

Compliance Journal

Special Focus

Year-end Frequently Asked Escrow Questions

While there has not been a recent significant change to escrow requirements, it is WBA's understanding that many banks pay taxes from escrow by December 20th every year. Around this time, many questions arise as to State and Federal requirements regarding escrow accounts. Furthermore, given the impacts of the COVID-19 pandemic, many borrowers may have been, or currently are, in deferral or forbearance, resulting in insufficient escrow balances. This article presents several questions and answers to refresh banks on relevant requirements, and important considerations, regarding escrow accounts both with respect to the pandemic, and more generally.

Q1: Does Wisconsin have rules regarding disbursements from tax escrows?

A1: Yes. Wis. Stat. section 138.052(5m) governs escrow accounts required to be maintained to pay taxes or insurance in connection with consumer-purpose loans secured by a first lien real estate mortgage or equivalent security interest in the borrower's principal dwelling. For example, the requirement applies to covered purchase money, refinance, and home equity transactions but does not apply to loans that are business or agricultural purpose, or manufactured home transactions. It also does not apply to voluntary escrow accounts. If a bank maintains a voluntary escrow account, it should ensure it has adequate documentation to evidence that fact.

For covered loans, banks must provide an escrow notice before closing giving the borrower options regarding how the bank will make payments from the amount escrowed:

1. Escrow agent sends a check by December 20 to the borrower for the amount held in escrow for the payment of property taxes made payable to the borrower or to the borrower and the taxing authority.
2. Escrow agent pays the property taxes by December 31 if the escrow agent has received a tax statement for the property by December 20.
3. Escrow agent pays the property taxes when due.

This notice is not required under section 138.052(5m) if the escrow agent's practice is to pay the borrower the amount held in escrow for the payment of property taxes by December 20, or to send a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and taxing authority.

Regardless of whether a notice under state law may not be required, banks are reminded that a voluntary agreement is still required under the Real Estate Settlement Procedures Act (RESPA) to pay property taxes annually as permitted under Wis. Stat. section 138.052(5m). See the discussion below regarding the interconnection between state and federal law.

Q2: Does RESPA have rules regarding disbursements from tax escrows?

A2: Yes. RESPA section 1024.17(k) prescribes rules that apply to escrow accounts established in connection with RESPA-covered loans to pay taxes, insurance, or other charges. If the terms of the loan require the borrower to make payments to an escrow account, the bank must make disbursements in a timely manner. A timely manner means payment by the disbursement date, so long as the loan account is not more than 30 days overdue.

If a taxing authority offers a bank a choice between annual and installment disbursements, RESPA includes additional requirements. Generally, disbursements must be made on an installment basis depending on whether the taxing authority offers a discount, or charges additional fees, for installment disbursements. In Wisconsin, where taxes may be paid in annual or installment payments, and the taxing authority does not offer a discount for payments on an annual basis nor does it impose any additional charge or fee for installment payments, the bank must make disbursements on an installment basis, unless the bank and borrower agree to another disbursement alternative.



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Most property taxes in Wisconsin may be payable in two installments. If the first installment is paid by January 31st, the second installment may be paid by July 31st. Because no discount is available for making annual payments, and no penalty is imposed for making installment payments, RESPA requires property taxes payable in this manner to be disbursed on an installment basis, unless the borrower voluntarily agrees, in writing, to an annual disbursement.

Q3: How do the requirements under Wis. Stat. section 138.052(5m) and RESPA section 1024.17 work together?

A3: RESPA preempts State law only to the extent of any inconsistency. Generally, escrows governed by section 138.052(5m) must also comply with RESPA, and banks must disburse tax escrows in installments, or as otherwise agreed to by the borrower. Thus, banks will want to consider their written agreement as to the borrower's choice of disbursement methods, and as discussed in Q1 above, a bank may pay by December 20th by check.

As RESPA requires taxes to be disbursed in installments, and State law allows more flexibility in how taxes are paid, in order for a bank to disburse money from a required escrow account, annually under the section 138.052(5m) December 20th method, RESPA requires the customer's voluntary agreement of that option. And, while notice under section 138.052(5m) may not be required, RESPA still requires the customer's voluntary agreement to pay by December 20th. See the discussion in Q2. FIPCO's WBA Tax Escrow Option Election form meets the requirements under Wis. Stat. 138.052(5m) and also serves as the voluntary agreement to disburse property taxes out of escrow in any method other than installments to comply with RESPA.

Q4: What if a deficiency occurs before disbursement?

A4: As discussed in Q2, RESPA generally requires the bank to disburse funds in a timely manner. If a deficiency exists, the bank must still cover the amount due. Upon advancing the funds, the bank may seek repayment from the borrower after performing an escrow account analysis.

If the deficiency is less than one month's escrow account payment, then the bank:

1. May allow the deficiency to exist and do nothing to change it;
2. May require the borrower to repay the deficiency within 30 days; or
3. May require the borrower to repay the deficiency in 2 or more equal monthly payments.

If the deficiency is greater than or equal to 1 month's escrow payment, the bank may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

If the borrower is not current, then the bank may recover the deficiency pursuant to the terms of the mortgage loan documents. For example, language within the WBA 428 Real Estate Mortgage states that if the escrowed funds held by bank are not sufficient to pay the escrow account items when due, bank may notify consumer in writing, and consumer shall pay bank the amount necessary to make up the deficiency in a manner described by bank or as otherwise required by applicable law.

Furthermore, for loans that are not covered by RESPA (*i.e.*, the escrow account is not required), the bank will need to determine how the deficiency will be covered, either by the borrower, or the bank, pursuant to the terms of its agreement.

Q5: How does a payment deferral or forbearance affect escrow considerations?

A5: As a result of the pandemic, bank may have deferred or forbore payments for some of its borrowers. Bank should consider its deferral and forbearance agreements to confirm whether this

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deferral or forbearance included escrow payments. Even if it did not, financial distress caused by the pandemic may have resulted in more escrow shortages and deficiencies than typical. Banks should consider how they are monitoring loans for payments, and accounting for expected, and unexpected shortages. Specific attention may need to be paid to escrow balances for loans in deferral, forbearance, or modification. Banks should identify loans that will be short, and determine how the deficiency will be handled, with the above considerations in mind.

Q6: What is the escrow rate for 2021, as set by section 138.052 Wis. Stat?

A6: The Wisconsin Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts for residential mortgage loans subject to Wisconsin Statute section 138.052(5) to be **0.11%** for 2021. The interest rate shall remain in effect through December 31, 2021.

Q7: Does sec. 138.052 Wis. Stat. require Wisconsin banks to pay interest on escrow accounts?

A7: Not for loans originated after April 18, 2018. 2017 Wisconsin Act 340 eliminated the requirement that a financial institution pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of Act 340. Thus, a Wisconsin financial institution is not required by law to pay interest on any escrow account maintained in association with a loan originated on or after April 18, 2018.

Wisconsin Statute section 138.052 previously required financial institutions to pay interest on the balance on any required escrow accounts. As discussed above, section 138.052 applies to consumer-purpose loans secured by a first lien or first lien equivalent in a 1-4 family dwelling that is used as the borrower's principal residence. Banks must continue to pay interest on escrow accounts they required prior to the effective date of Act 340. However, for any escrow account associated with a loan originated after the effective date of Act 340, section 138.052 no longer requires payment of interest. A bank should also consider the terms of its contract as to whether any payment of interest is part of the agreement.

Q8: Bank is closing loan in December for which bank will require escrow for the payment of taxes. The first mortgage payment will be in February. Can bank escrow for 2020 taxes to be paid in 2021?

A8. No. RESPA's escrow collection rules are prospective in nature. Bank should only collect for 2021 taxes to be paid either in December 2021 in a lump sum (with borrower's permission as outlined above) or in installments. Bank should not collect for anything between December 1 and 31st because nothing is owing during that time as the bank should only be collecting for 2021 taxes. Bank should not be collecting for 2020 taxes for payment in 2021. Borrower should be on his/her own to pay 2020 taxes. ■

CFPB Issues Revised General QM and New Seasonal QM Rules

Early this month, the Bureau of Consumer Financial Protection (CFPB) released two final rules regarding the rules affecting qualified mortgages (QM) under Regulation Z. This article is a highlight of the key provisions of the two new rules.

Background and Rationale for Revised General QM Rule

Under Regulation Z, the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the ATR/QM Rule's requirements for QMs obtain certain protections from liability. The ATR/QM Rule defines several categories of QMs, including the General QM category.

General QMs must comply with the ATR/QM Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. For General QMs, the consumer's debt-to-income (DTI) ratio must not exceed 43 percent. The ATR/QM Rule requires that creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in appendix Q of Regulation Z.



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The primary reason behind why CFPB revised the General QM rule is because of conditions related to another QM category referred to as the Temporary QM. The Temporary category of QMs defined in the ATR/QM Rule consists of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QMs and (2) are eligible to be purchased or guaranteed by the GSEs (*i.e.*, Fannie Mae and Freddie Mac) while under the conservatorship of the Federal Housing Finance Agency (FHFA).

Unlike for General QMs, the ATR/QM Rule does not prescribe a DTI limit for Temporary GSE QMs. Thus, a loan can qualify as a Temporary GSE QM even if the consumer's DTI ratio exceeds 43 percent, as long as the loan is eligible to be purchased or guaranteed by either of the GSEs and satisfies the other Temporary GSE QM requirements. In addition, for Temporary GSE QMs, the ATR/QM Rule does not require creditors to use appendix Q to determine the consumer's income, debt, or DTI ratio.

When first promulgated in 2013, the Temporary GSE QM loan definition was set to expire with respect to each GSE when that GSE ceased to operate under federal conservatorship or on January 10, 2021, whichever comes first. The GSEs are currently under federal conservatorship. Today, Temporary GSE QM originations continue to represent a large share of the residential mortgage loan market. Without changes to the General QM loan definition, a significant number of Temporary GSE QMs would not be made or would be made at higher prices when the Temporary GSE QM loan definition expires, or after January 2021. The affected loans would include loans for which the consumer's DTI ratio is above 43 percent or the creditor's method of documenting and verifying income or debt is incompatible with appendix Q.

On October 20, 2020, CFPB issued a final rule to amend Regulation Z to replace the January 10, 2021, sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Reg Z. The extension of the sunset date was meant to help ensure consumers remain able to have access to mortgage loan products with as little disruption to the marketplace as possible.

Revised General QM

In its December final rule, CFPB amended Regulation Z to replace the existing General QM loan definition with its 43 percent DTI limit with a price-based General QM loan definition. Under the final rule, a loan meets the General QM loan definition in section 1026.43(e)(2) only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than 2.25 percentage points as of the date the interest rate is set. The final rule provides higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions.

The thresholds set forth in the General QM Final Rule are:

- For a first-lien covered transaction with a loan amount greater than or equal to \$110,260, 2.25 percentage points;
- For a first-lien covered transaction with a loan amount greater than or equal to \$66,156 but less than \$110,260, 3.5 percentage points;
- For a first-lien covered transaction with a loan amount less than \$66,156, 6.5 percentage points;
- For a covered transaction secured by a manufactured home with a loan amount less than \$110,260, 6.5 percentage points;
- For a covered transaction secured by a manufactured home with a loan amount equal to or greater than \$110,260, 2.25 percentage points;
- For a subordinate-lien covered transaction with a loan amount greater than or equal to \$66,156, 3.5 percentage points; and
- For a subordinate-lien covered transaction with a loan amount less than \$66,156, 6.5 percentage points.

If a loan's interest rate may or will change in the first five years after the date on which the first regular periodic payment will be due, the creditor must treat the highest interest rate that may apply during that five years as the loan's interest rate for the entire loan term when determining the APR for purposes of the thresholds. See the final rule for additional information on determining the APR, the APOR, and the applicable threshold.



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The final rule requires that the creditor consider the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, debt obligations, alimony, child support, and DTI ratio or residual income. A creditor must maintain written policies and procedures for how it will take into account these factors.

A creditor must also retain documentation showing how it met the ability-to-repay determination, including how it applied its policies and procedures, in order to meet the requirement to consider and thereby meet the requirements for a QM under the General QM category. The documentation may include, for example, an underwriter worksheet or a final automated underwriting system certification, in combination with the creditor's applicable underwriting standards and any applicable exceptions described in its policies and procedures, that shows how these required factors were taken into account in the creditor's ability-to-repay determination.

In addition to removing the 43 percent DTI ratio limit, the final rule removes appendix Q. A creditor, however, is still required to verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. A creditor is only required to verify the income or assets the creditor relies on to evaluate the consumer's repayment ability. For example, if a consumer's application states that the consumer earns a salary and is paid an annual bonus and the creditor relies on only the consumer's salary to evaluate the consumer's repayment ability, the creditor need verify only the salary.

The final rule provides that a creditor may verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, which summarizes the information in a consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. A creditor may obtain a copy of a tax-return transcript or a filed tax return directly from the consumer or from a service provider. A creditor need not obtain the copy directly from the IRS or other taxing authority.

To assist with the verification process in light of the removal of appendix Q, CFPB included in the final rule several sources that may be used by creditors. In particular, a creditor can comply with Regulations Z's revised verification requirement if it complies with verification standards in one or more of the following manuals:

- Chapters B3-3 through B3-6 of the Fannie Mae Single-Family Selling Guide, published June 3, 2020;
- Sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020;
- Sections II.A.1 and II.A.4-5 of the Federal Housing Administration's Single-Family Housing Policy Handbook, issued October 24, 2019;
- Chapter 4 of the U.S. Department of Veterans Affairs' (VA) Lenders Handbook, revised February 22, 2019;
- Chapter 4 of the U.S. Department of Agriculture's (USDA) Field Office Handbook for the Direct Single-Family Housing Program, revised March 15, 2019; and
- Chapters 9 through 11 of the USDA's Handbook for the Single-Family Guaranteed Loan Program, revised March 19, 2020.

Under the General QM final rule, to qualify for General QM treatment, a loan still cannot have negative amortization, interest-only, balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits. The final rule does not affect QM definitions that apply to Federal Housing Administration, U.S. Department of Veterans Affairs, U.S. Department of Agriculture, or Rural Housing Service loans.

Seasoned QM

CFPB has also created a new category of QMs—the Seasoned QM. A Seasoned QM will receive a safe harbor from liability under the ATR/QM Rule if certain product restrictions and underwriting requirements are met. A loan made by any creditor, regardless of size, is eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM final rule.



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To qualify as a Seasoned QM, the loan must: be secured by a first lien, have a fixed rate with regular, substantially equal periodic payments that fully amortize the loan (*i.e.*, no balloon payments), have a term that does not exceed thirty (30) years, and not be a high-cost mortgage loan as defined by Regulation Z section 1026.32(a). The loan must also meet the points and fees limits applicable to the ATR/QM rule.

In review of the consumer's DTI ratio or residual income, income or assets (other than the value of the dwelling), and debts, a creditor is required to apply the same underwriting consider and verify rules of the revised General QM rule as discussed earlier in this article to underwriting a Seasoned QM loan.

The final rule also contains performance standards that must be met by the consumer for the loan to qualify as a Seasoned QM at the end of its seasoning period. In particular, the loan cannot have more than two delinquencies of thirty (30) days and cannot have a delinquency of sixty (60) days or more at the end of the seasoning period. The rule further discusses what it considered a delinquency.

A Seasoned QM must also be held by the creditor in its portfolio until the end of a thirty-six (36) month "seasoning" period. The final rule further clarifies that in order for the loan to be considered held in a creditor's portfolio, the loan cannot be subject, at consummation, to a commitment to be acquired by another person, and legal title to the loan cannot be sold, assigned or otherwise transferred before the end of the seasoning period. The final rule allows for an exception to that general requirement if the loan need be sold, assigned, or transferred pursuant to a capital restoration or prompt correction action plan, or under conservatorship, receivership, or bankruptcy actions, or pursuant to an order or agreement by a creditor's state or federal regulator. The final rule also allows for a transfer pursuant to a merger or acquisition of the creditor; see the final rule for further details.

The 36-month seasoning period begins on the date on which the first periodic payment is due after consummation. The seasoning period may be extended in two circumstances. First, the seasoning period may be extended if there is a delinquency of thirty (30) days or more at the end of the final month of the seasoning period. The seasoning period is extended until there is no delinquency. Second, the seasoning period will be extended if the consumer is under a temporary payment accommodation in connection with a disaster or pandemic-related national emergency. In such circumstance, the time spent in a temporary payment accommodation extended for that unique purpose does not count towards the seasoning period. The seasoning period can only resume after the temporary payment accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change.

Conclusion

CFPB has revised the General QM category to better accommodate the sunset of the Temporary GSE category. The revised General QM category no longer has a 43 percent DTI ratio requirement and creditors have greater flexibility in underwriting as appendix Q has been removed as the sole means to consider and verify consumers' assets, income, and debts. CFPB also established a new Seasoned QM which allows creditors to obtain QM status and therefore receive safe harbor from liability under the ATR/QM Rule after a seasoning period if certain product restrictions, underwriting requirements, and performance standards are met.

The General QM rule is effective sixty (60) days after publication of the rule in the *Federal Register*. Mandatory compliance with the rule is **July 1, 2021**. Creditors have the option to comply with the revised General QM definition for covered transactions for which creditors receive an application on or after the effective date based upon publication, and before the July mandatory compliance date. The Seasoned QM rule is effective sixty (60) days after publication of the rule in the *Federal Register*.

The General QM final rule may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_atr-qm-general-qm-final-rule_2020-12.pdf

The Seasoned QM final rule may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_atr-qm-seasoned-qm-final-rule_2020-12.pdf

A red-line markup of Regulation Z may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_atr-qm-final-rule-amendments_unofficial-redline_2020-12.pdf ■



Regulatory Spotlight

Retain Current HPML Exemption Threshold Level for 2021.

The Bureau of Consumer Financial Protection (CFPB), Board of Governors of the Federal Reserve System (FRB), Office of the Comptroller of the Currency (OCC) issued a final rule to amend the official interpretations for the regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for “higher-risk mortgages,” termed “higher-priced mortgage loans” or “HPMLs” in the agencies’ regulations. CFPB, FRB, OCC, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the agencies) jointly issued final rules to implement the requirements related to HPMLs, effective **01/18/2014**. The agencies’ rules exempted, among other loan types, transactions of \$25,000 or less, and required that the loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the agencies will not adjust the exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the annual percentage increase in the CPI-W as of **06/01/2020**, the exemption threshold will remain at \$27,200, effective **01/01/2021**. The final rule is effective **01/01/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-25872.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79385-79389.

Agencies Retain Current Regulation M Exemption Threshold for Consumer Leases.

The Bureau of Consumer Financial Protection (CFPB) and Board of Governors of the Federal Reserve System (FRB) (collectively, the agencies) issued a final rule to amend the official interpretations and commentary for the agencies’ regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Act amended CLA to require that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the agencies will not adjust the exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the annual percentage increase in the CPI-W as of **06/01/2020**, the exemption threshold will remain at \$58,300 effective **01/01/2021**. The final rule is effective **01/01/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-25871.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79390-79394.

Agencies Retain Current Regulation Z Exemption Threshold for Consumer Credit Transactions.

The Bureau of Consumer Financial Protection (CFPB) and Board of Governors of the Federal Reserve System (FRB) (collectively, the agencies) issued a final rule to amend the official interpretations and commentary for the agencies’ regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Act amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the agencies will not adjust the exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the annual percentage increase in the CPI-W as of **06/01/2020**, the exemption threshold will remain at \$58,300 effective **01/01/2021**. The final rule is effective **01/01/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-25870.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79394-79399.

Agencies Issue Interim Final Rule Regarding Temporary Asset Threshold.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency (OCC) (collectively, the agencies) issued an interim final rule to permit national banks, savings associations, state banks, bank holding companies, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations with under \$10 billion in total assets as of **12/31/2019**, (community banking organizations) to use asset data as of **12/31/2019**, in order to determine the applicability of various regulatory asset thresholds during calendar years 2020 and 2021. For the same reasons, FRB has temporarily revised the instructions to a number of its regulatory reports to provide that community banking organizations may use



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asset data as of **12/31/2019**, in order to determine reporting requirements for reports due in calendar years 2020 or 2021. The interim final rule is effective **12/02/2020**. Comments are due **02/01/2021**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-02/pdf/2020-26138.pdf>. *Federal Register*, Vol. 85, No. 232, 12/02/2020, 77345-77364.

Agencies Seek Comment on Revisions to Call Reports Due to COVID-19 Related Asset Growth.

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) seek comment on revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051). The agencies seek comment on an adjustment to the measurement date for certain total asset thresholds that trigger additional reporting requirements in the Call Reports for report dates in 2021 due to institution asset growth in 2020 related to participation in various COVID-19 related stimulus activities. Comments are due **01/29/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-30/pdf/2020-26388.pdf>. *Federal Register*, Vol. 85, No. 230, 11/30/2020, 76658-76662.

CFPB Issues Final Rule Relating to Disclosure of Records and Information.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under federal consumer financial law. The final rule revises subparts A and D of section 1070 of title 12 of the Code of Federal Regulations. The revisions to subpart A address definitions of terms that are used throughout the remainder of the part. CFPB has revised several of the definitions to clarify CFPB's intended meanings and practices. CFPB has also included one new definition and deleted one definition in the final rule. The revisions to subpart D pertain to the protection and disclosure of confidential information that CFPB generates and receives during the course of its work. The final rule is effective **12/24/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-24/pdf/2020-24113.pdf>. *Federal Register*, Vol. 85, No. 227, 11/24/2020, 75194-75220.

CFPB Issues Final Debt Collection Practices Rule.

CFPB issued a final rule to revise Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for state application for exemption from the provisions of FDCPA. CFPB has finalized federal rules governing the activities of debt collectors, as that term is defined in FDCPA. CFPB's final rule addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. The final rule is effective **11/30/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-30/pdf/2020-24463.pdf>. *Federal Register*, Vol. 85, No. 230, 11/30/2020, 76734-76907.

CFPB Issues Final Rule to Revise Regulation Z General QM Rules.

CFPB issued a final rule to revise rules regarding qualified mortgages (QM). With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan. Loans that meet Regulation Z's requirements for QMs obtain certain protections from liability. One category of QMs is the General QM category. For General QMs, the ratio of the consumer's total monthly debt to total monthly income (DTI) must not exceed 43 percent. The final rule amends the General QM loan definition in Regulation Z. Among other things, the final rule removes the General QM loan definition's 43 percent DTI limit and replaces it with price-based thresholds. Another category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The GSEs are currently under federal conservatorship. In 2013, CFPB established this category of QMs (Temporary GSE QMs) as a temporary measure that would expire no later than **01/10/2021**, or when the GSEs cease to operate under conservatorship. In a final rule released on **10/20/2020**, CFPB extended the Temporary GSE QM loan definition to expire on the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z (or when the GSEs cease to operate under the conservatorship of the FHFA, if that happens earlier). In the final rule, CFPB adopts the amendments to the General QM loan definition that are referenced in that separate final rule. The final rule is effective 60 days after date of publication in the *Federal Register*. The mandatory compliance date is **07/01/2021**. The final rule may be viewed at: <https://www.consumerfinance.gov/rules-policy/final-rules/qualified-mortgage-definition-under-truth-lending-act-regulation-z-general-qm-loan-definition/>.



Regulatory Spotlight

CFPB Finalizes Seasoned QM Loan Definition.

CFPB issued a final rule to create the Seasoned Qualified Mortgages (Seasoned QMs) category under Regulation Z. With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan. Loans that meet Regulation Z's requirements for QMs obtain certain protections from liability. Regulation Z contains several categories of QMs, including the General QM category. The new Seasoned QM category is for first-lien, fixed-rate covered transactions that have met certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. CFPB's primary objective with the final rule is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions. The final rule is effective sixty days after publication in the *Federal Register*. The final rule may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_atr-qm-seasoned-qm-final-rule_2020-12.pdf.

CFPB Issues Final Advisory Opinions Policy.

CFPB finalized its Advisory Opinions Policy, which sets forth procedures to facilitate the submission by interested parties of requests that CFPB issue advisory opinions, in the form of interpretive rules, to resolve regulatory uncertainty. The policy addresses the manner in which CFPB will evaluate and respond to such requests. The policy is applicable beginning **11/30/2020**. The policy may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-03/pdf/2020-26661.pdf>. *Federal Register*, Vol. 85, No. 233, 12/03/2020, 77987-77991.

CFPB Publishes Advisory Opinions.

- CFPB issued an advisory opinion to resolve regulatory uncertainty regarding the applicability of the definition of credit under Regulation Z, which implements the Truth in Lending Act (TILA), to certain earned wage access (EWA) programs that conform to the summary of material facts provided in part I.B of the advisory opinion. The advisory opinion is effective **12/10/2020**. The advisory opinion may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-26664.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79404-79408.
- CFPB issued an advisory opinion to clarify that loan products that refinance or consolidate a consumer's pre-existing federal, or federal and private, education loans meet the definition of "private education loan" in the Truth in Lending Act and Regulation Z and are subject to the disclosure and consumer protection requirements in subpart F of Regulation Z. The advisory opinion is effective **12/10/2020**. The advisory opinion may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-26662.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79400-79404.

FRB Finalizes New System of Records Regarding Security Sharing Platform.

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to revise its regulation which implements the Privacy Act rule to add BGFRS-43, FRB-Security Sharing Platform, to the list of systems of records identified as "exempt" systems of records. The final rule is effective **11/19/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-24088.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 73603-73604.

FRB Amends Regulation TT Assessment Rule.

FRB issued a final rule to amend its Regulation TT assessment rule, pursuant to Section 318 of the Dodd-Frank Act, to address amendments made by section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Regulation TT details how FRB: (a) determines whether a company is an assessed company for each assessment period, (b) estimates the total expenses that are necessary or appropriate to carry out the supervisory and regulatory responsibilities to be covered by the assessment, (c) determines the assessment amount for each assessed company, and (d) bills for and collects the assessment from the assessed companies. The final rule raises the minimum threshold for being considered an assessed company from \$50 billion to \$100 billion in total consolidated assets for bank holding companies and savings and loan holding companies and adjusts the amount charged to assessed companies with total consolidated assets between \$100 billion and \$250 billion to reflect changes in supervisory and regulatory responsibilities resulting from EGRRCPA. The final rule is effective **01/07/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-08/pdf/2020-25623.pdf>. *Federal Register*, Vol. 85, No. 236, 12/08/2020, 78949-78954.



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FRB Issues Regulation I 2021 Inflation Adjustment.

FRB issued a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that FRB annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis. Based on the change in the Gross Domestic Product Price Index as of **09/30/2020**, the total consolidated asset threshold will be \$10,785,000,000 through **12/31/2021**. The final rule is effective **01/11/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-26199.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79389-79390.

FRB Releases 2021 Private Sector Adjustment Factor and Fee Schedules for Services and Electronic Access.

FRB approved the private sector adjustment factor for 2021 of \$16.4 million and released 2021 fee schedules for FRB priced services and electronic access. Each year, as required by the Monetary Control Act, the Reserve Banks set fees for priced services provided to depository institutions. The fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that will have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF). Due to the impact of COVID-19, FRB has retained existing price levels for the 2021 fee schedules. The 2021 fee schedules are effective **01/04/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-16/pdf/2020-25176.pdf>. *Federal Register*, Vol. 85, No. 221, 11/16/2020, 73037-73054.

FDIC Amends Branch Application Procedures.

The Federal Deposit Insurance Corporation (FDIC) issued a final rule to amend its application requirements for the establishment and relocation of branches and offices so that such applications no longer require statements regarding the compliance of such proposals with the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). The final rule amends FDIC's regulations to remove NHPA and NEPA requirements embedded in its branch application procedures, and rescinds FDIC statements of policy regarding NHPA and NEPA, consistent with branch application procedures for national banks and insured state member banks supervised by the Office of the Comptroller of the Currency and Board of Governors of the Federal Reserve System. The final rule is effective **12/14/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-23529.pdf>. *Federal Register*, Vol. 85, No. 220, 11/13/2020, 72551-72555.

FDIC Issues 2021 Designated Reserve Ratio.

Pursuant to the Federal Deposit Insurance Act, FDIC has designated that the Designated Reserve Ratio for the Deposit Insurance Fund shall remain at **2 percent** for 2021. FDIC published the notice as required by the Federal Deposit Insurance Act. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-23/pdf/2020-25820.pdf>. *Federal Register*, Vol. 85, No. 226, 11/23/2020, 74719.

FDIC Announces Intent to Terminate Receiverships.

FDIC has given notice that it intends, as Receiver for the institutions listed in the notice, to terminate its receivership for the listed institutions. The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of the notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of the notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201. No comments concerning the termination of the receiverships will be considered which are not sent within the time frame. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-10/pdf/2020-27066.pdf>. *Federal Register*, Vol. 85, No. 238, 12/10/2020, 79489-79490.



Regulatory Spotlight

FDIC Issues Proposed Rule to Address Temporary Deposit Insurance Assessment Effects of the Optional Regulatory Capital Transitions for Implementing CECL.

FDIC seeks comment on a proposed rule that would amend the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs, to address the temporary deposit insurance assessment effects resulting from certain optional regulatory capital transition provisions relating to the implementation of the current expected credit losses (CECL) methodology. The proposal would amend the assessment regulations to remove the double counting of a specified portion of the CECL transitional amount or the modified CECL transition amount, as applicable (collectively, the CECL transitional amounts), in certain financial measures that are calculated using the sum of Tier 1 capital and reserves and that are used to determine assessment rates for large and highly complex IDIs. The proposed rule also would adjust the calculation of the loss severity measure to remove the double counting of a specified portion of the CECL transitional amounts for a large or highly complex IDI. The proposed rule does not affect regulatory capital, or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios. Comments are due **01/06/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-25830.pdf>. *Federal Register*, Vol. 85, No. 235, 12/07/2020, 78794-78805.

FDIC Corrects Regulatory Capital and Liquidity Requirement Rule.

FDIC issued a correction to a previously published regulatory capital and liquidity requirement rule. FDIC, together with the Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency published an interagency final rule in the *Federal Register* on **11/01/2019**, that revised the criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations. In promulgating the tailoring rule, the agencies, however, inadvertently omitted amending the prompt corrective action (PCA) provisions of the capital rule to reflect the tailoring rule, including the well capitalized PCA category. The correction aligns the applicability of the enhanced supplementary leverage ratio for purposes of the PCA provisions in FDIC's capital rule to its intended scope. The correction is effective **11/20/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-20/pdf/2020-24900.pdf>. *Federal Register*, Vol. 85, No. 225, 11/20/2020, 74257-74259.

FDIC Seeks Comment on Household Use of Banking Services Survey.

FDIC seeks comment on the survey collection instrument for its seventh biennial survey of households, which has been renamed the Survey of Household Use of Banking and Financial Services. The survey was previously named the FDIC National Survey of Unbanked and Underbanked Households. The survey collects information on U.S. households' use of bank accounts, other transaction accounts including prepaid cards and online payment services, nonbank financial transaction services, and bank and nonbank credit. The results of the biennial surveys will be published in FDIC's How America Banks reports which help inform policymakers, bankers, and researchers about how households use, or don't use, the banking system. Comment are due **02/01/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-02/pdf/2020-26572.pdf>. *Federal Register*, Vol. 85, No. 232, 12/02/2020, 77462-77463.

OCC Issues Fair Access to Financial Services Proposal.

The Office of the Comptroller of the Currency (OCC) issued a proposed rule to ensure that national banks and federal savings associations offer and provide fair access to financial services. The proposed rule would create a new part 55 to address fair access to financial services, drawing both on principles of long-established antitrust law and on OCC guidance and other statements. Comments are due **01/04/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-26067.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75261-75266.

OCC Issues Proposed Rule to Determine Approach to CRA Evaluations.

OCC seeks comment on its proposed approach to determine the Community Reinvestment Act (CRA) evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards. The proposed rule further explains how OCC would assess significant declines in CRA activities levels in connection with performance context following the initial establishment of the benchmarks, thresholds, and minimums. Finally, the proposed rule would make clarifying and technical amendments to the CRA final rule. Comments are due **02/02/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-26394.pdf>. *Federal Register*, Vol. 85, No. 234, 12/04/2020, 78258-78269.



Regulatory Spotlight

HUD Issues Final Rule to Extend Certification Timeline for Housing Counseling Program Due to COVID-19.

The Department of Housing and Urban Development (HUD) issued a final rule to extend the deadline by which participating agencies and counselors must comply with certification requirements in HUD's Housing Counseling Program from **08/01/2020** to **08/01/2021**. Due to the COVID-19 national emergency, a large number of housing counselors are likely unable to become certified by the end of the grace period, resulting in a loss of federal funding for some HUD-approved housing counseling agencies and loss of the ability to provide counseling that is required or provided in numerous HUD programs. The final rule is effective **12/04/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-26194.pdf>. *Federal Register*, Vol. 85, No. 234, 12/04/2020, 78230-78232.

HUD Publishes Regulatory Waiver Requests Granted in Second Quarter Calendar Year 2020.

HUD is required by the Housing and Urban Development Reform Act to publish quarterly *Federal Register* notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous *Federal Register* notice. The notice contains a list of regulatory waivers granted by HUD during the period beginning on **04/01/2020**, and ending on **06/30/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-25476.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 73732-73743.

HUD Issues Proposal to Accept Private Flood Insurance for FHA-Insured Mortgages.

HUD issued a proposed rule to amend Federal Housing Administration (FHA) regulations to allow mortgagors the option to purchase private flood insurance on FHA-insured mortgages for properties located in Special Flood Hazard Areas (SFHAs), in satisfaction of the mandatory purchase requirement of the Flood Disaster Protection Act (the FDPA). The FDPA, as amended, requires the owner of a property mapped in a SFHA, and located in a community participating in the National Flood Insurance Program, to purchase flood insurance as a condition of receiving a mortgage backed by the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), Department of Veteran Affairs (VA), United States Department of Agriculture (USDA), or FHA. Comments are due **01/22/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-23/pdf/2020-25105.pdf>. *Federal Register*, Vol. 85, No. 226, 11/23/2020, 74630-74636.

FEMA Announces Activation Plan of Action for Manufacture, Allocation, and Distribution of PPE Due to COVID-19.

The Federal Emergency Management Agency (FEMA) announced the activation of a Plan of Action to establish a National Strategy for the manufacture, allocation, and distribution of personal protective equipment (PPE) to respond to COVID-19 implemented under the Voluntary Agreement for the manufacture and distribution of critical healthcare resources necessary to respond to a pandemic. The notice contains the text of the Plan of Action. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-08/pdf/2020-26986.pdf>. *Federal Register*, Vol. 85, No. 236, 12/08/2020, 79020-79028.

FEMA Issues Final Flood Hazard Determinations.

- FEMA issued a final notice which identifies communities in the states of **Minnesota** and **Ohio**, 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 **03/09/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-12/pdf/2020-24973.pdf>. *Federal Register*, Vol. 85, No. 219, 11/12/2020, 71929-71930.
- FEMA issued a final notice which identifies communities in the states of **Iowa**, **Michigan**, and **Minnesota**, 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 **03/23/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-26056.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75355-75359.



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- 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 **04/07/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-26057.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75348-75349.

FEMA Issues Notices of Changes in Flood Hazard Determinations.

- FEMA issued a notice which lists communities in the state of **Minnesota**, 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-2020-11-18/pdf/2020-25346.pdf>. *Federal Register*, Vol. 85, No. 223, 11/18/2020, 73498-73501.
- FEMA issued a notice which lists communities in the states of **Indiana, Michigan, and Ohio**, 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-2020-11-25/pdf/2020-26054.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75359-75361.

FEMA Issues Proposed Flood Hazard Determinations.

FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities in the states of **Iowa and 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 **02/23/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-26055.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75354-75355.

FEMA Issues Correction to Proposed Flood Hazard Determinations for Iowa.

FEMA published a document in the *Federal Register* on **10/06/2020**, concerning a proposed flood hazard determination. The document contained an erroneous table. A correction has been made to the table containing data for Louise County, **Iowa** and incorporated areas. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-01/pdf/2020-26486.pdf>. *Federal Register*, Vol. 85, No. 231, 12/01/2020, 77227.



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IRS Issues Final Rule Related to Tax Withholding and Information Reporting Regarding Certain Partnership Interests.

The Internal Revenue Service (IRS) issued a final rule to provide guidance related to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in a trade or business within the United States. The final rule affects certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States, and persons that acquire those interests. The final rule also affects partnerships that, directly or indirectly, have foreign persons as partners. The final rule is effective **11/30/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-30/pdf/2020-22619.pdf>. *Federal Register*, Vol. 85, No. 230, 11/30/2020, 76910-76947.

IRS Issues Final Rule to Clarify Premium Tax Credit Unaffected by Suspension of Personal Exemption Deduction.

IRS issued a final rule under sections 36B and 6011 of the Internal Revenue Code to clarify that the reduction of the personal exemption deduction to zero for taxable years beginning after **12/31/2017**, and before **01/01/2026**, does not affect an individual taxpayer's ability to claim the premium tax credit. The final rule is effective **12/01/2020**. The final rule applies to taxable years ending on or after **12/31/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-01/pdf/2020-26200.pdf>. *Federal Register*, Vol. 85, No. 231, 12/01/2020, 76976-76979.

IRS Issues Final Rule Regarding Like-Kind Exchanges.

IRS issued a final rule to provide guidance under section 1031 of the Internal Revenue Code to implement recent statutory changes to that section. More specifically, the final rule amends the current like-kind exchange regulations to add a definition of real property to implement statutory changes limiting section 1031 treatment to like-kind exchanges of real property. The final rule also provides a rule addressing a taxpayer's receipt of personal property that is incidental to real property the taxpayer receives in an otherwise qualifying like-kind exchange of real property. The final rule is effective **12/02/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-02/pdf/2020-26313.pdf>. *Federal Register*, Vol. 85, No. 232, 12/02/2020, 77365-77383.

IRS Issues Final Rule on Computation of Unrelated Business Taxable Income.

IRS issued a final rule to provide guidance on how an exempt organization subject to unrelated business income tax determines if it has more than one unrelated trade or business, and, if so, how the exempt organization calculates unrelated business taxable income. The final rule also clarifies that the definition of "unrelated trade or business" applies to individual retirement accounts. Additionally, the final rule provides that inclusions of "subpart F income" and "global intangible low-taxed income" are treated in the same manner as dividends for purposes of determining unrelated business taxable income. The final rule is effective **12/02/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-02/pdf/2020-25954.pdf>. *Federal Register*, Vol. 85, No. 232, 12/02/2020, 77952-77984.

IRS Issues ABLE Act Guidance.

IRS issued guidance regarding programs under the Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act). The ABLE Act provides rules under which states or state agencies or instrumentalities may establish and maintain a federal tax-favored savings program for eligible individuals with a disability who are the owners and designated beneficiaries of accounts to which contributions may be made to meet qualified disability expenses. The accounts also receive favorable treatment for purposes of certain means-tested federal programs. In addition, the guidance provides corresponding amendments to the unrelated business income tax regulations, the gift and generation-skipping transfer tax regulations, and the electronic filing requirements regulations. The guidance is effective **11/19/2020**. See the guidance for applicability dates. The guidance may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-22144.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 74010-74047.

IRS Seeks Comment on Regulatory and Other Relief to Support Economic Recovery.

IRS seeks comment on a Presidential Executive Order issued on **05/19/2020**, regarding regulatory relief to support economic recovery. In the order, IRS and other federal agencies were directed to consider principles of fairness in administrative enforcement and adjudication and to consider rescinding, modifying, or waiving any regulations and other requirements that may inhibit the ongoing



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economic recovery from the COVID-19 pandemic. IRS seeks comment concerning regulations and other requirements that can be rescinded, modified, or waived to assist business and individual taxpayers with the ongoing economic recovery from the pandemic. Comments are due **01/04/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-17/pdf/2020-25240.pdf>. *Federal Register*, Vol. 85, No. 222, 11/17/2020, 73252-73253.

SBA Issues Final Rule to Remove Intermediary Lending Pilot Program Regulations from CFR.

The Small Business Administration (SBA) issued a final rule to remove three regulations that govern the application and selection process for the Intermediary Lending Pilot (ILP) program. The ILP program was a 3-year pilot program in which SBA provided loans to selected nonprofit intermediaries (ILP Intermediaries) for the purpose of providing loans to small businesses. The regulations are no longer necessary because SBA is no longer authorized to select new ILP Intermediaries. SBA has also made two conforming amendments to avoid confusion. The final rule is effective **12/28/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-27/pdf/2020-25555.pdf>. *Federal Register*, Vol. 85, No. 229, 11/27/2020, 75833-75834.

SBA Issues Final Supervised Lenders Application Process.

SBA issued a final rule to amend the regulations applicable to small business lending companies (SBLCs) and state-regulated lenders (non-federally regulated lenders (NFRLs) (collectively, SBA Supervised Lenders). The key amendments to the regulations include a new application and review process for SBA Supervised Lenders, including for transactions involving a change of ownership or control. Other amendments to the regulations include an update to the minimum capital maintenance requirements, clarification to the factors that SBA will consider in its evaluation of an SBA Supervised Lender application, and a limit to the 7(a) lending area for NFRLs. The final rule is effective **01/04/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-26307.pdf>. *Federal Register*, Vol. 85, No. 234, 12/04/2020, 78205-78215.

SBA Issues Procedural Notice on Tax Issues Relating to the Payments Made on Behalf of Borrowers under Section 1112 of the CARES Act.

SBA issued Procedural Notice 5000-20067 regarding tax issues of payments made on behalf of borrower under CARES Act section 1112. In April 2020, SBA began making payments under Section 1112 of the CARES Act to cover, for a 6-month period, the principal, interest, and any associated fees that small businesses owe on 7(a), 504, and Microloans (Section 1112 payments). Section 1112 payments relieve the small businesses of the obligation to pay that amount. SBA has provided information to 7(a) Lenders, Microloan Intermediaries, and Certified Development Companies with respect to information reporting issues arising from the Section 1112 payments. A series of questions and answers in the notice outline requirements of 1099-MISC information reporting. The notice is effective **12/08/2020**. The notice may be viewed at: https://www.sba.gov/sites/default/files/articles/5000-20067.pdf?utm_medium=email&utm_source=govdelivery

SBA Updates PPP FAQs.

SBA has updated its series of frequently asked questions (FAQs) to answer why some Paycheck Protection Program (PPP) borrowers receive a Loan Necessity Questionnaire (SBA Form 3509 or 3510). The item is #53 in the FAQ resource. The FAQs were updated **12/09/2020**. The updated FAQs may be viewed at: <https://www.sba.gov/sites/default/files/2020-12/Final%20PPP%20FAQs%20%28December%209%202020%29-508.pdf>

SBA Proposes to Increase Size Standards for Several NAICS Sectors.

- 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 Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services. SBA proposed to increase size standards for 46 industries in those sectors, including 27 industries in NAICS Sector 54 (Professional, Scientific and Technical Services), 2 industries in Sector 55 (Management of Companies and Enterprises), and 17 industries in Sector 56 (Administrative and Support and Waste Management and Remediation Services). SBA’s proposed revisions relied on its recently revised Size Standards Methodology. SBA seeks comments on its proposed changes to size standards and the data sources it evaluated to develop the proposed size standards. Comments are due **01/12/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24903.pdf>. *Federal Register*, Vol. 85, No. 220, 11/13/2020, 72584-72608.



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- 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 Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; and Other Services. SBA has proposed to increase size standards for 70 industries in those sectors, including 14 industries in NAICS Sector 61 (Education Services), 18 industries in Sector 62 (Health Care and Social Assistance), 11 industries in Sector 71 (Arts, Entertainment and Recreation), 4 industries in Sector 72 (Accommodation and Food Services), and 23 industries in Sector 81 (Other Services). SBA’s proposed revisions rely on its recently revised Size Standards Methodology. SBA seeks comments on its proposed changes to size standards and the data sources it evaluated to develop the proposed size standards. Comments are due **01/26/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-27/pdf/2020-26312.pdf>. *Federal Register*, Vol. 85, No. 229, 11/27/2020, 76390-76417.

FCIC Amends Crop Insurance Regulations.

The Federal Crop Insurance Corporation (FCIC) issued a final rule to amend the Area Risk Protection Insurance (ARPI) Regulations; Common Crop Insurance Policy (CCIP), Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions. The intended effect of the final rule is to improve prevented planting provisions, revise beginning farmer or rancher and veteran farmer or rancher provisions and clarify arbitration provisions. FCIC also made clarifications to the Dry Pea Crop Provisions and revised the cancellation and termination dates in the Sunflower Seed Crop Provisions. The changes made in the final rule are applicable for the 2021 and succeeding crop years for crops with a contract change date on or after **11/30/2020**. For all other crops, the changes made in the final rule are applicable for the 2022 and succeeding crop years. The final rule is effective **11/30/2020**. Comments are due **01/29/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-30/pdf/2020-26036.pdf>. *Federal Register*, Vol. 85, No. 230, 11/30/2020, 76420-76428.

FCA Announces Effective Date of Final Rule Regarding Criteria to Reinstate Non-Accrual Loans.

The Farm Credit Administration (FCA) announced the effective date of a previously published final rule that amended regulations governing how high-risk loans within the Farm Credit System are classified as being in nonaccrual status. The effective date of the rule is no earlier than 30 days from the date of publication in the *Federal Register* during which either or both Houses of Congress are in session. The effective date of the final rule published in the *Federal Register* on **08/25/2020**, is **10/21/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-18/pdf/2020-24005.pdf>. *Federal Register*, Vol. 85, No. 223, 11/18/2020, 73401.

FSA Issues Correction to Payment Limitations and Eligibility Definitions Rule.

The Farm Service Agency (FSA) on behalf of the Commodity Credit Corporation (CCC) issued a correction to a previously published final rule which amended regulations concerning payment limitation and eligibility. The final rule, published in the *Federal Register* on **08/24/2020**, amended the definitions in 7 CFR 1400.3 for “active personal management” and “significant contribution,” which apply throughout part 1400. It also removed and reserved §1400.601. The changes were intended to provide consistency in the definitions of the terms used throughout part 1400. After publication of the final rule, stakeholders notified FSA of concerns regarding potential non-intended, adverse effects to farming operations comprised solely of family members. In streamlining the definitions for consistency, the revised definitions were inadvertently made applicable to farming operations solely owned by family members. This was not the intent of the rule change, and as revised, the definitions were more restrictive than they needed to be in order to provide intended consistency in the rule. The more restrictive definitions were not intended to apply to farm operations comprised or owned solely of family members. The correction restores the previous definitions of “active personal management,” “significant contribution,” “significant contribution of active personal management,” and “significant contribution of the combination of active personal labor and active personal management.” The correction is effective **11/19/2020**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-25456.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 73601-73603.

RBC Seeks Applications Under Intermediary Relending Program for FY 2021.

The Rural-Business Cooperative Service (RBC) seeks applications under the Intermediary Relending Program (IRP) for fiscal year (FY) 2021, subject to availability of funding. An announcement on the website at: <https://www.rd.usda.gov/newsroom/fy2021-appropriated-funding>, will identify the amount received in appropriations. Deadlines for completed applications to be received in the USDA Rural Development State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: 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-2020-12-07/pdf/2020-26771.pdf>. *Federal Register*, Vol. 85, No. 235, 12/07/2020, 78821-78824.



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RHS Revises Rural Rental Housing Program Guarantee Fees.

The Rural Housing Service (RHS) issued final rule to revise the fees charged in connection with a guarantee. RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP). Under GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. RHS is authorized to charge certain fees to lenders for loan guarantees. The charged fees are required to be used to offset costs associated with loan guarantees. RHS published a proposed rule on **09/03/2019**, to amend its regulation to remove the stated amount that RHS will charge for the initial and annual guarantee fees. The change will allow RHS the flexibility to establish or make any future changes to the initial and annual guarantee fees without the need for a regulatory change. RHS finalized the proposed rule without any substantive revisions. The final rule is effective **01/04/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-03/pdf/2020-25822.pdf>. *Federal Register*, Vol. 85, No. 233, 12/03/2020, 77985-77987.

RHS Seeks Comment on Use of Automated Underwriting and Loan Closing Systems for Single-Family Housing Guaranteed Loan Program.

RHS proposes to amend the current regulation for the Single-Family Housing Guaranteed Loan Program (SFHGLP) to mandate the use of the Guaranteed Underwriting System (GUS) and the Lender Loan Closing System (LLC) by approved lenders. RHS' proposal to mandate the use of GUS in loan originations and the LLC for loan closings will allow RHS to decrease time-consuming and expensive manual file reviews, improve performance monitoring, and reduce program risk of the guaranteed loan portfolio. Comments are due **01/19/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-17/pdf/2020-24578.pdf>. *Federal Register*, Vol. 85, No. 222, 11/17/2020, 73241-73244.

Agencies Issue Final Rule Regarding Security Futures.

The Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) (collectively, the agencies) issued a final rule to adopt amendments to lower the margin requirement for an unhedged security futures position from 20% to 15% and adopted certain conforming revisions to the security futures margin offset table. The final rule is effective **12/24/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-24/pdf/2020-24353.pdf>. *Federal Register*, Vol. 85, No. 227, 11/24/2020, 75112-75147.

SEC Issues Final Rule on Fund of Funds Arrangements.

The Securities and Exchange Commission (SEC) adopted a new rule under the Investment Company Act (Act) to streamline and enhance the regulatory framework applicable to funds that invest in other funds ("fund of funds" arrangements). In connection with the new rule, SEC has rescinded rule 12d1-2 under the Act and certain exemptive relief that was granted from sections 12(d)(1)(A), (B), (C), and (G) of the Act permits certain fund of funds arrangements. Finally, SEC has adopted related amendments to rule 12d1-1 under the Act and to Form N-CEN. The final rule is effective **01/19/2021**. See the final rule for applicable compliance dates. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-23355.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 73924-74007.

SEC Issues Final Rule to Allow Electronic Signatures in Certain Signature Authentication Documents.

SEC adopted amendments to Regulation S-T and the Electronic Data Gathering, Analysis, and Retrieval system Filer Manual (EDGAR Filer Manual) to permit the use of electronic signatures in signature authentication documents required under Regulation S-T in connection with electronic filings on EDGAR that are required to be signed. SEC has also adopted corresponding revisions to several rules and forms under the Securities Act, Securities Exchange Act, and Investment Company Act to permit the use of electronic signatures in signature authentication documents in connection with certain other filings. The final rule is effective **12/04/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-26166.pdf>. *Federal Register*, Vol. 85, No. 234, 12/04/2020, 78224-78230.

CFTC Issues Final Rules Related to Swap Activities.

- The Commodity Futures Trading Commission (CFTC) issued a final rule to amend its regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (SDRs), and to provide enhanced and streamlined oversight over SDRs and data reporting generally. Among other changes, the amendments modify existing requirements for SDRs to establish policies



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and procedures to confirm the accuracy of swap data with both counterparties to a swap and require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The amendments also update existing requirements related to corrections for data errors and certain provisions related to SDR governance. The final rule is effective **01/25/2021**. Mandatory compliance is **05/25/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-21570.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75601-75678.

- CFTC issued a final rule to amend certain regulations setting forth the real-time public swap reporting and dissemination requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, address certain issues related to reporting post-priced swaps (PPS) and disseminating swaps associated with prime brokerage arrangements. In addition, CFTC adopted technical amendments to certain provisions in other parts of its regulations. The final rule is effective **01/25/2021**. See the final rule for mandatory compliance dates. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-21568.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75422-75503.
- CFTC issued a final rule to amend certain regulations setting forth the swap data recordkeeping and reporting requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are neither SDs nor MSPs. The final rule is effective **01/25/2021**. See the final rule for mandatory compliance dates. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-21569.pdf>. *Federal Register*, Vol. 85, No. 228, 11/25/2020, 75503-75601.
- CFTC issued a final rule to adopt amendments to the regulations governing which swaps are exempt from the clearing requirement set forth in applicable provisions of the Commodity Exchange Act. The amendments exempt from the clearing requirement swaps entered into by certain central banks, sovereign entities, international financial institutions, bank holding companies, savings and loan holding companies, and community development financial institutions. CFTC also published a compliance schedule setting forth all the past compliance dates for the 2012 and 2016 swap clearing requirement regulations. Finally, CFTC has made certain other, non-substantive technical amendments. The final rule is effective **12/30/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-30/pdf/2020-25394.pdf>. *Federal Register*, Vol. 85, No. 230, 11/30/2020, 76428-76450.

NCUA Issues Final Rule Regarding Corporate Credit Unions.

The National Credit Union Administration (NCUA) issued a final rule to amend its corporate credit union regulation. The final rule updates, clarifies, and simplifies several provisions of NCUA's corporate credit union regulation, including to: permit a corporate credit union to make a minimal investment in a credit union service organization (CUSO) without the CUSO being classified as a corporate CUSO under NCUA's rules; expand the categories of senior staff positions at member credit unions eligible to serve on a corporate credit union's board; and amend the minimum experience and independence requirement for a corporate credit union's enterprise risk management expert. The final rule is effective **12/14/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-12/pdf/2020-23185.pdf>. *Federal Register*, Vol. 85, No. 219, 11/12/2020, 71817-71827.

NCUA Issues Proposed Rule to Remove Prohibition on Capitalization of Interest in Connection with Loan Workouts and Modifications.

NCUA issued a proposed rule to amend its regulations to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications. NCUA has determined that the current prohibition on authorizing additional advances to finance unpaid interest may be overly burdensome and, in some cases, hamper a federally insured credit union's (FICU's) good-faith efforts to engage in loan workouts with borrowers facing difficulty because of the economic disruption that the COVID-19 pandemic has caused. Advancing interest may avert the need for alternative actions that would be more harmful to borrowers. The proposed rule would establish documentation requirements to help ensure that the addition of unpaid interest to the principal balance of a mortgage loan does not hinder the borrower's ability to become current on the loan. The proposed change would apply to workouts of all types of member loans, including commercial and business loans. NCUA has also taken the opportunity to make several technical changes to the Appendix to improve its clarity and update certain references. Comments are due **02/02/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-25988.pdf>. *Federal Register*, Vol. 85, No. 234, 12/04/2020, 78269-78277.



Regulatory Spotlight

NCUA Seeks Comment on Draft Budget.

NCUA seeks comment on its draft budget. Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) requires NCUA to make publicly available and publish in the *Federal Register* a draft of the detailed business-type budget. The draft budget details the resources required to support NCUA's mission as outlined in its 2018-2022 Strategic Plan. The draft budget includes personnel and dollar estimates for three major budget components, the: (1) Operating Budget; (2) Capital Budget; and (3) Share Insurance Fund Administrative Budget. The resources proposed will be used to carry out NCUA's annual operations. The proposed resources will finance NCUA's annual operations and capital projects, both of which are necessary for NCUA to accomplish its mission. Comments are due **12/11/2020**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-25546.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 74090-740159.

DOL Amends ERISA Investment Duties Regulations.

The Department of Labor (DOL) adopted amendments to the "investment duties" regulation under Title I of the Employee Retirement Income Security Act, as amended (ERISA). The amendments require plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action. The final rule is effective **01/12/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24515.pdf>. *Federal Register*, Vol. 85, No. 220, 11/13/2020, 72846-72885.

EEOC Seeks Comment on Draft Religious Discrimination Compliance Manual.

The Equal Employment Opportunity Commission (EEOC) announced the availability of updated guidance titled, *Proposed Updated Compliance Manual on Religious Discrimination*. The proposed updated guidance explains a variety of issues applicable to religious discrimination claims, discusses typical scenarios in which religious discrimination and requests for religious accommodation may arise, and provides guidance to employers on how to balance the needs of individuals in a diverse religious climate. The proposed guidance, when finalized, will supersede EEOC's existing manual issued in 2008. Comment are due **12/17/2020**. The announcement of availability may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-23/pdf/2020-25736.pdf>. *Federal Register*, Vol. 85, No. 226, 11/23/2020, 74719.

VA Issues Final Rule to Establish Procedures for Issuing Guidance Documents.

The Department of Veterans Affairs (VA) issued a final rule to establish in regulation its processes and procedures for issuing guidance documents. The final rule implements the mandates of Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents. The final rule is effective **12/14/2020**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-25121.pdf>. *Federal Register*, Vol. 85, No. 220, 11/13/2020, 72569-72571.

VA Issues Proposed Rule to Establish COVID-19 Related Payment Assistance Program.

VA issued a proposed rule to establish the COVID-19 Veterans Assistance Partial Claim Payment program (COVID-VAPCP), a temporary program to help veterans return to making normal loan payments on a VA-guaranteed loan (guaranteed loan) after exiting a Coronavirus Aid, Relief, and Economic Security Act (CARES Act) forbearance period. Under the proposed program, a servicer could consider a partial claim option after the servicer has evaluated all loss-mitigation options for feasibility. If the veteran qualifies and opts to move forward, VA would act as a mortgage investor of last resort by purchasing the amount of indebtedness necessary to bring the veteran's guaranteed loan current. The veteran would have up to 60 months to defer repayment to VA and up 120 months to repay the loan in full, with the interest rate fixed at 1 percent per annum. Comments are due **01/08/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-09/pdf/2020-26964.pdf>. *Federal Register*, Vol. 85, No. 237, 12/09/2020, 79142-79161.

VA Issues NOFA for Supportive Services for Veteran Families Program.

VA issued a notice of funds availability (NOFA) for supportive services grants under the Supportive Services for Veteran Families (SSVF) Program. The NOFA contains information concerning the SSVF Program, renewal of supportive services grant application processes, and the amount of funding available. Awards made for supportive services grants will fund operations beginning **10/01/2021**. Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4:00 p.m. Eastern Time **02/05/2021**. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-25402.pdf>. *Federal Register*, Vol. 85, No. 224, 11/19/2020, 73846-73851. ■



Compliance Notes

▲ The Wisconsin Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts for residential mortgage loans subject to Wisconsin Statute Section 138.052(5) to be **0.11%** for 2021. The interest rate shall remain in effect through **12/31/2021**. As a reminder, 2017 Wisconsin Act 340 eliminated the requirement that a financial institution pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the Act. Thus, a Wisconsin financial institution is not required by law to pay interest on any escrow account maintained in association with a loan originated on or after **04/18/2018**. A bank should also consider the terms of its contract as to whether any payment of interest is part of the agreement. The notice may be viewed at: www.wdfi.org/resources/indexed/site/fi/banks/EscrowNotice.pdf

▲ FRB, FDIC, and OCC issued a statement to encourage banks to transition away from U.S. dollar LIBOR as soon as practicable. In the statement, the agencies emphasized the LIBOR transition is a significant event that poses complex challenges for banks and the financial systems. The agencies encourage banks to cease entering into new contracts that use U.S. dollar LIBOR as a reference rate as soon as practicable and in any event by **12/31/2021**, in order to facilitate an orderly, and safe and sound, LIBOR transition. The statement may be viewed at: www.fdic.gov/news/press-releases/2020/pr20129a.pdf

▲ FFIEC has made available data on small business, small farm, and community development lending reported by certain commercial banks and savings association regulated by FRB, FDIC, and OCC, pursuant to CRA. An FFIEC disclosure statement on the reported data, in electronic form, is available for each reporting bank and savings association. FFIEC has also prepared aggregate statements on small business and small farm lending for all of the MSA and non-metropolitan counties. The data may be viewed at: www.ffiec.gov/press/pr121420.htm

▲ FinCEN has issued an updated Section 314(b) Fact Sheet. The revised fact sheet replaces a previously published November 2016 guidance and rescinds FIN-2009-G002. A previously published administrative ruling, FIN-2012-R006 has also been rescinded. FinCEN has provided three main clarifications in the new guidance: (1) that a bank may share information relating to activities that it suspects may involve possible terrorist financing or money laundering as is further outlined in the guidance, (2) an entity that is not itself a financial institution under the Bank Secrecy Act may form and operate an association of financial institutions whose members share information under section 314(b), notably this includes compliance service providers, and (3) an unincorporated association governed by a contract among the group of financial institutions that constitutes its members may engage in information sharing under Section 314(b). The new fact sheet may be viewed at: www.fincen.gov/sites/default/files/shared/314factsheet.pdf

▲ OCC has announced the availability of the “Mutual to Stock Conversions” booklet of the *Comptroller’s Licensing Manual*. The booklet incorporates provisions of the revised regulation (12 CFR 192) effective **08/13/2020**. The booklet: (1) provides an overview of policy consideration and decision criteria that OCC considers when reviewing applications by federal saving associations to convert from a mutual stock form of ownership under 12 CFR 192, (2) describes various types of mutual to stock conversions including standard conversions, merger conversions, conversion mergers, and voluntary supervisory conversions, (3) describes the applications process, including the pre-filing process, filing and review of the application, the decision, and the post-consummation phase of the mutual to stock conversion, (4) outlines requirements and procedures federal savings associations should follow when filing an application to convert from mutual to stock form of ownership, and (5) lists references and links to informational resources and sample forms and documents that prospective filers may find helpful during the filing and conversion process. The booklet may be viewed at: www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-102.html

▲ FDIC has released a new study on the state of community banks in the United States titled, 2020 Community Bank Study. The study found that, relative to the broader banking sector, community banks continued to report positive financial performance and demonstrated strength during the COVID-19 pandemic. The study also included an examination of the influence of regulation and technology on community banks. The study highlights the areas of structural changes, regulation, community bank lending, and technology. The study may be viewed at: www.fdic.gov/news/press-releases/2020/pr20139.html

▲ OCC released a bulletin to inform all national banks and federal savings associations of fees and assessments charged by OCC for calendar year 2021. In particular, OCC is reducing the rates in all fee schedules by 3 percent. The reduction reflects cost savings in OCC’s operations and projections of OCC’s revenues and expenses. OCC also announced there will be no inflation adjustment to assessment rates for the 2021 assessment year. OCC assesses banks that enter the federal banking system in the time between assessment cycles. Under current policy, OCC will assess new entrants to the federal charter on a prorated basis using call report information as of December 31 or June 30 depending when the bank enters the federal banking system. Banks that enter the federal banking system in the time between assessment cycles and have not previously filed call reports will be assessed a prorated fraction of the lowest tier of the general assessment fee schedule, plus any additional assessments due under other assessment categories in 12 CFR 8.



Compliance Notes

OCC is increasing its hourly fee for special examinations and investigations to \$150 from \$140. The bulletin may be viewed at: www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-106.html

▲ OCC issued Interpretive Letter 1173, OCC Chief Counsel’s Interpretation: 12 U.S.C. §25B. The letter sets out how OCC interprets the preemption standards and procedural requirements codified in section 25b. The letter also summarizes OCC’s framework for compliance with the standards and requirements. Interpretive Letter 1173 may be viewed at: www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-176a.pdf

▲ FRB released guidance regarding the internal appeals process for material supervisory determinations and policy statement regarding the Ombudsman for FRB. In early 2020, FRB updated its policy statement governing the internal appeals process and revised its Ombudsman policy. FRB amended its appeals process to improve and expedite the process. For instance, the amended appeals process specifies the standards of review that FRB will follow, and describes the selection of the review panel members. The amended appeals process also decreases the processing time for appeals and provides an expedited timeline for appeals of determinations that relate to or would cause a bank to become critically undercapitalized under the prompt correction action framework. Other changes to the appeals process include reducing the number of review levels from three to two, and increasing transparency through public disclosure of final appeal decision in redacted or summary form determined by FRB.

The amended Ombudsman policy formalizes many of the current practices of the Ombudsman, including receiving supervisory-related complaints and material supervisory determination appeals. In addition, the amended policy clarifies that the Ombudsman may attend meetings or deliberations relating to an appeal as an observer, if requested by the bank or FRB staff. The amended policy also formalizes the Ombudsman’s role as the decision-maker with respect to claims of retaliation. The guidance supersedes SR Letter 95-18. The guidance applies to institutions, including those with \$10 billion or less in total consolidated assets, that receive a material supervisor determination by FRB. The guidance may be viewed at: www.federalreserve.gov/supervisionreg/srletters/SR2028.htm ■

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Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

JANUARY 2021

- **Midwest Economic Forecast Forum**
7 Virtual – multiple registration options available
- **Community Bankers for Compliance (CBC) – Session I**
26-27 Virtual – 2021 Membership/Pricing Options Vary

FEBRUARY 2021

- **Bank Executives Conference**
1-3 Virtual - \$795/bank, includes up to 10 attendees
- **Compliance Forum: Session 3**
23-24 Virtual – Membership/Pricing Options Vary

MARCH 2021

- **Loan Compliance School**
8-12 Wisconsin Dells or Virtual – \$1,295/attendee
- **Real Estate Compliance School**
10-12 Wisconsin Dells or Virtual – \$795/attendee
- **Call Report Review & Update Workshop**
18-19 Virtual Half-Days – \$295/attendee
- **Security Officer Workshops**
23-24 Virtual Half-Days – \$175/attendee
- **Advanced IRA Workshops**
30 Eau Claire - \$245/attendee
31 Wisconsin Dells - \$245/attendee

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
- **Power of Community Week**
19-24 www.wisbank.com/BanksPowerWI
- **Women in Banking Conference**
26 Wisconsin Dells - \$250/each first two attendees; \$195/each additional attendee

APRIL 2021 *continued*

- **Community Bankers for Compliance (CBC) – Session II**
27 Stevens Point – Membership/Pricing Options Vary
28 Madison – Membership/Pricing Options Vary
- **Residential Mortgage Lending School**
27-30 Madison – \$1,045/attendee
- **Compliance Management School**
TBD Madison – \$795/attendee
- **Principles of Banking Course**
TBD Locations TBD - \$550/attendee
- **FIPCO Software & Compliance Forum: Deposit**
TBD TBD

MAY 2021

- **Personal Banker School**
4-5 Wausau/Rothschild – \$495/attendee
- **School of Bank Management**
10-14 Madison – \$1,395/attendee
- **Trust Conference**
18 Madison – \$220/Trust Section member; \$245/non-section member banker
- **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
- **Capitol Day**
TBD Madison

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**.