

# Compliance Monthly Newsletter

*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.*

## Focus of the Month

The long-awaited private flood insurance rule is now here. The Biggert-Waters Act of 2012 required the Agencies to issue a rule to direct regulated lending institutions to accept private flood insurance, as defined by the Biggert-Waters Act, and to notify borrowers of the availability of flood insurance coverage issued by private insurers. There was an original proposal in 2013 regarding private flood insurance, which was later re-proposed in November 2016. The November 2016 Proposed Rule significantly revised the October 2013 Proposed Rule. The final rule is effective July 1, 2019.

The final rule requires regulated lending institutions to accept “private flood insurance”. Private flood insurance is defined as an insurance policy that:

- is issued by an insurance company that meets the requirements of the Act;
- provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP) issued under the National Flood Insurance Program (NFIP), including when considering deductibles, exclusions, and conditions offered by the insurer;
- includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution’s behalf; and
- contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

The final rule also includes a streamlined compliance aid provision to help regulated lending institutions evaluate whether a flood insurance policy meets the definition of private flood insurance. This compliance aid allows a regulated lending institution to conclude that a policy meets the definition of private flood insurance without further review of the policy if the policy, or an endorsement to the policy, states: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

In addition, the final rule permits regulated lending institutions to choose to accept certain flood insurance policies issued by private insurers, even if the policies do not meet the statutory and regulatory definition of private flood insurance. The key conditions in the final rule is a requirement that the policy provide sufficient protection for a designated loan, is consistent with general safety and soundness principles, and a requirement that the regulated lending institution document its conclusion regarding the sufficiency of protection in writing.

The final rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by mutual aid societies. There is a three-prong test to determine whether an organization is a mutual aid society as described further in the regulation.

## Accume Thought Leadership

A roundtable discussion will take place in NYC on Thursday, March 7 as a follow-up to the recent Beneficial Ownership webinar and article. Topics will include: Beneficial Ownership; Enforcement Action Trends; Independent Testing; and HMDA. Additional roundtable discussions will be scheduled for other regions.

## Regulator Roundup

Regulatory focus on the Unfair, Deceptive, Acts or Practices Act (UDAAP) continues to increase. Both federal and state regulators are particularly zeroing in on Overdraft Programs and disclosures. Policies and procedures must be in place for payment of overdrafts and collection of fees, and they should include:

- Low dollar overdraft limits
- Number of overdraft fees charged per day
- Order of posting sequence
- High dollar overdraft limits and approval authority

It is also imperative for disclosures and statements to be aligned. If the bank’s disclosure states the overdraft fee is \$10, the statement must also match both the description (overdraft fee) and the amount. The same can be said for any fee the bank charges. A lack of harmonization will lead to regulatory criticism.

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## Final Rules

### Agencies Issue Private Flood Insurance Acceptance Rule

See Focus of the Month above for details.

### CFPB Adjusts HMDA Asset-Size and QM Exemptions for 2019

The CFPB has adjusted asset size exemption thresholds for banks under Regulation Z and Regulation C. The asset size exemption threshold for financial institutions reporting under the Home Mortgage Disclosure Act and Regulation C will rise from \$44 million to \$45 million. The asset size for banks exempt from the requirement to establish an escrow account for higher-priced mortgages under Regulation Z will rise from \$2.112 billion to \$2.167 billion. The adjustment to the escrows asset-size exemption threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. The thresholds are effective as of January 1st, 2019.

### Agencies Finalize Three-Year Phase-In for CECL's Regulatory Capital Effects

The financial regulatory agencies issued a final rule giving banks the option to phase in over a three-year period the day-one adverse effects of the Current Expected Credit Loss (CECL) standard on regulatory capital.

The CECL standard, which goes into effect in 2020 for SEC registrants, 2021 for non-SEC banks that are FASB-defined public business entities, and 2022 for all other banks, requires an estimate of expected credit losses over the life of the portfolio to be effectively recorded upon origination. In related news, the Federal Reserve issued a statement noting that to reduce uncertainty, it will maintain its current framework for calculating loan loss allowances in supervisory stress tests until after the 2021 test cycle. The rule is effective April 1, 2019.

### Agencies Issue Final Rule Extending Exam Cycle for More Banks

The federal banking agencies issued a final rule implementing a provision in the S. 2155 regulatory reform bill that make qualifying banks with up to \$3 billion in assets eligible for an 18-month on-site exam cycle vs a 12 month cycle. Prior to S. 2155's passage, only banks with under \$1 billion in assets were eligible. Under the final rule, insured depository institutions, including federal or state branches of foreign banks, qualify if they have an "outstanding" or "good" composite rating. The rule is effective January 28, 2019.

## Proposed Rules

### Fed Proposes Rule to Harmonize Company-Run Stress Testing Requirements with S. 2155

The Federal Reserve issued a proposed rule that would make changes to its framework for company-run stress tests to conform to Section 401 of the S. 2155 regulatory reform law. The OCC and FDIC released similar proposals for national banks and state nonmember banks, respectively, in December. The rule would raise the minimum asset threshold for state member banks to conduct their own stress tests from \$10 billion to \$250 billion. It would also generally require firms above \$250 billion to conduct company-run stress tests once every other year rather than annually. Finally, it would eliminate the hypothetical adverse scenario from the test. Banks would still be required to test themselves against the severely adverse scenario, and the severely adverse scenario will also remain a part of supervisory stress test. Comments are due by February 19, 2019.

## Other Compliance News

### CFPB Issues Policy Guidance on HMDA Data Release

The CFPB has released its policy guidance describing the Home Mortgage Disclosure Act loan-level data it plans to release publicly in 2019. The CFPB announced that it would not release property addresses, applicants' credit scores or automated underwriting results. As expected, the CFPB will release "certain information with reduced precision," including borrower ages, loan amount and number of units in the dwelling. In addition, the CFPB also announced that it would begin the rulemaking process in 2019 to consider what HMDA data it will disclose in future years.

### OCC Revises Guidelines for Recovery Planning

The OCC announced revisions to its guidelines on recovery planning for the large financial institutions it regulates. The OCC has increased the threshold at which banks are covered by the guidance from \$50 billion to \$250 billion, and it has decreased the time within which a bank should comply with the guidelines from 18 to 12 months. Under the guidelines, each covered bank is expected to develop and maintain a recovery plan appropriate for its own risk profile, size, activities and complexity.

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## **NCUA Supervisory Priorities for 2019**

The NCUA has outlined its primary areas of supervisory focus for 2019 in its Letter 19-CU-01 to credit unions. The NCUA's extended exam cycle will be fully implemented, and agency examiners will continue using the streamlined small credit union exam program procedures for most credit unions that have assets under \$50 million. For all other credit unions, examiners will conduct risk-focused examinations, concentrating on the areas of highest risk, new products and services, and compliance with federal regulations.

## **Recommended Actions to Take**

- Amend flood policies and procedures based on the new regulatory requirements described above, and provide training as necessary on the new requirements
- Conclude on whether or not your institution will accept private flood insurance policies that do not meet the statutory and regulatory definition of private flood insurance
- Review your Overdraft Policies, disclosures and periodic statements to ensure the required language is evident and statements and disclosures are consistent
- Take note of the HMDA and Regulation Z adjusted exemption thresholds and adjust your processes as applicable
- Looking forward, scrub your HMDA data and prepare for your first submission of the expanded HMDA data requirements on March 1st
- Mark your calendar for the Accume Roundtable!

**If you have questions about any of the above recommendations, or about their implementation, feel free to reach out to Accume for additional information.**

# Accume's Leadership Team



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## How Can Accume Partners Help You

We are trusted advisors in:

- ✓ Internal Audit / IT Audit: Outsource, Co-Source, Staff Augmentation
- ✓ Regulatory Compliance: Compliance with Multiple Federal, State and International Regulations
- ✓ Enterprise Risk Management: Risk Identification, Assessment, Design, Remediation, Implementation
- ✓ Advisory and Third Party Attest: Business Process Mgmt., Controls, Testing, Program Mgmt., Blockchain, Readiness, Attest

We assist our clients and reach their goals by:

- ✓ Exceed key stakeholder expectations
- ✓ Greater risk optimization / mitigation
- ✓ Reduced regulatory scrutiny
- ✓ Improved cost / benefit results
- ✓ Stronger risk posture