

COMPLIANCE MONTHLY

January 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:

SCRA Sunset Date for Mortgage Foreclosure Protection Extended

The President has signed into law the National Defense Authorization Act for Fiscal Year 2018, which extends for two years, until December 31, 2019, the "sunset" on the temporary change of "90 days" in §303(b) and (c) of the Servicemembers Civil Relief Act to "one year." For another two years, servicemembers will remain entitled to the foreclosure protections for one year beyond the end of their active duty service. The current HUD-SCRA delinquency notice for past-due mortgage payments can be used past its December 31, 2017 expiration date.

Agencies Release Annual CRA Adjustments

The federal bank regulatory agencies have announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank and intermediate small savings association under the Community Reinvestment Act (CRA) regulations. As a result of the 2.11 percent increase in the CPI-W for the period ending in November 2017, the definitions of small and intermediate small institutions for CRA examinations will change, effective January 1, 2018, as follows:

- Small bank/savings association means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.252 billion.
- Intermediate small bank/savings association means a small institution with assets of at least \$313 million as of December 31 of both of the prior two calendar years and less than \$1.252 billion as of December 31 of either of the prior two calendar years.
- Large bank/savings association means an institution that, as of December 31 of either of the prior two calendar years, had assets of \$1.252 billion or more.

CFPB Increases HMDA Asset & HPML Escrow Exemption Thresholds

The CFPB published a final rule amending the HMDA Regulation C asset-size exemption threshold for banks, savings associations, and credit unions from \$44 million to \$45 million in assets as of December 31, 2017, regarding the collection of data in 2018.

The CFPB also issued a final rule increasing the asset-size threshold for certain creditors to qualify for an exemption from the HPML escrow requirement, from \$2.069 billion to \$2.112 billion, effective January 1, 2018. The adjustment to the escrows asset-size exemption threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages.

Proposed Rules:

None.

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Other Compliance News:

FinCEN Exchange Launched

FinCEN has launched the FinCEN Exchange program to enhance information sharing with financial institutions. As part of this program, FinCEN will convene regular briefings with financial institutions to exchange information on priority illicit finance threats, including targeted information and broader typologies. FinCEN intends that the program will enable financial institutions to better identify risks and focus on high priority issues, and will help FinCEN and law enforcement receive critical information in support of their efforts to disrupt money laundering and other financial crimes.

FinCEN Updates Answers to Frequently Asked BSA Questions

FinCEN announced it has updated its Answers to Frequently Asked Bank Secrecy Act Questions on its website. The updates removed several outdated questions, updated references to the Code of Federal Regulations, and modified the answer to question 16 regarding how to address a current issue involving the Designation of Exempt Person form.

Agencies Rulemaking Agendas Updated

The CFPB intends to review inherited regulations, with a focus on credit card rules. The CFPB's goal is to modernize its database of credit card agreements to make it more useful. Small business lending and overdrafts continue to reflect "pre-rule activities" status through 2018. A proposed rule on third-party debt collection is now planned for February 2018, and the CFPB targets December 2018 for a proposed rule to make permanent the adjusted HMDA threshold for collection and reporting data on open-end credit.

FinCEN reports it is in the pre-rule stage for AML program requirements for persons involved in real estate closings and settlements and for investment advisers, and in the proposed rule stage regarding cross-border electronic transmittals of funds.

The Fed, OCC and FDIC are planning to issue a final rule expanding the exemption for appraisals of commercial real estate, and a final rule implementing net stable funding ratio standards.

Agencies Announce Leniency on 2018 HMDA Data

OCC Bulletin 2017-62, FDIC FIL-63-2017 and a public statement from the CFPB all state that the respective agencies do not intend to require data resubmission unless data errors are material or to assess penalties with respect to errors for data collected in 2018 and reported in 2019 under HMDA. The CFPB also announced it intends to open a rulemaking to reconsider various aspects of its 2015 HMDA rule, such as the institutional and transactional coverage tests and the rule's discretionary data points.

DoD Updates MLA Rule Interpretations

The Department of Defense has published an amendment to its interpretive Q&A on the Military Lending Act regulation, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," at 32 CFR Part 232. On August 26, 2016, the Department issued the first set of interpretations of that regulation in the form of questions and answers; this amendment adds to those questions and answers to provide guidance on certain questions the Department has received regarding compliance with the regulation. The new interpretive rule was effective December 14, 2017. Among the answers in the revisions are:

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- Purchase money secured loans such as those for vehicles will still qualify for an exemption from the MLA regulation when related items such as warranties are added to the loan. Financing credit-related costs, however, will disqualify the transaction for the exception.
- Depository institutions can take a security interest in checking, savings, or other financial accounts by describing a permissible security interest granted by a covered borrower.
- Creditors may exercise a statutory security interest (when available) in funds deposited into a covered borrower's account in connection with all types of consumer credit covered by the MLA regulation, including credit card accounts, provided this is not otherwise prohibited.

There are also clarifications on the use of remotely created checks to make loan payments and the timing for checking military status under the safe harbor provision in the MLA regulation.

Examiner Guidance for Institutions Affected by Major Disasters

OCC Bulletin 2017-61 and FDIC FIL-62-2017 have been issued regarding interagency examiner guidance for institutions affected by a disaster that results in a presidential declaration of a major disaster. The guidance also applies to institutions that may be located outside the area declared a major disaster, but have loans to or investments in individuals or entities located in such an area.