July 2020

Compliance Update

COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

INSIDE

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Principles for Offering Responsible Small-Dollar Loans

By Dee Bedell, CRCM; Consultant

The federal financial institution regulatory agencies issued principles for offering small-dollar loans in a responsible manner to meet financial institutions customers' short-term credit needs.

The Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Office of the Comptroller of the Currency (OCC) recognize the important role that responsibly offered small-dollar loans can play in helping customers meet their ongoing needs for credit from temporary cash-flow imbalances, unexpected expenses, or income shortfalls, including during periods of economic stress, natural disasters, or other extraordinary circumstances such as the public health emergency created by COVID-19.

The agencies have issued the "Interagency Lending Principles for Offering Responsible Small-Dollar Loans" to encourage supervised banks, savings associations, and credit unions to offer responsible small-dollar loans to customers for consumer and small business purposes.

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Core principles

The agencies' core lending principles for financial institutions that offer small-dollar loan products include:

- Loan products are consistent with safe and sound banking, treat customers fairly, and comply with applicable laws and regulations.
- Financial institutions effectively manage the risks associated with the products they offer, including credit, operational, and compliance risks.
- Loan products are underwritten based on prudent policies and practices governing the amounts borrowed, frequency of borrowing, and repayment requirements.

Policies & practices

Reasonable loan policies and sound risk management practices and controls for responsible small-dollar lending would generally address the following:

- *Loan structures* – Loan amounts and repayment terms that align with eligibility and underwriting criteria and that promote fair treatment and credit access of applicants, as well as product structures, including shorter-term single payment structures, that support borrower affordability and successful repayment of principal and interest/fees in a reasonable time frame rather than re-borrowing, rollovers, or immediate collectability in the event of default.
- *Loan pricing* – Loan pricing that complies with applicable state and federal laws and reflects overall returns reasonably related to the financial institution's product risks and costs. Any products offered through effectively managed third-party relationships would also reflect the core lending principles, including returns reasonably related to the financial institution's risks and costs.
- *Loan underwriting* – Analysis that uses internal and/or external data sources, such as deposit account activity, to assess a customer's creditworthiness and to effectively manage credit risk. Such analysis may facilitate sound underwriting for credit offered to non-mainstream customers or customers temporarily impacted by natural disasters, national emergencies, or economic downturns. Underwriting can also use effectively managed new processes, technologies, and automation to lower the cost of providing responsible small-dollar loans.

The joint press release, with links to the Joint Principles and an FDIC Fact Sheet, is available at https://www.fdic.gov/news/press-releases/2020/pr20061.html. ❑

More TRID Guidance Released

By Sharon Bond, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) released a Factsheet on Title Insurance Disclosure requirements and published four new FAQs for the TILA-RESPA Integrated Disclosure (TRID) requirements.

Factsheet

The Factsheet explains the purpose for both Lender's and Owner's Title Insurance in a purchase money loan transaction. Lender's Title Insurance is most often required by the lender as this protects it from a legal claim against the home. Owner's title insurance protects the borrower against title claims, and its purchase is optional. The Factsheet explains where the cost for both types of title insurance are to be disclosed on the Loan Estimate and on the Closing Disclosure.

Title companies often offer a different rate, called a "single" or "simultaneous" rate if a consumer purchases both the lender's and owner's title insurance from the same company, rather than purchasing each policy from separate companies. The CFPB has a formula to assist lenders in disclosing the required rates consistently, in a way that does not depend on whether

- The borrowers purchase the owner's and lender's title insurance policies individually
- They obtain the policies from the same company and get the simultaneous rate, or

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- They buy only the required lender's title insurance.

The Factsheet states that the TRID rule requires the lender to disclose the cost of the full lender's title insurance policy, rather than a discounted or simultaneous rate.

The Factsheet provides a formula for calculating the cost of an individual premium when there is a simultaneous issuance of a lender and owner's policy. It also contains several examples of the TRID disclosure requirements, including those for when the seller pays the owner's title insurance premium. Regulation Z references are also included for additional clarification and guidance.

FAQs

The CFPB also updated the TILA-RESPA Integrated Disclosure FAQs with four new questions and answers on the following topics:

- Disclosing seller-paid loan costs on a separate closing disclosure for the consumers/borrowers
- Lender credits
- Total of payments (Yes, you subtract any negative prepaid interest.), and
- Using the optional signature line on the Closing Disclosure (Are you providing a copy for the consumer to retain?)

The Factsheet and updated FAQs can be found on the CFPB's TILA-RESPA integrated disclosures (TRID) resources page at https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/tila-respa-integrated-disclosures/. ❑

Convening an Elder Abuse Retreat

By Bill Elliott, CRCM; Director of Compliance Education

The Consumer Financial Protection Bureau (CFPB) has published a guide to assist those who wish to hold a retreat regarding elder abuse. Unfortunately, bankers are sometimes on the front line in these situations, as we can see the financial transactions which impact our senior customers. To assist in the process, the CFPB has created a number of templates, guides, and so forth. Below is a partial listing of what appears in this publication.

As the CFPB notes, elder financial exploitation threatens the financial security of millions of older Americans annually. In response to this crisis, hundreds of communities across the country have created collaborative networks to protect their older residents.

We encourage all banks to consider using this material to help your communities. And keep great records, so the information can be shared with others – for instance, examiners who are in your bank to assess your efforts regarding the Community Reinvestment Act (CRA), or your colleagues at other banks and thrifts.

Guide contents

The CFPB's guide on building an elder fraud prevention and response network in your community covers the following topics.

- Planning a retreat – Decide who to invite, establish a core team, invite other key professionals, plan the retreat, consider hiring a neutral facilitator, and create an agenda
- Host a network building retreat – Before the retreat begins, retreat kickoff, network-building group exercises, other retreat activities, and retreat follow-up
- Reconvene and establish your network
- Expand network capabilities
- Activities for working groups
- Planning future network meetings

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The document also offers a lengthy list of resources which the CFPB will provide for free to assist you in your efforts. Elder abuse is a subject that appears in the literature of the regulators often – and with good reason. Anything that the industry can do to limit this abuse is a good use of time and resources.

The guide can be found at:

https://www.consumerfinance.gov/practitioner-resources/resources-for-older-adults/elder-protection-networks/. ❑

FinCEN Guidance on Hemp Customer Due Diligence

The Financial Crimes Enforcement Network (FinCEN) has issued Guidance, FIN-2020-G001, to address questions related to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regulatory requirements for hemp-related business customers. Points covered in the guidance include:

- Explains how financial institutions can conduct due diligence for hemp-related businesses
- Identifies the type of information and documentation financial institutions can collect from hemp-related businesses to comply with BSA regulatory requirements
- Is intended to enhance the availability of financial services for, and the financial transparency of, hemp-related businesses in compliance with federal law
- Supplements the December 3, 2019, interagency statement on providing financial services to customers engaged in hemp-related businesses
- Does not replace or supersede FinCEN's previous guidance on the BSA expectations regarding marijuana-related businesses

The latest FinCEN guidance on due diligence for hemp-related customers is available at https://www.fincen.gov/sites/default/files/2020-06/FinCEN_Hemp_Guidance_508_FINAL.pdf.

The December 2019 interagency statement "Providing Financial Services to Customers Engaged in Hemp-Related Businesses" may be found at https://www.fincen.gov/sites/default/files/2019-12/Hemp%20Guidance%20%28Final%2012-3-19%29%20FINAL.pdf.

The February 2014 FinCEN guidance, FIN-2014-G001, "BSA Expectations Regarding Marijuana-Related Businesses" may be found at https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses. ❑

FAQs on FCRA & the CARES Act

By Bill Elliott, CRCM; Director of Compliance Education

The Consumer Financial Protection Bureau (CFPB) has issued a "Compliance Aid" document on the issue of reporting credit information to consumer reporting agencies (credit bureaus). There are 10 frequently asked questions and answers (FAQ) that clarify the reporting requirements during the COVID-19 crisis, especially in response to changes made by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Readers of the FAQs should remember that "Compliance Aid" documents do not replace or circumvent the regulations and/or regulatory process. However, the CFPB has stated that anyone complying correctly with a Compliance Aid document will be protected from examiner scrutiny at the time of a compliance exam.

Credit reporting FAQ

Topics covered include, in part:

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- Expectations for credit information furnishers and consumer reporting agencies to make good faith efforts to investigate disputes as quickly as possible and that, absent impediments due to COVID-19, disputes should be resolved under FCRA requirements
- The expectation that furnishers comply with the CARES Act
- What an "accommodation" for purposes of the CARES Act amendments to the FCRA is
- Whether there is a requirement under the CARES Act that furnishers provide accommodations to consumers impacted by the pandemic
- What the consumer reporting obligations are when a furnisher provides a consumer an accommodation
- Comment codes in credit reporting regarding accommodations
- What furnishers must do in reporting the status of an account after a CARES Act accommodation ends

Question 7 is a good example of the FAQs, and provides as follows.

Question 7: What do furnishers need to consider when reporting consumers as current pursuant to the CARES Act?

Answer (Updated 6/16/2020): Whenever furnishers provide information to consumer reporting agencies, they have obligations related to the accuracy and integrity of the information they furnish under the FCRA and Regulation V. To ensure compliance with these obligations, if furnishers are reporting information to consumer reporting agencies about a credit obligation or account that is current, they should consider all of the trade line information they furnish that reflects a consumer's status as current or delinquent. For example, information a furnisher provides about an account's payment status, scheduled monthly payment, and the amount past due may all need to be updated to accurately reflect that a consumer's account is current consistent with the CARES Act. Furnishers are encouraged to ensure they understand the data fields that the consumer reporting agencies to whom they report utilize and which standard data reporting formats may apply.

We encourage readers to review all 10 FAQs to ensure that you are in compliance. You can find them at https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf. ❑

Remittance Transfer Rule FAQs Issued

By Dale Neiss, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) issued a Compliance Aid on June 2, 2020 containing Frequently Asked Questions (FAQs) explaining whether failure to deliver remittance transfer funds to the designated recipient by the disclosed date of availability due to certain government-mandated closures in response to the COVID-19 pandemic is an error under the

Remittance Transfer Rule.

The CFPB's Compliance Aid is available at https://files.consumerfinance.gov/f/documents/cfpb_remittance-transfers_faqs-covid-19_2020-06.pdf.

Background

The Remittance Transfer Rule applies to transactions that qualify as "remittance transfers" and are sent on behalf of consumers by entities that qualify as "remittance transfer providers." Remittance transfers are electronic transfers of funds of more than $15, requested by consumers in the United States, and sent to people or entities in foreign countries. These transfers include many types of international transfers, including cash-to-cash money transfers, international wire transfers, international automated clearing house (ACH) transactions, and certain prepaid card transfers.

Banks and other financial entities that send 500 or fewer remittance transfers in the prior and current calendar years do not qualify as "remittance transfer providers" under the Remittance Transfer Rule and, thus, are exempt from it.

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FAQs text

The three FAQs, which include illustrative examples, are provided below.

Question 1: Is failure to deliver remittance transfer funds to the designated recipient by the disclosed date of availability considered an error under the Remittance Transfer Rule, if the failure was due to a government-mandated closure of commercial activity in the relevant intermediary or recipient countries in response to COVID-19?

Answer 1 (Updated 06/02/2020): The provider's failure to deliver funds by the disclosed date would not be such an error if the provider could not have reasonably anticipated the closure. In general, the Remittance Transfer Rule requires a remittance transfer provider to disclose the date on which funds will be available in the foreign country to the designated recipient, and provides that the provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is an error. However, the Rule also states that such a failure is not an error if it resulted from extraordinary circumstances outside the remittance transfer provider's control that the provider could not have reasonably anticipated.

The CFPB understands that some foreign governments have mandated closures of commercial activity in response to the COVID-19 pandemic, and has heard that these closures may prevent remittance transfer providers from delivering or transmitting a remittance transfer by the disclosed date of availability. The CFPB also notes that the Remittance Transfer Rule recognizes that extraordinary circumstances in 12 CFR 1005.33(a)(1)(iv)(A) include government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider. Whether a closure that prevents a remittance transfer provider from delivering or transmitting a remittance transfer by the disclosed date of availability could have been reasonably anticipated by a remittance transfer provider will depend on the facts and circumstances.

Question 2: What is an example of a government-mandated closure that could not be reasonably anticipated by a remittance transfer provider?

Answer 2 (Updated 06/02/2020): Suppose that on March 15, 2020, a sender sends a remittance transfer to a family member (designated recipient) in Country X through ABC Remittance Company for cash pickup at an ABC Remittance Company location in Country X. ABC Remittance Company discloses to the sender that the funds will be available on March 18, 2020. On March 16, 2020, the government of Country X announces a stay-at-home order that requires all nonessential businesses to close from March 17, 2020 to April 1, 2020. The government deems remittance transfer services nonessential, and ABC Remittance Company closes all its locations in Country X. The designated recipient does not receive the remittance transfer funds on March 18, 2020. This is not an "error" pursuant to 12 CFR 1005.33(a)(1)(iv)(A).

Question 3: What is an example of a government-mandated closure that could be reasonably anticipated by a remittance transfer provider?

Answer 3 (Updated 06/02/2020): In contrast to the previous example, had Country X announced the same stay-at-home order on March 14, 2020, ABC Remittance Company could have reasonably anticipated the government-mandated closure. Accordingly, had it provided a date of availability of March 18, 2020 on March 15, 2020, then 12 CFR 1005.33(a)(1)(iv)(A) would not have applied. Therefore, if the funds were not made available to the designated recipient by March 18, 2020, it would be an "error" under the Remittance Transfer Rule, notwithstanding the government-mandated closure.

Compliance Aid status & availability

The CFPB states that it does not intend to use Compliance Aids to make decisions that

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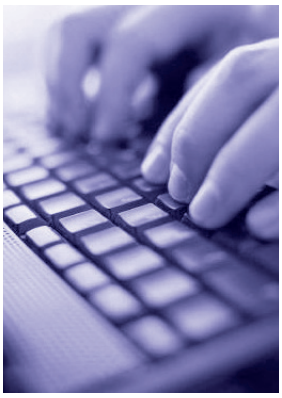

Federal Deposit Insurance Corporation
http://www.fdic.gov

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

Federal Reserve
http://www.federalreserve.gov

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

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

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

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

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

bind regulated entities. Unlike the agency's regulations and official interpretations, Compliance Aids are not "rules" under the Administrative Procedure Act. Rather, Compliance Aids present the requirements of existing rules and statutes in a manner that is useful for compliance professionals, other industry stakeholders, and the public. Compliance Aids may also include practical suggestions for how entities might choose to go about complying with those rules and statutes. But they may not address all situations.

Where there are multiple methods of compliance that are permitted by the applicable rules and statutes, an entity can make its own business decision regarding which method to use, and this may include a method that is not specifically addressed in a Compliance Aid. In sum, regulated entities are not required to comply with the Compliance Aids themselves. Regulated entities are required only to comply with the underlying rules and statutes.

Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes. Accordingly, when exercising its enforcement and supervisory discretion, the CFPB does not intend to sanction, or ask a court to sanction, entities that reasonably rely on Compliance Aids.

The CFPB's Policy Statement on Compliance Aids is available, detailing this treatment, is available at

https://www.federalregister.gov/documents/2020/01/27/2020-00648/policy-statement-on-compliance-aids.

Compliance guide updated

In a related development, the CFPB has released version 5.0 of its Remittance Transfers Small Entity Compliance Guide. This version includes the increase in the "safe harbor" exemption threshold from 100 to 500 remittance transfers in the prior and current calendar year, the sunset of the temporary conditional exception allowing insured depository institutions to disclose estimates, and the addition of two new permanent conditional exceptions allowing insured institutions to use estimates. The agency also designated this version of the Compliance Guide as a "Compliance Aid."

The latest version of the Compliance Guide is available on the CFPB's Remittance Transfers Compliance and Guidance webpage at https://www.consumerfinance.gov/policy-compliance/guidance/deposit-accounts-resources/remittance-transfer-rule/. ❑

FDIC Updates Manual for Flood Insurance CMPs

By Karen Clower, CRCM; Director of Compliance

The Federal Deposit Insurance Corporation (FDIC) issued a Financial Institution Letter (FIL 61-2020) announcing that it has updated its Formal and Informal Enforcement Actions Manual regarding the assessment of mandatory civil money penalties (CMP) for certain pattern and practice violations of the National Flood Insurance Act of 1968 (NFIA), as amended by the Flood Disaster Protection Act of 1973 (FDPA), collectively the Flood Act [42 U.S.C. § 4012a], as implemented by Part 339 of the FDIC Regulations.

This Financial Institution Letter (FIL) applies to all FDIC-supervised financial institutions.

CMPs for flood violations are imposed when the bank engages in a pattern or practice of violating the following requirements of the Flood Act:

- Purchase of flood insurance where available
- Escrow of flood insurance premiums
- Force placement of flood insurance and force placement notice
- Notice of special flood hazards and the availability of federal disaster relief assistance, and/or
- Notice of servicer and any change of servicer provisions

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Highlights of the updates include:

- The Flood Act requires the FDIC to assess a penalty of up to $2,000, adjusted annually for inflation, per violation per loan against an insured depository institution for certain pattern and practice violations of the Act.
- When calculating the appropriate amount of mandatory flood insurance CMPs, the FDIC will generally use a two-step process by determining a base CMP and adjusting the base CMP for smaller institutions with reduced ability to pay such penalties. The base CMP takes into account the type and repeat nature of the violations. The Institution Asset Size Factor takes into account the institution's asset size based on the last Call Report prior to the date of the examination.
- This CMP framework is consistent with statutory authority under the Flood Act.

Two-step process

Details of the two-step CMP process are:

- *Step 1: Determine base CMP amounts* – Examiners will first determine the base CMP amount to be assessed per violation based on whether the violation is categorized as a Tier 1 or Tier 2 violation. The penalty amounts increase for each repeat violation. A repeat violation exists where Mandatory Penalty Violations subject to a CMP were found in either of the two prior examinations. A violation does not have to be the same citation or the same tier to be considered a repeat violation. For example, if the bank was cited for a pattern or practice for failing to obtain flood insurance at origination at the last examination, but cited for a pattern or practice for failing to obtain force placed insurance at the current examination, that would be considered a repeat violation.

  Mandatory Penalty Violations fall into the following tier categories: (1) Tier 1 violations include force placement notice; special flood hazard notice; and servicer notice, and (2) Tier 2 violations include failure to insure or provide adequate insurance coverage for the term of the loan, failure to escrow, and failure to force place.

The following table illustrates the tiered penalty structure.

Exam with pattern or practice of Flood Act violations	Tier 1 – Base CMP amount per violation	Tier 2 – Base CMP amount per violation
1st Exam	$500	$1,000
2nd Exam	$1,000	$1,500
3rd Exam or more	$2,000	Maximum inflation-adjusted penalty

- *Step 2: Apply institution asset size factor* – Examiners will then take into account an institution's asset size, based on the last Call Report prior to the date of the exam, by applying a percentage to the base CMP amount using the following formula:

  Amount to be assessed per violation = [Base CMP amount(s)] x [Institution size factor]

  The following table illustrates the institution size factors:

Size category, based on total asset size (000s)	Percentage of the base CMP Amount
$500,000 and greater	100%
$250,001 to less than $500 ,000	75%
$250,000 and less	50%

While these steps and charts are tools to establish an appropriate CMP when identifying Mandatory Penalty Violations, the FDIC maintains its discretion to consider the facts and circumstances of each case, such as the institution's ability to repay, when determining the total amount of the CMPs to be assessed.

The FIL can be found at https://www.fdic.gov/news/financial-institution-letters/2020/fil20061.html.

The Formal and Informal Enforcement Actions Manual is available at https://www.fdic.gov/regulations/examinations/enforcement-actions/index.html. ❑

CFPB Updates CHARM Booklet

By Karen Clower, CRCM; Director of Compliance

The Consumer Financial Protection Bureau (CFPB) released an updated Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet. This booklet is 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 was updated to align with the agency's educational efforts, to be more concise, and to improve readability and usability.

Background

In 1974, section 5 of RESPA required the provision of "special information booklets" to help borrowers financing the purchase of residential real estate to understand better the nature and costs of real estate settlement services. RESPA special information booklets have explained the settlement process in general, and have changed over time as this process has changed.

In another disclosure arena, the Federal Reserve Board (FRB) revised Regulation Z in 1987 to require special disclosures for closed-end adjustable rate mortgages (ARMs) secured by the borrower's principal dwelling with a term greater than one year. The FRB and the former Federal Home Loan Bank Board (predecessor of the now former Office of Thrift Supervision) developed the CHARM booklet that year, and the FRB most recently updated the CHARM booklet in 2006.

Under the Dodd-Frank Act, the responsibility for the CHARM booklet transferred to the CFPB. In January 2014, the CFPB made technical and conforming changes to the CHARM booklet.

Contents of updated CHARM booklet

New features the CFPB has added include:

- A comparison table that describes adjustable rate mortgages and their differences in relation to fixed-rate loan products
- An explanation of how an adjustable rate mortgage works
- A tutorial on how to review an ARM Loan Estimate and a lender's ARM program disclosure
- A comparison table for the various adjustable and fixed-rate loan offers the reader has received or will receive, and
- A description of the risks that come with different types of adjustable rate mortgages

This version of the CHARM booklet eliminates references to the London Inter-Bank Offered Rate (LIBOR) due to the forecasted cessation of LIBOR.

A significant portion of the booklet is devoted to encouraging the consumer to review the specific terms offered in their Loan Estimate, which they are also likely to receive at the same time as the CHARM booklet. Portions of the Loan Estimate are reproduced and explained in the revised CHARM booklet.

Distribution & use of updated booklet

Regulation Z, 12 CFR 1026.19(b), requires creditors to deliver the CHARM booklet if the annual percentage rate (APR) may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year. The booklet (along with an ARM program disclosure) must be provided at the time of the application or before the consumer pays a nonrefundable fee, whichever is earlier. For telephone applications, the booklet may be delivered or placed in the mail not later than three business days following the receipt of the consumer's application.

Creditors may, at their option, immediately begin using the revised CHARM booklet, or a suitable substitute. The CFPB understands that some may wish to use their existing stock of the CHARM booklet before switching to the updated booklet. Therefore, earlier versions of the CHARM booklet may be used until any existing supplies are exhausted.

The revised booklet shows a "Last updated" date of 6/20.

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Links

The CFPB Notice in the Federal Register can be found at https://www.govinfo.gov/content/pkg/FR-2020-06-09/pdf/2020-12467.pdf.

The updated CHARM booklet is available at https://files.consumerfinance.gov/f/documents/cfpb_charm_booklet.pdf. ❑

CFPB Issues Interpretive Rule on "Underserved" Areas

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

The Consumer Financial Protection Bureau (CFPB) has issued an interpretive rule to provide guidance to creditors and other persons involved in the mortgage origination process about the way in which the agency determines which counties qualify as "underserved" for a given calendar year.

The CFPB's annual list of rural and underserved counties and areas is used in applying various provisions under Regulation Z, which implements the Truth in Lending Act (TILA). These provisions include the exemption from the requirement to establish an escrow account for a higher-priced mortgage loan (HPML) and the ability to originate balloon-payment qualified mortgages (QM) and balloon-payment high-cost mortgages.

Regulation Z states that an area is "underserved" during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in Regulation Z, secured by first liens on properties in the county five or more times.

The CFPB has not indicated when it will amend the Official Staff Commentary on Regulation Z to align with this new, updated interpretation.

This new interpretive rule was effective when released, and published in the *Federal Register*, on June 26, 2020.

Former interpretation

The CFPB previously interpreted how HMDA data would be used to determine which areas meet the "underserved" standard using a method set forth in the commentary to Regulation Z. However, portions of this method have become obsolete because they rely on data elements that were modified or eliminated by certain 2015 amendments to Regulation C, which became effective in 2018.

New interpretation

The new interpretive rule describes the HMDA data that will instead be used in determining that an area is "underserved" for purposes of the standard described in Regulation Z. This new interpretation supersedes the outdated methodology set forth in the commentary to Regulation Z.

Under this interpretive rule, the determination that a county is "underserved" will be made by counting first-lien originations from HMDA data for the preceding calendar year, except those for which any of the HMDA data points specified in the interpretive rule are reported with values the CFPB interprets as being inconsistent with Regulation Z's definition of a "covered transaction."

Examples of these data points that will exclude a transaction from being counted as a "covered transaction" are:

- If the number of dwelling units in a site-built residential structure is greater than four
- If the transaction is reported as being "primarily for a business or commercial purpose"
- If the applicant demographic data is reported as "not applicable" (indicating that a consumer is not involved)

The underserved counties list, using the HMDA data described above, can be found on the CFPB's public website at https://www.consumerfinance.gov/policy-compliance/guidance/mortgageresources/rural-and-underservedcounties-list/, where the list is made available along with historical lists.

The new interpretive rule is available at https://www.govinfo.gov/content/pkg/FR-2020-06-26/pdf/2020-13801.pdf. ❑

Agencies Release List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies

The Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of the Comptroller of the Currency (OCC) announced the availability of the 2020 list of distressed or underserved nonmetropolitan middle-income geographies, where revitalization or stabilization activities are eligible to receive Community Reinvestment Act (CRA) consideration as "community development."

Distressed nonmetropolitan middle-income geographies and underserved nonmetropolitan middle-income geographies are designated by the agencies in accordance with their CRA regulations. The criteria for designating these areas are available on the Federal Financial Institutions Examination Council (FFIEC) website at www.ffiec.gov/cra/distressed.htm. The designations continue to reflect local economic conditions, including unemployment, poverty, and population changes.

As with past releases, the agencies apply a one-year lag period for geographies that were listed in the previous year (2019, in this case) but are no longer designated as distressed or underserved in the current release. Revitalization or stabilization activities in these geographies are eligible to receive CRA consideration as community development for 12 months after publication of the current list.

The current and previous years' lists can be found on the FFIEC website, along with information about the data sources used to generate those lists. These lists can be found at www.ffiec.gov/cra/distressed.htm. ❑

Agencies Release Host State LTD Ratios

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

The Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of the Comptroller of Currency (OCC) issued host state loan-to-deposit (LTD) ratios that the banking agencies will use to determine compliance with Section 109 of the Riegle-Neal Interstate Banking Efficiency Act of 1994 (Interstate Act). The test will be applied during routine compliance or Community Reinvestment Act (CRA) examinations.

Background

The FRB, OCC and the FDIC approved final rules in October 1997 regarding interstate branching to assure that an interstate bank's branches in states other than its home state meet the credit needs of the communities served by those offices. The coverage of these rules was extended, effective October 1, 2002, to banks controlled by out-of-state holding companies, implementing statutory changes in the Gramm-Leach-Bliley Act (GLBA). The regulations implementing the Interstate Act rules are an extension of the regulation implementing CRA.

The Interstate Act generally provides expanded authority for U.S. and foreign banks to establish or acquire interstate offices beginning June 1, 1997. One section prohibits such branching if the primary purpose of the interstate branch(es) would be to accept deposits rather than serve the credit needs of a community. In other words, "deposit production offices," to siphon funds from the host state to make loans in the bank's home state, are not permitted.

Branches covered by this provision do not include those established under different laws, such as a national bank moving its headquarters under the 30-mile rule, even across state lines, and retaining the old office as a branch.

Testing compliance

Section 109 of the Interstate Act provides a two-step process to test compliance with the statutory requirements.

- The first step in this process is that the supervisory agencies will perform an LTD ratio screen to compare a bank's statewide LTD ratio to the host state LTD ratio. If the bank's statewide ratio in a state is at least one-half of the published host state LTD ratio, the bank complies with Section 109.

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For example, an Ohio-based bank or an Indiana bank controlled by an Ohio holding company – that operates a branch(es) in Indiana must lend out 44 percent of its Indiana deposits to borrowers there, or half the 88 percent average of that state's (Indiana) local banks.

- If the bank's ratio is less than 50 percent of the host state LTD ratio, the second step requires the agencies to determine if the bank is reasonably helping to meet the credit needs of the communities served by its interstate branch(es).

A bank that fails both steps is in violation of Section 109 and subject to sanctions by the agencies. The sanctions can include the agency ordering that the interstate branch(es) be closed.

States dominated by community banks consistently have lower ratios nationwide. Observers note that branching into these states will be made somewhat easier by these low ratios. Community banks tend to have lower LTD ratios because their funding for loans still comes predominately from deposits rather than capital markets.

Host state LTD ratio

The agencies calculate the host state LTD ratios using data from the Call Reports and Summary of Deposit reports, as of June 30 each year. The latest ratios are based on June 30, 2019 data. Because lending data is not reported geographically and the agencies are forbidden by Congress from imposing an additional regulatory burden to get this information, the agencies use a proxy to estimate the host state ratios.

The host state LTD ratio is calculated by first determining the percentage of the home state bank's total deposits attributable to branches located in its home state (from the Summary of Deposits) and applying this percentage to the bank's total domestic loans (from the Call Report) to estimate the amount of loans attributable to the home state. The host state LTD ratio is then calculated by separately totaling loans and deposits for the home state banks, and then dividing the sum of the loans by the sum of the deposits.

The five highest, and the five lowest, host state LTD ratios among states and the District of Columbia (not including territories) are shown in the following table.

Highest		Lowest	
State/Territory	**LTD ratio**	**State/Territory**	**LTD ratio**
New Jersey	102%	Delaware	59%
Utah	101%	New Mexico	64%
Maryland, Massachusetts New Hampshire, Rhode Island	98%	Wyoming	66%
Maine, Michigan, Vermont	96%	North Carolina, South Dakota	71%
Pennsylvania	95%	Colorado	72%

Source: FDIC, FRB, OCC

Credit card banks and banks designated as limited purpose or wholesale banks under CRA were excluded from the host state LTD calculations. The agencies understand that these banks could have very large loan portfolios, but may have few deposits. Beginning in 2001, special purpose banks, including bankers' banks, were excluded because these banks do not engage in traditional deposit taking or lending.

The host state LTD ratios, and any changes to the calculation method, will be made public annually. The latest host state LTD ratios are available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200602a.htm. ❑

HMDA Data for 2019 Released

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

The Federal Financial Institutions Examination Council (FFIEC) recently announced the availability of data for the year 2019 regarding mortgage lending transactions at 5,508 financial institutions covered by the Home Mortgage Disclosure Act (HMDA) in metropolitan statistical areas (MSA) throughout the nation.

The newly available HMDA data include disclosure statements for each covered financial institution, aggregate data for each MSA, nationwide summary statistics regarding lending patterns, and the Loan Application Register (LAR) submitted by each institution to its supervisory agency by March 1, 2020, modified for borrower privacy.

The FFIEC prepares and distributes these data products on behalf of its member agencies – the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Consumer Financial Protection Bureau (CFPB) – and the Department of Housing and Urban Development (HUD).

The HMDA loan-level data available to the public will be updated, on an ongoing basis, to reflect late submissions and resubmissions.

Data overview

The 2019 HMDA data use the census tract delineations, population, and housing characteristic data from the 2011-2015 American Community Surveys. In addition, the data reflect metropolitan statistical area (MSA) definitions released by the Office of Management and Budget in 2018 that became effective for HMDA purposes in 2019.

For 2019, the number of reporting institutions declined by about three percent from the previous year to 5,508, continuing a downward trend since 2006, when HMDA coverage included just over 8,900 lenders. The decline reflects mergers, acquisitions, and the failure of some institutions.

The 2019 data include information on 15.1 million home loan applications. Among them, 12.5 million were closed-end, 2.1 million were open-end, and, for another 442,000 records, pursuant to partial exemptions in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), financial institutions did not indicate whether the records were closed-end or open-end.

A total of 9.3 million applications resulted in loan originations. Among them, 7.9 million were closed-end mortgage originations, 1.1 million were open-end line of credit originations, and, pursuant to the EGRRCPA's partial exemptions, 335,000 were originations for which financial institutions did not indicate whether they were closed-end or open-end. The 2019 data include 2.3 million purchased loans, for a total of 17.5 million records. The data also include information on approximately 151,000 requests for preapprovals for home purchase loans.

The total number of originated loans decreased by about two million between 2018 and 2019, or 26 percent. Refinance originations increased by 78 percent from 1.9 million, and home purchase lending increased by four percent from 4.3 million.

A total of 2,494 reporters made use of the EGRRCPA's partial exemptions for at least one of the 26 data points eligible for the exemptions. In all, they account for about 641,000 records and 330,000 originations.

Demographic data

From 2018 to 2019, the share of home purchase loans for first lien, 1-4 family, site-built, owner-occupied properties made to low- and moderate-income (LMI) borrowers (those with income of less than 80 percent of area median income) rose slightly from 28.1 percent to 28.6 percent, and the share of refinance loans to LMI borrowers for 1-4 family, site-built, owner-occupied properties decreased from 30 percent to 23.8 percent.

In terms of borrower race and ethnicity, the share of home purchase loans for 1-4 family, owner-occupied properties made to Black borrowers rose from 6.7 percent in 2018 to 7.0 percent in 2019, the share made

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to Hispanic-White borrowers increased slightly from 8.9 percent to 9.2 percent, and those made to Asian borrowers decreased from 5.9 percent to 5.7 percent. From 2018 to 2019, the share of refinance loans for 1-4 family, owner-occupied properties made to Black borrowers decreased from 6.2 percent to 5.3 percent, the share made to Hispanic-White borrowers decreased from 6.8 percent to 6.2 percent, and the share made to Asian borrowers increased from 3.7 percent to 5.4 percent.

In 2019, Black and Hispanic-White applicants experienced higher denial rates for 1-4 family, owner-occupied conventional home purchase loans than non-Hispanic-White applicants. The denial rate for Asian applicants is more comparable to the denial rate for non-Hispanic-White applicants. These relationships are similar to those found in earlier years and, due to the limitations of the HMDA data, cannot take into account all legitimate credit risk considerations for loan approval and loan pricing.

Government-backed lending

The Federal Housing Administration (FHA)-insured share of first-lien home purchase loans for 1-4 family, owner-occupied properties increased from 19.3 percent in 2018 to 20.2 percent in 2019. The Department of Veterans Affairs (VA)-guaranteed share of such loans increased slightly to 10.6 percent in 2019. The overall government-backed share of such purchase loans, including FHA, VA, Rural Housing Service, and Farm Service Agency loans, was 33.4 percent in 2019, up slightly from 33 percent in 2018.

The FHA-insured share of refinance mortgages for 1-4 family, site-built, owner-occupied properties decreased slightly to 12 percent in 2019 from 12.8 percent in 2018, while the VA-guaranteed share of such refinance loans increased from 10.2 percent in 2018 to 13.5 percent in 2019.

Using the data

The FFIEC states that HMDA data can facilitate the fair lending examination and enforcement process and promote market transparency. When federal banking agency examiners evaluate an institution's fair lending risk, they analyze HMDA data in conjunction with other information and risk factors, in accordance with the Interagency Fair Lending Examination Procedures. Risk factors for pricing discrimination include, but are not limited to, the relationship between loan pricing and compensation of loan officers or mortgage brokers, the presence of broad pricing discretion, and consumer complaints.

The HMDA data alone, according to the FFIEC, cannot be used to determine whether a lender is complying with fair lending laws. They do not include many potential determinants of creditworthiness and loan pricing, such as the borrower's credit history, debt-to-income ratio, and the loan-to-value ratio. Much of this type of data is being added to HMDA reporting in 2018.

Therefore, when the federal banking agencies conduct fair lending examinations, including ones involving loan pricing, they analyze additional information before reaching a determination regarding institutions' compliance with fair lending laws.

Obtaining & disclosing HMDA data

In the past, HMDA-covered lenders had to make the HMDA disclosure statements available at their home and certain branch offices after receiving the statements. Now, lenders have only to post at their home offices and other offices in MSAs a written notice that clearly informs those interested that the lender's HMDA disclosure statement may be obtained on the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/hmda.

In addition, financial institution disclosure statements, MSA and nationwide aggregate reports for 2019 HMDA data, and tools to search and analyze the HMDA data are available at https://ffiec.cfpb.gov/data-publication/. More information about HMDA data reporting requirements is also available at https://ffiec.cfpb.gov/.

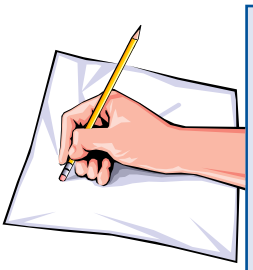
More information about HMDA data reporting requirements is available in the Frequently Asked Questions on the FFIEC website at www.ffiec.gov/hmda/faq.htm. Questions about a HMDA report for a specific lender should be directed to the lender's supervisory agency. ❑

CFPB Publishes Spring 2020 Rulemaking Agenda

The Consumer Financial Protection Bureau (CFPB) has published its Spring 2020 Rulemaking Agenda, which lists the regulatory matters that it expects to focus on between May 1, 2020 and April 30, 2021. In addition to actions already taken, the Agenda lists several other regulatory activities planned for the remainder of 2020 through the spring of 2021, including the following:

- A proposed rule to implement section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), which requires the CFPB to conduct a rulemaking to exempt certain loans from the escrow requirements applicable to higher-priced mortgage loans (HPML) if they are made by certain creditors with assets of $10 billion or less and that meet other criteria.
- In the fall of 2020, significant steps toward implementing section 1071 of the Dodd-Frank Act, requiring the collection and reporting of certain information on credit applications made by women-owned, minority-owned, and small businesses.
- Also in the fall of 2020, two new proposed rules under the Home Mortgage Disclosure Act (HMDA) relating to data points reported and public disclosure of HMDA data, in light of consumer privacy considerations.
- October 2020 final action on the May 2019 proposed rules under Regulation F to govern the activities of debt collectors under the Fair Debt Collection Practices Act (FDCPA), followed at a later date with final action on the supplemental proposal addressing time-barred debt disclosures.
- Consideration later in 2020 of a proposed rule with a "seasoning" definition of "qualified mortgage" (QM) in Regulation Z, to provide an alternate pathway to QM safe-harbor status for certain mortgage loans when the borrower has consistently made timely mortgage payments for a period to be determined.
- Conducting an assessment of the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) Rule and certain amendments (TRID Rule). The agency will issue its TRID Rule assessment report no later than October 2020.

The CFPB release may be read at https://www.consumerfinance.gov/about-us/blog/spring-2020-rulemaking-agenda/. ❑



Correction

An observant reader found an incorrect number in our June issue of the *Compliance Update*. In the Compliance Calendar for July 2020, the entry incorrectly states that the HMDA coverage threshold is being raised to 500 closed-end loans per year as of July 1, 2020. The correct figure is 100 closed-end loans (from the current 25), as reported in our May issue. We apologize for any confusion this error may have caused. ❑

Compliance Calendar

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

July 2020

- Regulation C (HMDA) changes related to closed-end loan data collection and reporting – permanently raising the coverage threshold to 100 loans in each of previous two years – effective July 1, 2020.
- Every-five-year inflation adjustments to amounts in Regulation CC effective July 1, 2020.

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

August 2020

- Limited Production Period related to revised URLA and updated AUS begins August 1, 2020 only for GSE-selected participating lenders.
- Large HMDA reporters (60,000 or more entries in 2019) electronically file second calendar quarter 2020 LAR by August 29, 2020. (CFPB temporarily suspending enforcement due to pandemic.)

September 2020

- New CTR completion instructions for batch filers effective September 1, 2020.
- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2020) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2020.

November 2020

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2020.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 1, 2020 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2019) electronically file third calendar quarter 2020 LAR by November 29, 2020. (CFPB temporarily suspending enforcement due to pandemic.)

December 2020

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

January 2021

- Open Production Period related to revised URLA and updated AUS begins January 1, 2021 for all lenders.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.
- Update FHHLDS home loan activity format with fourth calendar quarter 2020 data by January 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2021

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2021.

March 2021

- Mandate & Pipeline Transition Period related to revised URLA and updated AUS begins March 1, 2021 when all lenders (selling loans to GSEs and other secondary market participants) must begin using the new systems – with one-year transition period for loans in the pipeline by this date.
- 2020 HMDA LAR must be submitted to the CFPB by March 1, 2021.
- 2020 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2021 (except “small banks”).
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 14, 2021 (e.g., EDT, CDT, etc.).

April 2021

- Update information in CRA public file by of April 1, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2021.
- Update FHHLDS home loan activity format with first calendar quarter 2021 data by April 30, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

May 2021

- Large HMDA reporters (60,000 or more entries in 2020) electronically file first calendar quarter 2021 LAR by May 30, 2021.

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July 2021

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

August 2021

- Large HMDA reporters (60,000 or more entries in 2020) electronically file second calendar quarter 2021 LAR by August 29, 2021.

September 2021

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

November 2021

- Transactions using the former URLA and legacy AUS will no longer be accepted beginning November 1, 2021.
- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2021.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 7, 2021 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2020) electronically file third calendar quarter 2021 LAR by November 29, 2021.

December 2021

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

January 2022

- Regulation C (HMDA) changes related to open-end line data collection and reporting – permanently adjusting the coverage threshold to 200 open-end lines in each of previous two years – effective January 1, 2022.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2021 by January 31, 2022.
- Update FHHLDS home loan activity format with fourth calendar quarter 2021 data by January 31, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2022

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2022.

March 2022

- Retirement Date related to revised URLA and updated AUS – March 1, 2022. No legacy URLA and loan application submissions based on previous AUS specifications accepted from this date on (regardless whether dated before March 1, 2021). End of pipeline transition period.
- 2021 HMDA LAR must be submitted to the CFPB by March 1, 2022.
- 2021 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2022 (except “small banks”).
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 13, 2022 (e.g., EDT, CDT, etc.).

April 2022

- Update information in CRA public file by of April 1, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2022.
- Update FHHLDS home loan activity format with first calendar quarter 2022 data by April 30, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].