

# 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

Banks and Credit Unions now have a better opportunity to ensure that they meet consumers' needs for short-term, small-dollar loans. The CFPB has proposed to remove the underwriting provisions from the small-dollar (payday) lending rule it issued in October 2017. The rule imposes an ability-to-pay test on a wide range of small-dollar loans of 45 days or less, including payday loans, auto title loans and bank-provided loans with balloon payments. The CFPB's proposal maintains the complete exemption in the rule for banks and other depository institutions that made 2,500 or fewer small-dollar loans in each of the current and previous years and for which these loans account for less than 10 percent of revenues. The CFPB is also proposing to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the 2017 final rule to November 19, 2020. The extension is intended to help lenders avoid expending unnecessary resources to comply with provisions that the CFPB has proposed to rescind. Comments on the proposal to delay the compliance date for the ATR provisions are due on or before March 18, 2019. Comments on the proposal to rescind the ATR provisions are due on or before May 15, 2019.

## Accume Thought Leadership

Please stay tuned for more information coming soon!

## Regulator Roundup

Regulatory focus on Model Validations continues to be a hot topic. Supervisory Guidance on Model Risk Management (OCC 2011-12) serves as the foundation for model validation guidance. The FDIC also adopted the guidance in June 2017. The guidance states that banks should conduct a periodic review—at least annually but more frequently if warranted—of each model to determine whether it is working as intended and if the existing validation activities are sufficient. Although an independent model validation annually is best practice, some regulators allow for up to three years. Irrespective, if you have not had your BSA/AML System validated within the last year, you should work a model validation into your plans to avoid regulatory criticism.

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## Finalized Rules

None.

## Proposed Rules

### CFPB Proposes to Eliminate Small-Dollar Lending Rule's Ability-to-Repay (ATR) Test

See *Focus of the Month* above for details.

### Agencies Propose Simplified Community Bank Leverage Rule

The OCC, Fed, and FDIC published a notice of proposed rulemaking that would provide a simplified measure of capital adequacy for qualifying community banking organizations consistent with section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Qualifying community banking organizations that comply with and elect to use the community bank leverage ratio (CBLR) framework and that maintain a CBLR greater than 9 percent would be considered to have met the capital requirements for the "well-capitalized" capital category under the agencies' prompt corrective action (PCA) frameworks and would no longer be subject to the generally applicable capital rule. The proposed CBLR framework is a simple alternative methodology to measure capital adequacy for qualifying community banks. The proposal would provide material regulatory relief while maintaining safety and soundness in the banking system. Comments are due by April 9, 2019.

### Volcker Simplification Proposal Comment Periods Open

The financial regulatory agencies published a proposal implementing another section of EGRRCPA that grants an exemption from the Volcker Rule for community banks. To qualify for the exemption, community banks and their controlling entities must have \$10 billion or less in total consolidated assets as well as trading assets and liabilities of 5 percent or less of total consolidated assets. Comments on the proposal are due by April 9<sup>th</sup>.

## OCC Publishes Proposed Changes to Stress Test Rules

The OCC has published a proposal to amend the OCC's company-run stress testing requirements for national banks and Federal savings associations, consistent with section 401 of EGRRCPA. The proposed rule would revise the minimum threshold for national banks and Federal savings associations to conduct stress tests from \$10 billion to \$250 billion, revise the frequency by which certain national banks and Federal savings associations would be required to conduct stress tests, and reduce the number of required stress testing scenarios from three to two. The proposed rule would also make certain facilitating and conforming changes to the stress testing requirements. This proposal was announced by the OCC in mid-December, but publication was delayed by the December-January partial government shutdown. Comments are due by March 14, 2019.

## Other Compliance News

### New Protections for Servicemembers and Veterans

The CFPB has posted an article discussing free credit monitoring, medical debt credit reporting restrictions, and mortgage protections for servicemembers. A provision of EGRRCPA that went into effect on September 21, 2018, requires free security freezes and one year fraud alerts at the three nationwide credit reporting agencies. In addition, other EGRRCPA provisions address a number of key financial issues for the military, including:

- Holding lenders to more stringent requirements when they participate in VA's refinance programs
- Ensuring continued foreclosure protections for servicemembers up to one year after they leave active duty
- Prohibiting medical debt that should have been paid by the VA to be reported as part of a veteran's credit history
- Providing free credit monitoring for active duty military, including the National Guard

### CFPB Issues TRID Rule FAQs

The CFPB has posted a set of four TRID-related frequently asked questions. Topics include model forms as well as corrected closing disclosures and the three business-day waiting period before consummation.

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## **FCRA Amendment for Private Education Loans**

The FDIC has issued FIL-5-2019 with a joint advisory issued with the Federal Reserve on Voluntary Private Education Loan Rehabilitation Programs to make financial institutions aware of an amendment to section 623 of the Fair Credit Reporting Act. It gives consumers the opportunity to rehabilitate a private education loan with a previously reported default under certain conditions. Financial institutions that choose to establish a private education loan rehabilitation program under Section 602 of EGRRCPA that satisfies the statutory requirements, including written approval of the terms and conditions from their federal regulatory agency, are entitled to a safe harbor from potential claims under the FCRA related to removal of the reported default.

## **CFPB Releases 2019 Lists of Rural, Underserved Counties**

The CFPB released the lists of rural counties and rural or underserved counties that entities can use in 2019 to determine whether they are exempt from certain regulatory requirements under the Ability-to-Repay, escrow, HOEPA and appraisal rules. Lists are available for download as Excel, CSV or PDF files. In addition to the lists, the CFPB has also updated its tool for helping bankers determine whether a property is located in a rural or underserved area.

## **CFPB Updates Reportable HMDA Data Chart for 2019**

The CFPB has published the Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for Data Collected in 2019. The chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C.

## **CFPB Releases Payday Lending Compliance Guide**

The CFPB has released a small entity compliance guide summarizing the payment-related provisions of the Payday Lending Rule. Other provisions of the rule are under review, are likely to be delayed and may ultimately be rescinded. The Payday Lending Rule became effective on January 16, 2018. However, the rule's general compliance date is August 19, 2019. The rule does not require lenders to comply with its payment provisions or the related compliance program and record retention requirements until August 19, 2019. The compliance date is currently stayed by a court order issued in *Community Financial Services Association v. CFPB*. As a result, lenders have no obligation to comply with the rule until the court-ordered stay is lifted.

## **FDIC Adds Prepaid Rule to Exam Procedures**

The FDIC has issued FIL-9-2019 to announce revised interagency examination procedures to incorporate the CFPB's amendments to Regulation E and Regulation Z implementing the CFPB's Prepaid Accounts Rule, which will be effective April 1, 2019.

## **CFPB Unveils Electronic Platform for Prepaid Account Agreement Submissions**

The CFPB unveiled a new electronic submission system that prepaid account issuers may use to submit their account agreements to the CFPB. The CFPB also released several related compliance materials including a user guide, quick reference guide, FAQs and a recorded webinar. All prepaid account agreements that are offered as of April 1, 2019, must be submitted to the CFPB by May 1, 2019. After that, prepaid account issuers must make a submission to the CFPB within 30 days whenever a new agreement is offered, a previously submitted agreement is amended, or a previously submitted agreement is no longer offered.

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## Recommended Actions to Take

- Take note of the proposal to delay the small dollar lending rule ability-to-repay requirement
- Ensure you are offering the proper protections for servicemembers and veterans as outlined by the CFPB
- Review the new TRID FAQs
- Review the 2019 list of rural and underserved counties to determine if the exemptions apply to your institution
- Review the CFPB HMDA chart and Payday Lending Rule Compliance guide
- Determine when your BSA/AML System was last validated and, if not within the last year, plan for a model validation.

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

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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