

Compliance Journal

Special Focus

Exam Preparation Considerations

The COVID-19 pandemic has presented unique, unexpected, and ongoing difficulties, and Wisconsin banks have taken swift action by protecting their customers and employees, while meeting the financial needs of their communities. Banks have faced both operational and regulatory challenges, and over the past months, the banking agencies have issued guidance and rulemaking to provide tools and reduce burden. This new landscape leads to a unique examination environment, both in scope and in nature. In some cases, examination activity was paused at the start of the pandemic, but has recently resumed. This article provides a summary of agency guidance, as well as considerations and recommendations on preparing for upcoming exams considering the pandemic.

Background

On March 13 the president declared a national emergency, and on March 24, State shelter-in-place orders went into effect. During this time, the agencies issued guidance encouraging banks to work with customers affected by the pandemic. This guidance included statements that prudent efforts should not be subject to examiner criticism. More specifically, for example, the agencies stated in their March 22 guidance that they would not criticize financial institutions that mitigate credit risk through prudent actions consistent with safe and sound practices.

During this time, FDIC and OCC transitioned to conducting nearly all examinations remotely. DFI followed suit. FRB ceased all regular examination activity for institutions with less than \$100 billion in assets and shifted its regulatory focus to monitoring and communicating. In the meantime, the agencies continued rulemaking and issuing guidance documents to support the industry. Links to COVID-related agency action are included at the end of the article, which includes establishment of credit and liquidity facilities, new allowances for certain capital methodologies, guidance on accounting for loan modifications, and reduced regulatory burden (for example: deletion of Reg D transaction limitations and waiver of appraisal requirements under certain circumstances, which will be used as scenarios later in the article).

Communities have been impacted by the pandemic to varying extents. Similarly, financial institutions have adapted in unexpected, unique ways. This results in operational challenges as banks look to assist their communities in a manner appropriate to the situation. It is important that banks remain mindful of increased risks, and be aware of examination expectations. In order to better prepare, this article presents some recommendations below.

Recommendations for Exam Preparation

Understandably, the unexpected complexities of the pandemic present unique compliance problems. Financial institutions may have made exceptions to policy, or undertaken actions they normally would not, but found appropriate, given the situation. It is important, then, that in such cases, the bank prepares appropriately for examination. Some specific considerations and examples are given below.

Overall Considerations

A good general starting point is to consider how the bank evaluated its potential risk, and how it responded to that risk. Meaning, when and how did bank measure the impact of the pandemic on its own operation, and its customers? On its capital and reserves? What steps did the bank take to manage that risk? For example: to earnings, capital adequacy, liquidity, and asset quality? What was known versus what remains uncertain? Examiners are likely to evaluate how a bank approached the pandemic in terms of making these considerations, questioning how bank prepared and ultimately, whether bank's response was tailored appropriately. For more specific examples consider:

- What risk management efforts did bank consider with respect to the impact of the pandemic on its customer base?
- Does bank do business with customers significantly affected by the pandemic in industries such as leisure, hotel, restaurant, or small business?



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Overall Considerations (continued)

- What data did bank use to assess its risk then and now?
- For some loan customers, bank likely is aware of facts regarding the current financial situation of the customer (i.e., bank knows customer has closed its business with no plans to reopen), how did bank use that knowledge in its loan grading and risk analysis for the customer when the pandemic first hit and now?
- For loan customers where there are still too many unanswered questions (i.e., restaurant is permitted to operate at 25% capacity level for an undetermined amount of time), how does bank use that knowledge in its loan grading and risk analysis for the customer or pool of similarly situated customers?
- What considerations were made for forward looking impacts? Were capital resilience plans put into place?

These are all aspects that examiners are likely to consider, and a bank should be prepared with documentation to discuss its course of appropriate action.

Loan Modifications and Deferrals

Many financial institutions have worked with borrowers experiencing financial hardship by providing options for loan modifications and deferrals. The agencies have recognized this, and stated that they view loan modification programs as positive actions that can mitigate adverse effects on borrowers due to the pandemic. Financial institutions should consider:

- How did bank work with a customer and tailor the accommodation to the situation? (for example: restaurant business experiencing hardship? Customer laid off? Furloughed?)
- How did bank evaluate and mitigate risk?
- What monitoring is in place?
- Will bank re-evaluate the loan? When? Is there a plan in place with the customer if future accommodations are necessary?
- How were these loans graded?
- If loan payments were forbore, what are repayment options when forbearance period ends? Will bank follow CFPB's newest mitigation option regarding forbearance? What compliance-related procedures need be added to existing procedures, or do new procedures need be created?

Deposit-Related Considerations

Financial institutions should also consider any changes made to deposit operations due to the pandemic. Changes in lobby hours or access, staffing, and customer needs may have resulted in lapses in compliance or exceptions to typical policy. Remote engagements may have resulted in delayed or missed disclosures, or unique account opening procedures. For example, as a result of the Regulation D changes, a bank may have suspended (temporarily or permanently), transaction limitations on savings accounts. As something that was immediately available as a tool to assist customers, many banks may have implemented without additional thought, but there is more to consider:

- Were disclosures updated appropriately?
- Was any notice provided to customers?
- Is the change temporary? If so, has bank made plans for re-implementation, including advanced notice to its customers?

If the institution has identified that a compliance-related error occurred, it is best to both identify the error and be prepared to explain how the error was remedied, including any reimbursements paid to customers affected by the error. The proactive efforts by the bank should lessen the impact of the compliance error as a one-time inadvertent error which resulted due to the impact of the pandemic and mitigation efforts rather than a systemic compliance violation.

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Review Previous Risk Analysis

As mentioned above, the pace at which financial institutions have had to adopt to the pandemic was unprecedented. Financial institutions had little time to react to state- and local-level mitigation efforts. However, now that the industry is seven-months into the pandemic, financial institutions are reminded to consider review of how temporary and permanent operational changes made as a result of the pandemic could change a previously set risk level for a given procedure or policy. A review prior to examination will better prepare the institution for examiner questions related to risk. For example, if the bank's normal practice is to open deposit accounts in person and now the practice has become a procedure of opening deposit accounts exclusively online via bank's website, has bank modified its risk analysis of the online activity impact on the bank. Regarding the Reg D changes mentioned above, if bank now allows for unlimited withdrawals from savings deposit accounts, what impact did that change have in bank's liquidity or other related risk concerns? Has the bank adjusted its risk analysis for either activity?

Reliance Upon Agency Guidance

As discussed above, the agencies have issued numerous rules and guidance documents throughout the pandemic. Where a financial institution may have relied upon agency guidance, it should refer to the proper document and fit its actions within the appropriate context. For example, the agencies issued an interim, now final, rule deferring the requirement to obtain an appraisal or evaluation for up to 120 days following closing, excluding certain transactions, and under certain conditions. If a financial institution relied upon this rule, it should document all steps taken in accordance with the requirements. For consideration:

- Does bank have evidence prepared that the loan is not for acquisition, development, and construction of real estate?
- What efforts did bank make to obtain an appraisal or evaluation?
- How did bank otherwise develop a well-informed estimate of the collateral value of the property?
- Did bank adhere to internal underwriting standards for creditworthiness and ability to repay?
- What other risk-mitigation steps were taken?

Safety and Soundness Considerations

In a recent panel discussion with FRB, FDIC, OCC, and DFI Safety and Soundness Risk Field Supervisors, the examiners shared their exam focus areas and things that banks should consider as examinations return to a more routine schedule. The examiners all identified cybersecurity and information technology (IT) concerns as one of their top risk concerns given the fact the industry has been working remotely. Additionally, banks should be certain they are attending to increased fraud activity. Banks should be prepared to share strengths in each of the identified areas, and if problems arose, be prepared to explain how the bank addressed and mitigated the situation to avoid any future repeat of the cybersecurity or IT issue.

Another area of concern is bank's management of loan portfolios. The examiners all agree that loan analysis and calculating accurate loan projections can be difficult given the current economic uncertainty as caused by the pandemic. However, the examiners encouraged the performance of additional analysis. More specifically, they stated that an historical analysis can be helpful but be mindful of what may impact a particular borrower given the uniqueness of the borrower. If projections are used for loan analysis, examiners stated they will be looking for supporting documentation regarding the bank's analysis.

To help illustrate just how individualized an analysis likely need become, OCC gave a trucking company example: while the customer's current cash flow is negative given recent travel restrictions and reduced schedules for transporting goods, when looking further at projections the customer may well have an overall more positive picture due to upcoming trucking contracts as travel restrictions ease, more areas reopen, and the holiday season begins – thus making the transportation of goods more necessary and projections realistically positive. On the flip side, a business in the hospitality-related industry. A reliance on an historical analysis will likely not accurately reflect the current status of travel in the area. Historically, this customer likely had high holiday and event activities resulting in an overall positive end-of-year analysis. However, projections for end of this year need be realistic. As travel restrictions lift in some areas, hotels and conference occupancy rates will realistically still not be up to pre-pandemic or past holiday levels given the general populations' concerns over travel. Full capacity levels during last year's end-of-year is likely not be same level of activity for this year's end-of-year.

Communication with Examiners

Amidst planning for an upcoming examination, financial institutions should not hesitate to have robust conversations with lead examiners and field examiner supervisors to explain how the pandemic has specifically impacted the institution. Such conversation will help set exam scope and focus. Regulators have reported exams are likely to remain remote until end-of-year; this format will require exam information to be shared electronically. If sharing of information electronically is difficult due to not all files being



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Communication with examiners (continued)

converted into electronic files, examiners should be alerted to that fact so other accommodations can be arranged without adding unnecessary or duplicative efforts for the bank. Additionally, key staff may still be working remotely which may impact exam scheduling. This is especially critical for staff that may have connectivity or broadband limitations when trying to participate in electronic meetings. Banks should discuss exam schedules to ensure necessary bank staff are available during the exam and have access necessary to effectively participate and interact with the examination team. Also, don't be afraid to ask questions as to an examiner's rationale and be prepared to further explain bank managements' decisions and reasoning for actions taken during the pandemic.

Conclusion

This article is designed to help financial institutions prepare for upcoming examinations. While it contains general considerations, and some specific examples, the impact of the pandemic will be different from institution to institution and from affected borrower to affected borrower. Furthermore, each institution's exam response will vary. As such, preparation should be tailored accordingly. WBA anticipates that examiners will be mindful of the varying levels of impact and response, but the more prepared a financial institution is, the more it can assist in creating a transparent examination process.

Resources for COVID-related agency activity:

OCC: <https://www.occ.gov/topics/supervision-and-examination/bank-operations/covid-19-information/convid-19-info-index.html>

FDIC: <https://www.fdic.gov/coronavirus/index.html>

FRB: <https://www.federalreserve.gov/covid-19.htm>

Webinar: Update on FRB's supervisory posture for small banks as examinations resume:

<https://bsr.stlouisfed.org/askthefed/Home/ArchiveCall/273> ■

Regulatory Spotlight

Agencies Issue Final Rule to Correct Counterparty Credit Risk Capital Rule.

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 a final rule to make technical corrections to certain provisions of the capital rule related to the standardized approach for counterparty credit risk (SA-CCR), which is used to calculate the exposure amount of derivative contracts and was adopted in a final rule published on **01/24/2020**. The amendatory text of the SA-CCR final rule did not accurately reflect the treatment described in the supplementary information section of the SA-CCR final rule for the items described in the January final rule. This final rule corrects the agencies' capital rule consistent with the supplementary information section of the SA-CCR final rule. The agencies also made corrections to certain cross-references within the capital rule that are no longer accurate as of the effective date of the SA-CCR final rule. The final rule is effective **09/17/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-17744.pdf>. *Federal Register*, Vol. 85, No. 181, 09/17/2020, 57956-57964.

Agencies Issue Final Rule to Delay Estimated Impact of Implementing CECL.

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 a final rule 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 final rule provides banking organizations that implement CECL during the 2020 calendar year the option to delay for two years an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, followed by a three-year transition period. The agencies are providing the relief to allow banking organizations to better focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the coronavirus disease 2019, while also maintaining the quality of regulatory capital. The final rule is consistent with the interim final rule published in the *Federal Register* on **03/31/2020**, with certain clarifications and minor adjustments in response to comments related to the mechanics of the transition and the eligibility criteria for applying the transition. The final rule is effective **09/30/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-30/pdf/2020-19782.pdf>. *Federal Register*, Vol. 85, No. 190, 09/30/2020, 61577-61594.



Regulatory Spotlight

Agencies Revise Eligible Retained Income Definition.

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 a final rule to adopt revisions to the definition of “eligible retained income” made under the interim final rule published in the *Federal Register* on **03/20/2020**, for all depository institutions, bank holding companies, and savings and loan holding companies subject to the agencies’ capital rule. The final rule revises the definition to make more gradual any automatic limitations on capital distributions that could apply under the agencies’ capital rule. Separately, in the final rule, FRB also adopted as final the definition of “eligible retained income” made under the interim final rule published in the *Federal Register* on **03/26/2020**, for purposes of FRB’s total loss-absorbing capacity (TLAC) rule. The final rule adopts the interim final rules with no changes. The final rule is effective **01/01/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-19829.pdf>. *Federal Register*, Vol. 85, No. 196, 10/08/2020, 63423-63428.

Agencies Make Temporary Changes to and Transition for Community Bank Leverage Ratio Framework.

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 a final rule to adopt revisions to the community bank leverage ratio framework made under two interim final rules issued in the *Federal Register* on **04/23/2020**. The final rule adopts the interim final rules with no changes. Under the final rule, the community bank leverage ratio will remain 8 percent through calendar year 2020, will be 8.5 percent through calendar year 2021, and will be 9 percent thereafter. The final rule also maintains a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percentage point below the applicable community bank leverage ratio requirement. The final rule is effective **11/09/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-19922.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64003-64009.

Agencies Issue Technical Correction to Bank Holding Company Act.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC) (collectively, the agencies) issued a technical correction to a final rule published in the *Federal Register* on **07/31/2020**, which adopted amendments to the regulations that implement section 13 of the Bank Holding Company Act (BHC Act). Two of the amendatory instructions of the July 2020 amendments did not accurately reflect changes to the agencies’ rules as described in the supplementary information section of the 2020 amendments. Specifically, the correction amends an instruction stating that the agencies were revising paragraph (d)(1) of section __.20 of the 2020 amendments when the agencies intended to revise the introductory text to paragraph (d)(1). This correction also amends instructions concerning 17 CFR 255.10(c)(11) and 75.10(c)(11) to retain the introductory text for those paragraphs. The agencies note that the effective date for the 2020 amendments remains **10/01/2020**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-25/pdf/2020-21100.pdf>. *Federal Register*, Vol. 85, No. 187, 09/25/2020, 60355-60356.

CFPB Seeks Comment on New Questionnaire on Consumer Savings.

The Bureau of Consumer Financial Protection (CFPB) seeks comment on a new information collection titled, Start Small, Save Up Workforce Questionnaire. The questionnaire evaluates the respondent’s current savings habits, behaviors, and attitudes. It evaluates the respondent’s level of financial well-being, a subjective state wherein a person has a sense of financial security and financial freedom of choices, in the present and for the future. The questionnaire will give CFPB an efficient way to measure the effectiveness of financial education and other efforts in increasing consumers’ liquid savings and financial well-being. Information will be gathered from those in the CFPB workforce. The questionnaire may also be made available for use by other federal agencies for similar studies related to financial well-being and savings practices. Comments are due **11/04/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-21922.pdf>. *Federal Register*, Vol. 85, No. 193, 10/05/2020, 62715.

CPFB Seeks Comment on New Advisory Opinion Information Collection.

CFPB has proposed to establish an Advisory Opinion (AO) Program. AOs issued under the program would be interpretive rules under the Administrative Procedure Act that respond to a specific request for clarity on an interpretive question regarding a CFPB-administered regulation or statute. Under the program, parties would be able to request interpretive guidance, in the form of an AO, to resolve regulatory uncertainty. CFPB would have discretion to decide which AOs to respond to. CFPB intends to publish AOs as well as a description of the incoming request. The requests for an AO, and thus the information collection, may be submitted by persons, primarily business or other for-profit entities. The information collected will be used by CFPB to determine whether to pursue the issuance of an AO responsive to the request. Comments are due **11/06/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-22193.pdf>. *Federal Register*, Vol. 85, No. 195, 10/07/2020, 63262.



Regulatory Spotlight

FRB Revises Rules Regarding Availability of Information.

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to revise its rules regarding availability of information. The revisions clarify and update FRB's regulations that implement the Freedom of Information Act and the rules governing the disclosure of confidential supervisory information and other nonpublic information of FRB. The final rule is effective **10/15/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-18806.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57616-57637.

FRB Extends Expiration Date of Temporary Actions to Ensure Intraday Credit Usage.

FRB extended through temporary actions to encourage healthy depository institutions to utilize intraday credit extended by Federal Reserve Banks (Reserve Banks). Specifically, the temporary actions: (1) suspend uncollateralized intraday credit limits (net debit caps) and waive daylight overdraft fees for institutions that are eligible for the primary credit program; and (2) permit a streamlined procedure to request collateralized intraday credit (max caps) for institutions that are eligible only for the secondary credit program. FRB also suspended the collection of information under the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks and the Annual Report of Net Debit Cap. The temporary actions were previously scheduled to expire **09/30/2020**. The temporary actions will now expire **03/31/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22005.pdf>. *Federal Register*, Vol. 85, No. 194, 10/06/2020, 63114-63115.

FRB Modifies Implementation Date of Same-Day ACH Processing and Settlement and Corresponding Changes to Payment System Risk Policy.

On **12/30/2019**, FRB announced the approval of modifications to the Federal Reserve Banks' (Reserve Banks) payment services to facilitate adoption of a later same-day ACH processing and settlement window, and corresponding changes to the Federal Reserve Policy on Payment System Risk (PSR policy). FRB approved the modifications and changes with an implementation date of **03/19/2021**. FRB has amended the implementation date for the modifications and changes from **03/19/2021**, to **03/08/2021**, with the exception of two changes to the PSR policy that will still be implemented on the original March date. The earlier implementation date will permit the Reserve Banks to test and implement modifications to the Fedwire® Funds Service and the National Settlement Service before **03/19/2021**, which is NACHA's current effective date for implementing the later same-day ACH window. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-30/pdf/2020-21532.pdf>. *Federal Register*, Vol. 85, No. 190, 09/30/2020, 61747.

FRB Issues Proposed Rule to Amend Capital Planning and Stress Testing Requirements for Certain Holding Companies.

FRB issued a proposed rule to tailor the requirements in FRB's capital plan rule, which applies to large bank holding companies and U.S. intermediate holding companies of foreign banking organizations. The proposed rule would make conforming changes to the capital planning, regulatory reporting, and stress capital buffer requirements for firms subject to Category IV standards to be consistent with the tailoring framework. To be consistent with recent changes to FRB's stress testing rules, the proposed rule would make other changes to FRB's stress testing rules, Stress Testing Policy Statement and regulatory reporting requirements relating to business plan change assumptions, capital action assumptions, and the publication of company-run stress test results for savings and loan holding companies. Comments are due **11/20/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-22166.pdf>. *Federal Register*, Vol. 85, No. 195, 10/07/2020, 63222-63235.

FDIC Publishes DIF Restoration Plan.

The Federal Deposit Insurance Corporation (FDIC) published its Deposit Insurance Fund (DIF) restoration plan. Extraordinary growth in insured deposits during the first and second quarters of 2020 caused the DIF reserve ratio to decline below the statutory minimum of 1.35 percent. As of **06/30/2020**, the reserve ratio stood at 1.30 percent. The Federal Deposit Insurance Act requires that FDIC adopt a restoration plan when the DIF reserve ratio falls below 1.35 percent or is expected to within 6 months. Under its plan, FDIC will: monitor deposit balance trends, potential losses, and other factors that affect the reserve ratio; maintain the current schedule of assessment rates for all insured depository institutions; and at least semiannually, update its analysis and projections for the fund and, if necessary, recommend any modifications to the plan, such as increasing assessment rates. The plan was established **09/15/2020**. The restoration plan may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-20690.pdf>. *Federal Register*, Vol. 85, No. 183, 09/21/2020, 59306-59309.



Regulatory Spotlight

FDIC Terminates Receiverships.

FDIC, as Receiver for the insured depository institutions identified in the notice, announces termination of receiverships. As Receiver, FDIC was charged with the duty of winding up the affairs of the former institutions 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 on the termination dates listed in the notice, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22355.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64149.

FDIC Proposes Revisions to Minority Depository Institutions Statement of Policy.

FDIC seeks comments on proposed revisions to its Statement of Policy Regarding Minority Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act established several goals related to encouraging, assisting, and preserving minority depository institutions. FDIC has long recognized the unique role and importance of minority depository institutions and has historically taken steps to preserve and encourage minority-owned and minority-led financial institutions. The revised Statement of Policy updates, strengthens, and clarifies FDIC's policies and procedures related to minority depository institutions. Comments are due **11/24/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-25/pdf/2020-18816.pdf>. *Federal Register*, Vol. 85, No. 187, 09/25/2020, 60402-60407.

FDIC Issues Proposed Rules to Remove Transferred OTS Regulations.

- FDIC issued a proposed rule to rescind and remove from the Code of Federal Regulations rules titled, Nondiscrimination Requirements (part 390, subpart G), and to amend FDIC regulation part 338 to make it applicable to state savings associations. Part 390, subpart G was included in the regulations that were transferred to FDIC from the Office of Thrift Supervision (OTS) on **07/21/2011**, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Act. FDIC's part 338 is titled, Fair Housing, and applies to insured state nonmember banks. Several provisions for state savings associations in part 390, subpart G have substantively similar provisions in part 338. The remaining provisions in part 390, subpart G without a direct counterpart are largely duplicative of federal laws, Equal Credit Opportunity Act, Fair Housing Act, Equal Employment Opportunity Act, and other laws concerning nondiscrimination in lending, employment, and services and implementing regulations. FDIC also proposed to define "FDIC-supervised institution" and "State savings association." If the proposal is adopted in final form, insured state nonmember banks and state savings associations will be subject to the same anti-discrimination requirements. Comments are due **10/26/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-25/pdf/2020-18813.pdf>. *Federal Register*, Vol. 85, No. 187, 09/25/2020, 60389-60402.
- FDIC issued a proposed rule to rescind and remove from the Code of Federal Regulations rules titled, Prompt Corrective Action, that were transferred to FDIC from the Office of Thrift Supervision (OTS) on **07/21/2011**, in connection with the implementation of Title III of the Dodd-Frank Act. The proposed rule also amends certain sections of existing FDIC regulations governing the issuance and review of orders pursuant to the prompt corrective action provisions of the Federal Deposit Insurance Act to make it clear that such rules apply to all insured depository institutions for which FDIC is the appropriate federal banking agency. Comments are due **10/28/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18812.pdf>. *Federal Register*, Vol. 85, No. 188, 09/28/2020, 60738-30745.

OCC Issues Correcting Amendment to Supplemental Lending Limits Rule.

The Office of the Comptroller of the Currency (OCC) issued a correcting amendment to a **07/14/2020**, published final rule that, among other revisions, made technical changes to OCC's supplemental lending limits rule. The correcting amendment makes a correction to those regulations by reinstating two paragraphs to the lending limits rules that were inadvertently deleted. The correcting amendment is effective **10/01/2020**. The correcting amendment may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-01/pdf/2020-18937.pdf>. *Federal Register*, Vol. 85, No. 191, 10/01/2020, 51809-51811.

HUD Issues Correction to Disparate Impact Standard Regulation.

On **09/24/2020**, the Department of Housing and Urban Development (HUD) published a final rule to amend its disparate impact standard regulation and included minor revisions to section 100.70. In the revision of the section, HUD's amendatory instructions in the final rule included an incorrect instruction to add a new paragraph (d)(5). HUD intended, consistent with the proposed rule, to revise the already-existing paragraph (d)(5). This correction amends the instruction. The correction is effective **10/26/2020**.



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The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-21634.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64025.

HUD Seeks Comment on Revisions to Existing Information Collections.

- HUD seeks comment on revision to an existing information collection titled, Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents. The HECM program is the Federal Housing Administration's (FHA) reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM Program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The information collection is necessary to screen mortgage insurance applications in order to protect the FHA insurance fund and the interests of consumers and potential borrowers. Comments are due **11/16/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-20490.pdf>. *Federal Register*, Vol. 85, No. 181, 09/17/2020, 58068-58069.
- HUD seeks comment on revision to an existing information collection titled, HUD Loan Sale Bidder Qualification Statement. The statement solicits from prospective bidders to the HUD Loan Sales the basic qualifications required for bidding, including but not limited to: purchaser information (name of purchaser, corporate entity, address, tax ID), business type, net worth, equity size, prior history with HUD Loans and prior sales participation. By executing the qualification statement, the purchaser certifies, represents, and warrants to HUD that each of the statements included are true and correct as to the purchaser and thereby qualifies them to bid. Comments are due **11/16/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-20498.pdf>. *Federal Register*, Vol. 85, No. 181, 09/17/2020, 58067-58068.
- HUD seeks comment on revisions to an existing information collection titled, Multifamily Accelerated Processing (MAP) Guide. The MAP is designed to establish uniform national standards for Federal Housing Administration (FHA) approved lenders to prepare, process and submit loan applications for FHA multifamily mortgage insurance. The MAP Guide provides guidance for HUD staff, lenders, third party consultants, borrowers, and other industry participants. Topics include mortgage insurance program descriptions, borrower and lender eligibility requirements, application requirements, underwriting standards for all technical disciplines and construction loan administration requirements. The Guide has been updated to reflect various organizational, policy and processing changes implemented since the last edition was published in 2016. Comments are due **11/02/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21814.pdf>. *Federal Register*, Vol. 85, No. 182, 10/02/2020, 62318.

FEMA Issues Final Flood Hazard Determinations.

The Federal Emergency Management Agency (FEMA) issued a final notice which identifies communities in the state of **Iowa**, where flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final. The FIRM and FIS reports are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in FEMA's National Flood Insurance Program (NFIP). The final notice is effective **01/29/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-21305.pdf>. *Federal Register*, Vol. 85, No. 188, 09/28/2020, 60818-60821.

FEMA Issues Notices of Changes in Flood Hazard Determinations.

- FEMA issued a notice which lists communities in the states of **Illinois, Indiana, Iowa, 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-2020-09-28/pdf/2020-21300.pdf>. *Federal Register*, Vol. 85, No. 188, 09/28/2020, 60814-60818.



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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 state of **Minnesota**, 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 **12/15/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-16/pdf/2020-20349.pdf>. *Federal Register*, Vol. 85, No. 180, 09/16/2020, 57872-57874.
- 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 state of **Iowa**, 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 **01/04/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22084.pdf>. *Federal Register*, Vol. 85, No. 194, 10/06/2020, 63131-63132.

FEMA Seeks Comment on Revision to Existing Disaster Assistance Registration Collection.

FEMA seeks comment on revision to an information collection titled, Disaster Assistance Registration, which consists of a series of forms. The forms are used to obtain pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses they are unable to meet. To provide meaningful access to individuals with disabilities throughout FEMA programs, the revisions to the collection will obtain pertinent disability-related information. Comments are due **11/13/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-20191.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 56625-56626.

IRS Issues Final and Proposed Rules Regarding Limitation on Deduction for Business Interest Expense.

- The Internal Revenue Service (IRS) issued a final rule to provide guidance about the limitation on the deduction for business interest expense after amendment of the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on **12/22/2017**, and the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on **03/27/2020**. The final rule provides guidance to taxpayers on how to calculate the limitation, what constitutes interest for purposes of the limitation, which taxpayers and trades or businesses are subject to the limitation, and how the limitation applies in consolidated group, partnership, international, and other contexts. The final rule is effective **11/13/2020**. See the final rule for dates of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-16531.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 46685-56845.
- IRS issued a proposed rule concerning the limitation on the deduction for business interest expense after amendment of the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on **12/22/2017**, and the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on **03/27/2020**. Specifically, the proposed rule addresses application of the limitation in contexts involving passthrough entities, regulated investment companies (RICs), United States shareholders of controlled foreign corporations, and foreign persons with effectively connected income in the United States. The proposed rule also provides guidance regarding the definitions of real property development, real property redevelopment, and a syndicate. The proposed rule affects taxpayers that have business interest expense, particularly passthrough entities, their partners and shareholders, as well as foreign corporations and their United States shareholders and foreign persons with effectively connected income. The proposed rule also affects RICs that have business interest income, RIC shareholders that have business interest expense, and members of a consolidated group. Comments are due **11/02/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-16532.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 56846-56922.



Regulatory Spotlight

IRS Issues Final Rule Concerning Rehabilitation Credit Allocated Over 5-Year Period.

IRS issued a final rule concerning 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 final rule amends the Income Tax Regulations (26 CFR part 1) to finalize rules under section 47 of the Internal Revenue Code. IRS adopted the proposed rule without modification. The final rule is effective **09/18/2020**. Please see the final rule for date of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-18/pdf/2020-20671.pdf>. *Federal Register*, Vol. 85, No. 182, 09/18/2020, 58266-58268.

IRS Issues Final and Proposed Rules Relating to Ownership Attribution.

- IRS issued a final rule related to the modification of section 958(b) of the Internal Revenue Code by the Tax Cuts and Jobs Act (the Act), which was enacted on **12/22/2017**. As in effect before its repeal, section 958(b)(4) provided that section 318(a)(3)(A), (B), and (C) (providing for downward attribution) was not to be applied so as to consider a United States person as owning stock owned by a person who is not a United States person (a “foreign person”). Section 14213 of the Act repealed section 958(b)(4), effective for the last taxable year of foreign corporations beginning before **01/01/2018**, and each subsequent year of the foreign corporations, and for the taxable years of United States shareholders (as defined in section 951(b)) in which or with which such taxable years of the foreign corporations end. As a result of the repeal, stock of a foreign corporation owned by a foreign person can be attributed to a United States person under section 318(a)(3) for various purposes, including for purposes of determining whether a United States person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a controlled foreign corporation (within the meaning of section 957). On **10/02/2019**, IRS published a proposed rule related to the repeal of section 958(b)(4) by the Act. The final rule finalizes the proposed rule. The final regulations affect United States persons that have ownership interests in, or that make or receive payments to or from, certain foreign corporations. The final rule is effective **09/22/2020**. Please see the final rule for dates of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-22/pdf/2020-17549.pdf>. *Federal Register*, Vol. 85, No. 184, 09/22/2020, 59428-59436.
- IRS issued a proposed rule related to the modification of section 958(b) of the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on **12/22/2017**. The proposed rule modifies the ownership attribution rules applicable to outbound transfers of stock or securities of a domestic corporation under section 367(a). The proposed rule also narrows the scope of foreign corporations that are treated as controlled foreign corporations for purposes of the look-through rule under section 954(c)(6). The proposed rule affects United States persons that transfer stock or securities of a domestic corporation to a foreign corporation that are subject to section 367(a), and United States shareholders of foreign corporations. Comments and request for hearing are due **11/20/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-22/pdf/2020-17550.pdf>. *Federal Register*, Vol. 85, No. 184, 09/22/2020, 59481-59484.

IRS Issues Final Rule Regarding Income Tax Withholding on Certain Periodic Retirement and Annuity Payment.

IRS issued a final rule that provides rules 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 final rule affects payors of certain periodic payments, plan administrators that are required to withhold on such payments, and payees who receive such payments. The final rule is effective **10/01/2020**. Please see the final rule for dates of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-01/pdf/2020-21777.pdf>. *Federal Register*, Vol. 85, No. 191, 10/01/2020, 61813-61816.

IRS Issues Final Rule Regarding Income Tax Withholding from Wages.

IRS issued a final rule to provide guidance for employers concerning income tax withholding from employees’ wages. The final rule concerns the amount of federal income tax employers withhold from employees’ wages, implements changes in the Internal Revenue Code made by the Tax Cuts and Jobs Act, and reflects the redesigned withholding allowance certificate (Form W-4) and related IRS publications. The final rule affects employers that pay wages subject to federal income tax withholding and employees who receive wages subject to federal income tax withholding. The final rule is effective **10/06/2020**. Please see the final rule for dates of applicability. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22071.pdf>. *Federal Register*, Vol. 85, No. 194, 10/06/2020, 63019-63037.



Regulatory Spotlight

FinCEN Issues Final Rule to Implement CIP, AML, and Beneficial Ownership Requirements for Banks Which Lack a Federal Functional Regulator.

The Financial Crimes Enforcement Network (FinCEN) issued a final rule to implement sections 352, 326 and 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) and to remove the anti-money laundering (AML) program exemption for banks that lack a federal functional regulator, including, but not limited to, private banks, non-federally insured credit unions, and certain trust companies. The final rule requires minimum standards for AML programs for banks without a federal functional regulator to ensure that all banks, regardless of whether they are subject to federal regulation and oversight, are required to establish and implement AML programs, and extends customer identification program (CIP) requirements and beneficial ownership requirements to those banks not already subject to these requirements. The final rule is effective **11/16/2020**. The compliance date is **03/15/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-20325.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57129-57138.

FinCEN Seeks Comment on Existing BSA Information Collection.

FinCEN seeks comment on an existing information collection found in existing Bank Secrecy Act (BSA) regulations. Specifically, the regulations require banks, brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and mutual funds to establish due diligence programs that include risk-based, and, where necessary, enhanced policies, procedures, and controls reasonably designed to detect and report money laundering conducted through or involving, any correspondent accounts established or maintained for foreign financial institutions. The regulations also require that these same financial institutions establish due diligence programs that include policies, procedures, and controls reasonably designed to detect and report money laundering conducted through or involving any private banking accounts established by the financial institutions. The due diligence programs are required to be part of the financial institutions' anti-money laundering programs. Although no changes are proposed to the information collection itself, the request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. Comments are due **11/30/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-21441.pdf>. *Federal Register*, Vol. 85, No. 189, 09/29/2020, 61104-61110.

FinCEN Issues ANPR Regarding AML Program Effectiveness.

FinCEN issued an advanced notice of proposed rulemaking (ANPR) regarding potential regulatory amendments to establish that all covered financial institutions subject to an anti-money laundering (AML) program requirement must maintain an "effective and reasonably designed" AML program. Any amendments would be expected to further clarify that such a program assesses and manages risk as informed by a financial institution's risk assessment, including consideration of AML priorities to be issued by FinCEN consistent with the proposed amendments; provides for compliance with Bank Secrecy Act requirements; and provides for the reporting of information with a high degree of usefulness to government authorities. The amendments under consideration are intended to modernize the regulatory regime to address the evolving threats of illicit finance and provide financial institutions with greater flexibility in the allocation of resources, resulting in the enhanced effectiveness and efficiency of AML programs. Comments are due **11/16/2020**. The ANPR may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-20527.pdf>. *Federal Register*, Vol. 85, No. 181, 09/17/2020, 58023-58029.

SBA Issues PPP Interim Rule to Create New Forgiveness and Loan Review Process for Loans \$50,000 and Less.

The Small Business Administration (SBA) issued an interim final rule to create a new forgiveness and loan review process for Paycheck Protection Program (PPP) loans \$50,000 and less. On **04/02/2020**, SBA posted on its website an interim final rule relating to the implementation of Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (published in the *Federal Register* on **04/15/2020**). Section 1102 of the CARES Act temporarily adds PPP to SBA's 7(a) Loan Program. Subsequently, SBA issued additional interim final rules to implement PPP. On **06/05/2020**, the Paycheck Protection Program Flexibility Act was signed into law, amending the CARES Act. This interim final rule revises interim final rules posted on SBA's website on **05/22/2020** (published on **06/01/2020**, in the *Federal Register*) and **06/22/2020** (published on **06/26/2020**, in the *Federal Register*), by providing additional guidance concerning the forgiveness and loan review processes for PPP loans of \$50,000 or less and, for PPP loans of all sizes, lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount. The interim final rule is effective **10/14/2020**. Comments are due **11/18/2020**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-23091.pdf>. *Federal Register*, Vol. 85, No. 202, 10/19/2020, 66214-66217.



Regulatory Spotlight

SBA Updates PPP FAQs.

SBA updated its Paycheck Protection Program Frequently Asked Questions (PPP FAQs) document to clarify that the changes made under the Paycheck Protection Program Flexibility Act to the deferral of PPP loan payments were automatic. The new FAQ also clarifies a modification document is not required under the program. The new question is item #52 at the end of the guidance document. The revised FAQs may be viewed at: <https://www.sba.gov/sites/default/files/2020-10/Final%20PPP%20FAQs%20%28October%207%2C%202020%29.pdf>.

SBA Issues Peg Rate.

SBA publishes an interest rate called the optional “peg” rate on a quarterly basis. The rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. The rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. The rate will be **0.88 percent** for the October-December quarter of fiscal year (FY) 2021. Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender’s commercial loan which funds any portion of the cost of a 504 project shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given state, the maximum interest rate will be the rate permitted by the constitution or laws of the given state. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-21427.pdf>. *Federal Register*, Vol. 85, No. 189, 09/29/2020, 61078.

SBA Changes its Secondary Market Program.

SBA issued a notice to inform the public that it is making a change to its Secondary Market Loan Pooling Program. SBA has decreased the minimum maturity ratio for both SBA Standard Pools and Weighted-Average Coupon (WAC) Pools by 500 basis points, to 89.0%. The change described in the notice has been made to cover the estimated cost of the timely payment guaranty for newly formed SBA 7(a) loan pools. The change will be incorporated, as needed, into the SBA Secondary Market Program Guide and all other appropriate SBA Secondary Market documents. The change will apply to SBA 7(a) loan pools with an issue date on or after **10/01/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21832.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62363.

SBA Adopts Surety Bond Guarantee Program Fees.

SBA announced it has adopted the guarantee fees in the amounts that SBA has been charging during the temporary fee reduction initiative that began **10/01/2018** and continues through **09/30/2020**. The guarantee fees are charged to all surety companies and principals on each guaranteed bond (other than a bid bond) issued in SBA’s Surety Bond Guarantee (SBG) Program. SBA will actively monitor the performance of the SBG program to ensure that the fees are reasonable and necessary and allow SBA to administer the SBG program on a prudent and economically justifiable basis. The fees described in the notice are adopted as of **10/01/2020** and will apply to all SBA surety bond guarantees approved on or after **10/01/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21876.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62362-62363.

SBA Establishes Application Filing Period for MREIDL.

SBA announced the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL). Effective **10/01/2020**, small businesses that employ military reservists may apply for economic injury disaster loans if those employees are ordered to perform active service for a period of more than 30 consecutive days, and those employees are essential to the success of the small businesses’ daily operations. The loans are intended to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active service. The interest rate for eligible small businesses is 3.000. For information/applications contact 1-800-659-2955 or visit www.sba.gov. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22408.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64212.

SBA Issues Proposed Rule to Streamline Rules Related to Small Business Investment Company Regulations.

SBA issued a proposed rule to remove from the Code of Federal Regulations (CFR) eighteen regulations that are no longer necessary because they are obsolete, inefficient or redundant. Many of the regulations SBA has proposed to remove apply to Specialized Small Business Investment Companies (SSBICs) licensed under the now-repealed Section 301(d) of the Small Business Investment Act, as amended, and certain other types of Small Business Investment Companies (SBICs) that SBA no longer licenses, such as Participating



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Securities SBICs and Early Stage SBICs. The removal of the regulations will simplify SBA's regulations in the CFR. In addition, SBA proposes to amend its regulations, consistent with recent statutory changes, to increase the maximum amount of leverage available to a single SBIC from \$150 million to \$175 million. Comments are due **11/30/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-30/pdf/2020-19432.pdf>. *Federal Register*, Vol. 85, No. 190, 09/30/2020, 61654-61659.

SBA Proposes Revisions to NAICS Size Standards.

- SBA issued a proposed rule to increase its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) Sectors related to Agriculture, Forestry, Fishing and Hunting; Mining; Quarrying, and Oil and Gas Extraction; Utilities; and Construction. SBA proposed to increase size standards for 68 industries in those sectors, including 58 industries and 2 subindustries (exceptions) in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), 3 industries in Sector 21 (Quarrying, and Oil and Gas Extraction), 3 industries in Sector 22 (Utilities), and 1 industry and 1 subindustry (“exception”) in Sector 23 (Construction). SBA's proposed revisions relied on its recently revised Size Standards Methodology. Comments are due **12/01/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21589.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62239-62266.
- SBA issued a proposed rule to increase its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Transportation and Warehousing; Information; Finance and Insurance; and Real Estate and Rental and Leasing. SBA proposed to increase size standards for 45 industries in those sectors, including 18 industries in NAICS Sector 48-49 (Transportation and Warehousing), 8 industries in NAICS Sector 51 (Information), 10 industries in NAICS Sector 52 (Finance and Insurance), and 9 industries in NAICS Sector 53 (Real Estate and Rental and Leasing). SBA's proposed revisions relied on its recently revised Size Standards Methodology. Comments are due **12/01/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21593.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62372-62403.

SBA Seeks Comment on New Information Collection to Evaluate its Microloan Program.

SBA seeks comment on a proposal to conduct a survey of small businesses and lenders who participated in its Microloan Program. The purpose of the Microloan Program is to assist women, low income, veteran, and minority entrepreneurs, and other small businesses in need of small amounts of financial assistance. SBA proposes the use of four data collection instruments: (1) borrower web survey, (2) borrower semi-structured telephone interview, (3) lender web survey, and (4) lender semi-structured telephone interview. The results of the evaluation will be used to develop recommendations to improve the program. The recommendations will focus on improving access to financing, improving technical assistance and training, and improving other factors that promote small business growth. Comments are due **11/20/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-25/pdf/2020-21132.pdf>. *Federal Register*, Vol. 85, No. 187, 09/25/2020, 60508-60509.

Agencies Establish Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs.

The Rural Utilities Service (RUS), Rural Business-Cooperative Service (RBC), and Rural Housing Service (RHS) (collectively, the agencies) issued a final rule to establish the authority authorized by Section 6210 of the Agriculture Improvement Act, to assist rural families and small businesses in gaining access to broadband service by permitting recipients of a loan, grant, or loan guarantee from the agencies to use up to 10 percent of the amount provided to construct broadband infrastructure in areas not served by minimum acceptable level of broadband service. The final rule describes the procedures by which the agencies will consider projects eligible for special broadband authority. The final rule is effective **09/15/2020**. Comments are due **11/16/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-19033.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57077-57085.

Agencies Issue Correction to OneRD Guaranteed Loan Regulation.

The Rural Business-Cooperative Service (RBC), Rural Housing Service (RHS), and Rural Utilities Service (RUS) (collectively, the agencies) issued a correction to a previously promulgated OneRD Guaranteed Loan regulation. Following implementation of the final rule, the agencies found that corrections due to error, omissions, or need for clarity were necessary. The technical correction makes amendments to address the changes. The correction is effective **10/01/2020**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21917.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62195-62199.



Regulatory Spotlight

FCA Issues Loan Amortization Limits.

The Farm Credit Administration (FCA) issued a final rule to repeal the regulatory requirement that production credit associations amortize their loans in 15 years or less, while requiring Farm Credit System associations to address amortization through their credit underwriting standards and internal controls. The final rule will be effective 30 days after publication in the *Federal Register* during which either or both Houses of Congress are in session. FCA will publish a document announcing the effective date in the *Federal Register*. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18552.pdf>. *Federal Register*, Vol. 85, No. 188, 09/28/2020, 60691-60694.

FCA Issues Final Rule to Amend Investment Regulations.

FCA issued a final rule to amend its investment regulations to allow Farm Credit System (FCS) associations to purchase and hold the portion of certain loans that non-FCS lenders originate and sell in the secondary market, and that the United States Department of Agriculture (USDA) unconditionally guarantees or insures as to the timely payment of principal and interest. The regulation shall become effective no earlier than 30 days after publication in the *Federal Register* during which either or both houses of Congress are in session. FCA will publish notification of the effective date in the *Federal Register*. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-19711.pdf>. *Federal Register*, Vol. 85, No. 194, 10/06/2020, 62945-62950.

FCA Issues Final Rule on District Financial Reporting.

FCA issued a final rule to amend FCA regulations governing how a Farm Credit bank presents information on its related associations when preparing annual bank financial statements on a stand-alone basis. The final rule provides two presentation options when disclosing related association financial information in an annual bank report: by footnote or attached in a supplement. The final rule will become effective 30 days after publication in the *Federal Register* during which either or both Houses of Congress are in session. FCA will publish notification of the effective date in the *Federal Register*. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-20264.pdf>. *Federal Register*, Vol. 85, No. 196, 10/08/2020, 63428-63431.

CCC Issues NOFA for Seafood Trade Relief Program.

The Commodity Credit Corporation (CCC) issued a notice of funding availability (NOFA) regarding the Seafood Trade Relief Program (STRP). STRP provides payments to eligible commercial fishermen of seafood commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. The NOFA announces the availability of STRP funds for eligible active commercial fishermen as specified in the NOFA, consistent with the Presidential Memorandum issued on **06/24/2020**, "Protecting the United States Lobster Industry." Payments are for the purpose of expanding or aiding in the expansion of domestic markets for U.S. caught and sold seafood. The application period begins **09/14/2020**, through **12/14/2020**. Comments regarding the Paperwork Reduction Act are due **11/13/2020**. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-20143.pdf>. *Federal Register*, Vol. 85, No. 178, 08/14/2020, 56572-56575.

RBC Requests Applications for FY 2021 Rural Economic Development Loan and Grant Programs.

The Rural Business-Cooperative Service (RBC) seeks applications for loans and grants under the Rural Economic Development Loan and Grant (REDLG) Programs for fiscal year (FY) 2021, subject to the availability of funding. RBC issued the notice in order to allow applicants sufficient time to leverage financing, prepare and submit applications, and give RBC time to process applications within FY 2021. Successful applications will be selected by RBC for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the website at: <https://www.rd.usda.gov/newsroom/fy2021-appropriated-funding> will identify the amount received in the appropriations. Applications must be received in USDA Rural Development State Office no later than 4:30 p.m. (local time): First Quarter, **09/30/2020**; Second Quarter, **12/31/2020**; Third Quarter, **03/31/2021**; and Fourth Quarter, **06/30/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-20251.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57186-57190.

RBC Issues NOFA for Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.

RBC issued a notice of funding availability (NOFA) under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program. The program provides guaranteed loans to fund the development, construction, and retrofitting of commercial scale biorefineries using eligible technology and of biobased product manufacturing facilities that use technologically new commercial scale processing and manufacturing equipment to convert renewable chemicals and other biobased outputs of biorefineries into end-user products, on a commercial scale. RBC has announced two separate application cycles, which have application closing



Regulatory Spotlight

dates of 4:30 p.m. EDT, **10/01/2020**, and 4:30 p.m. EDT, **04/01/2021**. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-20687.pdf>. *Federal Register*, Vol. 85, No. 183, 09/21/2020, 59281-59285.

FTC Updates Telemarketing Sales Fee Rules.

The Federal Trade Commission (FTC) issued a final rule to amend its Telemarketing Sales Rule (TSR) to update the fees charged to entities accessing the National Do Not Call Registry (Registry) as required by the Do-Not-Call Registry Fee Extension Act. The revised rule increases the annual fee for access to the Registry for each area code of data from \$65 to \$66 per area code; and increases the maximum amount that will be charged to any single entity for accessing area codes of data from \$17,765 to \$18,044. Entities may add area codes during the second six months of their annual subscription period, and the fee for those additional area codes increases to \$33 from \$32. The final rule is effective **10/05/2020**. The revised fees will be applicable **10/01/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-19137.pdf>. *Federal Register*, Vol. 85, No. 193, 10/05/2020, 62596-62597.

FTC Seeks Comment on Revisions to FCRA.

- FTC seeks comment on its Duties of Users of Consumer Reports Regarding Address Discrepancies Rule (Address Discrepancy Rule) as part of its systematic review of all current FTC regulations and guides. FTC has also proposed to amend the rule to correspond to changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act. Comments are due **11/30/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-19141.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57172-57175.
- FTC seeks comment on its Prescreen Opt-Out Notice Rule as part of its systematic review of all current FTC regulations and guides. FTC has also proposed to amend the rule to correspond to changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act and to reinstate a model prescreen opt-out notice. Comments are due **12/17/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-19176.pdf>. *Federal Register*, Vol. 85, No. 183, 09/21/2020, 59226-59234.
- FTC seeks comment on its Affiliate Marketing Rule as part of its systematic review of all current FTC regulations and guides. FTC has also proposed to amend the rule to correspond to changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act. Comments are due **12/07/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-22/pdf/2020-19174.pdf>. *Federal Register*, Vol. 85, No. 184, 09/22/2020, 59466-54469.
- FTC seeks comment on its Duties of Furnishers of Information to Consumer Reporting Agencies Rule as part of its systematic review of all current FTC regulations and guides. In addition, FTC has proposed to amend the rule to correspond to changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act. Comments are due **12/14/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-30/pdf/2020-19523.pdf>. *Federal Register*, Vol. 85, No. 190, 09/30/2020, 61659-61662.
- FTC seeks comment on its Duties of Creditors Regarding Risk-Based Pricing Rule (Risk-Based Pricing Rule) as part of its systematic review of all current FTC regulations and guides. In addition, FTC has proposed to amend the rule to correspond to changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act. Comments are due **12/22/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-19529.pdf>. *Federal Register*, Vol. 85, No. 196, 10/08/2020, 63462-63473.

FCC Issues Advanced Methods to Target and Eliminate Unlawful Robocalls.

The Federal Communications Commission (FCC) adopted two safe harbors for voice service providers that block calls in certain situations and adopts certain measures to ensure that erroneous blocking is quickly remedied. Specifically, FCC adopted a safe harbor from liability under the Communications Act and FCC's rules for terminating voice service providers that block calls on an opt-out basis based on reasonable analytics designed to identify unwanted calls, so long as those take into account information provided by caller ID authentication where available for a particular call. Second, FCC adopted a safe harbor enabling voice service providers to block traffic from bad-actor upstream voice service providers that continue to allow unwanted calls to traverse their networks. Finally, FCC requires that blocking providers furnish a single point of contact to resolve unintended or inadvertent blocking, and emphasizes that, when blocking, they should make all reasonable efforts to ensure that critical calls, such as those from Public Safety Answering Points (PSAPs), are not blocked and that they should never block calls to 911. The rules both respond to voice service providers that seek assurance that their good-faith blocking will not result in liability if they inadvertently block wanted calls and implement the call blocking provisions of the TRACED Act, and provide safeguards against erroneous blocking. The final rule is effective **10/14/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-17268.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 56530-56534.



Regulatory Spotlight

FCC Implements National Suicide Hotline Improvement Act.

FCC issued a final rule to implement the National Suicide Hotline Improvement Act. In the final rule, FCC designates 988 as a simple, easy-to-remember, 3-digit dialing code for a national suicide prevention and mental health crisis hotline. All covered providers are required to implement 988 in their networks by **07/16/2022**. The final rule is effective **10/16/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-16/pdf/2020-16908.pdf>. *Federal Register*, Vol. 85, No. 180, 09/16/2020, 57767-57783.

FCC Issues Proposed Rule Regarding Exemptions Implemented Under TCPA.

FCC issued a proposed rule to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) and seeks comment on how to best implement it. As directed by the TRACED Act, FCC seeks to ensure that any exemption FCC has granted under the Telephone Consumer Protection Act (TCPA) for calls to residential lines or for calls to wireless numbers includes requirements with respect to the classes of parties that may make such calls; the classes of parties that may be called; and the number of such calls that may be made to a particular called party. FCC also seeks comment on any conditions that are necessary to ensure that existing exemptions for calls made to residential telephone lines satisfy section 8 of the TRACED Act. FCC also proposes to allow residential consumers to opt out of any calls made pursuant to an exemption. Comments are due **10/26/2020**. Reply comments are due **11/03/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-22331.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64091-64096.

CFTC Issues Final Rule Regarding Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants.

The Commodity Futures Trading Commission (CFTC) issued a final rule to address the cross-border application of certain swap provisions of the Commodity Exchange Act (CEA), as added by Title VII of the Dodd-Frank Act. The final rule addresses the cross-border application of the registration thresholds and certain requirements applicable to swap dealers and major swap participants. The final rule also establishes a formal process for requesting comparability determinations for such requirements from CFTC. The final rule adopts a risk-based approach that, consistent with the applicable section of CEA, and with due consideration of international comity principles and CFTC's interest in focusing its authority on potential significant risks to the U.S. financial system, advances the goals of the Dodd-Frank Act's swap reforms, while fostering greater liquidity and competitive markets, promoting enhanced regulatory cooperation, and improving the global harmonization of swap regulation. The final rule is effective **11/13/2020**. Please see the final rule for specific compliances dates. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-16489.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 56924-57016.

CFTC Issues Capital Requirements of Swap Dealers and Major Swap Participants Not Subject to Prudential Regulator.

CFTC issued a final rule to impose minimum capital requirements and financial reporting requirements on swap dealers and major swap participants that are not subject to a prudential regulator. CFTC has also amended existing capital requirements for futures commission merchants (FCMs) to provide specific capital deductions for market risk and credit risk for swaps and security-based swaps entered into by an FCM. CFTC also adopted amendments to its regulations to permit certain entities dually-registered with the Securities and Exchange Commission (SEC) to file an SEC Financial and Operational Combined Uniform Single Report in lieu of CFTC financial reports, to require certain CFTC registrants to file notices of certain defined events, and to require notices of bulk transfers to be filed with CFTC electronically and within a defined period of time. The final rule is effective **11/16/2020**. The compliance date is **10/06/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-16492.pdf>. *Federal Register*, Vol. 85, No. 179, 09/15/2020, 57462-57576.

CFTC Proposes Amendments to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants Without Prudential Regulator.

- CFTC issued a proposed rule to amend the margin requirements for uncleared swaps for swap dealers and major swap participants for which there is no prudential regulator. The proposed amendments would permit the application of separate minimum transfer amounts for initial margin and variation margin, and the application of a minimum transfer amount of up to \$50,000 for separately managed accounts. Comments are due **10/22/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-22/pdf/2020-18222.pdf>. *Federal Register*, Vol. 85, No. 184, 09/22/2020, 59470-59480.



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- CFTC issued a proposed rule to amend the margin requirements for uncleared swaps for swap dealers (SDs) and major swap participants (MSPs) for which there is no prudential regulator. In particular, CFTC proposed to revise the calculation method for determining whether certain entities come within the scope of the initial margin (IM) requirements under the CFTC Margin Rule beginning **09/01/2021**, and the timing for compliance with the IM requirements after the end of the phased compliance schedule. The proposed amendment would align certain aspects of the CFTC Margin Rule with the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions' Framework for margin requirements for non-centrally cleared derivatives. CFTC also proposed to allow SDs and MSPs subject to the CFTC Margin Rule to use the risk-based model calculation of IM of a counterparty that is a CFTC-registered SD or MSP to determine the amount of IM to be collected from the counterparty and to determine whether the IM threshold amount for the exchange of IM has been exceeded such that documentation concerning the collection, posting, and custody of IM would be required. Comments are due **10/23/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-18303.pdf>. *Federal Register*, Vol. 85, No. 185, 09/23/2020, 59702-59718.

CFTC Proposes Amendments to Recent Bankruptcy Proceedings Proposed Rule.

In April of 2020, CFTC proposed amendments to its regulations governing the bankruptcy proceedings of commodity brokers. In light of comments on the proposed amendments, CFTC proposes a revision of the proposed amendments with respect to a particular issue, specifically, efforts to foster a resolution proceeding under Title II of the Dodd-Frank Act. Please see the proposed rule for details regarding the amendments to the April proposal. Comments regarding the most recent amendments are due **10/26/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-21005.pdf>. *Federal Register*, Vol. 85, No. 186, 09/24/2020, 60110-60115.

SEC Issues Final Rule to Amend Application Procedures Under the Investment Company Act.

The Securities and Exchange Commission (SEC) issued a final rule to amend its rules under the Investment Company Act to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a rule to establish an internal timeframe for review of applications outside of such expedited procedure. In addition, SEC adopted an amendment to its rules under the Investment Company Act to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days. The final rule is effective **06/14/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-14884.pdf>. *Federal Register*, Vol. 85, No. 178, 09/15/2020, 57186-57190.

SEC Issues Final Rule on Regulation S-K.

SEC issued a final rule to adopt amendments to modernize the description of business, legal proceedings, and risk factor disclosures that registrants are required to make pursuant to Regulation S-K. The disclosure items have not undergone significant revisions in over 30 years. The amendments update the rules to account for developments since adoption or last revision, to improve disclosure for investors, and to simplify compliance for registrants. Specifically, the amendments are intended to improve the readability of disclosure documents, as well as discourage repetition and the disclosure of information that is not material. The final rule is effective **11/09/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-19182.pdf>. *Federal Register*, Vol. 85, No. 196, 09/08/2020, 63726-63761.

SEC Issues Final Accredited Investor Rule.

SEC issued a final rule to adopt amendments to the definition of "accredited investor" in SEC rules to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition. The amendments are intended to update and improve the definition to identify more effectively investors that have sufficient knowledge and expertise to participate in investment opportunities that do not have the rigorous disclosure and procedural requirements, and related investor protections, provided by registration under the Securities Act. SEC also adopted amendments to the "qualified institutional buyer" definition in Rule 144A under the Securities Act to expand the list of entities that are eligible to qualify as qualified institutional buyers. The final rule is effective **12/08/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-19189.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64234-64278.



Regulatory Spotlight

SEC Issues Order Designating Certain Professional Licenses as Qualified Natural Persons for Accredited Investor Status.

SEC issued an order to designate the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), and the Investment Adviser Representative license (Series 65) as qualifying natural persons for accredited investor status. Accordingly, pursuant to Rule 501(a)(10) of Regulation D under the Securities Act, the identified professional licenses will qualify natural persons holding such licenses in good standing as accredited investors under Rule 501(a)(10). The order is effective **12/08/2020**. The order may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-19188.pdf>. *Federal Register*, Vol. 85, No. 197, 10/09/2020, 64234.

SEC Seeks Comment on Regulation S-T.

SEC seeks comment regarding a proposed new rule under Regulation S-T. The proposal would specify several actions that SEC, in its administration of the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR), may take to promote the reliability and integrity of EDGAR submissions. In addition, the proposed rule would set forth a process for SEC to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable. Comments are due **10/19/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-18825.pdf>. *Federal Register*, Vol. 85, No. 181, 09/17/2020, 58018-58023.

NCUA Issues Chartering and Field of Membership Final Rule.

The National Credit Union Administration (NCUA) issued a final rule to amend its chartering and field of membership (FOM) rules with respect to applicants and existing federal credit unions (FCUs) seeking a community charter approval, expansion, or conversion, in response to an August 2019 opinion and order issued by the D.C. Circuit Court of Appeals. First, NCUA re-adopted a provision to allow an applicant to designate a Combined Statistical Area (CSA), or an individual, contiguous portion thereof, as a well-defined local community (WDLC), provided that the chosen area has a population of 2.5 million or less. Second, with respect to communities based on a Core-Based Statistical Area (CBSA), or a portion thereof, NCUA provided additional explanation to support its decision to eliminate the requirement to serve the CBSA's core area as provided for in its comprehensive 2016 FOM rulemaking known as FOM1. Third, NCUA clarified existing requirements and adds an explicit provision to its rules regarding potential discrimination in the FOM selection for CSAs and CBSAs. NCUA also issued a correction to the final rule effective date. The original final rule effective date was **09/14/2020**. The correction makes the final rule effective date be **10/14/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-16988.pdf>. *Federal Register*, Vol. 85, No. 178, 09/14/2020, 56498-56514. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-16/pdf/C1-2020-16988.pdf>. *Federal Register*, Vol. 85 No. 180, 09/16/2020, 57666

NCUA Issues Final Rule to Correct Regulations.

NCUA issued a final rule to make technical amendments to various provisions of NCUA's regulations. The amendments correct minor technical problems and improve clarity. NCUA periodically issues a technical amendments rule to correct minor typographical errors, inaccurate legal citations, or superfluous or outdated regulatory provisions throughout NCUA's regulations. The final rule is effective **10/02/2020**, except for the corrections to the final rule which amends 12 CFR part 702, which is effective **01/01/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-17372.pdf>. *Federal Register*, Vol. 85, No. 192, 10/02/2020, 62207-62214.

DOL Issues Temporary Rule Regarding Paid Leave Under FFCRA.

The Department of Labor (DOL) promulgated revisions and clarification to a temporary rule issued on **04/01/2020**, which implemented public health emergency leave under Title I of the Family and Medical Leave Act (FMLA) and emergency paid sick leave to assist working families facing public health emergencies arising out of the Coronavirus Disease 2019 (COVID-19) global pandemic, in response to an **08/03/2020**, district court decision finding certain portions of that rule invalid. Both types of emergency paid leave were created by a time-limited statutory authority established under the Families First Coronavirus Response Act (FFCRA) and are set to expire **12/31/2020**. The FFCRA and its implementing regulations, including the temporary rule, do not affect the FMLA after **12/31/2020**. The temporary final rule is effective **09/16/2020**, through **12/31/2020**. The temporary final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-16/pdf/2020-20351.pdf>. *Federal Register*, Vol. 85, No. 180, 09/16/2020, 57677-57691.



Regulatory Spotlight

DOL Issues Proposed Rule to Revise Interpretation of Independent Contractor Status under FLSA.

DOL issued a proposed rule to revise its interpretation of independent contractor status under the Fair Labor Standards Act (FLSA) in order to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy. The proposal would introduce a new part to Title 29 of the Code of Federal Regulations (CFR) to set forth DOL's interpretation of the FLSA as relevant to the question whether workers are "employees" or are independent contractors under FLSA. The proposed rule would be DOL's sole and authoritative interpretation of independent contractor status under FLSA. As such, it would replace DOL's previous interpretations of independent contractor status under FLSA in certain contexts, including interpretations found at 29 CFR 780.330(b) (interpreting independent contractor status under FLSA for tenants and sharecroppers) and 29 CFR 788.16(a) (interpreting independent contractor status under FLSA for certain forestry and logging workers). DOL believes the proposal will significantly clarify to stakeholders how to distinguish between employees and independent contractors under FLSA. Comments are due **10/26/2020**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-25/pdf/2020-21018.pdf>. *Federal Register*, Vol. 85, No. 187, 09/25/2020, 60600-60639.

CDFI Issues NOAA Inviting Applications for the CY 2020 Allocation Round of the New Markets Tax Credit Program.

The Community Development Financial Institutions Fund (CDFI) announced a notice of allocation availability (NOAA) issued in connection with the calendar year (CY) 2020 allocation round of the New Markets Tax Credit Program (NMTC Program). Through the NMTC Program, CDFI provides authority to certified CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. Through the NOAA, CDFI announced the availability of \$5 billion of NMTC Allocation authority in this Allocation Round. Please see the NOAA for application information. The NOAA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-20931.pdf>. *Federal Register*, Vol. 85, No. 185, 09/23/2020, 59853-59862. ■

Compliance Notes

▲ Agencies issued an order on **10/05/2020**, granting an exemption from CIP requirements for loans extended by banks (and their subsidiaries) subject to the jurisdiction of the federal banking agencies to all customers to facilitate purchases of property and casualty insurance policies. Premium finance loans provide short-term financing to business and non-business borrowers to facilitate their purchases of property and casualty insurance policies. According to FinCEN, these types of loans present a low risk of money laundering because of the purpose for which the loans are extended and limitations on the ability of a customer to use such funds for any other purpose. Moreover, according to FinCEN, property and casualty insurance policies themselves are not an effective means for transferring illicit funds. The order may be viewed at: www.fincen.gov/sites/default/files/2020-10/Order%20for%20CIP%20Exemption%2010-5-2020%20Publication%20508%20Compliant.pdf

▲ OCC released its *Community Reinvestment Act 2020 Rule Small Bank Compliance Guide* and other supporting materials pertaining to community banks subject to CRA. In addition to the compliance guide, OCC also released an initial illustrative list of qualifying activities and a form to request consideration of items to be added to the list of qualifying activities. The CRA resources may be viewed at: <https://occ.gov/cra>

▲ CFPB rescinded Bulletin 2015-05: RESPA, Compliance with Marketing Service Agreements, stating the bulletin lacked clarity. In its place, CFPB has issued new RESPA Section 8 FAQs. The rescission may be viewed at: www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/bulletin-respa-compliance-marketing-services-agreements/. The revised RESPA Section 8 FAQs may be viewed at: www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/real-estate-settlement-procedures-act/real-estate-settlement-procedures-act-faqs/#respa-section-8-general



Compliance Notes

▲ FinCEN issued FIN-2020-A007 to alert financial institutions to unemployment insurance (UI) fraud observed during the COVID-19 pandemic. Many illicit actors are engaged in fraudulent schemes that exploit vulnerabilities created by the pandemic. The advisory contains descriptions of COVID-19 related UI fraud, associated financial red flag indicators, and information on reporting suspicious activity. The advisory is based on FinCEN's analysis of COVID-19 related information obtained from BSA data, open source reporting, and law enforcement partners. FinCEN has identified the activities of: fictitious employer-employee fraud, employer-employee collusion fraud, misrepresentation of income, insider fraud, and identity-related fraud as representative types of fraud to be aware of occurring due to the pandemic. FIN-2020-A007 may be viewed at: www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf

FinCEN also issued FIN-2020-A006 to alert financial institutions to predominant trends, typologies, and potential indicators of ransomware and associated money laundering activities. The advisory provides information on: (1) the role of financial intermediaries in the processing of ransomware payments; (2) trends and typologies of ransomware and associated payments; (3) ransomware related financial red flag indicators; and (4) reporting and sharing information related to ransomware attacks. The information contained in the advisory is derived from FinCEN's analysis of cyber- and ransomware related BSA data, open source reporting, and law enforcement partners. FIN-2020-A006 may be viewed at: www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf

Lastly, FinCEN also issued FIN-2020-008 to help save lives and to protect the most vulnerable from predators and cowards who prey on the innocent and defenseless for money and greed. The advisory supplements the 2014 FinCEN, *Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking*. Human traffickers and their facilitators exploit adults and children in the United States, and around the world, for financial gain, among other reasons. Victims are placed into forced labor, slavery, involuntary servitude, and peonage, and/or forced to engage in commercial sex acts. Since the 2014 Advisory, FinCEN collaborated with law enforcement to identify 20 new financial and behavioral indicators of labor and sex trafficking, and four additional typologies. The new advisory provides new information to assist in identifying and reporting human trafficking, and to aid the global effort to combat this crime; and two illustrative recent case studies. The 2014 Advisory remains relevant, and provides information related to human smuggling, in addition to human trafficking. FIN-2020-008 may be viewed at: www.fincen.gov/sites/default/files/advisory/2020-10-15/Advisory%20Human%20Trafficking%20508%20FINAL_0.pdf

▲ OCC announced rescission of its "Truth in Lending Act (TILA)" booklet of the *Comptroller's Handbook*. OCC instructed examiners and bankers to instead rely on the revised interagency examination procedures for TILA. Also rescinded is OCC Bulletin 2018-31, "Truth in Lending Act: Revised" *Comptroller's Handbook* Booklet and Rescissions. The recent revisions to the interagency examination procedure related to TILA reflect: (1) amendments to Regulation Z that relate to the TILA-RESPA Integrated Mortgage Disclosure rule; (2) amendments to TILA relating to the Economic Growth, Regulatory Relief, and Consumer Protection Act, including provisions relating to high-cost loans, appraisals, and student lending; (3) an additional type of QM for insured depository institutions with less than \$10 billion in assets; and (4) an additional type of escrow exemption for insured depository institutions with less than \$10 billion in assets. OCC's announcement may be viewed at: www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-84.html

▲ CFPB filed a report of its assessment of the RESPA/TILA integrated mortgage disclosures rule with Congress. In its assessment, CFPB used both its own research and external sources to evaluate the effectiveness of the rule in meeting the purposes and objectives of CFPB and the specific goals of the rule as stated by CFPB prior to the rule's effective date. The full report may be viewed at: www.consumerfinance.gov/data-research/research-reports/trid-rule-assessment/

▲ FRB released a supplementary *Senior Loan Officer Opinion Survey on Bank Lending Practices* to understand the experiences of domestically chartered banks with the Main Street Lending Program (MSLP). The survey consisted of a set of questions that focused on four areas: commercial and industrial (C&I) loan inquiries and banks' participation in the MSLP since mid-June, when lender registration started; banks' outlook regarding their participation in the program; factors that may have shaped banks' willingness to participate; and characteristics of borrowers inquiring and receiving MSLP loans. The survey may be viewed at: www.federalreserve.gov/data/sloos/sloos-202009.htm

▲ OCC released its Bank Supervision Operating Plan for FY 2021. The plan provides the foundation for policy initiatives and for supervisory strategies as applied to individual national banks, federal savings associations, federal branches, federal agencies, and technology service providers. OCC staff members use the plan to guide their supervisory priorities, planning, and resource allocations. The supervisory strategies for FY 2021 focus on: (1) credit risk management, commercial and residential real estate concentration



Compliance Notes

risk management, allowances for loan and lease losses, and allowances for credit losses; (2) cybersecurity and operational resilience; (3) BSA/AML compliance management; (4) compliance risk management associated with 2020 pandemic-related bank activities; (5) CRA performance; (6) fair lending examinations and risk assessments; (7) the impact of a low-rate environment and preparation for the phaseout of LIBOR; (8) proper oversight of significant third-party relationships; (9) change management over significant operational changes; and (10) payment systems products and services. OCC will provide periodic updates about supervisory priorities through the semiannual risk perspective in the fall and spring. The plan may be viewed at: www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-130.html

▲ FHA announced the availability of the first module on its FHA Catalyst technology platform for multifamily lenders doing business with FHA. The FHA Catalyst: Multifamily Applications module will allow eligible multifamily lenders to electronically submit applications for FHA insurance on multifamily properties. The new capability supports lenders in providing FHA-insured mortgage financing while working remotely because of the COVID-19 National Emergency. More information regarding the module may be viewed at: www.hud.gov/press/press_releases_media_advisories/HUD_No_20_172

▲ OFAC issued, *Advisory on Potential Sanctions Risks for Facilitating Ransomware*, to highlight the sanctions risks associated with ransomware payments related to malicious cyber-enabled activities. Demand for ransomware payments has increased during the COVID-19 pandemic as cyber actors target online systems that U.S. persons rely on to continue conducting business. Companies that facilitate ransomware payments to cyber actors on behalf of victims, including financial institutions, cyber insurance firms, and companies involved in digital forensics and incident response, not only encourage future ransomware payment demands but also may risk violating OFAC regulations. The advisory describes the sanctions risks and provides information for contacting relevant U.S. government agencies, including OFAC, if there is a reason to believe the cyber actor demanding ransomware payment may be sanctioned or otherwise have a sanctions nexus. The advisory may be viewed at: https://home.treasury.gov/system/files/126/ofac_ransomware_advisory_10012020_1.pdf ■

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



Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

OCTOBER 2020

- 6-7 **•Margin Management Workshop**
Virtual – \$295/attendee
- 8 **•BSA/AML Compliance Workshop**
Virtual – \$245/attendee, *certificate of attendance provided*
- 13-14 **•Personal Banker School***
Wisconsin Dells – \$450/attendee
- 15 **•Bank Directors Summit**
Virtual – \$150/attendee, *certificate of attendance provided*
- 15 **•Advanced Financial Statement & Cash Flow Analysis Workshop**
Virtual – \$245/attendee
- 16 **•Advanced Tax Return Analysis Workshop**
Virtual – \$245/attendee
- 20-21 **•Community Bankers for Compliance (CBC) – Session IV**
Virtual – Pricing Options Vary
- 21-22 **•Supervisor Boot Camp***
Wisconsin Dells – \$535/attendee
- 27-28 **•Compliance Forum: Session 2**
Virtual – Pricing Options Vary
- 29 **•IRA Essentials Workshops**
Virtual – \$225/attendee
- 30 **•Advanced IRA Workshops**
Virtual – \$225/attendee

NOVEMBER 2020

- 2-3 **•Deposit Compliance School***
Madison – \$535/attendee
- 3-4 **•LEAD360 Conference***
Virtual – \$595/bank – unlimited attendees!
- 5-6 **•Consumer Lending Boot Camp***
Madison – \$495/attendee
- 12 **•Human Resources Conference***
Wisconsin Dells & Virtual – \$225/first in-person attendee; \$125/each additional in-person attendee; \$450/bank for virtual connection

NOVEMBER 2020 *continued*

- 16-17 **•BOLT Winter Leadership Summit***
Stevens Point & Virtual – \$150/attendee
- 16-19 **•FIPCO Software & Compliance Forum: Loans & Mortgage***
Virtual Half-Days – \$459/bank – unlimited attendees!

DECEMBER 2020

- 10 **•Enterprise Risk Management Peer Group**
Virtual – \$39/attendee

JANUARY 2021

- 7 **•Midwest Virtual Economic Forecast Forum**
Virtual
- 26-27 **•Community Bankers for Compliance (CBC) – Session I**
Virtual – Membership/Pricing Options Vary

FEBRUARY 2021

- 1-3 **•Bank Executives Conference***
Wisconsin Dells
- 23 **•Compliance Forum: Session 3***
Wausau – Membership/Pricing Options Vary
- 24 Wisconsin Dells – Membership/Pricing Options Vary
- 25 Milwaukee – Membership/Pricing Options Vary

KEY: Color-Coded Event Descriptions...

• **Conferences | Summits** – One or more days, based on hot topics, industry news and best practices; scheduled time for peer networking. • **Schools | Boot Camps** – Focused on a particular area of banking, allowing for a deep dive into that focused area over the course of two to six days. • **Workshops | Seminars** – One-day programs, sometimes in multiple locations, focused on a specific topic or area of banking. • **WBA-Hosted Webinars** – Two-hour webinars instructed with a particular focus on Wisconsin state law and rules. • **Other Events**.

(continued)

Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

APRIL 2021

- **Agricultural Bankers Conference***
7-8 Wisconsin Dells - \$300/ag section member;
\$350/non-section member banker
- **Introduction to Commercial Lending School***
19-21 Madison – \$795/attendee
- **Women in Banking Conference***
26 Wisconsin Dells - \$250/each first two attendees;
\$195/each additional attendee
- **Community Bankers for Compliance
(CBC) – Session II***
27 Stevens Point – Membership/Pricing Options Vary
28 Madison – Membership/Pricing Options Vary

MAY 2021

- **School of Bank Management**
10-14 Madison – \$1,395/attendee
- **Trust Conference***
18 Madison
- **Credit Analysis Boot Camp**
20-21 Madison – \$495/attendee
- **BSA/AML Workshops***
25 Eau Claire – \$245/attendee
26 Neenah – \$245/attendee
27 Madison – \$245/attendee

JUNE 2021

- **BOLT Summer Leadership Summit***
10-11 Wisconsin Dells – \$150/attendee
- **Credit Analysis Boot Camp**
24-25 Green Bay – \$495/attendee

JULY 2021

- **Community Bankers for Compliance
(CBC) – Session III**
27-28 Virtual – Membership/Pricing Options Vary
- **Advanced Financial Statement & Cash Flow
Analysis Workshop***
29 Madison – \$245/attendee
- **Advanced Tax Return Analysis Workshop***
30 Madison – \$245/attendee

AUGUST 2021

- **Chairman's Member Appreciation Golf Outing**
19 Wisconsin Dells
- **Family-owned and Closely Held Bank Strategic
Retreat***
25-26 Galena, IL – \$295/attendee

SEPTEMBER 2021

- **Management Conference**
13-14 Green Bay
- **Secur-I.T. Conference**
22-23 Wisconsin Dells
- **FDIC Bank Directors College***
28 Stevens Point
29 Madison

OCTOBER 2021

- **Community Bankers for Compliance
(CBC) – Session IV***
26 Wausau area – Membership/Pricing Options Vary
27 Madison area – Membership/Pricing Options Vary

***IMPORTANT INFORMATION**

Attendance at in-person events will be limited to allow for physical distancing and a more spacious room set-up. Please visit <https://www.wisbank.com/education/engagement-center-guidelines/> for more information.