less than \$10 billion in assets

The next step for the bill is to go to the House of Representatives.

CFPB Posts 2018 Rural and Underserved Counties List

The CFPB has updated its Rural and Underserved Counties page to add the 2018 list of rural and underserved counties and a separate 2018 list that includes only rural counties. The CFPB has also updated the rural and underserved areas tool on its website for 2018. The lists and the tool help creditors determine whether a property is located in a rural or underserved area for purposes of applying certain regulatory provisions related to mortgage loans. A creditor that makes a first-lien mortgage loan secured by a property located in a rural or underserved area during 2018 meets the requirements to be a creditor that operates in rural or underserved areas during 2019 and for loan applications received before April 1, 2020.

CFPB Updates Prepaid Rule Resources

The CFPB has updated its *Small Entity Compliance Guide* and the *Guide to Preparing the Short Form Disclosure for Prepaid Accounts*. Those guidance documents and other resources for compliance with the Prepaid Card rule (which now becomes effective April 1, 2019), can be found on the CFPB's Implementation and Guidance page for the Prepaid Rule.

Court Voids Two Key Telephone Consumer Protection Act (TCPA) Provisions

A three-judge panel of the D.C. Circuit Court of Appeals overturned two significant aspects of the Federal Communications Commission (FCC)'s 2015 interpretive order on TCPA that have created compliance challenges for banks: the FCC's definition of an autodialer (which the court noted was "unreasonably expansive"), and the FCC's assignment of liability for calling a reassigned number. Bankers has argued that the rules stood in the way of their ability to send time-critical, non-marketing messages to customers, including alerts of suspicious activity, data security breach warnings, etc., using cell phone calls or text messages.

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In related news, the FCC stated they will be proposing to establish a database of phone numbers that have been relinquished by one individual and reassigned to another individual. The proposal seeks comment on how such a database should be constructed, used and funded.

The Federal Trade Commission (FTC) Annual Survey of Consumer Complaints

The FTC has released the results of its annual survey of complaints reported by consumers. While the number of complaints about fraud from consumers dropped in 2017, consumers reported losing more money than they did in 2016. Although reports about debt collection declined between 2016 and 2017, it remained the top consumer complaint category, making up about 23 percent of all complaints. Identity theft was the second biggest category, making up nearly 14 percent of all the consumer complaints. Credit card fraud was the most common type of identity theft reported by consumers. Tax fraud was the second most common type of identity theft reported despite falling by 46 percent from 2016.

CFPB Requests for Information (RFI)

The CFPB has issued the following RFIs in the “call for evidence” series:

- Sixth in the series – complaint reporting – requests public input about the CFPB’s public reporting of consumer complaints. Comments are due by June 5, 2018.
- Seventh in the series - requests input about the CFPB’s rulemaking process. Comments are due by June 7, 2018.
- Eight in the series - adopted regulations and its new rulemaking authorities - seeking comments and information in considering whether the CFPB should amend any rules it has issued since its creation or rules under new rulemaking authority provided for by the Dodd-Frank Act. Comments are due June 19, 2018.
- Ninth in the series - issued a request for information seeking feedback on its inherited regulations and inherited rulemaking authorities. Comments are due by June 25, 2018.

The CFPB will be issuing additional RFIs on Guidance and Implementation Support; Consumer Education; and Consumer Inquiries.

The CFPB extended the comment period on three RFIs.

- The comment deadline on the RFI regarding CFPB Rules of Practice for Adjudication Proceeds is changed from April 6 to May 7, 2018.
- The deadline for comments on the RFI regarding CFPB Civil Investigative Demands and Associated Processes is changed from March 27 to April 26, 2018.
- The comment deadline on the RFI regarding CFPB Enforcement Processes was moved from April 13 to May 14, 2018.

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