

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 Clarifies HMDA Partial Exemptions

The CFPB issued an interpretive rule clarifying several changes to Home Mortgage Disclosure Act regulations made under S. 2155, the bipartisan regulatory reform law. The rule is intended to address concerns raised by banks about S. 2155's partial exemptions for certain financial institutions from reporting an expanded set of HMDA data points. The CFPB also published an executive summary on the rule and updated the Filing Instructions Guide for HMDA data collected in 2018 and the Regulatory and Reporting Overview Reference Chart. The rule will be effective upon publication in the *Federal Register*. The rule:

- Provides banks and credit unions with partial exemptions from reporting certain HMDA data points for closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, and for open-end lines of credit if the institution originated fewer than 500 open-end lines of credit in each of the two preceding calendar years;
- Clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data;
- Clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions;
- Clarifies which of the data points in Regulation C are covered by the partial exemptions;
- Assigns a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and
- Clarifies that exemptions do not apply for banks that have received consecutive ratings of "needs to improve" during their two most recent Community Reinvestment Act exams before December 31st of the preceding year.



**David Smith,
Compliance
Director**

FinCEN Extends Beneficial Ownership Relief for CD Rollovers, Loan Renewals

The Financial Crimes Enforcement Network has extended for 30 additional days its temporary suspension of the beneficial ownership requirements for certificate of deposit rollovers and loans that renew automatically. FinCEN Ruling FIN-2018-R003 extends the exceptive relief through September 8, 2018. FinCEN is working to finalize a more permanent solution.

CFPB Issues Final Privacy Rule to Codify Legal Exemption for Annual Privacy Notice

The CFPB issued its long-awaited final rule amending Regulation P to incorporate a new legal exception to the requirement for banks to send annual privacy notices to their customers. Under a law passed by Congress in 2015, banks are no longer required to send an annual privacy notice if they have not changed their policies and practices about how they share customer information since the previous notice was sent, provided they only share non-public personal information with third parties as permitted by one of the statutory or regulatory exceptions. While the statutory provisions took effect on enactment, the final rule formally codifies that change in regulation, clarifying lingering confusion about compliance. The final rule also establishes deadlines for resuming annual privacy notices in the event that an institution no longer qualifies for an exemption; under the rule, banks that change their privacy policies and procedures and lose the exemption have 100 days to provide customers with an updated copy of the notice. Additionally, the CFPB removed a provision of Regulation P that allows for use of an alternative delivery method, noting that the alternative delivery method created by the CFPB will likely no longer be necessary as a result of the annual notice exception. The amendments to Regulation P in this final rule will become effective on September 17, 2018.

Expanded Examination Cycles for Qualified Small Banks

The FRB, FDIC, and OCC issued a joint press release announcing interim final rules to expand the number of insured depository institutions and U.S. branches and agencies of foreign banks eligible for an 18-month on-site examination cycle, as provided by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The rules will generally allow qualifying insured depository institutions with less than \$3 billion in total assets to benefit from an 18-month on-site examination cycle, up from the current cap of \$1 billion. The rules will also apply to qualifying U.S. branches and agencies of foreign banks. Under the final rules, insured depository institutions, including federal or state branches of foreign banks, qualify if they have an “outstanding” or “good” composite rating. These interim final rules are effective on August 29, 2018. Comments on the rules must be received by October 29, 2018.

CFPB Announce 2019 Regulation Z Dollar Thresholds

The CFPB has announced 2019 changes in dollar thresholds for several Regulation Z provisions governed by the CARD Act, the Home Ownership and Equity Protection Act and the Dodd-Frank Act. For credit cards, the penalty fees safe harbor for 2018 will increase by \$1 to \$28 for a first late payment. The subsequent late payment safe harbor fee will also grow by \$1 to \$39. The minimum interest charge disclosure threshold will remain unchanged for 2019 at \$1. The HOEPA loan threshold will increase to \$21,549, and the HOEPA points-and-fees trigger will

rise to \$1,077. For Qualified Mortgages, points and fees cannot exceed 3 percent of loans of \$107,747 or more; \$3,232 for loans between \$64,648 and \$107,747; 5 percent for loans between \$21,549 and \$64,648; \$1,077 for loans between \$13,568 and \$21,549; and 8 percent for loans of less than \$13,468. The adjustments are based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2018. The changes are effective January 1, 2019.

Proposed Rules:

OCC Seeks Comments on CRA Regulation Modernization

The OCC has released an Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on the best ways to modernize the regulatory framework implementing the Community Reinvestment Act (CRA). Through this ANPR, the OCC seeks stakeholder comment on ways to: broaden and clarify the types of activities eligible for CRA consideration; update assessment area definitions to accommodate digital lending channels; measure bank CRA performance by a metric-based framework, using quantitative benchmarks that would assign numerical values to CRA activities; increase lending and investment where it is needed most; and reduce the burden associated with reporting and assessing CRA performance. Comments will be accepted for 75 days after publication in the *Federal Register*.

NCUA Proposes Loan Regulations Amendments

The NCUA Board issued a proposal to amend its regulations regarding loans to members and lines of credit to members. The proposal would reduce regulatory burden by making amendments to improve clarity and to make compliance easier. The proposal would:

- identify in one section all the various maturity limits applicable to federal credit union loans
- better define the maturity date of new loans
- more clearly express the limits on loans to a single borrower or group of associated borrowers

The NCUA Board also seeks comment on whether it should provide longer maturity limits for certain 1-4 family real estate loans. Comments on the proposal are due October 9, 2018.

HUD Requests Comments on Fair Housing Rule Proposal

HUD announced an advance notice of proposed rulemaking inviting public comment on amendments to its Affirmatively Furthering Fair Housing (AFFH) regulations. HUD's stated goal in pursuing new rulemaking is to offer more helpful guidance to states and local communities to effectively promote fair housing choice through the use of their federal funds. Comments are sought on changes that would: (1) minimize regulatory burden while more effectively aiding program participants to meet their statutory obligations, (2) create a process focused primarily on accomplishing positive results, rather than on analysis, (3) provide for greater local control and innovation, (4) seek to encourage actions that increase housing choice, including through greater housing supply, and (5) more efficiently utilize HUD resources. Comments will be accepted for 60 days following publication. Comments due by October 15, 2018.

Other Compliance News:

Treasury Report on Non-Bank Financials, Fintech and Innovation

The Treasury Department has issued a report identifying improvements to the regulatory landscape that will better support non-bank financial institutions, embrace financial technology, and foster innovation. This is the fourth in a series of reports which called on Treasury to identify laws and regulations that are inconsistent with the Core Principles for financial regulation it set forth.

OCC to Accept Applications from Fintech Companies

The OCC also issued a report that encourages the OCC to "further develop its special purpose national bank charter, previously announced in December 2016". The OCC has announced it will begin accepting applications for special purpose national bank charters from non-depository financial technology (fintech) companies engaged in the business of banking. Qualifying fintech companies also may apply for federal charters under the OCC's authority to charter full-service national banks and other special purpose banks, such as trust banks, banker's banks, and credit card banks.

CFPB Makes 2018 HMDA File Format Check Tool Available

The CFPB has announced the availability of the File Format Verification Tool (FFVT) for HMDA data collected in 2018 and submitted in 2019. The FFVT can be used to test your HMDA file for certain formatting requirements set out in the HMDA Filing Instruction Guide.

OCC Clarifies CRA Policy

The OCC has issued Bulletin 2018-23 announcing the revision of Policies and Procedures Manual (PPM) 5000-43, which clarifies the OCC's policy for applying the regulatory framework to determine the effect of evidence of discriminatory or other illegal credit practices on the Community Reinvestment Act (CRA) rating of a national bank, federal savings association, or federal branch. The OCC updated its policies and procedures manual to clarify its policy and methodology for determining how evidence of discrimination or illegal credit practices will affect a bank's Community Reinvestment Act rating. Importantly, the updated manual maintains the OCC's position that there be a logical link between the CRA rating and evidence of discriminatory or illegal credit practices. The revisions clarify that in assigning a CRA rating, the OCC first evaluates a bank's CRA performance for the applicable time period and then makes any adjustments that are warranted based on evidence of discriminatory or other illegal credit practices. The OCC also clarified that its general policy is to downgrade the rating by only one rating level unless such illegal practices are found to be particularly egregious.