Compliance Monthly

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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.

David Smith, Compliance Director

Finalized Rules:

NCUA Adjusts Member Business Lending Rule

In one of the first regulatory changes implementing the Economic Growth, Regulatory Relief, and Consumer Protection Act (P. Law 115-174), the NCUA Board has approved a change to its Member Business Lending rule that removes the member's occupancy requirement for loans secured by liens on 1-to-4-unit family dwellings. The member business lending rule previously required those dwellings to be the primary residence of a member in order to be excluded from limitations on member business loans. The rule is effective June 5, 2018.

NCUA Loosens Credit Union Membership Limits

The NCUA issued a final rule that allows federal credit unions to use a "narrative" to apply for expansion of a community charter rather than relying on statistical benchmarks. An applicant for an original community charter, conversion, or expansion has the option of submitting a narrative, with sufficient supporting documentation, to establish the existence of the required well-defined local community. The final rule is effective September 1, 2018.

Fed Approves Final Rule Setting Single Counterparty Credit Limit

The Federal Reserve Board approved a rule to prevent concentration of risk between large banking organizations and the counterparts. The final rule applies credit limits that increase in stringency as the systemic footprint of a firm increases. A global systemically important bank holding company (GSIB) would be limited to a credit exposure of no more than 15% of the GSIB's tier 1 capital to another systemically important financial firm. Consistent with the recently passed Economic Growth, Regulatory Reform, and Consumer Protection Act, the limits in the final rule will apply only to GSIBs and bank holding companies with at least $250 billion in total consolidated assets. The Board will consider the extent to which additional standards, including credit exposure limits, should apply to

holding companies with total consolidated assets between $100 billion and $250 billion at a later date. GSIBs will be required to comply by January 1, 2020.

Proposed Rules:

Simplified Volcker Rule Requirements

A proposal was developed to simplify the Volcker Rule's compliance burdens and better target the rule's effects toward intended activities. The proposal was developed by the five federal agencies (the Board, the CFTC, the FDIC, the OCC, and the SEC) responsible for administration of the Volcker Rule. The proposal would tailor the rule by focusing its restrictions on proprietary trading and investments in covered funds on banks with "significant" and "moderate" trading activities; banks with limited trading assets and liabilities of less than $1 billion would have a rebuttable presumption of compliance with the Volcker Rule. The rule would focus supervisory efforts on the 40 firms with significant or moderate activities, which the Fed said accounts for 98% of U.S. trading activities by banks. This proposal would combine with a provision in the recently enacted S. 2155 that generally exempts banks with less than $10 billion in assets from Volcker Rule requirements to significantly reduce the rule's burden on community banks.

Banks with the most significant trading activities (trading assets and liabilities of more than $10 billion) would face the strictest compliance regime, including the six-pillar compliance program specified in the 2013 final rule. Meanwhile, banks with moderate trading activities would be allowed to establish a simplified compliance program that includes CEO attestation.

The proposal would also address several compliance issues that have arisen since the Volcker Rule was finalized in 2013, including: revising the definition of trading account under the proprietary trading restrictions; clarifying the exemptions for permitted underwriting and market-making activities; removing or reducing certain hedging requirements; modifying foreign banks' permitted trading activities; and clarifying activities connected to organizing or offering a covered fund. Comments are due 60 days after it is published in the Federal Register.

NCUA Publishes PAL II Proposal

The NCUA has published its previously announced proposal to expand credit unions' ability to offer payday alternative loans. Comments are due by August 3, 2018.

Other Compliance News:

OCC Issues Bulletin Outlining How Examiners Assess CRA Performance

The OCC issued a bulletin to clarify current OCC policies and processes for assessing banks' CRA performance. The bulletin covers policy clarifications that take effect immediately and address the implementation of full-scope and limited-scope reviews; consideration of activities that promote economic development; use of demographic, aggregate, and market share data; evaluation of the borrower distribution of loans outside bank assessment areas; evaluation frequency and timing; the CRA performance evaluation period; and evaluation of home mortgage loans.

It also covers clarifications on standard processes related to CRA evaluations that were communicated to examiners and took effect on May 2, 2017. These clarifications address the type of information considered in a written performance evaluation, the process for sharing CRA evaluation data and ratings with OCC-supervised banks, factors considered when evaluating bank performance under tests for both small and large banks' lending, branch distribution, internal and external performance context factors and the consideration of CRA plans imposed as conditions of approval of applications.

HUD Reviewing its Implementation of Disparate Impact Standard

The Department of Housing and Urban Development is seeking comment on whether its rule implementing the Fair Housing Act's discriminatory effects standard is consistent with the Supreme Court decision in Texas Department of Housing and Community Affairs v. Inclusive Communities Project. The Supreme Court ruled in 2015 that "disparate impact" analysis to demonstrate discrimination claims is recognized under the Fair Housing Act, but it included key limitations that placed the burden of proof in disparate impact cases with the plaintiffs.

In an advance notice of proposed rulemaking, HUD is seeking comments on several aspects of its disparate impact rule, such as the rule's burden-of-proof standard, the rule's definition of discriminatory effect and whether it strikes the proper balance in encouraging legitimate legal claims, the need for clarification on the causality standard for a prima facie case under Inclusive Communities, and the need for safe harbors and other revisions to the rule that could reduce uncertainty or undue burden. Comments are due by August 20, 2018.

Restoration of Protecting Tenants at Foreclosure Act

Consumer Affairs Letter CA-18-4 issued by the Federal Reserve Board addresses the restoration of the Protecting Tenants at Foreclosure Act. The letter provides background information about the recently restored Act, which again became effective on Saturday, June 23, 2018, with no sunset date. The Board also issued compliance examination procedures for the Act. The law protects tenants from immediate eviction by persons or entities that become owners of residential property through the foreclosure process, and extends additional protections for tenants with U.S. Department of Housing and Urban Development Section 8 vouchers. Under the law, the immediate successor in interest at foreclosure must: (a) provide bona fide tenants with 90 days' notice prior to eviction; and, (b) allow bona fide tenants with leases to occupy property until the end of the lease term, except the lease can be terminated on 90 days' notice if the unit is sold to a purchaser who will occupy the property.

FCC Seeks Comment on Interpretation of TCPA

The Consumer and Governmental Affairs Bureau of the Federal Communications Commission (FCC) has published a notice requesting comment on issues related to interpretation and implementation of the Telephone Consumer Protection Act (TCPA) following the recent decision of the U.S. Court of Appeals for the District of Columbia in ACA International v. FCC:

- What constitutes an "automatic telephone dialing system";
- How to treat calls to reassigned wireless numbers; and

- How a called party may revoke prior express consent to receive robocalls under the TCPA.

The Commission's prior interpretations on those three issues were voided by the Court. The notice is a summary of the Commission's Public Notice released on May 14, 2018. Comments are due on June 13, and reply comments by June 28, 2018.

FinCEN Issues Advisory on Corrupt Foreign Political Figures

Advisory FIN-2018-A003 has been issued by FinCEN to highlight the connection between corrupt senior foreign political figures and their enabling of human rights abuses. The use of financial facilitators is one way that corrupt senior foreign political figures access the U.S. and international financial systems to move or hide illicit proceeds and evade U.S. and global sanctions. The advisory describes a number of typologies used by corrupt senior foreign political figures to access the U.S. financial system, obscure, and further their illicit activity. The advisory also provides 14 red flags that may assist financial institutions in identifying the methods used by those individuals.

CFPB Publishes Spring 2018 Regulatory Agenda

The CFPB has published its agenda, listing the regulatory matters that the CFPB anticipates having under consideration between May 1, 2018 and April 30, 2019. Because the CFPB is operating under interim leadership, it is prioritizing meeting specific statutory responsibilities, continuing selected rulemakings that were already underway, and reconsidering two regulations issued under prior leadership. Acting Director Mulvaney has decided to reclassify as "inactive" certain other rulemakings that had been listed in previous editions of the CFPBs agenda in the expectation that final decisions on whether and when to proceed with such projects will be made by the next permanent director. Statutory directives on the agenda include implementation of section 1071 of the Dodd-Frank Act, which would require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. Continuing rulemakings include those around the Fair Debt Collection Practices Act, and a review of subparts B and G of Regulation Z (open-end credit and credit cards, respectively). The CFPB has reclassified as "inactive" potential rulemakings regarding overdraft programs and a project to supervise certain large non-depository institutions that offer personal loans. The CFPB has included plans to reconsider various aspects of the amended HMDA regulations, such as the transactional coverage tests and discretionary data points, including the temporary HELOC reporting threshold that expires in 2020. Also under reconsideration will be its 2017 "Payday Lending" rule.