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Compliance Update

COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

INSIDE

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TILA & CLA Coverage Thresholds Increased Slightly

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

The Federal Reserve Board (FRB) and Consumer Financial Protection Bureau (CFPB) have announced the annual changes in the dollar coverage thresholds for Regulation Z, which implements the Truth in Lending Act (TILA), and Regulation M, which implements the Consumer Leasing Act (CLA). Transactions at or below the thresholds are subject to the protections of the regulations.

The rules follow a methodology to make annual inflation adjustments to the threshold for coverage by these regulations. The calculation method adopted allows the thresholds to keep pace with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the agencies will not adjust the exemption threshold from the prior year.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA) increased the threshold in the TILA for exempt consumer credit transactions, and of the CLA for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011. In addition, the DFA requires that these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics. In April 2011, the FRB issued final rules amending Regulations Z and M consistent with these provisions of the DFA.

Title X of the DFA transferred rulemaking authority for a number of consumer financial protection laws from the FRB to the CFPB, effective July 21, 2011. In connection with this transfer of rulemaking authority, the CFPB issued its own Regulations Z and M implementing the TILA and CLA in interim final rules, respectively, 12 CFR 1026 and 12 CFR 1013.

The CFPB's interim final rules substantially duplicated the FRB's Regulations Z and M, including the revisions to the threshold for exempt transactions made by the FRB in April 2011. Although the CFPB has the authority to issue rules to implement the TILA and CLA for most entities, the

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FRB retains authority to issue rules under these laws for certain motor vehicle dealers covered by section 1029(a) of the DFA, and the FRB's Regulations Z and M continue to apply to those entities.

Latest annual adjustments

The FRB's and CFPB's Regulations Z and M, and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. As of June 1, 2019, there was a slight increase in the CPI–W over the previous year.

Therefore, the protections of the TILA and CLA generally will apply to consumer credit transactions and consumer leases of $58,300 or less in 2020 – up slightly from the $57,200 threshold for 2019. However, private education loans and loans secured by real property (such as mortgages) are subject to the TILA regardless of the amount of the loan.

The Regulation M final rule is available at https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-21554.pdf. The Regulation Z final rule is available at https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-21557.pdf. ❑

Agencies Increase Threshold for HPML Appraisals

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

The Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and Consumer Financial Protection Bureau (CFPB) have amended the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for "higher-risk mortgages," termed "higher-priced mortgage loans" or "HPMLs" in the agencies' regulations.

Background

The OCC, FRB, CFPB, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) issued joint final rules implementing these requirements, effective Jan. 18, 2014. The agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the OCC, FRB, and CFPB will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account.

Threshold for 2020

Based on the CPI-W in effect as of June 1, 2019, the exemption threshold will increase from $26,700 to $27,200, effective Jan. 1, 2020.

A transaction is exempt from HPML appraisal requirements in these rules if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

The joint final rule is available at https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-21559.pdf. ❑

National Flood Insurance Program Extended

By Karen S. Clower, CRCM; Director of Compliance

In late September, the President signed legislation passed by Congress that temporarily extends the National Flood Insurance Program's (NFIP) authorization to November 21, 2019.

The Federal Emergency Management Agency (FEMA) and Congress have never failed to honor the flood insurance contracts in place with NFIP policyholders, despite periodic lapses in authorization for the program. Should the NFIP's authorization lapse, FEMA would still have authority to ensure the payment of valid claims with available funds. However, FEMA would stop selling new and renewing existing policies.

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Interagency lapse guidance

At the end of 2018, the federal bank regulatory agencies – the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and Farm Credit System (FCS) – reminded banks, savings associations, and Farm Credit System institutions that they can continue to make loans during periods when the NFIP administered by FEMA is unavailable.

They also reminded lenders that guidance issued in 2010 is generally applicable whenever the NFIP is unavailable. The guidance explains that lenders may continue to make loans subject to the federal flood insurance statutes without flood insurance during a period when the NFIP is not available. However, lenders must continue to make flood determinations; provide timely, complete, and accurate notices to borrowers; and comply with other parts of the flood insurance regulations. In addition, lenders must evaluate safety and soundness and legal risks and prudently manage those risks during the lapse period. Lenders should also have a system in place to ensure flood insurance policies are obtained as soon as available following reauthorization for properties subject to the mandatory purchase requirement.

Because of when it was issued, none of this guidance deals with what impact, if any, all this has on private flood policies.

The December 28, 2018 joint agency statement can be found at https://www.fdic.gov/news/news/press/2018/pr18106.html.

In addition, the guidance issued in 2010 can be found at:

- FRB: www.federalreserve.gov/boarddocs/caletters/2010/1003/caltr1003.htm
- FDIC: www.fdic.gov/news/news/financial/2010/fil10023.html
- OCC: www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-20.html

Latest reauthorization

A link to FEMA's website for the reauthorization can be found at:

https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-reauthorization-guidance.

Stay tuned for further developments. It is possible we may get more long-term reauthorization with changes to things like premium structures sought by many members of Congress. ❑

Highlights of 2019 Interagency Fair Lending Webinar

By Dale Neiss, CRCM; Consultant

A 2019 Fair Lending Interagency Webinar was held October 1, 2019. Representatives from six federal agencies – the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), Department of Justice (DOJ), and Consumer Financial Protection Bureau (CFPB) – discussed a variety of topics, including (but not limited to) the following issues.

Risk assessment & examination process

The OCC representative stated that risk-based fair lending examinations are determined through analysis of Home Mortgage Disclosure Act (HMDA) data and information collected while conducting the fair lending risk assessment.

An effective customer complaint system is critical to the fair lending examination process. A review of complaints will accomplish the following:

- Identify the type and number of complaints across all products (including foreclosure and servicing complaints), business lines, and channels
- Determine whether issues from previous findings are resolved, and
- Identify focal points for fair lending examinations based on indications of disparate treatment or redlining

Advanced topics in redlining

The FRB presenter defined "redlining" as providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside, or in which the property will be located.

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Analyzing for redlining is a multi-factored process. Using the 2009 Interagency Fair Lending Examination Procedures, examiners generally review the following risk factors:

- Lending disparities
- Branching
- Marketing and outreach
- Assessment areas, and
- Overt statements and complaints

Indicators of the first three risk factors above are further explained in the following table.

Factor	Risk Indicator(s)/Elevated Risk Fact Patterns
Lending disparities	▪ A statistically significant disparity between a lender's mortgage applications and originations in majority-minority neighborhoods compared with the adjusted aggregate of similar lenders ▪ Zero applications or originations in majority-minority neighborhoods
Branching	▪ By geography: lender does not locate branches or loan production offices (LPOs) within majority-minority neighborhoods ▪ By products and services: focus of branches or LPOs in majority-minority neighborhoods is on deposit, not credit products
Marketing and outreach	• Exclusionary traditional/internet-based marketing and outreach – print, in-person, digital marketing, and outreach activities – exclude majority-minority communities, as well as minority applicants • Utilizing an advertising platform that uses predictive analytics to show ads, which may operate independently to exclude majority-minority communities or minority applicants, despite lender preferences

HMDA review observations

The NCUA representative stated that HMDA loan/application register (LAR) violations often impact fair lending risk evaluation and management. Such violations are usually attributable to weaknesses in one or more areas of the compliance management system (CMS), as elaborated on in the following table.

Observation	Issue	Fair Lending Impact	CMS Deficiency
Withdrawn applications	Reporting as "withdrawn" before institution makes a credit decision	Affects accuracy of decisioning; especially when correct action taken is "denied" or "approved, not accepted"	Training and compliance audit
Race, ethnicity, and sex	Incorrect information	Flawed fair lending analysis	Monitoring, corrective action, and compliance audit
NMLSR ID number	Reporting institution's NMLSR instead of loan originator's NMLSR	Cannot evaluate trends associated with loan originator	Training and compliance audit

Fair lending analysis in CRA protests

The FDIC presenter discussed common fair lending issues raised in CRA protests. These can generally be broken down into two categories:

- Lending (residential mortgage lending, small business lending), or its lack, and
- Branching (lack of or low number of branches in certain areas)

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How to avoid such CRA protests, as well as how to deal with them once they happen, are summarized in this table.

What institutions can do proactively	What institutions can do if there Is a CRA protest
Monitor HMDA data (in a merger, include analysis of the other institution's data as well)	Don't panic!
Evaluate branching strategy	Assist your supervisory agency in its analysis
Understand impact of the application (effect on low- to moderate-income, LMI or minority areas)	Add CRA protest information to CRA Public File (public comments regarding CRA performance)
Engage with community groups	Reach out to your supervisory agency regional or district contact

Redlining enforcement

The DOJ speaker discussed the June 13, 2019 settlement between DOJ and First Merchants Bank (Muncie, IN). Terms of the settlement include:

- $1.12 million loan subsidy fund targeted for black neighborhoods
- $500,000 for advertising, community outreach, and credit repair and education
- One branch and one loan production office to serve predominately black neighborhoods, and
- A director of community lending and development

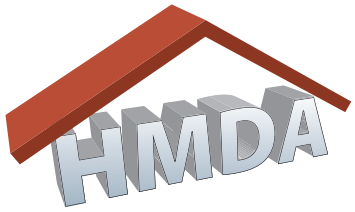
Fair lending & innovation

The CFPB representative spoke about the three new policies that agency issued in September 2019 to promote innovation and facilitate compliance. The three new CFPB policies are:

- No-Action Letter Policy (NAL)
- Trial Disclosure Policy (TDP), and
- Compliance Assistance Sandbox (CAS)

If you missed the live webinar, a recording, as well as presentation materials, are available at

https://www.consumercomplianceoutlook.org/outlook-live/2019/2019-fair-lending-interagency-webinar/. ❑



HMDA Changes for 2020

By Bill Elliott, CRCM; Director of Compliance Education

The Consumer Financial Protection Bureau (CFPB) has issued a final rule amending Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). While all the changes are not finished, this rule accomplishes several things, including changes mandated by the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) that was passed by Congress and signed by the President in May 2018. This rule is effective January 1, 2020.

The CFPB extended to January 1, 2022 the current temporary coverage threshold of 500 open-end lines of credit for reporting data about open-end lines of credit and set the permanent coverage threshold at 200 open-end lines of credit upon expiration of the proposed extension. The net result of this action means that everyone's responsibilities for home equity line of credit (HELOC) loan/application register (LAR) lines remains unchanged for another two years.

The CFPB also incorporated into Regulation C the changes required by the EGRRCPA. In reality, they are "catching the regulation up" to the legislative changes – something they accomplished last fall in the HMDA Small Entity Compliance Guide and their 2018 Interpretive rule. The issues addressed include:

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- Clarification that insured depository institutions and insured credit unions covered by a partial exemption may, at their option, report exempt data fields as long they report all data fields that the data point comprises
- Clarification that only loans and lines of credit that are otherwise reportable under Regulation C count towards the thresholds for the partial exemptions
- Clarification regarding which of the data points in Regulation C are covered by the partial exemptions
- Designating a non-universal loan identifier for certain partially exempt transactions, and
- Clarification to the exception to the partial exemptions for insured depository institutions with less than satisfactory Community Reinvestment Act (CRA) examination history

The rule further implements the EGRRCPA by addressing issues relating to the partial exemptions that the 2018 Rule did not address, such as how to determine whether a partial exemption applies after a merger or acquisition.

The CFPB indicated that it intends to address the proposed permanent coverage thresholds for closed-end mortgage loans and open-end lines of credit in a later final rule. They proposed potential changes to increase the minimum number of LAR lines for closed-end transactions to a number above the current 25-loan coverage threshold for reporting HMDA data. The comment period for that change (which could aid small mortgage producers) was not quite closed when this update was issued.

To read all 59 *Federal Register* pages of the final rule, go to:

https://www.govinfo.gov/content/pkg/FR-2019-10-29/pdf/2019-22561.pdf. ❑

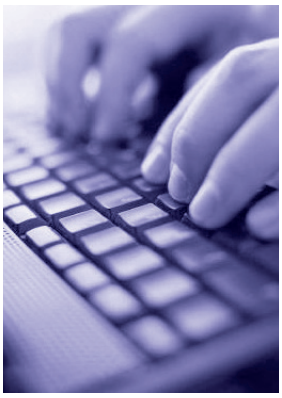
Short Notes

BSA. The Financial Crimes Enforcement Network (FinCEN) recently revised the instructions for completing section 2 of the Currency Transaction Report (CTR) and updated its FAQ document on CTR filing to change the answer to Question 16 concerning transactions in which the conductor has more than one role. The changes were made without public announcement, other than notice behind FinCEN's e-filing login wall.

Former instructions for the CTR indicated that when a conductor completes a currency transaction on the conductor's own behalf and on behalf of another person, the reporter completes one Part I for the conductor and checks the first "role" in item 2 that applies, starting at the left. That would be check box 2a, indicating a transaction conducted on behalf of oneself. The total amount is reported in that Part I entry.

However, those instructions and Question 16 in the FAQ now say that there should be two Part I entries for the conductor – one with item 2a checked for the transaction "completed on own behalf" and the other with item 2b checked to report the part of the transaction conducted on behalf of another. And of course, there is still the Part I entry for the business with item 2c checked (person on which behalf transaction was conducted). The FAQ document is available at www.fincen.gov/frequently-asked-questions-regarding-fincen-currency-transaction-report-ctr.

Regulations. The Consumer Financial Protection Bureau (CFPB) announced that it will establish a task force to examine ways to harmonize and modernize federal consumer financial laws. The Task Force on Federal Consumer Financial Law will examine the existing legal and regulatory environment facing consumers and financial services providers and report to Director Kraninger its recommendations for ways to improve and strengthen consumer financial laws and regulations. The CFPB announcement may be read at www.consumerfinance.gov/about-us/newsroom/cfpb-announces-taskforce-federal-consumer-financial-law/. ❑



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

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.

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.).
- Temporary reauthorization of NFIP expires November 21,2019.

December 2019

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

January 2020

- Amended thresholds for HMDA coverage and incorporation of 2018 Rule into Regulation C effective January 1, 2020.
- Rural residential appraisal exemption and requirement to review appraisals for compliance with the USPAP effective January 1, 2020.
- Increased thresholds for Regulations Z and M coverage, as well as for exemption from the HPML appraisal requirement, increase effective January 1, 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

- Mandatory of the updated URLA form was to begin on February 1, 2020 for all new applications (to be sold on the secondary market) – has been delayed (no new date set).

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 information in CRA public file by of April 1, 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

- Every-five-year inflation adjustments to amounts in Regulation CC effective July 1, 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.

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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 information in CRA public file by of April 1, 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].

September 2021

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2021) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2021.

November 2021

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2021.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 7, 2021 (e.g., EST, CST, etc.).

December 2021

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2021.