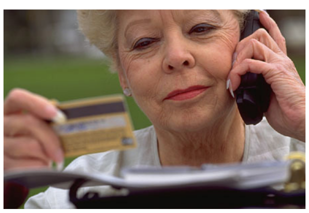
March 2019

# Compliance Update


Community Bankers for Compliance Newsletter

## INSIDE





## SAR Filings Show Widespread Elder Financial Abuse

*By Dee Bedell, CRCM; Consultant*

Financial institutions are seeing vast numbers of their older customers fall prey to financial exploitation by perpetrators ranging from offshore scammers to close family members – and they are filing hundreds of thousands of Suspicious Activity Reports (SARs) with the federal government about these suspicions.

The Consumer Financial Protection Bureau (CFPB) released a report about the key facts, trends, and patterns revealed in these SARs – filed by banks, credit unions, casinos, and other financial services providers. The CFPB analyzed 180,000 elder financial exploitation SARs filed with the Financial Crimes Enforcement Network (FinCEN) from 2013 to 2017, involving more than $6 billion in funds. This first-ever public analysis provides a chance to better understand elder fraud and to find ways to improve prevention and response.

The following is what the CFPB learned:

- SAR filings on elder financial exploitation quadrupled from 2013 to 2017. In 2017, financial institutions filed 63,500 SARs reporting elder financial abuse. Yet these SARs likely represent only a tiny fraction of the actual 3.5 million incidents of elder financial exploitation estimated to have happened that year.
- Elder financial exploitation is not happening just at banks or credit unions. Money services businesses, used by many people to wire money, have filed an increasing share of these SARs (58 percent in 2017).
- Older adults ages 70 to 79 lost on average $43,300. And when the older adult knew the suspect, the average loss was even larger – about $50,000.
- While financial institutions are increasingly filing elder financial exploitation SARs, they often do not indicate that they reported the suspicious activity directly to first responders. Fewer than one-third

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of elder financial exploitation SARs specify that the financial institution reported the activity to adult protective services, law enforcement, or other authorities. If the financial institution is not reporting to these authorities, this is a missed opportunity to strengthen prevention and response.

The CFPB also encourages speaking up about elder financial exploitation:

- If you believe that you or someone you know is a victim of financial exploitation, contact your local adult protective services (APS) agency. You can find out how to reach your APS office from the Eldercare Locator at eldercare.acl.gov or by calling 800-677-1116.
- Report scams or fraud to the Federal Trade Commission at ftc.gov/complaint.
- Share a Money Smart for Older Adults guide with those in your community. Money Smart for Older Adults is an elder financial exploitation awareness and prevention program the CFPB created with the Federal Deposit Insurance Corporation (FDIC).

The CFPB blog article with a link to the report can be found at: www.consumerfinance.gov/about-us/blog/financial-institutions-report-widespread-elder-financial-abuse/?utm_source=newsletter&utm_term=20190227OAnewsltr. ❑

## CFPB Releases 2019 List of Rural & Underserved Counties

*By Dale Neiss, CRCM; Consultant*

The Consumer Financial Protection Bureau (CFPB) issued the 2019 list of rural and underserved counties. Some creditors that do business in rural or underserved counties are exempt from certain regulatory requirements of the Truth in Lending Act. The following resources help creditors determine whether a property is located in a rural or underserved area for applying certain regulatory provisions related to mortgage loans; specifically, ability-to-repay, escrow, Home Ownership and Equity Protection Act (HOEPA), and appraisal rules.

Specifically, these lists impact the following requirements:

- The Ability-to-Repay rules in Regulation Z [12 CFR 1026.43] permit a bank to make a balloon-payment “qualified mortgage” provided the bank operates in a rural or underserved area.
- The escrow rules for higher-priced mortgage loans (HPML) secured by a first lien on a consumer's principal dwelling in Regulation Z [12 CFR 1026.35] exempt a bank from requiring an escrow account provided the bank operates in a “rural or underserved area.” The bank must also meet other operational requirements.
- A high-cost mortgage loan (HOEPA) as defined in Regulation Z [12 CFR 1026.32] is generally not permitted to have a balloon payment unless the bank meets the criteria for a “small creditor” operating in a “rural or underserved area,” and the loan meets other specific criteria.
- The additional appraisal requirements for HPMLs in Regulation Z [12 CFR 1026.35] are exempt when the property being acquired is located in a “rural” county. The separate list of “rural” counties must be used for this test. The website search engine tool will not facilitate compliance with this section of the rule since the tool identifies those properties located in a “rural” area and not a “rural” county.

A creditor that makes a first-lien mortgage loan secured by a property located in a “rural or underserved area” during 2019 meets the requirements to be a creditor that operates in “rural or underserved areas” during 2020 and for loan applications received before April 1, 2021.

The Rural or Underserved Counties list can be found at
s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_rural-underserved-list_2019.pdf.

In addition to the Rural or Underserved Counties list, creditors should also use the Rural or Underserved Areas Tool to provide a safe harbor determination that a property is located in a rural or underserved area, as defined in §1026.35(b)(2)(iv)(A) and (B).

The Rural or Underserved Areas Tool can be found at
www.consumerfinance.gov/rural-or-underserved-tool/.

However, the Rural or Underserved Areas Tool is not applicable to the exemption from the §1026.35(c)(4) requirement for an additional appraisal (as noted above), which is based on “rural county” and not “rural area.” The CFPB also publishes a list of counties that are entirely rural to facilitate compliance with the exemption in §1026.35(c)(4)(vii)(H).

The Rural Counties list can be found at
s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_rural-list_2019.pdf ❑

# Interagency Exam Procedures for the Prepaid Accounts Rule Adopted

*By Karen S. Clower, CRCM; Consultant*

The Federal Deposit Insurance Corporation (FDIC) is the first of the regulatory agencies to adopt revised interagency examination procedures to incorporate the Consumer Financial Protection Bureau's (CFPB) amendments to Regulation E and Regulation Z for the Prepaid Accounts Rule. The examination procedures may be helpful to financial institutions seeking to better understand how examiners will evaluate an institution's compliance with these regulations that become effective April 1, 2019.

The FDIC Financial Institution Letter, FIL-9-2019, with links to the examination procedures, can be found at: www.fdic.gov/news/news/financial/2019/fil19009.html

The Regulation Z exam procedures can be found at:
www.fdic.gov/news/news/financial/2019/fil19009a.pdf

And, the Regulation E exam procedures can be found at:
www.fdic.gov/news/news/financial/2019/fil19009b.pdf. ❑

# Don't Let Customer Complaints Manage You

*By William J. Showalter, CRCM, CRP; Senior Consultant*

You have probably heard any number of times that it is important to have a formal process for managing complaints from our customers. We have all nodded our heads and mumbled agreement and, then, went back to work at our day-to-day responsibilities without taking any further action to change our bank's complaint process.

If we do not handle customer complaints in a consistent manner, they will manage us. This approach can result in serious difficulties as sources of customer dissatisfaction are not dealt with and studied in a uniform way. Some customers find their issues taken care of quickly and satisfactorily, while other customers feel abandoned by the bank, and everything in between. Is this really how you want to run your bank?

## Benefits of managing complaints

One positive aspect of proactively managing the customer complaint process is there is no real downside. The only "downside" is that such a process shines a light on the extent of complaints, and their underlying causes. But, this disadvantage is actually an advantage. What you don't know really can hurt you.

The positive results from complaint management can include:

- Uncovering and dealing with shortcomings in product features, bank processes, customer service, and other issues at an early stage, before they grow to a point that they present real threats to the institution
- Improving customer satisfaction with the bank, and enhancing the bank's efforts to serve the banking needs of its community
- Resolving fair treatment issues at an early stage
- Realigning bank products, processes, and services with regulatory requirements and expectations
- Heading off potential UDAAP (unfair, deceptive, or abusive acts and practices) issues

## Managing complaints

The bank already has formal processes, with assigned responsibilities, for handling errors/disputes asserted by customers related to electronic banking (Regulation E, EFTA), open-end credit (Regulation Z, TILA), and mortgage loan servicing (Regulation X, RESPA).

However, a formal process to address customer complaints in other areas – both those received directly from customers and those referred by the regulators – is considered an industry best practice. The structure of this program will vary depending on the culture of the bank and other internal factors. But, there are some common elements that form the basis of any sound customer complaint program, including:

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- Make sure everyone knows how important it is to respond promptly and accurately to any customer complaints. This is a basis for giving good customer service.
- Appoint a central point (an individual or an office) to be in charge of your complaint response program, especially those referred by the regulators – and make sure that all bank staff is aware of how to handle complaints, including where to refer them. Branch managers can be charged with handling customer service issues occurring at their branches that do not involve regulatory issues (fair lending, EFTA, etc.). However, they should report on these complaints and resolutions to the central complaint point for tracking of any trends that may arise.
- Establish uniform standards and timeframes for investigating customer complaints. The time limits you set should be reasonable and probably not significantly longer than those set by regulations for some error resolutions (EFTA, TILA).
- Document your investigation (e.g., copies of relevant documents and reports) of each customer complaint and the bank response.
- Ensure that regulators are informed promptly of the results of investigations of any complaints referred by regulatory agencies.
- Maintain a database of your customer complaints, either manually or using some spreadsheet or database software. This step allows you to mine the data related to this process for information about problems with your products, customer service, potential fair treatment/lending issues, and so forth.

## Results

The database discussed in the final bullet above can provide a wealth of information about how customers view your bank, your product mix, your service levels, and many other facets of your business. It also provides you with an opportunity to discern trends in their infancy, allowing you to deal with negative issues early or enhance the benefits from positive developments.

A proactive approach to customer complaint management derives many benefits for the bank, not the least of which is reducing conflicts with customers, enhancing the bank's public image, improving bank relations with regulators, and creating a competitive advantage for the bank.

## New sheriff in town

For the past nearly eight years, there has been a more active and visible regulatory presence in this area – the Consumer Financial Protection Bureau (CFPB). The CFPB has set up a complaint database to which consumers can submit complaints about financial service providers, have their complaints forwarded to the providers for response, and give the public a window on this process and its outcomes.

The CFPB also periodically analyzes the results of this process, usually for one or another particular financial service area – student loans one time, mortgage servicing another, yet another financial service another time.

The purpose of the CFPB database is to provide consumers with one central point through which they can submit complaints about financial service providers, without having to search through the maze of regulatory agencies first, and follow the results. Another purpose is to provide a gauge for how well financial service providers are serving their particular customer bases.

While the CFPB database can be a useful tool, financial institutions should have a goal of trying to deal with their own customers' complaints and concerns themselves, before customers become so frustrated that they feel the need to turn to supervisory agencies. ❑

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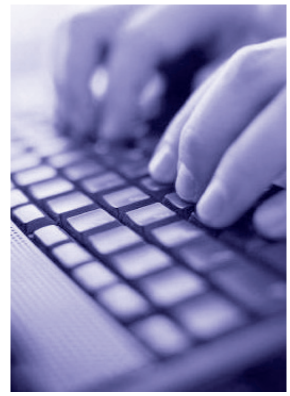

**Federal Deposit Insurance Corporation**
http://www.fdic.gov

**Office of the Comptroller of the Currency**
http://www.occ.gov

**Federal Reserve**
http://www.federalreserve.gov

**Housing and Urban Development**
http://www.hud.gov

**Federal Financial Instutions Examination Council**
http://www.ffiec.gov

**U.S. Department of Treasury**
http://www.treas.gov

**Financial Crimes Enforcement Network**
http://www.fincen.gov

**Consumer Financial Protection Bureau**
http://www.consumerfinance.gov

# Payday Lending Rule Compliance Guide Released

*By Karen S. Clower, CRCM; Consultant*

The Consumer Financial Protection Bureau (CFPB) has released a Small Entity Compliance Guide that summarizes the payment-related provisions of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (Payday Lending Rule, 12 CFR 1041).

In October 2017, the CFPB issued the final Payday Lending Rule which governs certain personal loans with short-term or balloon-payment structures, and certain additional installment loan products. In February 2019, the CFPB issued a notice of proposed rulemaking to reconsider the mandatory underwriting provisions of the Payday Lending Rule.

The proposed rulemaking does not reconsider the payment-related requirements of the Payday Lending Rule. Therefore, the small entity compliance guide highlights only information that may be helpful when implementing the payment-related requirements of the Payday Lending Rule. It does not discuss the Rule's mandatory underwriting provisions. As appropriate, the CFPB will revise the guide to assist industry with implementation of the Payday Lending Rule's mandatory underwriting provisions at a later date.

The CFPB reminds us that the guide is not a substitute for reviewing the Payday Lending Rule and its Official Interpretations (also known as the commentary) which are the definitive sources of information regarding the Payday Lending Rule's requirements.

The Small Entity Compliance Guide, as well as other resources, can be found on the CFPB's implementation page for the Payday Lending Rule at:
www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/. ❑

# FFIEC Releases Updated CRA Software & Data

*By William J. Showalter, CRCM, CRP; Senior Consultant*

The Federal Financial Institution Examinations Council (FFIEC) has released updated software for filing 2019 data required from covered banks and thrifts under the Community Reinvestment Act (CRA) – "large banks." Each software version is year-specific. This latest version facilitates data entry for calendar year 2019 data that must be submitted by March 1, 2020.

"Large banks" and those choosing to be evaluated under the large bank CRA tests must file data annually on their small business and small farm lending.

On behalf of the FFIEC, the Federal Reserve System designed the CRA Data Entry Software (DES) to assist respondents in automating the filing of their CRA data.

The free software for CRA reporting includes editing features to help verify and analyze the accuracy of the data. The data files created, using this software, can be submitted to an institution's regulatory agency using one of the available submission methods. The CRA DES is available at www.ffiec.gov/software/software.htm.

For more information on using the FFIEC's CRA DES, refer to DES frequently asked questions at www.ffiec.gov/cra/desfaqs.html. Technical questions regarding installation of the DES should be directed to CRAHELP@frb.gov.

## Data & geocoding system

In addition to the 2019 CRA DES, the 2019 CRA File Edits document is available at www.ffiec.gov/cra/pdf/edit2019.pdf, and the 2019 CRA File Specifications at www.ffiec.gov/cra/pdf/2019Specs.pdf. ❑

# Compliance Calendar

*This calendar is designed to help you address current and upcoming requirements related to compliance with federal consumer protection and other select rules. The calendar is not intended as general advice on when to perform ongoing compliance management functions, but as a reminder of due dates for completing these tasks. And, as always, consult the particular law or regulation for details on coverage, etc.*

## March 2019

- 2018 HMDA LAR must be submitted to the CFPB by March 1, 2019.
- 2018 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2019 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 10, 2019 (e.g., EDT, CDT, etc.).

## April 2019

- Prepaid card rules effective April 1, 2019.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2019 by April 30, 2019.
- Update FHHLDS home loan activity format with first calendar quarter 2019 data by April 30, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

## July 2019

- Lenders may begin using redesigned Uniform Residential Lending Application (URLA) form on July 1, 2019.
- Final rule regarding use of private flood insurance policies effective July 1, 2019.
- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2019 by July 31, 2019.
- Update FHHLDS home loan activity format with second calendar quarter 2019 data by July 31, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

## September 2019

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2019) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2019.

## October 2019

- Update HMDA-LAR with loans and applications that reached final disposition in third calendar quarter 2019 by October 30, 2019.
- Update FHHLDS home loan activity format with third calendar quarter 2019 data by October 30, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

## November 2019

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2019.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 3, 2019 (e.g., EST, CST, etc.).

## December 2019

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2019.

## January 2020

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2019 by January 31, 2020.
- Update FHHLDS home loan activity format with fourth calendar quarter 2019 data by January 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

## February 2020

- Lenders must begin using the updated URLA form on February 1, 2020 for all new applications (to be sold on the secondary market). Also, Pipeline Loan Transition Period begins for older loans (typically construction loans) with an application received date prior to 2/1/2020 – allowing lenders to complete processing of such loans with old forms 1003.

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### March 2020

- 2019 HMDA LAR must be submitted to the CFPB by March 1, 2020.
- 2019 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2020 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 8, 2020 (e.g., EDT, CDT, etc.).

### April 2020

- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2020 by April 30, 2020.
- Update FHHLDS home loan activity format with first calendar quarter 2020 data by April 30, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### July 2020

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2020 by July 31, 2020.
- Update FHHLDS home loan activity format with second calendar quarter 2020 data by July 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### September 2020

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2020) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2020.

### November 2020

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2020.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 1, 2020 (e.g., EST, CST, etc.).

### December 2020

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2020.

### January 2021

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.
- Update FHHLDS home loan activity format with fourth calendar quarter 2020 data by January 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### February 2021

- Fannie Mae and Freddie Mac will no longer accept loans with the old form 1003 application.

### March 2021

- 2020 HMDA LAR must be submitted to the CFPB by March 1, 2021.
- 2020 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2021 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 14, 2021 (e.g., EDT, CDT, etc.).

### April 2021

- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2021.
- Update FHHLDS home loan activity format with first calendar quarter 2021 data by April 30, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### July 2021

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2021 by July 31, 2021.
- Update FHHLDS home loan activity format with second calendar quarter 2021 data by July 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].