

# Compliance Journal

## Special Focus

### CFPB Issues Proposed Rule to Facilitate LIBOR Transition

On June 4, 2020, the Bureau of Consumer Financial Protection (CFPB) released a notice of proposed rulemaking (proposal) to address the sunset of LIBOR, which is expected to be discontinued after 2021. The proposal would provide examples of replacement indices that meet certain Regulation Z (Reg Z) standards, permit creditors new means to transition home equity lines of credit (HELOCs) and credit card accounts from LIBOR to a replacement index, and address change-in-terms notice provisions.

Reg Z contains separate provisions for HELOCs and open-end credit that is not home secured. These distinctions are important for identifying applicability of various rules, and the proposal amends each separate rule appropriately. However, from a conceptual standpoint, the changes are fundamentally similar. To present these fundamental changes in a manner that is simpler to understand from a conceptual standpoint, and to avoid redundancy, provisions for HELOCs and not home-secured plans have been presented together.

#### Open-end Credit Subsequent Disclosure Requirements

Reg Z specifies when change-in-terms notifications must be sent to consumers. The transition from LIBOR may trigger certain notification requirements, which CFPB seeks to clarify in the proposal. For example, the proposal would specify that any change-in-terms notice must include any replacement index, including any adjusted margin, regardless of whether the margin is reduced or increased. Reg Z Section 1026.9(c) contains rules for when written change-in-terms notifications are required, both for HELOCs and open-end not home-secured plans. Those rules can be summarized in a way that is relevant to the proposal as follows:

- For HELOCs, a creditor must provide a notice whenever a required term is changed, or the required minimum periodic payment is increased.
- For open-end (not home-secured) plans, a creditor must provide a notice whenever a significant change in required account terms is made.
- Both rules provide an exception from notice requirements when the change involves a reduction of any component of a finance or other charge.

Because the index is a required term, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index for both HELOCs and for non-home-secured plans. The exception does not apply to the index change, regardless of whether there is also a change in the index value or margin that involves a reduction in a finance or other charge.

The exception also requires notification of a margin change if the margin is increasing. However, a decrease in the margin would be excepted from the notification requirements because the change would involve a reduction in a component of a finance or other charge. The proposal would revise the exception when the change involves a reduction of any component of a finance or other charge so that it does not apply on or after October 1, 2021, where the creditor is reducing the margin when a LIBOR index is replaced. Thus, the proposal would make it clear that a change-in-terms notice for any replacement index must include any adjusted margin *regardless* of whether the margin is reduced or increased.

The Truth in Lending Act generally requires that changes in disclosures have an effective date of the 1st of October that is at least six months after the date the final rule is adopted. However, in the proposal, CFPB notes that creditors may want to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin earlier than October 1, 2021.



## Requirements for Home Equity Plans and Credit Cards

Reg Z generally prohibits a creditor from changing the terms of a HELOC except under certain circumstances. Additionally, Reg Z Subpart G contains rules implementing requirements under the Credit CARD Act. In the case of a credit card account under an open-end consumer credit plan, a card issuer may not increase an APR (or certain other charges) except under certain circumstances.

Existing unavailability provisions exist for both HELOC plans and credit card plans, which permits the creditor to change the index and margin. In both instances, the proposal would revise existing unavailability provisions, primarily for technical, conforming, and clarification purposes. The proposal would also create LIBOR-specific provisions and permit a creditor to use either those new provisions or the existing, updated unavailability provisions.

Reg Z currently provides that a creditor may change the index and margin used under either plan under certain circumstances, namely beginning with the situation where the original index has become no longer available. The proposal would update both existing unavailability provisions so that a creditor may change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. The proposal would also provide that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. Thus, the proposal would change the existing requirements in the following three ways:

1. Use of the term “historical fluctuations” rather than the term “historical movement” to refer to the original index and the replacement index. This would primarily be a technical change with the revised definition being shaped by conforming changes throughout the rule.
2. Includes a provision regarding newly established indices. A similar provision currently exists in Reg Z requiring newly established indices to produce a rate substantially similar to the original index. The proposal would clarify that the creditor using a newly established index may adjust the margin in order to produce a substantially similar APR.
3. The terms “replacement index” and “replacement index and replacement margin” are used instead of “new index” and “new index and margin.” The proposed change is intended to avoid any confusion when the rule refers to a replacement index and replacement margin as opposed to a newly established index.

The proposal would also add new LIBOR-specific provisions to Reg Z. These provisions would permit creditors for both types of plans that use a LIBOR index under the plan to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, under certain circumstances, without needing to wait for LIBOR to become unavailable.

Specifically, the proposal would provide that if a variable rate is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as:

1. The historical fluctuations in the LIBOR index and replacement index were substantially similar; and
2. The replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

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### Wisconsin Bankers Association

4721 South Biltmore Lane,  
P.O. Box 8880, Madison,  
Wisconsin, 53708-8880

### Senior Writers

Heather Mackinnon  
Scott Birrenkott

### Editor

Ally Bates

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Additionally, if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

## Card Issuer Reevaluation of Rate Increases

Reg Z contains provisions that requires a card issuer to perform an ongoing review for credit card accounts when the APR is increased. Thus, if the LIBOR transition results in an APR increase, a card issuer would be required to complete an analysis reevaluating the rate on that account every 6 months until certain requirements are met. For this purpose, LIBOR must be used as the comparison index.

The proposal would create an exception for those card issuers that transitioned from LIBOR using either Reg Z's existing unavailability provision, or the proposal's LIBOR-specific provision discussed above. The proposal also would provide instructions on how to replace LIBOR as a benchmark for comparison for card issuers who were already required to perform a review as of March 15, 2021.

Where the transition results in an APR increase, no analysis reevaluating the rate would be required. The proposal also would provide instructions on how to replace LIBOR as a benchmark for comparison for card issuers who were already required to perform a § 1026.59 review as of March 15, 2021.

## Closed-end Loan Considerations

Pursuant to Reg Z, if a creditor changes the index of a variable-rate closed-end loan to an index that is not a "comparable index," the index change may constitute a refinancing for purposes of Regulation Z, triggering certain requirements. The proposal would provide an example of an index that is a "comparable index" to LIBOR for closed-end products. Specifically, CFPB would add an illustrative example to identify the Secured Overnight Financing Rate-based spread-adjusted replacement indices recommended by the Alternative Reference Rates Committee as an example of a "comparable index" for the LIBOR indices that are intended to be replaced.

## Conclusion

CFPB's proposal would provide examples of replacement indices for LIBOR, permit a means for creditors to transition existing accounts that use LIBOR to a replacement index, address change-in-terms notice provisions, and address the rate reevaluation provisions applicable to credit card accounts. Financial institutions using LIBOR as an index for calculating rates for open-end and closed-end products should consider how these changes affect their plans for the transition to replacement indices. As noted above, this article has been presented to help understand the proposal on a conceptual level. As such, financial institutions should refer to the applicable provisions within the proposal itself depending on the types of products they offer for more specific requirements. CFPB has also provided FAQs (which includes other transition topics in addition to the proposal) and "fast facts" regarding the proposal. Questions can also be directed to the WBA Legal Call program at [wbalegal@wisbank.com](mailto:wbalegal@wisbank.com).

[CFPB's Proposed Rule](#)

[CFPB's FAQs](#)

[CFPB's Fast Facts](#) ■



# Regulatory Spotlight

## Agencies Issue Interim Final Rule to Temporarily Revise Supplementary Leverage Ratio.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued an interim final rule to temporarily revise the supplementary leverage ratio calculation for depository institutions. Under the interim final rule, any depository institution subsidiary of a U.S. global systemically important bank holding company or any depository institution subject to Category II or Category III capital standards may elect to exclude temporarily U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio denominator. Additionally, under the interim final rule, any depository institution making the election must request approval from its primary federal banking regulator prior to making certain capital distributions so long as the exclusion is in effect. The tier 1 leverage ratio is not affected by the interim final rule. The interim final rule is effective **06/01/2020** through **03/31/2021**. Comments are due **07/16/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-10962.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 32980-32990.

## Agencies Issue Interagency Policy Statement on Allowance for Credit Losses.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the agencies) issued an interagency policy statement on allowances for credit losses (ACLs). The agencies issued the statement in response to changes to U.S. generally accepted accounting principles (GAAP) as promulgated by the Financial Accounting Standards Board (FASB) in Accounting Standards Update (ASU) 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments and subsequent amendments issued since June 2016. The updates are codified in Accounting Standards Codification (ASC) Topic 326, Financial Instruments—Credit Losses (FASB ASC Topic 326). The interagency policy statement describes the: (1) measurement of expected credit losses under the current expected credit losses (CECL) methodology and the accounting for impairment on available-for-sale debt securities in accordance with FASB ASC Topic 326; (2) design, documentation, and validation of expected credit loss estimation processes, including the internal controls over these processes; (3) maintenance of appropriate ACLs; (4) responsibilities of boards of directors and management; and (5) examiner reviews of ACLs. The interagency policy statement is available **06/01/2020**. The statement may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-10291.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 32991-33004.

## Agencies Issue Guidance on Credit Risk Review System.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the agencies) issued final guidance for credit risk review. The guidance is relevant to all institutions supervised by the agencies and replaces Attachment 1 of the 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses. The guidance discusses sound management of credit risk, a system of independent, ongoing credit review, and appropriate communication regarding the performance of the institution's loan portfolio to its management and board of directors. The guidance is available **06/01/2020**. The guidance may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-10292.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 33278-33287.

## Agencies Correct Capital Rule That Delays CECL Implementation.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a correction to an interim final rule published in the *Federal Register* on **03/31/2020**, that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (CECL). The notice corrects errors in and clarifies the interim final rule. Please see the amendment for the specific corrections. The notice is effective **05/19/2020** and is applicable **03/31/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-08789.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29839-29842.

## CFPB Issues Final HMDA Rule to Increase Reporting Threshold.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend 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 **07/01/2020**. Regulation C implements the Home Mortgage Dis-



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closure Act (HMDA). CFPB has also set the threshold for reporting data about open-end lines of credit at 200 open-end lines of credit effective **01/01/2022**, upon the expiration of the current temporary threshold of 500 open-end lines of credit. The final rule is effective **07/01/2020**, 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 **01/01/2022**. See part VI of the final rule for more information. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-08409.pdf>. *Federal Register*, Vol. 85, No. 92, 05/12/2020, 28364-28407.

## **CFPB Issues Final Remittance Rule.**

CFPB issued a final rule to amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA), to revise remittance transfer rules. EFTA establishes certain protections for consumers sending international money transfers, or remittance transfers. CFPB's remittance rule in Regulation E implements the protections. CFPB amended Regulation E and the official interpretations 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. The exception expires **07/21/2020**. In addition, CFPB increased a safe harbor threshold in the rule related to whether a person makes remittance transfers in the normal course of its business. The final rule is effective **07/21/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-10278.pdf>. *Federal Register*, Vol. 85, No. 109, 06/05/2020, 34870-34909.

## **CFPB Releases Updated CHARM Booklet.**

CFPB announced the availability of an updated consumer publication, the Consumer Handbook on Adjustable Rate Mortgages booklet, also known as the CHARM booklet, required under the Real Estate Settlement Procedures Act (RESPA) implemented by Regulation X and the Truth in Lending Act (TILA) implemented by Regulation Z. The booklet is updated to align with CFPB's educational efforts, to be more concise, and to improve readability and usability. Creditors may, at their option, immediately begin using the revised CHARM booklet, or a suitable substitute, to comply with the requirements in Regulation Z. Creditors may use earlier versions of the CHARM booklet until existing supplies are exhausted. When reprinting the CHARM booklet, the most recent version should be used. The announcement may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-09/pdf/2020-12467.pdf>. *Federal Register*, Vol. 85, No. 111, 06/09/2020, 35292-35293.

## **CFPB Extends Comment Period for Proposal to Amend Regulation F, FDCPA.**

On **03/03/2020**, CFPB published in the *Federal Register* a proposed rule that would amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA), to require debt collectors to make certain disclosures when collecting time-barred debts. The proposal provided a 60-day comment period that closed **05/04/2020**. CFPB first extended the comment period until **06/05/2020**. CFPB has determined that a further extension of the comment period is appropriate. Comments are now due **08/04/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-21/pdf/2020-10966.pdf>. *Federal Register*, Vol. 85, No. 99, 05/21/2020, 30890-30891.

## **FRB Extends Compliance Date for Single-Counterparty Credit Limits for Bank Holding Companies and Foreign Banking Organizations.**

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to amend the compliance dates related to a final rule affecting single-counterparty credit limits for bank holding companies and foreign banking organizations (final SCCL rule). The final rule revises the final SCCL rule to modify the initial compliance dates of **01/01/2020**, for a foreign banking organization that has the characteristics of a global systemically important banking organization, and **07/01/2020**, for any other foreign banking organization subject to the final SCCL rule to now have an effective date of **07/01/2021**, and **01/01/2022**, respectively, regarding the SCCL applicable to a foreign banking organization's combined U.S. operations only. The final rule is effective **05/28/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-09665.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 31949-31952.

## **FRB Announces Financial Sector Liabilities.**

FRB announced financial sector liabilities. Section 622 of the Dodd Frank Act, implemented by FRB's Regulation XX, prohibits a merger or acquisition that would result in a financial company that controls more than 10 percent of the aggregate consolidated lia-



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bilities of all financial companies (aggregate financial sector liabilities). Specifically, an insured depository institution, a bank holding company, a savings and loan holding company, a foreign banking organization, any other company that controls an insured depository institution, and a nonbank financial company designated by the Financial Stability Oversight Council (each, a “financial company”) is prohibited from merging or consolidating with, acquiring all or substantially all of the assets of, or acquiring control of, another company if the resulting company’s consolidated liabilities would exceed 10 percent of the aggregate financial sector liabilities. Pursuant to Regulation XX, FRB publishes the aggregate financial sector liabilities by July 1 of each year. Aggregate financial sector liabilities equal the average of the year-end financial sector liabilities figure (as of December 31) of each of the preceding two calendar years. Please see the announcement for specific calculation methodology. The announcement may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-02/pdf/2020-11771.pdf>. *Federal Register*, Vol. 85, No. 106, 06/02/2020, 33669-33670.

## **FDIC Provides Notice of Response to Exception Requests of Recordkeeping for Timely Deposit Insurance Determination.**

The Federal Deposit Insurance Corporation (FDIC) issued a notice to announce it has granted a time-limited exception concerning the information technology system requirements and general recordkeeping requirements for certain accounts that require data cleanup, system updates, or customer outreach to make a deposit insurance determination. FDIC has also granted a time-limited exception from information technology system requirements and general recordkeeping requirements for certain internal (work-in-process) accounts that require an additional 24 hours (48 hours in total) post failure to obtain beneficial ownership information from internal business lines necessary to make a deposit insurance determination. The grants of exception relief are effective **05/28/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-11987.pdf>. *Federal Register*, Vol. 85, No. 107, 06/03/2020, 34194-34196.

## **FDIC Extends Comment Period for Industrial Bank Proposal.**

On **03/31/2020**, FDIC published in the *Federal Register* a proposed rule entitled “Parent Companies of Industrial Banks and Industrial Loan Companies” that would require certain conditions and commitments for each deposit insurance application approval, non-objection to a change in control notice, and merger application approval that would result in an insured industrial bank or industrial loan company becoming, after the effective date of any final rule, a subsidiary of a company that is not subject to consolidated supervision by the Board of Governors of the Federal Reserve System (FRB). The proposed rule also would require that before any industrial bank or industrial loan company may become a subsidiary of a company that is not subject to consolidated supervision by FRB, such company and the industrial bank or industrial loan company must enter into one or more written agreements with FDIC. The proposed rule provided for a 60-day comment period, which would have closed **06/01/2020**. FDIC has determined that an extension of the comment period is appropriate. Comments are due **07/01/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-11446.pdf>. *Federal Register*, Vol. 85, No. 102, 05/27/2020, 31710.

## **FDIC Announces Termination of Receivership.**

FDIC as Receiver for Fayette County Bank, **Illinois** was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective **06/01/2020**, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-12203.pdf>. *Federal Register*, Vol. 85, No. 109, 06/05/2020, 34630.

## **FDIC Announces Intent to Terminate Receiverships.**

FDIC intends to terminate the receivership for the institutions listed in the notices. The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of the notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of



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the date of the notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201. No comments concerning the termination of the receiverships will be considered which are not sent within the time frame. The notices may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-08/pdf/2020-12350.pdf>. *Federal Register*, Vol. 85, No. 110, 06/08/2020, 35088-35089; and <https://www.govinfo.gov/content/pkg/FR-2020-06-08/pdf/2020-12279.pdf>. *Federal Register*, Vol. 85, No. 110, 06/08/2020, 35089.

## **FDIC Proposes Changes to Deposit Insurance Assessments to Accommodate Impact of PPP Loans, PPPLF and MMLF.**

FDIC seeks comment on a proposed rule that would mitigate the deposit insurance assessment effects of participating in the Paycheck Protection Program (PPP) established by the Small Business Administration (SBA), and the Paycheck Protection Program Lending Facility (PPPLF) and Money Market Mutual Fund Liquidity Facility (MMLF) established by the Board of Governors of the Federal Reserve System (FRB). The proposed changes would remove the effect of participation in the PPP and PPPLF on various risk measures used to calculate an insured depository institution's assessment rate, remove the effect of participation in the PPPLF and MMLF programs on certain adjustments to an IDI's assessment rate, provide an offset to an insured depository institution's assessment for the increase to its assessment base attributable to participation in the MMLF and PPPLF, and remove the effect of participation in the PPPLF and MMLF programs when classifying insured depository institutions as small, large, or highly complex for assessment purposes. Comments were due **05/27/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-20/pdf/2020-10454.pdf>. *Federal Register*, Vol. 85, No. 98, 05/20/2020, 30649-30664.

## **OCC Issues Final CRA Rule.**

The Office of the Comptroller of the Currency (OCC) adopted a final Community Reinvestment Act (CRA) rule. OCC stated the revised rule is meant to strengthen and modernize 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. The final rule is effective **10/01/2020**. Banks must comply with the final rule by **10/01/2020**, **01/01/2023**, or **01/01/2024**, as applicable, except appendix C to part 25, which expires **01/01/2024**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-11220.pdf>. *Federal Register*, Vol. 85, No. 109, 06/05/2020, 34734-34834.

## **OCC Issues Interim Final Rule on Director, Shareholder, and Member Meetings.**

OCC issued an interim final rule to amend its regulations on activities and operations of national banks and corporate activities of federal savings associations to provide that the institutions may permit telephonic and electronic participation at all board of directors, shareholder, and as applicable, member meetings. The interim final rule updates OCC's regulations to conform with modern technologies and enables national banks and federal savings associations to hold the meetings without violating social distancing restrictions imposed in response to the COVID-19 emergency. The interim final rule is effective **05/28/2020**. Comments are due **07/13/2020**. OCC has also issued a correction to the interim final rule. The correction is effective **06/10/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-11525.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 31943-31949. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-10/pdf/2020-12570.pdf>. *Federal Register*, Vol. 85, No. 112, 06/10/2020, 35373-35374.

## **OCC Issues Final Rule on Permissible Interest on Loans Sold, Assigned or Otherwise Transferred.**

OCC issued a final rule on permissible interest rates on loans 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. The final rule clarifies that when a bank transfers a loan, the interest rate permissible before the transfer continues to be permissible after the transfer. The final rule is effective **08/03/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-02/pdf/2020-11963.pdf>. *Federal Register*, Vol. 85, No. 106, 06/02/2020, 33530-33536.



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## HUD Issues Notice of Terminations of FHA Direct Endorsements.

The Department of Housing and Urban Development (HUD) issued notice of the cause and effect of the termination of Direct Endorsement (DE) approval taken by Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. The notice includes a list of mortgagees that have had their DE Approval terminated. HUD regulations permit HUD to terminate the DE Approval of any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and that exceeds the national default and claim rate for insured mortgages. Termination of DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the HUD field office jurisdiction(s) listed in the notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10660.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29961.

## HUD Issues Annual Indexing for Basic Statutory Mortgage Limits.

HUD adjusted its annual indexing, in accordance with Section 206A of the National Housing Act, for the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2020. Please see the notice for the specific levels. The notice is applicable **01/01/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-04/pdf/2020-12084.pdf>. *Federal Register*, Vol. 85, No. 108, 06/04/2020, 34460-34461.

## HUD Seeks Comment on Revisions to Mortgage-related Information Collections.

- HUD seeks comment on revisions to an information collection entitled: FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions, and Transfers. Federal Housing Administration (FHA) insurance is an important source of mortgage credit for low and moderate-income borrowers. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged to the borrower by FHA. Providing policy and guidance to the single-family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. The information collected is to support HUD's policy and guidance. Comments are due **07/17/2020**. The information collection may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/2020-10612.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29738-29739.
- HUD seeks comment on revisions to an information collection entitled: HUD Multifamily Rental Project Closing Documents. The form, Subordination Agreement, HUD-92420M, is used in Federal Housing Administration (FHA)-insured multifamily rental project loan closings with secured, publicly financed secondary debt, often to promote affordable housing. The document is used to subordinate such secured, secondary financing to the lien of the FHA-insured mortgage, which must be in a first lien position as required by the National Housing Act, on terms and conditions that are legally and administratively acceptable to HUD. The Subordination Agreement is part of a larger information collection that consists of numerous other closing forms (Closing Documents) used in FHA-insured multifamily transactions. The Closing Documents, including the Subordination Agreement, were last updated in 2018. However, HUD was not able to complete its review of comments received in connection with the previous information collection renewal for the Closing Documents prior to its comment period deadline. Therefore, when HUD initiates a new information collection process for the Closing Documents later this year, it will include, as a starting point, changes HUD anticipated making in response to comments received. Notwithstanding, due to concerns that state and local housing finance agencies (HFAs) have expressed concerning certain terms and conditions in the 2018 Subordination Agreement, HUD initiated this separate action in order to allow HFAs and other interested parties an opportunity to comment on the form. Comments are due **07/17/2020**. The information collection may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/2020-10516.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29736-29738.
- HUD seeks comment on revision to an information collection entitled: Rental Assistance Demonstration (RAD); Supporting Contracts and Processing Requirements. RAD allows Public Housing, Mod Rehab, Rent Supp, RAP, and 202 PRAC properties to convert to long-term project-based Section 8 rental assistance contracts. Participation in the demonstration is voluntary and HUD approval is discretionary. Participating Public Housing Agencies (PHAs) and multifamily owners are required to submit documentation for processing and completing the conversion. Through the documents HUD evaluates whether the PHA or owner has met all the requirements necessary to complete conversion. Comments are due **07/17/2020**. The information collection may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/2020-10521.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29739-29740.
- HUD seeks comment on revision to an information collection entitled: Application for FHA-Insured Mortgages. Specific forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for Feder-



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al Housing Administration's (FHA's) insurance endorsement. The Uniform Residential Loan Application (URLA) and form HUD-92900-A (Addendum to the URLA) are used in every case by the lender to make application for FHA mortgage insurance. Together the forms describe the parties involved, the property, and the conditions and terms on which the mortgage insurance will be based. The HUD-92900-A was updated to: revise certifications to reflect regulations and other legal requirements; ensure accuracy of information provided to FHA; reduce uncertainty in the industry; maintain the ability to enforce FHA program requirements; and remove Department of Veterans Affairs requirements and certifications. Comments are due **06/18/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10659.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29959-29961.

## FEMA Issues Notices of Changes in Flood Hazard Determinations.

- The Federal Emergency Management Agency (FEMA) issued a notice which lists communities in the state of **Michigan**, where new or modified Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by FEMA for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-10103.pdf>. *Federal Register*, Vol. 85, No. 92, 05/12/2020, 28023-28025.
- FEMA issued a notice which lists communities in the states of **Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin**, where new or modified Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by FEMA for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11723.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 3318-33183.

## FEMA Issues Proposed Flood Hazard Determinations.

- FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities in the states of **Indiana, Iowa, Michigan, and Ohio**, as listed in the table in the notice. The purpose of the notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that FEMA has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). Comments are due **08/31/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11725.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 33185-33188.
- FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities in the states of **Iowa, Michigan, and Wisconsin**, as listed in the table in the notice. The purpose of the notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that FEMA has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). Comments are due **09/08/2020**. The notice may be viewed at:



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<https://www.govinfo.gov/content/pkg/FR-2020-06-09/pdf/2020-12488.pdf>. *Federal Register*, Vol. 85, No. 111, 09/08/2020, 35320-35321.

## **FEMA Issues Correction to Previously Published Proposed Flood Hazard Determination.**

On **04/22/2020**, FEMA published in the *Federal Register* a proposed flood hazard determination notice regarding Ottawa County, **Michigan** that contained an erroneous table. The notice provides corrections to that table, to be used in lieu of the information previously published. Comments are due **08/10/2020**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-10098.pdf>. *Federal Register*, Vol. 85, 05/12/2020, 28025-28026.

## **FEMA Seeks Comment on Effectiveness of Maintaining and Improving State, Local, and Tribal Territorial Preparedness.**

FEMA seeks comment to a list of priority research questions to further understand existing evidence on the Homeland Security Grant Program's (HSGP's) influence on state, local, Tribal, and territorial (SLTT) preparedness. The HSGP includes a suite of risk-based grants to assist SLTT efforts in preventing, preparing for, protecting against, and responding to acts of terrorism. HSGP funding can also be used to enhance preparedness for other catastrophic events (e.g., hurricanes, wildfires) when the use of such funds has a nexus to preventing, preparing for, protecting against, and responding to terrorism. Comments are due **11/09/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-11/pdf/2020-12620.pdf>. *Federal Register*, Vol. 85, No. 113, 06/11/2020, 35659-35660.

## **IRS Issues Final Rule on Treatment of Certain Interests as Stock or Indebtedness.**

The Internal Revenue Service (IRS) issued a final rule regarding the treatment of certain interests in corporations as stock or indebtedness. The final rule generally affects corporations, including those that are partners of certain partnerships, when those corporations or partnerships issue purported indebtedness to related corporations or partnerships. Section 385 authorizes Treasury to prescribe rules to determine whether an interest in a corporation is treated as stock or indebtedness (or as in part stock and in part indebtedness). On **10/21/2016**, IRS published in the *Federal Register* final, temporary, and proposed rules under section 385. The 2016 rules addressed the classification of certain related-party debt as stock or indebtedness (or as in part stock and in part indebtedness) for federal income tax purposes. The temporary rule expired **10/13/2019**. On **10/28/2019**, IRS issued guidance that, following the expiration of the temporary rule, a taxpayer may rely on the 2016 proposed rule until further notice is given in the *Federal Register*. On **11/04/2019**, IRS an advance notice of proposed rulemaking in the *Federal Register* which announced that it intended to propose more streamlined and targeted regulations. The final rule adopts the 2016 proposed rule without any substantive change. The final rule is effective **05/14/2020**. Please see the final rule for dates of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-08096.pdf>. *Federal Register*, Vol. 85, No. 94, 05/14/2020, 28867-28883.

## **IRS Issues Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.**

IRS issued a final rule regarding the reporting requirements of exempt organizations under Internal Revenue Code section 6033. The final rule updates information reporting regulations under section 6033 that are generally applicable to organizations exempt from tax under section 501(a) to reflect statutory amendments and certain grants of reporting relief for tax-exempt organizations required to file an annual Form 990 or 990-EZ information return that have been made since the previous regulations were adopted. The final rule affects tax-exempt organizations. Please see the final rule for specific reporting requirements. The final rule is effective **05/28/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-11465.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 31959-31969.

## **IRS Issues Proposal Concerning Rehabilitation Credit.**

IRS proposed amendments to Title 26 part 1 under section 47 of the Internal Revenue Code concerning the rehabilitation credit, including rules to coordinate the new 5-year period over which the credit may be claimed with other special rules for investment credit property. The rehabilitation credit under section 47 is listed as an investment credit under section 46, and the investment credit under section 46 is a current year general business credit under section 38. On **12/22/2017**, section 47 was amended by section 13402 of the Tax Cuts and Jobs Act (TCJA). The proposed rule is meant to reconcile changes made by TCJA to the rehabilitation credit rule.



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Comments are due **07/21/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-09879.pdf>. *Federal Register*, Vol. 85, No. 100, 05/22/2020, 31096-31099.

## **IRS Issues Guidance Clarifying Premium Tax Credit Unaffected by Suspension of Personal Exemption Deduction.**

IRS issued a proposed rule under sections 36B and 6011 of the Internal Revenue Code (Code) to clarify that the reduction of the personal exemption deduction to zero for taxable years beginning after **12/31/2017**, and before **01/01/2026**, does not affect an individual taxpayer's ability to claim the premium tax credit. Section 151 of the Code generally allows a taxpayer to claim a personal exemption deduction, based on the exemption amount defined in section 151(d), for the taxpayer, the taxpayer's spouse, and any dependents, as defined in section 152 of the Code. On **12/22/2017**, section 151(d)(5) was added to the Code by section 11041 of the Tax Cuts and Jobs Act (TCJA). Section 151(d)(5)(A) provides that, for taxable years beginning after **12/31/2017**, and before **01/01/2026**, the term "exemption amount" means zero. However, section 151(d)(5)(B) provides that the reduction of the exemption amount to zero is not taken into account in determining whether a deduction under section 151 is allowed or allowable to a taxpayer, or whether a taxpayer is entitled to a deduction under section 151, for purposes of any other provision of the Code. Beginning in 2014, under the Patient Protection and Affordable Care Act, and the Health Care and Education Reconciliation Act, (collectively, Affordable Care Act), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange established under section 1311 of the Affordable Care Act may claim a premium tax credit under section 36B. Several rules relating to the premium tax credit apply based on whether a taxpayer properly claims or claimed a personal exemption deduction under section 151 for the taxpayer, the taxpayer's spouse, and any dependents. Comments are due **07/27/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-10069.pdf>. *Federal Register*, Vol. 85, No. 102, 05/27/2020, 31710-31714.

## **IRS Proposes Rule on Income Tax Withholding for Certain Periodic Retirement and Annuity Payments.**

IRS seeks comment on a proposed rule for federal income tax withholding on certain periodic retirement and annuity payments to implement an amendment made by the Tax Cuts and Jobs Act. The proposed rule affects payors of certain periodic payments, plan administrators that are required to withhold on such payments, and payees who receive such payments. Comments are due **07/27/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-10679.pdf>. *Federal Register*, Vol. 85, No. 102, 05/27/2020, 31714-31718.

## **IRS Proposes Tax on Excess Tax-Exempt Organization Executive Compensation.**

IRS issued a propose rule under section 4960 of the Internal Revenue Code, which would impose an excise tax on remuneration in excess of \$1,000,000 and any excess parachute payment paid by an applicable tax-exempt organization to any covered employee. The proposed rule affects certain tax-exempt organizations and certain entities that are treated as related to those organizations. Comments are due **08/10/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-11/pdf/2020-11859.pdf>. *Federal Register*, Vol. 85, No. 113, 06/11/2020, 35746-35789.

## **OFAC Amends Zimbabwe Sanctions Regulations.**

The Office of Foreign Assets Control (OFAC) issued a final rule to amend the Zimbabwe Sanctions Regulations to remove a general license that authorizes all transactions involving the Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe as a result of these entities being removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). The final rule is effective **05/22/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-11093.pdf>. *Federal Register*, Vol. 85, No. 100, 05/22/2020, 31060-31061.

## **OFAC Amends Syria-related Sanctions Regulations.**

OFAC amended the Syria-related Sanctions Regulations to implement Executive Order 13894, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria. OFAC intends to supplement the regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy. The final rule is effective **06/05/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-12200.pdf>. *Federal Register*, Vol. 85, No. 109, 06/05/2020, 34510-34518.



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## FinCEN Seeks Comment on Renewal of SAR Information Collection.

The Financial Crimes Enforcement Network (FinCEN) seeks comment on the proposed renewal, without change, of currently approved information collections relating to reports of suspicious transactions. Under the Bank Secrecy Act regulations, financial institutions are required to report suspicious transactions using FinCEN Report 111 (the suspicious activity report, or SAR). Although no changes are proposed to the information collections themselves, the request for comments covers a proposed updated burden estimate for the information collection. Comments are due **07/27/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-11247.pdf>. *Federal Register*, Vol. 85, No. 101, 05/26/2020, 31598-31613.

## FHFA Issues Order of Revision to Data for Enterprise Public Use Database.

The Federal Housing Finance Agency (FHFA) issued an order to announce revision of data requirements for the Enterprise Public Use Database (PUDB) and modifies its previous Enterprise PUDB orders issued in 2010 and 2011. The Enterprise PUDB contains data related to single-family and multifamily mortgages purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in a calendar year. FHFA publishes the PUDB annually pursuant to the requirements of the Federal Housing Enterprises Financial Safety and Soundness Act. The order revises the PUDB to include data elements that the Enterprises collected in 2018 from their loan sellers that are the same as those required to be reported under the Home Mortgage Disclosure Act (HMDA), and sets out the privacy protections for the HMDA data. The order also adds geographic indicators related to the Enterprise Duty to Serve program to the Enterprise PUDB to provide greater transparency about the Enterprises' activities. All data specifications set out in the order apply to future annual PUDB releases, until further modified by FHFA. A new 2018 PUDB will be released by FHFA containing the data elements added by the order, replacing an interim PUDB released 09/23/2019, that does not include the new HMDA data elements or Duty to Serve geographic indicators. The expansion of the PUDB data requirements will enhance transparency about the Enterprises' mortgage purchase activities. The order is applicable **05/27/2020**. The order may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-11819.pdf>. *Federal Register*, Vol. 85, No. 107, 06/03/2020, 34196-34208.

## SBA Publishes Several PPP Interim Final Rules.

- The Small Business Administration (SBA) published an interim final rule regarding the Paycheck Protection Program (PPP) interim final rule in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance on additional eligibility requirements for certain electric cooperatives. The interim final rule is effective **05/19/2020**. Comments are due **06/18/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10674.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29847-29849.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance on the ability to increase certain PPP loans. The interim final rule is effective **05/19/2020**. Comments are due **06/18/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10658.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29842-29845.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/24/2020**, SBA posted an interim final rule relating to promissory notes, authorizations, affiliation, and eligibility in connection with the implementation of PPP. This interim final rule revises that interim final rule by extending the date by which certain PPP borrowers may repay their loans from **05/07/2020** to **05/14/2020**, in order to avail themselves of a safe harbor with respect to a certification required by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and makes other conforming changes. The interim final rule is effective **05/19/2020**. Comments are due **06/18/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10649.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29845-29847.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance on the additional eligibility requirements related to entities with foreign



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affiliates. The interim final rule is effective **05/21/2020**. Comments are due **06/22/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-21/pdf/2020-10967.pdf>. *Federal Register*, Vol. 85, No. 99, 05/21/2020, 30835-30837.

- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **05/08/2020**, SBA posted an interim final rule relating to the extension of a safe harbor with respect to a certification required by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in connection with the implementation of PPP. This interim final rule revises the previously posted interim final rule, by extending the date by which certain PPP borrowers may repay their loans from **05/14/2020** to **05/18/2020**, in order to avail themselves of a safe harbor with respect to the certification required by the CARES Act, and by extending the timeframe for submission of the initial SBA Form 1502 report for PPP loans. The interim final rule is effective **05/26/2020**. Comments are due **06/25/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-11292.pdf>. *Federal Register*, Vol. 85, No. 101, 05/26/2020, 31357-31359.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance in order to help: PPP borrowers prepare and submit loan forgiveness applications as provided for in the CARES Act, PPP lenders who will be making the loan forgiveness decisions, and inform borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications. The interim final rule is effective **05/28/2020**. Comments are due **07/01/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11536.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 33004-33010.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance to inform borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications. The interim final rule is effective **05/28/2020**. Comments are due **07/01/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11533.pdf>. *Federal Register*, Vol. 85, No. 105, 06/01/2020, 33010-33015.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. The interim final rule supplements previously released interim final rules by providing guidance on additional eligibility requirements for certain telephone cooperatives. The interim final rule is effective **06/08/2020**. Comments are due **07/13/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-11/pdf/2020-12623.pdf>. *Federal Register*, Vol. 85, No. 113, 06/11/2020, 35550-35553.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. Subsequently, SBA issued several interim final rules implementing PPP as is highlighted in the previously paragraphs of this publication. On **06/05/2020**, the Paycheck Protection Program Flexibility Act (PPP Flexibility Act) was signed into law, amending the CARES Act. This interim final rule revises SBA's interim final rule published on **04/15/2020**, by changing key provisions, such as the loan maturity, deferral of loan payments, and forgiveness provisions, to conform to the PPP Flexibility Act. SBA has also made conforming amendments to the use of PPP loan proceeds for consistency with amendments made in the PPP Flexibility Act. Several of these amendments are retroactive to the date of enactment of the CARES Act, as required by section 3(d) of the PPP Flexibility Act. The provisions in the interim final rule related to loan forgiveness and deferral periods for PPP loans are effective **03/27/2020**. The provision in the interim final rule relating to the maturity date of PPP loans is effective **06/05/2020**. The remaining provisions in the interim final rule are effective **06/12/2020**. Comments are due **07/16/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-16/pdf/2020-12909.pdf>. *Federal Register*, Vol. 85, No. 115, 06/16/2020, 36308-36312.
- SBA published an interim final rule regarding the Paycheck Protection Program (PPP) interim final rule in the *Federal Register*. On **04/02/2020**, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. Subsequently, SBA issued a



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number of interim final rules implementing PPP. This interim final rule revises SBA's interim final rule published in the *Federal Register* on **04/15/2020**, by changing the eligibility requirement related to felony convictions of applicants or owners of the applicant. The interim final rule is effective **06/16/2020**. Comments are due **07/20/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-18/pdf/2020-13130.pdf>. *Federal Register*, Vol. 85, No. 117, 06/18/2020, 36717-36719.

## Agencies Issue Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program Final Rule.

The Rural Business-Cooperative Service (RBC) and Rural Utilities Services (RUS) (collectively, the agencies) issued a final rule for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, formerly the Biorefinery Assistance Program. The final rule incorporates the statutory definition changes as required in the Agricultural Act of 2018 and, with one exception, adopts the interim rule published on **06/24/2015**, in the *Federal Register*. The final rule is effective **05/18/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/2020-08078.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29593-29596.

## Agencies Update B&I Guaranteed Loan Program.

- The Rural Business-Cooperative Service (RBC) and Rural Utilities Service (RUS) (collectively, the agencies) issued an interim final rule to update the Business and Industry (B&I) Guaranteed Loan Program to allow flexibility to obligate federal funds for guaranteed loans pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the national COVID-19 emergency. RBC is responsible for administering the B&I Guaranteed Loan Program. It is the agencies' intent that guaranteed loan funds will be used for working capital loan purposes to support business operations and facilities in rural areas. The interim final rule is effective **05/22/2020**. Comments are due **06/22/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-11242.pdf>. *Federal Register*, Vol. 85, No. 100, 05/22/2020, 31035-31042.
- RBC also announced additional funding assistance of \$20,500,000 in budget authority appropriated under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for the Business and Industry (B&I) Guaranteed Loan Program. Applications may be accepted **05/22/2020** through **09/15/2021**, or until funds are expended. Program funding expires **09/30/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-11243.pdf>. *Federal Register*, Vol. 85, No. 100, 05/22/2020, 31139-31141.

## Agencies Announce Application Window for Higher Blends Infrastructure Incentive Program.

The Commodity Credit Corporation (CCC) and Rural Business-Cooperative Service (RBC) (collectively, the agencies) announced the application window, general policy, and application procedures for funding under the Higher Blends Infrastructure Incentive Program (HBIIP) in a Notice of Funding Availability (NOFA) published in the *Federal Register* in early May. The HBIIP will provide up to \$100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under HBIIP. This Notice announces the opening date for the HBIIP application window. Applications for HBIIP will be accepted from **05/15/2020** through **08/13/2020**. Applications received after 11:59 p.m. Eastern Daylight Time on **08/13/2020**, will not be considered. The grant period is not to exceed 18-months, unless otherwise specified in the grant agreement or agreed to by CCC. The agencies have also issued a correction to the notice which referenced an incorrect program name in the DATES section of the notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-15/pdf/2020-10487.pdf>. *Federal Register*, Vol. 85, No. 95, 05/15/2020, 29394-29395. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-11977.pdf>. *Federal Register*, Vol. 85, No. 107, 06/03/2020, 34174.

## FCA Seeks Comment on Revisions to System of Records.

- The Farm Credit Administration (FCA) seeks comment on amendments to an existing system of records, FCA-10, Farm Credit System Institution Criminal Referrals. The record system is used to track the progress of criminal referrals through the justice system, to notify FCA examiners and Farm Credit System institutions of criminal referrals, and to issue notices/orders of prohibition. FCA seeks to update the notice to clarify and include more details about the categories of records maintained in the system, how they are maintained, to update the routine uses, to make administrative updates, and to make non-substantive changes to conform



# Regulatory Spotlight

to the system of records notice (SORN) template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A-108. Comments are due **06/25/2020**. The notice will become effective without further publication on **07/06/2020**, unless modified by a subsequent notice to incorporate comments received. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-11198.pdf>. *Federal Register*, Vol. 85, No. 101, 05/26/2020, 31497-31499.

- FCA seeks comment on amendments to an existing system of records, General Statement of Routine Uses. FCA seeks to add four new routine uses and make non-substantive changes to two existing routine uses. The new routine uses implemented by the notice would allow for: (i) disclosure of records in response to a breach or suspected breach of an FCA system of records; (ii) disclosure of records in response to a breach or suspected breach of or in response to another agency's system of records; (iii) disclosure of records to contractors or other authorized agents performing work on behalf of FCA; and (iv) a routine use allowing disclosure to other federal and state agencies to facilitate access to, amendment or correction of records, or to verify the identity of individuals making such requests. Comments are due **06/25/2020**. The notice will become effective without further publication on **07/06/2020**, unless modified by a subsequent notice to incorporate comments received. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-11199.pdf>. *Federal Register*, Vol. 85, No. 101, 05/26/2020, 31495-31497.
- FCA seeks comment on amendments to an existing system of records, FCA-5, Assignments and Communication Tracking System. The modifications include: (1) Identifying the records in the system as unclassified; (2) Updating the system location to reflect the system's current location; (3) Updating the system managers to reflect the system's current owner; (4) Clarifying and expanding the system purpose to maintain files related to receiving, reviewing, and responding to public comments received on FCA's proposed rulemakings and other public notices, as applicable; (5) Expanding and clarifying the categories of records to ensure they are consistent with the purposes for which the records are collected; (6) Expanding and clarifying how records may be stored and retrieved; (7) Clarifying the routine uses for which information in the system may be disclosed and adding a routine use for the disclosure of public comments the Agency receives in its rulemaking and other activities, in compliance with the Administrative Procedures Act; (8) Revising the retention and disposal section to reflect the relevant records schedule; and (9) Revising the safeguards section to reflect updated cybersecurity guidance and practices. Comments are due **07/06/2020**. The notice will become effective without further publication on **07/14/2020**, unless modified by a subsequent notice to incorporate comments received. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-04/pdf/2020-12097.pdf>. *Federal Register*, Vol. 85, No. 108, 06/04/2020, 34436-34438.

## **RHS Issues Correction to Policy to Temporarily Allow Payment Deferrals for CF Program.**

The Rural Housing Service (RHS) issued a correction to its policy to allow loan payment deferrals for the Community Facilities (CF) Direct Loan Program. In rule document 2020-08429 beginning on page 22009 in the *Federal Register* issue of **04/21/2020**, make the following correction: On page 22009, in the DATES section, "May 12, 2020" should read "April 21, 2020". The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-21/pdf/C1-2020-08429.pdf>. *Federal Register*, Vol. 85, No. 99, 05/21/2020, 30835.

## **FCIC Issues Final Crop Insurance Provisions for Canola and Rapeseed Crops.**

The Federal Crop Insurance Corporation (FCIC) issued a final rule to amend the Common Crop Insurance Regulation for canola and rapeseed crop insurance provisions. The intended effect of the action is to clarify policy provisions and for consistency with other crop provisions that offer coverage on both fall and spring-planted acreage of the crop. The changes are effective for the 2021 and succeeding crop years. FCIC will accept comments on the final rule until **07/27/2020**. The final rule is effective **05/28/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-10240.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 31939-31943.

## **SEC Issues Final Rule to Define Covered Clearing Agency.**

The Securities and Exchange Commission (SEC) adopted amendments to the definitions of "covered clearing agency," "central securities depository services," and "sensitivity analysis" pursuant to Section 17A of the Securities Exchange Act and the Payment, Clearing, and Settlement Supervision Act. SEC amended Rule 17Ad-22(a)(5) to define "covered clearing agency" to mean a registered clearing agency that provides the services of a central counterparty (CCP) or central securities depository (CSD). SEC amended Rule 17Ad-22(a)(3) to define "central securities depository" to mean a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act. In addition, SEC amended the definition of "sensitivity analysis" in Rule 17Ad-22(a)(16) so that



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the policies and procedures of all covered clearing agencies that are CCPs provide for a sensitivity analysis that considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the covered clearing agency. The final rule is effective **07/13/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-07905.pdf>. *Federal Register*, Vol. 85, No. 94, 05/14/2020, 28853-28867.

## **SEC Issues Proposed Rule on Good Faith Determination of Fair Value.**

SEC issued a new rule (Rule 2a-5) under the Investment Company Act that would address valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company (a “fund”). The proposed rule would provide requirements for determining fair value in good faith with respect to a fund for purposes of section 2(a)(41) of the Act. The determination would involve assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; overseeing and evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records. The proposed rule would permit a fund’s board of directors to assign the fair value determination to an investment adviser of the fund, who would then carry out the functions for some or all of the fund’s investments. The assignment would be subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board’s ability effectively to oversee the adviser’s fair value determinations. If Rule 2a-5 is adopted, SEC would rescind previously issued guidance on the role of the board of directors in determining fair value and the accounting and auditing of fund investments. Comments are due **07/21/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-13/pdf/2020-08854.pdf>. *Federal Register*, Vol. 85, No. 93, 05/13/2020, 28734-28770.

## **SEC Issues Corrections to Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts.**

SEC issued a correction to a final rule published in the *Federal Register* on **05/01/2020**, regarding updated disclosure requirements and summary prospectus for variable annuity and variable life insurance contracts. SEC has issued a second correction to the same final rule. Please see the notices for the specific corrections. The first correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-13/pdf/C1-2020-05526.pdf>. *Federal Register*, Vol. 85, No. 92, 05/13/2020, 28484. The second correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/C2-2020-05526.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29614.

## **CFTC Adopts Inadvertently Deleted Provisions of Consumer Privacy Rules.**

The Commodity Futures Trading Commission (CFTC) is making a correction to regulations to restore text that was inadvertently deleted in a 2011 amendment to that regulation. On **11/12/2019**, CFTC published a proposed rule to amend section 160.30 of CFTC’s regulations to restore the inadvertently deleted detailed requirements in section 160.30 which mirror the requirements of section 501 of GLBA, pursuant to which part 160 of CFTC’s regulations were adopted. CFTC adopted the proposed rule as proposed. The final rule is effective **06/17/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-18/pdf/2020-08552.pdf>. *Federal Register*, Vol. 85, No. 96, 05/18/2020, 29611-29614.

## **CFTC Seeks Comment on Strategic Plan.**

CFTC seeks comment on its draft 2020-2024 Strategic Plan. The CFTC-approved version of the Strategic Plan includes CFTC’s mission, vision, core values, strategic goals, and strategic objectives. Comments are due **06/18/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10676.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29935.

## **FTC Withdraws Previously Published Semiannual Agenda.**

The Federal Trade Commission (FTC) withdraws its semiannual regulatory agenda published in the *Federal Register* on **05/07/2020**. The agenda will be incorporated in the upcoming government-wide Unified Agenda of Federal Regulatory and Deregulatory Actions. The withdrawal is effective **05/15/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-15/pdf/2020-10301.pdf>. *Federal Register*, Vol. 85, No. 95, 05/15/2020, 29359.



# Regulatory Spotlight

## **FCC Issues Proposed Rule on FY 2020 Regulatory Fees.**

The Federal Communications Commission (FCC) issued a proposed rule regarding the assessment and collection of regulatory fees for fiscal year 2020. Please see the proposal for the specific changes to fiscal year 2020 regulatory fees. Comments are due **06/12/2020**; reply comments due **06/29/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-11368.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 32256-32288.

## **NCUA Issues Prompt Correction Action Interim Final Rule.**

The National Credit Union Administration (NCUA) issued an interim final rule to temporarily modifying certain regulatory requirements to help ensure that federally insured credit unions (FICUs) remain operational and liquid during the COVID-19 crisis. Specifically, NCUA issued two temporary changes to its prompt corrective action regulations. The first amends regulations to temporarily enable NCUA to issue an order applicable to all FICUs to waive the earnings retention requirement for any FICU that is classified as adequately capitalized. The second modifies regulations with respect to the specific documentation required for net worth restoration plans for FICUs that become undercapitalized. The temporary modifications will be in place until **12/31/2020**. The interim final rule is effective **05/28/2020**. Comments are due **06/29/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-11384.pdf>. *Federal Register*, Vol. 85, No. 103, 05/28/2020, 31952-31957.

## **NCUA Issues Proposed Rule on Joint Ownership Share Accounts.**

NCUA proposes to amend its share insurance regulation governing the requirements for a share account to be separately insured as a joint account by the National Credit Union Share Insurance Fund (NCUSIF). Specifically, the proposed rule would provide an alternative method to satisfy the membership card or account signature card requirement necessary for insurance coverage (signature card requirement). Under the proposal, even if an insured credit union cannot produce membership cards or account signature cards signed by the joint accountholders, the signature card requirement could be satisfied by information contained in the account records of the insured credit union establishing co-ownership of the share account. For example, the signature card requirement could be satisfied by the credit union having issued a mechanism for accessing the account, such as a debit card, to each co-owner or evidence of usage of the joint share account by each co-owner. Comments are due **07/06/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-11385.pdf>. *Federal Register*, Vol. 85, No. 109, 06/05/2020, 34545-34548.

## **DOL Withdraws Partial Lists of Establishments that Lack or May Have a “Retail Concept” Under Fair Labor Standards Act.**

The Department of Labor (DOL) issued a final rule under the Fair Labor Standards Act (FLSA). Section 7(i) of FLSA provides an exemption from the overtime compensation requirement for certain commissioned employees employed by a retail or service establishment. In the final rule, DOL withdraws the “partial list of establishments” that it previously viewed as having “no retail concept” and categorically unable to qualify as retail or service establishments eligible to claim the section 7(i) exemption; and the “partial list of establishments” that, in its view, “may be recognized as retail” for purposes of the exemption. Removing the lists promotes consistent treatment when evaluating section 7(i) exemption claims by treating all establishments equally under the same standards and permits the reevaluation of an industry’s retail nature as developments progress over time. The final rule is effective **05/19/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10250.pdf>. *Federal Register*, Vol. 85, No. 97, 05/19/2020, 29867-29870.

## **DOL Provides Additional Safe Harbor to Furnish ERISA Information Electronically.**

DOL issued a final rule to adopt a new, additional safe harbor for employee benefit plan administrators to use electronic media, as a default, to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act (ERISA). The final rule allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. The final rule is effective and applicable **07/27/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-10951.pdf>. *Federal Register*, Vol. 85, No. 102, 05/27/2020, 31884-31924.



# Regulatory Spotlight

## DOL Issues Technical Corrections to FLSA.

DOL issued technical correction to Fair Labor Standards Act (FLSA). On **09/27/2019**, DOL published in the *Federal Register* a final rule updating and revising the regulations issued under FLSA regarding the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. The final rule was effective on **01/01/2020**. Through publication of the final rule, DOL corrects certain regulatory text. Please see the final rule for specific corrections. The final rule is effective **06/08/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-08/pdf/2020-11979.pdf>. *Federal Register*, Vol. 85, No. 110, 06/08/2020, 34969-34970.

## DOL Issues Final Rule to Compute Overtime for Fluctuating Workweek.

DOL issued a final rule to revise its regulation for computing overtime compensation of salaried nonexempt employees who work hours that vary each week (fluctuating workweek) under the Fair Labor Standards Act. The final rule clarifies that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method of compensation, and that such payments must be included in the calculation of the regular rate as appropriate under the Act. DOL also added examples and made minor revisions to make the rule easier to understand. The final rule is effective **08/07/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-06-08/pdf/2020-10872.pdf>. *Federal Register*, Vol. 85, No. 110, 06/08/2020, 34970-24993.

## EEOC Proposes Procedures for Issuing Guidance.

The Equal Employment Opportunity Commission (EEOC) proposes to amend its procedural regulations to establish rules for issuing guidance. The proposed rule makes guidance documents readily available to the public, ensures that guidance will be treated as non-binding, requires a notice and comment period for significant guidance, and establishes a petition process for the issuance, amendment, or repeal of guidance. Comments are due **06/19/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-20/pdf/2020-09813.pdf>. *Federal Register*, Vol. 85, No. 98, 05/20/2020, 30667-30670.

## CDFI NOFA for Capital Magnet Fund.

The Community Development Financial Institution Fund (CDFI) issued a Notice of Funds Availability (NOFA) to invite applications for the fiscal year 2020 funding round of the Capital Magnet Fund (CMF). Through CMF, CDFI provides financial assistance grants to Community Development Financial Institutions (CDFIs) and to qualified nonprofit organizations that have the development or management of affordable housing as one of their principal purposes. Please see the NOFA for application requirements. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-29/pdf/2020-11580.pdf>. *Federal Register*, Vol. 85, No. 104, 05/29/2020, 32443-32458. ■

Are you a WBA member with a compliance question?

## Contact the WBA Legal Call Program

This WBA member-exclusive program provides information in response to compliance questions.

call: 608-441-1200



# Compliance Notes

▲ On **06/09/2020**, CFPB released a Fact Sheet regarding how to properly complete TRID title insurance disclosures. The instruction focuses on the disclosure of purchased owners and lenders title insurance. Examples are given to help illustrate the disclosure requirements. CFPB simultaneously released FAQs regarding lender credits on the total of payments disclosure, the optional signature line, and separating consumer and seller information in required disclosures. The Fact Sheet and FAQs may be viewed at the following links, respectively: [https://files.consumerfinance.gov/f/documents/cfpb\\_tila-respa\\_title-insurance-disclosures-factsheet.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tila-respa_title-insurance-disclosures-factsheet.pdf) and [www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/tila-respa-integrated-disclosures/tila-respa-integrated-disclosure-faqs/](http://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/tila-respa-integrated-disclosures/tila-respa-integrated-disclosure-faqs/)

▲ FRB announced examination activities are to resume for all banks, after previously announcing a reduced focus on examination activity due to the COVID-19 response. FRB stated examinations will continue to be conducted offsite until conditions improve. FRB will continue to work with banks to understand any specific issues a bank may be facing. The announcement: [www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200615a1.pdf](http://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200615a1.pdf)

▲ FDIC issued financial institution letter 59-2020 to remind banks that by **06/30/2020**, they should review current branch office information using FDIC's BankFind website and submit changes through FDICconnect. Banks are also reminded that beginning **07/01/2020**, they may submit their summary of deposits survey. All survey responses are required by **07/31/2020**. FDIC will not grant extensions for submitting summary data. More information may be found at: [www.fdic.gov/news/news/financial/2020/fil20059.html](http://www.fdic.gov/news/news/financial/2020/fil20059.html)

▲ FRB updated its Savings Deposit FAQs webpage that is dedicated to the topic of recent revisions made to Regulation D. Changes were made to state that FRB has no plans to reimpose the savings deposit transfer limits recently removed. FRB may, however, adjust the definition of "savings deposits" in response to comments received on the outstanding interim final rule. FRB also clarified that the changes do not make savings deposits subject to Regulation CC, Funds Availability rules. The updated FAQs: [www.federalreserve.gov/supervisionreg/savings-deposits-frequently-asked-questions.htm](http://www.federalreserve.gov/supervisionreg/savings-deposits-frequently-asked-questions.htm)

▲ CFPB issued several aids related to compliance requirements as impacted by COVID-19, including Regulation Z's consumer billing error notices, changing terms for deposit accounts, changing terms for open-end non-home secured lines of credit, delivery of remittance transfer funds, and consumer credit reporting. The following highlights the compliance aids:

- CFPB issued a statement to inform banks of its flexible supervisory and enforcement approach during the pandemic regarding the timeframe within which banks need complete their investigations of consumers' billing errors. The guidance is in response to the possibility that merchants may have difficulty responding to banks' inquiries in response to consumers' billing error notifications due to limited staff or access to information systems. Specifically, in evaluating a bank's compliance with the maximum timeframe for billing error resolution set forth in Regulation Z, CFPB intends to consider the bank's circumstances and does not intend to cite a violation in an examination or bring an enforcement action against a bank that takes longer than required by Regulation Z to resolve a billing error notice, so long as the bank makes good faith efforts to obtain the necessary information and makes a determination as quickly as possible, and complies with all other requirements pending resolution of the error. Good faith efforts by banks may include obtaining a reasonable estimate from the merchant of when it will be able to respond or determining reasonably that the merchant is unable to respond to the bank's request for information for the time being. CFPB does not expect, however, that current circumstances would prevent any bank from fully complying with the requirements of Regulation Z section 1026.13(d), as described in more detail in the statement: [https://files.consumerfinance.gov/f/documents/cfpb\\_statement\\_regulation-z-error-resolution-covid-19\\_2020-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_statement_regulation-z-error-resolution-covid-19_2020-05.pdf)
- In a second statement, CFPB confirmed that banks offering open-end, non-home secured credit may change terms of that credit. The bank is also permitted to give verbal disclosures to the consumer regarding any change so long as the bank also mails a disclosure regarding the changed terms as soon as practically reasonable after having provided the verbal disclosures. CFPB also confirmed banks may proactively contact consumers to share helpful information and resources with affected consumers. More information may be viewed at: [https://files.consumerfinance.gov/f/documents/cfpb\\_faqs\\_open-end-rules-covid-19\\_2020-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_faqs_open-end-rules-covid-19_2020-05.pdf)
- In its third compliance aid statement, CFPB confirmed that banks may make changes to the terms of deposit accounts. The statement outlines when advance notice need be provided to consumers regarding the changed terms. Certain changed terms may be made immediately, as outlined in: [https://files.consumerfinance.gov/f/documents/cfpb\\_faqs\\_payments-deposits-rules-covid-19\\_2020-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_faqs_payments-deposits-rules-covid-19_2020-05.pdf)
- In its fourth compliance aid statement, CFPB confirmed how it may not be an error if a designated recipient does not receive funds by the disclosed date of availability in a remittance transfer notice if the failure was due to a government-mandated



# Compliance Notes

closure of commercial activity in the relevant intermediary or recipient countries in response to COVID-19. More specific information, including an example, may be viewed at: [https://files.consumerfinance.gov/f/documents/cfpb\\_remittance-transfers\\_faqs-covid-19\\_2020-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_remittance-transfers_faqs-covid-19_2020-06.pdf)

- In another compliance aid, CFPB addressed consumer credit reporting in light of the protections offered consumers under the CARES Act. The statement provides answers to questions regarding how furnishers are to report for consumers given an accommodation and how to report for consumers who are currently in forbearance status. The statement may be viewed at: [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra\\_consumer-reporting-faqs-covid-19\\_2020-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf)

▲ FTC announced the three national credit reporting agencies, Equifax, Experian, and Transunion, are giving consumers weekly access to monitor their credit report. The access is free. Consumers may go to [AnnualCreditReport.com](https://www.annualcreditreport.com). The notice may be viewed at: [www.consumer.ftc.gov/blog/2020/05/credit-reports-are-now-free-every-week](https://www.consumer.ftc.gov/blog/2020/05/credit-reports-are-now-free-every-week)

▲ FDIC updated Section 21.1 of its *Risk Management Manual of Examination Policies*. The sections revised include: Capital Adequacy, Loan Portfolio Review, and Loan Operations Review. The changes revise the Community Bank Leverage Ratio, Allowances for Credit Losses, and other minor technical revisions. The revised manual may be viewed at: <https://www.fdic.gov/regulations/safety/manual/index.html>

▲ Many state and local authorities have taken, or are considering taking, legislative, executive, or other action to respond to the economic disruptions caused by the spread of COVID-19. In light of those actions, OCC issued Bulletin 2020-62 to remind national banks and federal savings associations that they are governed primarily by uniform federal standards and are generally not subject to state law limitations. Nationally-chartered banks and federal savings associations should work with counsel to determine whether state or local actions are applicable or whether the actions are preempted by federal law. The bulletin: [www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-62.html](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-62.html)

▲ CFPB has updated its Remittance Transfer Guide to address revised requirements of the remittance transfer rule. The guide was revised to include: an increase to the normal course of business safe harbor threshold (Guide: Section 3.2.2), expiration of the temporary exemption under Regulation E section 12 1005.32(a) (Guide: Section 4.2.1), and two new permanent exceptions that permit banks to use estimates in the disclosure of certain fees and exchange rates in certain circumstances (Sections 4.2.2 and 4.2.3). The guide was also updated to note the guidance is a Compliance Aid under CFPB's Policy Statement on Compliance Aids (Guide: Section 1.1), to include CFPB's current process for informal inquiries (Guide: Section 1.2), and change formatting and administrative changes in various sections, and revises internal cross references to refer to sections of the guide. The updated guide may be viewed at: [https://files.consumerfinance.gov/f/documents/cfpb\\_remittance-transfers\\_small-entity-compliance-guide.pdf](https://files.consumerfinance.gov/f/documents/cfpb_remittance-transfers_small-entity-compliance-guide.pdf)

▲ Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), were revised, effective as of the **06/30/2020**, report date. The revisions resulted from several interim final rules and a proposed rule issued by FRB, FDIC, and OCC in response to the impact of COVID-19. The revisions also resulted from the CARES Act. The revisions include:

1. Updates to the instructions for the calculation of certain amounts reported on Schedule RC-R, Regulatory Capital, that apply to the three versions of the Call Report and for the calculation of certain amounts reported on Schedule A, Advanced Approaches Regulatory Capital, on FFIEC 101.
2. New items on Call Report Schedule RC-C, Part I, Loans and Leases, and Schedule RC-M, Memoranda, to collect data on:
  - a. Eligible loan modifications under Section 4013, Temporary Relief from Troubled Debt Restructurings, of the CARES Act, with the items collected on a confidential basis;
  - b. SBA PPP loans and borrowings under the Federal Reserve PPP Liquidity Facility (PPPLF); and
  - c. Holdings of assets purchased under the Federal Reserve Money Market Mutual Fund Liquidity Facility (MMLF). The agencies expect the collection of these new items to be time limited.
3. Revisions to the definitions of certain deposits reported on Call Report Schedule RC-E, Deposit Liabilities, in response to an FRB rule that amends FRB's Regulation D.



# Compliance Notes

4. Changes to the reporting on extensions of credit to insiders on Call Report Schedule RC-M, Memoranda, in response to an FRB rule that excepts certain SBA PPP loans from section 22(h) of the Federal Reserve Act and the corresponding provisions of FRB's Regulation O.

Supplemental instructions for reporting in accordance with the revisions, along with the redlined report forms are available from FFIEC's Reporting Forms webpages and found at: <https://www.fdic.gov/news/news/financial/2020/fil20060.html>

▲ FDIC issued its quarterly summary State Profiles. The publication summarizes banking and economic conditions of each state and may be found at: [www.fdic.gov/bank/analytical/stateprofile/](http://www.fdic.gov/bank/analytical/stateprofile/)

▲ FHFA issued several announcements regarding matters related to Fannie Mae and Freddie Mac loans (collectively, the Enterprises), including the following:

- The Enterprises have made available a new payment deferral option, effective **07/01/2020**. The payment deferral option allows borrowers, who can return to making their normal monthly mortgage payment, the ability to repay their missed payments at the time the home is sold, refinanced, or at maturity. The borrower's monthly mortgage payment will not change. In addition to the new payment deferral option, borrowers with COVID-19 related hardships can still utilize other options that include reinstatement, repayment plans, or loan modifications based on borrowers' individual situations. More may be found at: [www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Home-owners-in-COVID-19-Forbearance-Plans.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Home-owners-in-COVID-19-Forbearance-Plans.aspx)
- The Enterprises extended their moratorium on foreclosures and evictions until at least **08/31/2020**. The moratorium applies to Enterprise-backed, single-family mortgages only. The current moratorium was set to expire **06/30/2020**. [www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx)
- FHFA released the latest report on the sale of non-performing loans (NPLs) by the Enterprises. The report includes information about NPLs sold through **12/31/2019**, and reflects borrower outcomes on NPLs sold through **06/30/2019**. The sale of NPLs reduces the number of delinquent loans in the enterprises' portfolios and transfers credit risk to the private sector. The report shows that, through **12/31/2019**, the enterprises sold 126,757 NPLs with a total unpaid principal balance (UPB) of \$23.8 billion. The report: [www.fhfa.gov/AboutUs/Reports/ReportDocuments/Dec-2019\\_NPL-Sales-Report.pdf](http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Dec-2019_NPL-Sales-Report.pdf)
- The Enterprises launched new websites that provide key resources for lenders and investors as the Enterprises transition away from LIBOR. LIBOR is expected to stop being published at the end of 2021. The websites contain information about resources and products, including the Enterprises' jointly published, LIBOR Transition Playbook and Frequently Asked Questions (FAQ). The Playbook describes key transition milestones and recommended actions for stakeholders to consider as they manage the upcoming transition away from LIBOR. Together with the accompanying FAQs, the tools will help participants plan and adapt business policies, procedures, and processes to support products linked to alternative reference rates, discontinue most LIBOR-indexed products by the end of 2020, and prepare for discontinuing the use of LIBOR as an index.

The Enterprises also announced updates related to transitioning their Credit Risk Transfer (CRT) programs and their collateralized mortgage obligations (CMOs), including the cessation dates for new issuances indexed to LIBOR and the expected dates for new issuances indexed to the Secured Overnight Financing Rate (SOFR). Details are available on the Enterprises' LIBOR Transition webpages: [www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-New-Fannie-and-Freddie-LIBOR-Transition-Resources.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-New-Fannie-and-Freddie-LIBOR-Transition-Resources.aspx)

- FHFA extended the loan origination flexibilities currently offered by the Enterprises designed to help borrowers during the COVID-19 national emergency. The flexibilities are extended unto at least July 31st and include alternative appraisals on purchase and rate term refinance loans; alternative methods for verifying employment before loan closing; expanded use of power of attorneys and remote online notarization to assist with loan closings; and authority to purchase mortgages in forbearance. The information may be viewed at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-Related-Loan-Processing-Flexibilities-for-Fannie-Mae-and-Freddie-Mac-Customers-Through-July.aspx>

▲ FRB, FDIC, and OCC issued host state loan-to-deposit ratios that will be used to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act. The ratios replace the prior year's ratios released **05/28/2019**. In general, section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the



# Compliance Notes

purpose of deposit production. Section 109 also prohibits branches of banks controlled by out-of-state BHC from operating primarily for the purpose of deposit production. Section 109 provides a process to test compliance with the statutory requirements. A bank that fails the process is in violation of section 109 and is subject to sanctions by the appropriate agency. The updated host state loan-to-deposit ratios: [www.federalreserve.gov/newsevents/pressreleases/bcreg20200602a.htm](http://www.federalreserve.gov/newsevents/pressreleases/bcreg20200602a.htm)

▲ FRB conducted a Senior Financial Officer Survey in February 2020 to gather views systematically from banks concerning their reserve balance management strategies and practices. Respondents were asked to comment on their strategies and practices employed in January 2020. Since that time, FRB has taken a variety of actions to support market functioning and the flow of credit to businesses and households in response to volatility and market strains caused by the COVID-19 pandemic. The actions have notably increased the size of FRB's balance sheet and the amount of reserves in the banking system. Reserve management practices may have changed as a result. Survey responses were received from 78 banks, which in aggregate held roughly three-fourths of total reserve balances in the banking system at the time of the survey. The banks sampled in the survey represented a wide range of asset sizes and business models. Responses were collected from senior financial officers at 45 domestic banks and 33 U.S. branches and agencies of foreign banking organizations. The survey may be viewed at: [www.federalreserve.gov/data/sfos/files/senior-financial-officer-survey-202002.pdf](http://www.federalreserve.gov/data/sfos/files/senior-financial-officer-survey-202002.pdf)

▲ CFPB released a consumer-focused blog to outline how withdrawals from retirement accounts are impacted by the CARES Act. The blog offers considerations for withdrawals from a retirement account in the event the holder is out of work and in need of income. The blog may be viewed at: [www.consumerfinance.gov/about-us/blog/cares-act-early-retirement-withdrawal/](http://www.consumerfinance.gov/about-us/blog/cares-act-early-retirement-withdrawal/)

▲ FRB released a report entitled, *Fed Listens: Perspectives from the Public*, which summarizes the 15 Fed Listens events held since the beginning of 2019, including the most recent event to discuss the effects of COVID-19. Fed Listens events are part of FRB's review of monetary policy strategy, tools, and communication practices. The report may be viewed at: [www.federalreserve.gov/newsevents/pressreleases/monetary20200612a.htm](http://www.federalreserve.gov/newsevents/pressreleases/monetary20200612a.htm)

▲ FTC made available state-level information about complaints received from consumers related to COVID-19, with reports about online shopping problems topping the list of complaints in most states. FTC has released the numbers of different types of fraud, Do Not Call, and other complaints received from consumers in each state. The information may be viewed at FTC's Explore Data webpage: [www.ftc.gov/enforcement/data-visualizations/explore-data](http://www.ftc.gov/enforcement/data-visualizations/explore-data)

▲ FDIC released a report to Congress that chronicles FDIC's efforts to preserve and promote Minority Depository Institutions (MDIs) in 2019. Pursuant to Section 367 of the Dodd Frank Act, the report provides a summary profile of MDIs as of the end of 2019, a description of FDIC's minority depository institution program, and detailed information on FDIC's 2019 initiatives supporting MDIs. The report, entitled *Preservation and Promotion of Minority Depository Institutions* may be viewed at: [www.fdic.gov/regulations/resources/minority/congress/report-2019/complete-report.pdf](http://www.fdic.gov/regulations/resources/minority/congress/report-2019/complete-report.pdf)

▲ CFPB released a new resource titled, *The Elder Fraud Prevision and Response Networks Development Guide*, which is meant to provide materials to help communities form networks to increase their capacity to prevent and respond to elder fraud. Specifically, the guide offers planning tools, templates, and exercises to help stakeholders complete tasks in the creation of a new network or to refresh or expand an existing network. The guide may be viewed at: <https://www.consumerfinance.gov/about-us/blog/new-resource-fight-against-elder-financial-fraud/>

▲ IRS reminds taxpayers that estimated tax payments for tax year 2020, originally due April 15 and June 15, are now due July 15. Any individual or corporation that has a quarterly estimated federal tax payment due has until July 15 to make that payment without penalty. The reminder: [www.irs.gov/newsroom/irs-reminder-deadline-postponed-to-july-15-for-those-who-pay-estimated-taxes](http://www.irs.gov/newsroom/irs-reminder-deadline-postponed-to-july-15-for-those-who-pay-estimated-taxes)

▲ CFPB launched a pilot advisory opinion program to address regulatory uncertainty in CFPB's existing regulations. The program will allow banks that seek to comply with regulatory requirements to submit a request where uncertainty exists. CFPB will select topics based on the program's priorities and make responses available to the public. If deemed appropriate, CFPB will issue an advisory opinion based on its summary of the facts presented that would be applicable to other entities in situations with similar facts and circumstances. The advisory opinions would be posted on CFPB's website and published in the *Federal Register*. The announcement may be viewed at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-pilot-advisory-opinion-program-provides-regulated-entities-clear-guidance/>

