



Capitol Comments August 2020

When there is a deadline or effective date associated with an item, you will see this graphic: 

‘Breathe the sweetness that hovers in August...’ — Denise Levertov

Department of the Treasury [COVID-19 Resources](#)

SBA Coronavirus (COVID-19): Small Business Guidance & Loan [Resources](#)

Joint federal agency issuances, actions and news

Federal Banking Agencies Issue Joint Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements (08.13.2020)

WASHINGTON—The federal banking agencies issued a joint statement updating their existing enforcement guidance to enhance transparency regarding how they evaluate enforcement actions that are required by statute when financial institutions fail to meet Bank Secrecy Act/anti-money laundering (BSA/AML) obligations.

The statement clarifies that isolated or technical violations or deficiencies are generally not considered the kinds of problems that would result in an enforcement action. The statement also addresses how the agencies evaluate violations of individual components (known as pillars) of the BSA/AML compliance program. It also describes how the agencies incorporate the customer due diligence regulations and recordkeeping requirements issued by the U.S. Department of the Treasury as part of the internal controls pillar of the financial institution’s BSA/AML compliance program.

The statement, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, updates and supersedes the Interagency Statement on Enforcement of BSA/AML Requirements issued on July 19, 2007, to promote a consistent approach to the application of Section 8(s) of the Federal Deposit Insurance Act and Section 206(q) of the Federal Credit Union Act.

The Financial Crimes Enforcement Network simultaneously issued a “Statement on Enforcement of the Bank Secrecy Act” that sets forth its approach to enforcement in circumstances of non-compliance with the BSA.

Source [link](#).

Comment: This is ‘must’ reading for the BSA officer. In addition, it should be summarized and reported to the bank’s board of directors. The guidance, which as noted replaces guidance from 2007, interprets a unique provision of the BSA regulatory enforcement regime that requires regulators to issue cease and desist (C&D) orders when banks fail to (i) establish and maintain adequate AML programs or (ii) correct deficiencies previously identified by their regulators. It also addresses other circumstances in which C&D orders or informal enforcement actions may be appropriate.

Joint Statement on Additional Loan Accommodations Related to COVID-19 (08.03.2020)

The Federal Financial Institutions Examination Council on behalf of its members (collectively referred to as FFIEC members) is issuing this joint statement to provide prudent risk management and consumer protection principles for financial institutions to consider while working with borrowers as loans near the end of initial loan accommodation periods applicable during the Coronavirus Disease 2019 (COVID event). These principles are consistent with Interagency Guidelines Establishing Standards for Safety and Soundness and are generally applicable to both commercial and retail loan accommodations. The principles in this joint statement are intended to be tailored to a financial institution’s size, complexity, and loan portfolio risk profile, as well as the industry and business focus of its customers or members.

Source [link](#).

Comment: The coronavirus has not cooperated and abated as quickly as had been hoped. Therefore, banks should review their COVID-19 program and consider their next steps. Well-designed and consistently applied accommodation options accompanied by prudent risk management practices can minimize losses to the bank, while helping its borrowers resume structured, affordable and sustainable repayment of amounts contractually due over a reasonable period of time.

CFPB actions and news

Consumer Financial Protection Bureau Proposes New Category of Qualified Mortgages to Encourage Innovation and Access to Affordable Mortgage Credit (08.18.2020)

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) to create a new category of seasoned qualified mortgages (Seasoned QMs) in order to encourage innovation and help ensure access to responsible, affordable in the mortgage credit market.

To be considered a Seasoned QM under the proposal, loans would have to be first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period. Covered transactions would also have to be held on the creditor’s portfolio during the seasoning period, comply with general restrictions on product features and points and fees and meet certain underwriting requirements. For a loan to be eligible to become a Seasoned QM, the proposal would also require that the creditor consider and verify the consumer’s debt-to-income ratio (DTI) or residual income at origination.

Seasoned QMs would only be available for covered transactions that have no more than two 30-day delinquencies and no delinquencies of 60 or more days at the end of the seasoning period. Also, should there be a disaster or pandemic-related national emergency and as long as certain conditions are met, the proposal would not disqualify a loan from becoming a Seasoned QM for the failure to make full contractual payments if the consumer receives a temporary payment accommodation.

“Today’s proposal continues the Bureau’s work to encourage safe and responsible innovation in the mortgage origination market,” said Consumer Financial Protection Bureau Director Kathleen L. Kraninger. “Our goal through our very deliberative rulemaking process is to protect, promote and preserve the financial well-being of American consumers while at the same time offering access to responsible, affordable mortgage credit.”

This announcement follows [two NPRMs from June of this year regarding QMs](#). The first NPRM proposes to amend the General QM definition in Regulation Z to replace the DTI limit with a price-based approach. Through a recent speech and otherwise, Director Kraninger has emphasized the importance of receiving public comment from stakeholders in response to this NPRM, especially on possible standards to help the Bureau identify verification safe harbors for inclusion in final rules. The second NPRM proposes to amend Regulation Z to extend a temporary QM definition known as the Government-Sponsored Enterprise Patch to expire upon the effective date of the final rule proposed in the first NPRM.

The NPRM can be found here: https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_seasoned-gm-loan-definition_2020-08.pdf.

Source [link](#).

Comment: In summary, the CFPB said loans could gain “seasoned” QM status even if they have two, 30-day delinquencies at the end of a roughly three-year seasoning period. Loans in forbearance plans whereby the borrower can forgo mortgage payments for up to a year due to the coronavirus pandemic could ultimately become eligible for seasoned QM status as well, the CFPB said, as long as certain conditions are met.

CFPB Issues Additional Small Dollar Lending FAQs (08.11.2020)

The Bureau issued several Frequently Asked Questions (FAQs) about the Small Dollar Lending Rule. You can access the FAQs [here](#).

The Bureau previously issued several resources, including a Small Entity Compliance Guide, to help institutions comply with the Small Dollar Lending Rule. You can access those resources [here](#).

Comment: With the changes made to the rule, the underwriting part is gone. However, some community bank small dollar programs may still be subject to the provisions relating to terms. These FAQs are helpful in assuring your small dollar program is either outside the scope of the revised rule or is consistent with it.

CFPB issues HMDA FAQs - Multiple Data Points (07.30.2020)

The Bureau released two HMDA FAQs in response to questions it has received. The FAQs cover reporting requirements for certain data points, and specifically discuss reporting when the information is not the dispositive factor in a credit decision.

You can access the FAQs here: <https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/>.

Source [link](#).

Comment: The CFPB confirmed, with respect to both data sets, that any such data point must be reported if “relied on in making the credit decision” and that there is no requirement in Regulation C, implementing HMDA, that limits reporting to dispositive factors alone. For example, if a financial institution denied an application for failing to satisfy one or more underwriting requirements other than the credit score, the FAQs

emphasize that the credit score must still be reported if the financial institution “relied” on the credit score in its decision. Citing the comments to Regulation C, the FAQs apply this same fact pattern and analysis to the reporting of CLTV and DTI. These FAQs clarify areas that are murky. Add this to your HMDA tool kit!

Consumer Financial Protection Bureau Requests Information on Ways to Prevent Credit Discrimination and Build a More Inclusive Financial System (07.28.2020) 

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (Bureau) issued a request for information (RFI) to seek public input on how best to create a regulatory environment that expands access to credit and ensures that all consumers and communities are protected from discrimination in all aspects of a credit transaction.

The Equal Credit Opportunity Act (ECOA) and Regulation B make it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age; because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The information provided will help the Bureau continue to explore ways to address regulatory compliance challenges while fulfilling the Bureau's core mission to prevent unlawful discrimination and foster innovation.

The RFI is in lieu of a symposium the Bureau had planned to host on ECOA issues this Fall.

To read the RFI click here: https://files.consumerfinance.gov/f/documents/cfpb_rfi_equal-credit-opportunity-act-regulation-b.pdf .

Source [link](#).

Comment: It’s worth noting the timing of this RFI suggests that enforcement of the ECOA will be a priority of the CFPB. Prior to issuing the RFI, the CFPB filed suit against a nonbank retail-mortgage creditor for discriminatory lending practices under the ECOA.

FDIC actions and news

Deposit Insurance Coverage Seminars: Free Nationwide Series for Bank Officers and Employees (08.12.2020)



The FDIC will conduct four identical live seminars on FDIC deposit insurance coverage for bank employees and bank officers between September 15, 2020, and December 10, 2020. In addition to a comprehensive overview of FDIC deposit insurance rules, the seminars include deposit insurance coverage information on signature card requirements for joint accounts, prepaid cards, bank trade names, Health Savings Accounts, 529 plan accounts, and 529 Achieving a Better Life Experience (ABLE) plan accounts.

Details about the deposit insurance seminars can be found on the FDIC's website.

Highlights:

- The presentation provides an overview of some of the most popular deposit insurance resources such as the FDIC's Electronic Deposit Insurance Estimator (EDIE), which is an interactive tool used to calculate deposit insurance coverage; the FDIC's BankFind Directory, which allows users to confirm if a bank is

FDIC-insured; and the FDIC's Financial Institution Employee's Guide to Deposit Insurance, which was developed to assist bankers in providing detailed information about deposit insurance coverage to their customers.

- The FDIC also has developed three separate seminars for bank officers and employees that are available on the FDIC's YouTube channel. Both the live and YouTube seminars will provide bank employees with an understanding of how to calculate deposit insurance coverage. Each live seminar will provide a comprehensive overview of FDIC deposit insurance.
- Questions about the live seminars or the YouTube videos may be sent to DIBankerSeminars@fdic.gov or you may call 1-877-275-3342 and ask to speak to a subject matter expert in the Deposit Insurance Section.

Attachment:

[Deposit Insurance Coverage: Free Nationwide Seminars for Bank Officers and Employees.](#)

Source [link](#).

Comment: These free seminars are excellent training tools for frontline employees.

FDIC Launches BankFind Suite (08.06.2020)

The FDIC is pleased to announce the launch of [BankFind Suite](#), a new section of our public website that provides one-stop access to the FDIC's premier collection of data tools. Whether you're a developer and want to access our new Application Programming Interfaces (APIs) for data retrieval or a consumer looking for easy point-and-click access to information about your bank, you can find everything you need in one convenient place.

BankFind Suite contains current and historic bank data, bank failures and assistance data, and bank structure events and changes data which provides insight about mergers, liquidations, and branch purchases and assumptions.

Source [link](#).

FDIC Issues Final Rule Revising and Codifying Section 19 to Allow Greater Employment Opportunities for Individuals with Certain Minor Criminal Offenses on Their Records (07.24.2020)

WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) approved a final rule to revise and incorporate into the FDIC's regulations a longstanding Statement of Policy (SOP) related to individuals with certain criminal offenses on their records who seek employment in the banking industry.

Section 19 of the Federal Deposit Insurance Act (Section 19) prohibits any person from participating in banking who has been convicted of a crime involving dishonesty, breach of trust, or money laundering, or who has entered a pretrial diversion or similar program in connection with the prosecution for such an offense, without first obtaining written consent from the FDIC.

Based on filings over the past several years, the FDIC expects that the revisions in the final rule will reduce applications required under Section 19 by 30 percent. All of these changes will reduce regulatory burden on financial institutions and individuals.

The final rule will be effective 30 days after publication in the Federal Register, at which time, the existing SOP will be rescinded.

FDIC: PR-87-2020

[FDIC Chairman Jelena McWilliams's statement.](#)

Source [link](#).

Comment: Individuals whose offense has been expunged will be exempt from submitting an application. In addition, the de minimis exception is expanded and made more flexible.

FDIC Names New Members to Advisory Committee on Community Banking (07.22.2020)

The Federal Deposit Insurance Corporation (FDIC) announced three new members to its Advisory Committee on Community Banking, which has been sharing input with the FDIC on a broad range of community bank policy and regulatory matters since it was established in 2009. The Advisory Committee members represent a cross-section of community bankers from around the country.

On July 28, 2020, the Advisory Committee will meet to address a wide range of issues. The agenda includes: a discussion of local banking conditions; a briefing on the FDIC's Rapid Prototyping Competition; an update on supervision matters; a report from its Minority Depository Institutions Subcommittee; and a discussion of diversity and inclusion at community banks. This meeting of the Advisory Committee on Community Banking will be Webcast live at <http://fdic.windrosemedia.com> beginning at 1 p.m. EDT.

The new members of the FDIC's Advisory Committee on Community Banking are:

Stephen Hayes, Chairman & President, Dakota Prairie Bank, Ft. Pierre, South Dakota

Teri Messerschmitt, President & CEO, South Ottumwa Savings Bank, Ottumwa, Iowa

Patty Mongold, Chairperson, President & CEO, Mt. McKinley Bank, Fairbanks, Alaska

The new members will join the following individuals currently serving on the Committee:

Shaza Andersen, CEO, Trustar Bank, Great Falls, Virginia

Dick Beshear, Chairman, President & CEO, First Security Bank and Trust Company, Oklahoma City, Oklahoma

Fred DeBiasi, President & COO, Valley Central Bank, Liberty Township, Ohio

James J. Edwards, Jr., CEO, United Bank, Zebulon, Georgia

Keith Epstein, EVP & CEO, Roxboro Savings Bank, Roxboro, North Carolina

Sarah Getzlaff, CEO, Security First Bank of North Dakota, New Salem, North Dakota

Kenneth Kelly, Chairman & CEO, First Independence Bank, Detroit, Michigan

Bruce Kimbell, President & CEO, First Community Bank of the Heartland, Clinton, Kentucky

Thomas Leavitt, President & CEO, Northfield Savings Bank, Northfield, Vermont

Lori Maley, President & CEO, Bank of Bird-in-Hand, Bird-in-Hand, Pennsylvania

Gilbert Narvaez, Jr., President & CEO, Falcon International Bank, Laredo, Texas

Mark Pitkin, President & CEO, Sugar River Bank, Newport, New Hampshire

Alan Shettlesworth, President & COO, Main Bank, Albuquerque, New Mexico

Cathy Stuchlik, Chairwoman & President, Clackamas County Bank, Sandy, Oregon

Louise Walker, President & CEO, First Northern Bank, Dixon, California

[Read more about the work of the FDIC's Advisory Committee on Community Banking.](#)

FDIC: PR-84-2020

[Advisory Committee on Community Banking July 28th Meeting Agenda.](#)

Source [link](#).

OCC actions and news

Office of the Comptroller of the Currency Fees and Assessments: Amended Interim Calendar Year 2020 Fees and Assessments Structure (08.07.2020)

This bulletin informs all national banks, federal savings associations, and federal branches and agencies of foreign banks (banks) of fees and assessments charged by the Office of the Comptroller of the Currency (OCC) for the remainder of calendar year 2020. The bulletin becomes effective September 7, 2020.

Highlights

- The OCC is reducing assessments due on September 30, 2020, in response to the national emergency declared in connection with the coronavirus disease (COVID-19). Assessments due on September 30, 2020, for all OCC-supervised banks will be calculated using the December 31, 2019, call report for each institution, rather than the June 30, 2020, call report. This change will result in lower assessments for most banks. However, if a bank's assets as reported on the June 30, 2020, call report are lower than on the December 31, 2019, call report, the OCC will calculate the assessment due on September 30, 2020, for the bank using the June 30, 2020, call report.
- All other elements of OCC assessments and fees for 2020, as set out in OCC Bulletin 2019-59 and outlined below, remain in effect:
- [OCC Bulletin 2019-59](#), "Office of the Comptroller of the Currency Fees and Assessments: Calendar Year 2020 Fees and Assessments Structure."
- [OCC Bulletin 2020-63](#), "Assessments: Interim Final Rule."
- For the 2020 assessment year, there will be no inflation adjustment to assessment rates.
- For the 2020 assessment year, the OCC has revised the assessments policy for institutions that enter the federal banking system in the time between assessment cycles. Under this policy, the OCC will assess these new entrants to the federal charter on a prorated basis using call report information as of December 31 or June 30 depending on the date the institution enters the federal banking system. The OCC is adopting this revised policy to ensure that supervisory efforts and resources are allocated and aligned once an institution is subject to the jurisdiction of the OCC. This revision is in line with the OCC's refund policy for institutions that leave the federal banking system.
- The OCC is increasing the hourly fee for special examinations and investigations to \$140 from \$110. The increase is to ensure adequacy in recovering the cost of conducting special examinations and investigations.

Source [link](#).

Comment: These changes represent important cost savings to national banks at a critical time.

Federally Chartered Banks and Thrifts May Provide Custody Services for Crypto Assets (07.22.2020)

WASHINGTON—The Office of the Comptroller of the Currency (OCC) published a letter clarifying national banks' and federal savings associations' authority to provide cryptocurrency custody services for customers.

National and state banks and thrifts have long provided safekeeping and custody services, including both physical objects and electronic assets. The OCC has specifically recognized the importance of digital assets and the authority for banks to provide safekeeping for such assets since 1998. In the letter published, the OCC concludes that providing cryptocurrency custody services, including holding unique cryptographic keys associated with cryptocurrency, is a modern form of traditional bank activities related to custody services. Crypto custody services may extend beyond passively holding "keys."

"From safe-deposit boxes to virtual vaults, we must ensure banks can meet the financial services needs of their customers today," said Acting Comptroller of the Currency Brian P. Brooks. *"This opinion clarifies that banks can continue satisfying their customers' needs for safeguarding their most valuable assets, which today for tens of millions of Americans includes cryptocurrency."*

The OCC also recognizes that, as the financial markets are increasingly digitized, the need will increase for banks and other service providers to leverage new technology and innovative ways to serve their customers' needs. By doing so, banks can continue to fulfill the financial intermediation function they have historically played in providing payment, lending, and deposit services.

The opinion applies to national banks and federal savings associations of all sizes and is consistent with a number of states which have already authorized state banks or trust companies to provide similar functions.

Source [link](#).

Comment: The key phrase above is 'any lawful business.' When a bank deals with crypto clients, whether the bank is actually dealing with a customer engaged in lawful activity is literally the question. The compliance obligations for a bank engaging in cryptocurrency custody activities will be significant. Banks must satisfy AML obligations when dealing with an industry that has often resisted full transparency.

Office of the Comptroller of the Currency Issues Proposed True Lender Rule (07.20.2020)

WASHINGTON—The Office of the Comptroller of the Currency (OCC) proposed a rule that would determine when a national bank or federal savings association (bank) makes a loan and is the "true lender" in the context of a partnership between a bank and a third party.

Banks' lending relationships with third parties can facilitate access to affordable credit. However, the relationships have been subject to increasing uncertainty about the legal framework that applies to loans made as part of these relationships. This uncertainty may discourage banks and third parties from entering into relationships, limit competition, and chill the innovation that results from these partnerships—all of which may restrict access to affordable credit.

The proposed rule would resolve this uncertainty by specifying that a bank makes a loan and is the "true lender" if, as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan.

The deadline for comments on the rule is September 3, 2020.

Related Link

[Federal Register Notice](#) (PDF).

Source [link](#).

Comment: The proposed rule would resolve uncertainty by specifying that a bank makes a loan and is the “true lender” if, as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan.

Federal Reserve actions and news

FraudClassifier: Watch Now: Better Fraud Data. Better Defense (08.11.2020)

Presenters Mike Timoney and Andrés Rapela from the Federal Reserve Bank of Boston gave an overview of the recently published model, highlighting its key features and intuitive approach to classifying fraud. Watch the recording to learn more about how the model was created and validated, the model’s different classification paths and the projected benefits of voluntary adoption.

Source [link](#).

Comment: The Fraud Definitions Work Group also developed and recommended an industry adoption road map, outlining a strategy and potential steps to encourage voluntary industry wide use of the FraudClassifier model.

Federal Reserve Announces FedNowSM Service Features and Functionality (08.06.2020)

The Federal Reserve Board announced details of the FedNowSM Service, a new 24x7x365 interbank settlement service with clearing functionality to support instant payments in the United States.

The features and functionality described in the accompanying Federal Register notice represent a key milestone in the FedNow Service's development and are based on input received from the public in response to the Board's 2019 request for comment. The Federal Reserve will take a phased approach to service implementation. The first release of the FedNow Service will provide core clearing and settlement features that will support market needs and help banks manage the transition to a 24x7x365 service. Based on ongoing stakeholder engagement, additional features and service enhancements will be introduced over time. The target launch date for the service remains 2023 or 2024, with a more specific time frame to be announced after additional work is completed.

The Federal Reserve has a long-standing role in providing payment and settlement services to promote an accessible, safe, and efficient U.S. payment system. The FedNow Service, alongside similar services provided by the private sector, will modernize the U.S. payment system and bring the benefits of instant payments broadly to communities across the country.

"The rapid expenditure of COVID emergency relief payments highlighted the critical importance of having a resilient instant payments infrastructure with nationwide reach, especially for households and small businesses with cash flow constraints," said Federal Reserve Board Governor Lael Brainard. *"Since we initiated FedNow one*

year ago, we have been hitting our project milestones, and today I am pleased to announce the Federal Reserve Board has approved the core features and functionality based on extensive input from stakeholders."

[FedNow launch timing and service design](#)

[Board of Governors' press release](#)

Source [link](#).

The July 2020 Senior Loan Officer Opinion Survey on Bank Lending Practices (08.03.2020)

The July 2020 Senior Loan Officer Opinion Survey on Bank Lending Practices addressed changes in the standards and terms on, and demand for, bank loans to businesses and households over the past three months, which generally corresponds to the second quarter of 2020.

Regarding loans to businesses, respondents to the July survey indicated that, on balance, they tightened their standards and terms on commercial and industrial (C&I) loans to firms of all sizes. Banks reported weaker demand for C&I loans from firms of all sizes. Meanwhile, banks tightened standards and reported weaker demand across all three major commercial real estate (CRE) loan categories—construction and land development loans, nonfarm nonresidential loans, and multifamily loans—over the second quarter of 2020.

For loans to households, banks tightened standards across all categories of residential real estate (RRE) loans and across all three consumer loan categories—credit card loans, auto loans, and other consumer loans—over the second quarter of 2020 on net. Banks reported stronger demand for all categories of RRE loans and weaker demand for all categories of consumer loans.

Banks also responded to a set of special questions inquiring about the current level of lending standards relative to the midpoint of the range over which banks' standards have varied since 2005. Banks, on balance, reported that their lending standards across all loan categories are currently at the tighter end of the range of standards between 2005 and the present.

Source [link](#).

Comment: Responses were received from 75 domestic banks and 22 U.S. branches and agencies of foreign banks. Respondent banks received the survey on June 22, 2020 and responses were due by July 2, 2020. Unless otherwise indicated, this summary refers to the responses of domestic banks.

Federal Reserve Board Finalizes Rule That Implements Technical, Clarifying Updates to Freedom of Information Act (FOIA) Procedures and Changes to Rules for the Disclosure of Confidential Supervisory Information (CSI) (07.24.2020)

The Federal Reserve Board on Friday finalized a rule that implements technical, clarifying updates to its Freedom of Information Act (FOIA) procedures and changes to its rules for the disclosure of confidential supervisory information (CSI), which is supervisory information belonging to the Board that may include proprietary financial institution-specific information. The final rule is generally similar to the proposal from June 2019, with a few changes in response to public comments.

The final rule updates the Board's FOIA regulation to be consistent with the Board's current practices and to incorporate recent changes in law and guidance. Some of these changes include updating definitions for

expedited processing and the different categories of requesters. The revisions also clarify terms and help users more easily navigate the process of filing a FOIA request.

The final rule provides clarifying revisions to the definition of CSI, and, like the proposal, does not expand or reduce the information that falls within the current definition of CSI. The final rule also updates certain outdated and inefficient restrictions governing the disclosure of CSI. For example, the final rule allows supervised financial institutions to share CSI with all affiliates, rather than only with their parent bank holding companies. In a change from the proposal, the final rule will allow financial institutions to share CSI with service providers without obtaining Reserve Bank approval.

The final rule is effective 30 days after publication in the Federal Register.

Source [link](#).

Comment: This change significantly simplifies the process for a Fed Member bank to work with its attorney and CPA firm to address issues raised in an examination.

Other federal action and news

FinCEN Statement on Enforcement of the Bank Secrecy Act (08.18.2020)

WASHINGTON—As the primary regulator and administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) issued a statement that sets forth its approach to enforcing the rules and regulations within the BSA.

Through this statement, FinCEN aims to provide clarity and transparency to its approach when contemplating compliance or enforcement actions against covered financial institutions that violate the BSA. The statement outlines the administrative actions available to FinCEN, and provides an overview of the information FinCEN analyzes in order to determine the appropriate outcome to violations of the BSA. FinCEN also encourages financial institutions to voluntarily and promptly report violations, and to candidly and completely cooperate with any investigation.

“FinCEN is committed to being transparent about its approach to BSA enforcement. It is not a ‘gotcha’ game,” said FinCEN Director Kenneth A. Blanco. “The information required by the BSA saves lives, and protects our communities and people from harm. It is a national security issue.”

The statement describes FinCEN’s enforcement authorities, dispositions, and the factors it evaluates in determining the appropriate response and enforcement of BSA violations.

Source [link](#).

Comment: In summary, the statement outlines the various types of action FinCEN may pursue when it identifies an actual or possible BSA violation, including issuing a warning letter, an injunction or equitable relief, settlements, civil money penalties, criminal referral or taking no action. It also lists the range of factors FinCEN considers when evaluating an appropriate disposition upon identifying actual or possible violations of the BSA.

Adverse Market Refinance Fee (Loan-Level Price Adjustment (08.12.2020)

Fannie Mae and Freddie Mac instituted a new “Adverse Market Refinance Fee.” It adds a 50 basis points fee (0.5%) to most mortgage refinances starting Sept. 1, 2020.

Fannie Mae : <https://singlefamily.fanniemae.com/media/23726/display>

Freddie Mac: <https://guide.freddiemac.com/app/guide/bulletin/2020-32>

Source [link](#).

Comment: The charge is meant to offset the risks and expenses the firms say they have taken on due to the coronavirus pandemic. The costs of the new fee will surely be passed onto consumers, either in the form of higher closing costs or higher mortgage rates, experts say. One industry group says the new fee increases the average cost of a refinanced mortgage by \$1,400.

CSBS BLOG - An Unconventional Retrospective on How to Spot Recessions in Real-Time (08.11.2020)

Yogi Berra, the famous New York Yankees manager and master of pithy witticisms, once exclaimed, “You can observe a lot just by watching.” Economists spend much of their time eyeing statistics and surveys about prices, employment, inflation, spending, interest rates, trade, consumer behavior and other indicators to find clues that help them understand macroeconomic trends to spot turning points and make forecasts. And because economists often form gloomy predictions and construct doomsday scenarios, the discipline has been dubbed “the dismal science.” While the National Bureau of Economic Research (NBER) Business-Cycle Dating Committee is the official arbiter for calling the start and end dates for U.S. recessions, I am going down memory lane to reflect on my own thoughts and perspectives and lessons learned by looking for signs to detect economic slumps in real-time.

On June 8, the NBER Committee—the group of eight distinguished academic economists who serve as the nation’s authoritative voice for announcing start and end dates for recessions (aka the nation’s chief dismal scientists)—made the 2020 COVID-19/lockdown recession official. After a record 128 months of economic expansion since the end of the 2008-09 Great Recession, the official monthly peak in economic activity was declared as February 2020. Of course, by the first week of June, with more than 40 million Americans having filed initial claims for unemployment insurance over the preceding eight weeks and the reported U.S. unemployment rate hitting a post-World War II high of 14.7% in April, the national economy was clearly and firmly contracting with expectations that second quarter real Gross Domestic Product (GDP) would decline by a stunning 30-35%. (And it did...falling at a 32.9% compound annual rate.)

Source [link](#).

CISA Releases Cyber Resiliency Resources for Public Safety Partners Fact Sheet (08.04.2020)

The Cybersecurity and Infrastructure Security Agency (CISA) is charged with ensuring that the Nation’s public safety and national security and emergency preparedness communities can seamlessly and securely communicate during steady state and emergency operations to keep America safe, secure, and resilient. Cyber incidents pose a significant risk to the voice and data communications capabilities of public safety agencies. A cyber incident has the potential to significantly disrupt an agency’s ability to execute life-saving missions. However, results from the 2018 [SAFECOM Nationwide Survey](#) indicate that 36 percent of respondents have not instituted cybersecurity best practices, such as risk assessments, continuous monitoring, and identity management.

In response, CISA compiled the [Cyber Resiliency Resources for Public Safety Fact Sheet](#) highlighting resources provided by the Federal Government, industry, and trade associations. The factsheet is intended to assist agencies in determining their current network cybersecurity and resiliency capabilities and identify ways to improve their ability to defend against cyber incidents.

For more information and additional guidance regarding cyber resiliency, visit <https://www.cisa.gov/safecom/technology>.

Source [link](#).

Comment: These resources could be excellent tools to educate consumers as well as bank employees and the board about various cybersecurity issues.

CSBS BLOG - OCC's Activities and Operations Rule Would Undermine the Dual Banking System (08.03.2020)

State regulators are opposed to portions of the Office of the Comptroller of the Currency (OCC)'s proposed rule that would expand the scope of activities that could occur at non-branch offices of national banks because they would undermine the state regulatory system, CSBS said in a comment letter.

CSBS asked the OCC to rescind the non-branch sections from the proposed rule because they:

- Make far-reaching and unprecedented changes without legal authority
- Undermine the dual banking system including the policy of competitive equality between state and national banks coupled with deference to state standards
- Conflict with the limits on NBA preemption prescribed by Congress
- Would allow national banks to operate de facto branches without branch-related obligations under the Community Reinvestment Act

Additionally, the OCC shortened the comment period timeframe by starting it from the day the proposed rule was posted on the agency's website and not waiting until it was published in the Federal Register.

"CSBS believes that issues of such importance to the balance of federal and state power in the dual banking system should not be rushed through the rulemaking process to avoid meaningful public input because well-reasoned, thoughtful and informed public policy demands time and consideration," the letter said.

Source [link](#).

FinCEN Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions. (08.03.2020)

The Financial Crimes Enforcement Network (FinCEN), in consultation with the federal functional regulators, is issuing responses to three frequently asked questions (FAQs) regarding customer due diligence requirements for covered financial institutions. These FAQs clarify the regulatory requirements related to obtaining customer information, establishing a customer risk profile, and performing ongoing monitoring of the customer relationship in order to assist covered financial institutions with their compliance obligations in these areas. These FAQs are in addition to those that were published on [July 19, 2016](#) and [April 3, 2018](#). For further information regarding customer due diligence requirements, including the Customer Due Diligence Requirements for Financial Institutions (the "CDD Rule"), please see FinCEN's CDD [Webpage](#).

Source [link](#).

Comment: Be sure to share this with your BSA officer. In addition, use these to review and possibly revamp due diligence processes.

FinCEN Advisory on Cybercrime and Cyber-Enabled Crime Exploiting the COVID-19 Pandemic (07.30.2020)

The Financial Crimes Enforcement Network (FinCEN) issued an advisory to alert financial institutions to potential indicators of cybercrime and cyber-enabled crime observed during the COVID-19 pandemic. The advisory contains descriptions of COVID-19-related malicious cyber activity and scams, associated financial red flag indicators, and information on reporting suspicious activity.

The advisory is based on FinCEN's analysis of COVID-19-related information obtained from Bank Secrecy Act data, open source reporting, and law enforcement partners. FinCEN will issue COVID-19-related information to financial institutions to help enhance their efforts to detect, prevent, and report suspected illicit activity on its website at <https://www.fincen.gov/coronavirus>.

Source [link](#).

Comment: This is one of three advisories issued by FinCEN on issues arising under COVID-19. Use the red flags to assist in educating employees in identifying potential crime. Also, note the instructions regarding referencing this advisory when reporting cybercrime exploiting the pandemic.

FFIEC Census and Demographic Data (07.31.2020)

-- The [2020 Census Data Products](#) have been released.

-- The [2020 Geocoding System](#) has been updated with the 2020 Census demographic data based on the 2011 - 2015 five year estimated American Community Survey (ACS).

Source [link](#).

CSBS Supports New York in Lawsuit Against OCC Fintech Charter (07.31.2020)

CSBS President and CEO John W. Ryan statement on the CSBS brief as amicus curiae in *Lacewell v OCC*, NYDFS' suit challenging the legality of the OCC's proposed fintech charter:

"The OCC does not have the statutory authority to define banking – that power resides with Congress – which is why state bank regulators, through CSBS, filed an amicus brief yesterday supporting the New York State Department of Financial Services (DFS).

"Last October, the Southern District of New York agreed with DFS, ruling that the OCC's special purpose national bank charter for fintech companies was invalid. The court determined the OCC lacks authority to issue charters to fintech companies that do not receive deposits. The court found that the 'business of banking' unambiguously requires taking deposits. And the court explicitly said that its decision applies nationwide.

"State regulators will fight any effort to preempt state laws that protect consumers and ensure a safe and sound financial system."

Source [link](#).

DOL Offers New COVID Guidance on FLSA, FMLA, FFCRA (07.20.2020)

As employers continue to grapple with the COVID-19 pandemic, the U.S. Department of Labor (DOL) has released new guidance that attempts to answer questions related to employee pay and leave time.

The guidance addresses protections and requirements of the [Fair Labor Standards Act \(FLSA\)](#), the [Family and Medical Leave Act \(FMLA\)](#), and the [Families First Coronavirus Response Act \(FFCRA\)](#). The guidance—in question-and-answer form—tackles how the pandemic affects the various laws.

Source [link](#).

Comment: These Q&As are likely not the final instance in which the DOL will update its guidance in these areas, as employers are constantly challenged with new and developing issues in this new world order involving the novel coronavirus. Banks would be wise to stay informed.

Publications, articles, reports, studies, testimony & speeches

Industrial Production and Capacity Utilization - G.17 (08.14.2020)

Total industrial production rose 3.0 percent in July after increasing 5.7 percent in June; even so, the index in July was 8.4 percent below its pre-pandemic February level. Manufacturing output continued to improve in July, rising 3.4 percent. Most major industries posted increases, though they were much smaller in magnitude than the advances recorded in June. The largest gain in July—28.3 percent—was registered by motor vehicles and parts; factory production elsewhere advanced 1.6 percent. Mining production rose 0.8 percent after decreasing for five consecutive months. The output of utilities increased 3.3 percent, as unusually warm temperatures increased the demand for air conditioning. At 100.2 percent of its 2012 average, the level of total industrial production was 8.2 percent lower in July than it was a year earlier. Capacity utilization for the industrial sector increased 2.1 percentage points in July to 70.6 percent, a rate that is 9.2 percentage points below its long-run (1972–2019) average but 6.4 percentage points above its low in April.

Source [link](#).

FRB Chicago - Higher Education Faces a Perfect Storm During the Covid-19 Pandemic (08.11.2020)

Over the past decade or so, higher education in the U.S. has faced three major disruptive factors—declining public funding, declining enrollments, and the rise of online instruction. The Covid-19 pandemic has only magnified these challenges, creating a perfect storm situation for many universities and colleges across the nation.

Source [link](#).

Consumer Credit - G.19 (08.07.2020)

June 2020

Consumer credit decreased at a seasonally adjusted annual rate of 6-3/4 percent during the second quarter. Revolving credit decreased at an annual rate of 31-3/4 percent, while nonrevolving credit increased at an annual rate of 2 percent. In June, revolving credit decreased at an annual rate of 2-3/4 percent, while nonrevolving credit increased at an annual rate of 4-1/4 percent.

Source [link](#).

Bloomberg: Fed's Kaplan Says We Have to Learn to Live With COVID-19 (08.03.2020)

In an interview with Michael McKee on Bloomberg TV, Dallas Fed President Robert Kaplan discusses the importance of mask-wearing for economic recovery, as well as monetary policy, the energy sector and more.

Source [link](#).

Financial Institutions Likely to Doubledown on Security Spending (08.03.2020)

Prior to the pandemic, financial institutions spent an average \$2,700 on cybersecurity per full-time employee, up from \$2,300 the previous year. COVID-19 now drives the need for companies to doubledown on cybersecurity going forward, according to a study from Deloitte's cyber risk and strategic risk services group in conjunction with the Financial Services Information Sharing and Analysis Center (FS-ISAC).

Source [link](#).

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED DATE	SUMMARY OF PROPOSED RULE
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07.02.2020	Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z) - The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z, which implements the Truth in Lending Act, as mandated by section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The amendments would exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans. <u>DATES: Comments on the proposed rule must be received on or before September 21, 2020.</u>
07.20.2020	National Banks and Federal Savings Associations as Lender - The Office of the Comptroller of the Currency (OCC) is proposing a regulation to determine when a national bank or Federal savings association (bank) makes a loan and is the "true lender" in the context of a partnership between a bank and a third party, such as a marketplace lender. Under this proposal, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan. <u>DATES: Comments must be received on or before September 3, 2020.</u>
08.18.2020	Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition - With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" (QMs) obtain certain protections from liability. Regulation Z contains several categories of QMs, including the General QM category and a temporary category (Temporary GSE QM loans) of loans that are eligible for purchase or guarantee by government-sponsored enterprises (GSEs) while they are operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The Bureau of Consumer Financial Protection (Bureau) is issuing this proposal to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. The Bureau's primary objective with this proposal is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions. <u>Comments must be received on or before 30 days after publication in the federal register.</u>

Selected federal rules – upcoming effective dates

Not all final rules are included. Only rules affecting community banks are reported, but we make no guarantees that these are all the final rules your bank needs to know.

EFFECTIVE
DATE:

SUMMARY OF FINAL RULE:

- 07.01.2020 [Home Mortgage Disclosure \(Regulation C\)](#) - The Bureau of Consumer Financial Protection (Bureau) is amending Regulation C to increase the threshold for reporting data about closed-end mortgage loans, so that institutions originating fewer than 100 closed-end mortgage loans in either of the two preceding calendar years will not have to report such data effective July 1, 2020. The Bureau is also setting the threshold for reporting data about open-end lines of credit at 200 open-end lines of credit effective January 1, 2022, upon the expiration of the current temporary threshold of 500 open-end lines of credit. This final rule is effective on July 1, 2020, except for the amendments to § 1003.2 in amendatory instruction 5, the amendments to § 1003.3 in amendatory instruction 6, and the amendments to supplement I to part 1003 in amendatory instruction 7, which are effective on January 1, 2022. See part VI for more information.
- 07.21.2020 [Remittance Transfers under the Electronic Fund Transfer Act \(Regulation E\)](#) - The Electronic Fund Transfer Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, establishes certain protections for consumers sending international money transfers, or remittance transfers. The Bureau of Consumer Financial Protection's (Bureau) remittance rule in Regulation E (Remittance Rule or Rule) implements these protections. The Bureau is amending Regulation E and the official interpretations of Regulation E to provide tailored exceptions to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of a statutory exception that allows insured institutions to disclose estimates instead of exact amounts to consumers. That exception expires on July 21, 2020. In addition, the Bureau is increasing a safe harbor threshold in the Rule related to whether a person makes remittance transfers in the normal course of its business. This final rule is effective July 21, 2020.
- 08.03.2020 [Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred](#) - Federal law establishes that national banks and savings associations (banks) may charge interest on loans at the maximum rate permitted to any state-chartered or licensed lending institution in the state where the bank is located. In addition, banks are generally authorized to sell, assign, or otherwise transfer (transfer) loans and to enter into and assign loan contracts. Despite these authorities, recent developments have created legal uncertainty about the ongoing permissibility of the interest term after a bank transfers a loan. This rule clarifies that when a bank transfers a loan, the interest permissible before the transfer continues to be permissible after the transfer. DATES: The final rule is effective on August 3, 2020.
- 08.21.2020 [Federal Interest Rate Authority](#) - The Federal Deposit Insurance Corporation (FDIC) is issuing regulations clarifying the law that governs the interest rates State-chartered banks and insured branches of foreign banks (collectively, State banks) may charge. These regulations provide that State banks are authorized to charge interest at the rate permitted by the State in which the State bank is located, or one percent in excess of the 90-day commercial paper rate, whichever is greater. The regulations also provide that whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined at the time the loan is made, and interest on a loan permissible under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan. DATES: The rule is effective on August 21, 2020.
- 10.20.2020 [Community Reinvestment Act Regulations](#) - The Office of the Comptroller of the Currency (OCC) is adopting a final rule to strengthen and modernize the Community Reinvestment Act (CRA) by clarifying and expanding the activities that qualify for CRA credit; updating where activities count for CRA credit; creating a more consistent and objective method for evaluating CRA performance; and providing for more timely and transparent CRA-related data collection, recordkeeping, and reporting. DATES: This rule is effective on October 1, 2020. Banks must comply with the final amendments by October 1, 2020, January 1, 2023, or January 1, 2024, as applicable. Until the compliance dates, banks must continue to comply with parts 25 and 195 that are in effect on September 30, 2020 (as set forth in appendix C to 12 CFR 25). Alternatively, the OCC may permit a bank to voluntarily comply, in whole or in part, with the amendments adopted in this release prior to the applicable compliance dates. Parts 25 and 195 that are in effect on September 30, 2020 (as set forth in appendix C) expire on January 1, 2024.
- 01.01.2021 [Truth in Lending \(Regulation Z\) Annual Threshold Adjustments \(Credit Cards, HOEPA, and Qualified Mortgages\)](#) - The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending the regulation text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to calculate annually the dollar amounts for several provisions in Regulation Z; this final rule revises, as applicable, the dollar amounts for provisions implementing TILA and amendments to TILA, including under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau is adjusting these amounts, where appropriate, based on the annual

Common words, phrases and acronyms

APOR	“Average Prime Offer Rates” are derived from average interest rates, points, and other pricing terms offered by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.
CFPB	Consumer Financial Protection Bureau
CARD Act	Credit Card Accountability Responsibility and Disclosure Act of 2009
CFR	Code of Federal Regulations . Codification of rules and regulations of federal agencies.
CRA	Community Reinvestment Act . This Act is designed to encourage loans in all segments of communities.
CRE	Commercial Real Estate
CSBS	Conference of State Bank Supervisors
CTR	Currency Transaction Report . Filed for each deposit, withdrawal, exchange of currency that involves a transaction in currency of more than \$10,000.
Dodd-Frank Act	The Dodd–Frank Wall Street Reform and Consumer Protection Act
DOJ	Department of Justice
FDIC	Federal Deposit Insurance Corporation
EFTA	Electronic Fund Transfer Act
Federal bank regulatory agencies	FDIC, FRB, and OCC
Federal financial institution regulatory agencies	BFCP, FDIC, FRB, NCUA, and OCC
FEMA	Federal Emergency Management Agency
FFIEC	Federal Financial Institutions Examination Council
FHFA	Federal Housing Finance Agency
FHA	Federal Housing Administration

FinCEN	Financial Crime Enforcement Network
FR	Federal Register . U.S. government daily publication that contains proposed and final administrative regulations of federal agencies.
FRB, Fed or Federal Reserve	Federal Reserve Board
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
GAO	Government Accountability Office
HARP	Home Affordable Refinance Program
HAMP	Home Affordable Modification Program
HMDA	Home Mortgage Disclosure Act
HOEPA	Home Ownership and Equity Protections Act of 1994
HPML	Higher Priced Mortgage Loan
HUD	U.S. Department of Housing and Urban Development
IRS	Internal Revenue Service
MLO	Mortgage Loan Originator
MOU	Memorandum of Understanding
NFIP	National Flood Insurance Program . U.S. government program to allow the purchase of flood insurance from the government.
NMLS	National Mortgage Licensing System
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Asset Control
OREO	Other Real Estate Owned
QRM	Qualified Residential Mortgage
Reg. B	Equal Credit Opportunity
Reg. C	Home Mortgage Disclosure
Reg. DD	Truth in Savings
Reg. E	Electronic Fund Transfers
Reg. G	S.A.F.E. Mortgage Licensing Act

Reg. P	Privacy of Consumer Financial Information
Reg. X	Real Estate Settlement Procedures Act
Reg. Z	Truth in Lending
RESPA	Real Estate Settlement Procedures Act

SAR	Suspicious Activity Report – Report financial institutions file with the U.S. government (FinCEN) regarding activity that may be criminal in nature.
SDN	Specially Designated National
TILA	Truth in Lending Act
TIN	Tax Identification Number
Treasury	U.S. Department of Treasury

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