



SETTING A NEW STANDARD
FOR THE FINANCIAL SERVICES INDUSTRY

Be Prepared!

Quarterly Compliance Update

4th Q 2019

Compliance – Year End Recap & New Year Radar

Presented by:

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Speaker Information

Rhonda Coggins, CRCM, is the **National Compliance Services Director at Sheshunoff Consulting + Solutions**. She provides expert compliance-related advice and guidance to banks and credit unions all over the country.

With over 34 years of experience in the banking industry, Ms. Coggins has served in a variety of capacities. She previously served as a Compliance Engagement Manager in SC+S's Risk Management Services Division, and supervised the quality control process for the Southwest Region. She has conducted numerous consumer compliance audits and fair lending assessments. She also delivers training programs and presentations on various risk management and compliance topics.

Ms. Coggins previously served as a Vice President, State of Texas Compliance Officer, for one of the largest commercial banks in the United States. She has also served as a BSA Officer and worked in Commercial and Consumer lending. Ms. Coggins has attended various ABA Compliance Schools and has the ABA designation of Certified Regulatory Compliance Manager. In 2010, Ms. Coggins was a speaker at the ABA Regulatory Compliance Conference in San Diego, California. She currently serves on the Board of Directors of the Dallas Area Compliance Association.

Agenda

Year End Recap & New Year Radar

- Calendar Items
 - *Year End Items*
 - *New Year Items*
 - *One "Sunsetting" Item Removed*
- Interagency Fair Lending Webinar Highlights
- HMDA Observations
- Bonus! Sheshunoff Compliance Program Checklists for 2020

Year End Calendar Items



NFIP Reauthorization

NFIP Reauthorization

As the financial industry has become familiar with over the years, the **National Flood Insurance Program (NFIP)** will periodically “sunset” and requires reauthorization. This is most often managed by patchwork legislation that provides for temporary reauthorization of a few months.

Related to this, Congress most recently renewed the NFIP by way of legislation that was signed by the President on November 21st. This legislation reauthorized the NFIP through **December 20, 2019**. Congress must now reauthorize the NFIP by no later than end of day December 20th, or a lapse will occur. Related to this, we’re aware that the House Financial Services Committee is in the process of working on a 5 year extension for the NFIP.

Reauthorization of NFIP – <https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-reauthorization-guidance>

Appraisal Regulations

Adjusted Appraisal Regulations

New final rules from the **OCC, Federal Reserve, and the FDIC** were published in the Federal Register. The rules were issued to revise the agencies' regulations which require appraisals of real estate for certain transactions.

The new final rules, amending 12 CFR 34, 12 CFR 225, and 12 CFR 323, provide for the following:

- It increases the threshold level at or below which appraisals are not required for **residential real estate** transactions from **\$250,000** to **\$400,000**;
- It defines a residential real estate transaction as a **real-estate related transaction that is secured by a single 1-to-4 family residential property**;
- It requires institutions to obtain an **evaluation** of real estate property collateral for residential real estate transactions exempted from the appraisal requirement because of the revised threshold;
- It includes conforming changes to add to the list of exempt transactions those secured by **residential property in rural areas** that have been exempted from appraisal requirements; and
- It requires institutions to subject appraisals for certain transactions to review for compliance with the **Uniform Standards of Professional Appraisal Practice**

Appraisal Regulations

Adjusted Appraisal Regulations, cont.

The rules were published on October 8, 2019, and generally became effective the first day after publication, **October 9, 2019**. However, provisions for the evaluation requirement for transactions exempted by the rural residential appraisal exemption and for the appraisal review will be effective on **January 1, 2020**.

In moving forward to implement these regulatory adjustments, institutions are encouraged to **review their supervisory agency's regulation**.

Interested persons may find the published final rules here - <https://www.govinfo.gov/content/pkg/FR-2019-10-08/pdf/2019-21376.pdf>

Appraisal Regulations

Adjusted Appraisal Regulation

Likewise, a new final rule from the **NCUA** was published in the Federal Register. The rule was issued to revise the agency's regulation which requires appraisals of real estate for certain transactions.

The new final rule, amending 12 CFR 722, accomplishes the following:

- It increases the threshold below which appraisals are not required for **commercial residential real estate** transactions from **\$250,000** to **\$1,000,000**;
- It restructures the rule to **enhance clarity**;
- It **exempts** from the rule **certain federally related transactions involving real estate in a rural area**; and
- It makes conforming amendments to the **definitions** section.

The new final rule was effective **October 22, 2019**, and may be found here -

<https://www.federalregister.gov/documents/2019/07/24/2019-15708/real-estate-appraisals>

NOTE: The NCUA published a proposed rule on November 29, 2019, that would increase the threshold level below which appraisals would not be required for residential real estate-related transactions from \$250,000 to \$400,000. <https://www.federalregister.gov/documents/2019/11/29/2019-25768/real-estate-appraisals>

New Year Calendar Items



Annual Threshold Adjustments

Reg. Z – General Exemption Threshold

- Effective **January 1, 2020**, the exemption threshold is increasing from \$57,200 to **\$58,300**
- Not applicable to:
 - Loans secured by real property, or by personal property to be used as principal dwelling
 - Private education loans
- See: <https://www.federalregister.gov/documents/2019/10/30/2019-21557/truth-in-lending-regulation-z>



Annual Threshold Adjustments

Reg. Z – HOEPA Threshold

- Effective **January 1, 2020**, the regulation is adjusting the points and fees coverage test used to determine whether a transaction is a high cost mortgage, as follows:
 - 5% of the total loan amount – for loans greater than or equal to **\$21,980**
 - 8% of the total loan amount or **\$1,099**, whichever is less – for loans less than **\$21,980**
- See: <https://www.federalregister.gov/documents/2019/08/01/2019-16300/truth-in-lending-regulation-z-annual-threshold-adjustments-credit-cards-hoeпа-and-qualified>



Annual Threshold Adjustments

Reg. Z – Qualified Mortgage (QM) Thresholds

- Effective **January 1, 2020**, the regulation is adjusting the points and fees thresholds that are used in determining whether a transaction is a QM, as follows:
 - Points and fees may not exceed **3%** - for a loan amount greater than or equal to **\$109,898**
 - Points and fees may not exceed **\$3,297** - for loans greater than or equal to **\$65,939**, but less than **\$109,898**
 - Points and fees may not exceed **5%** - for loans greater than or equal to **\$21,980** but less than **\$65,939**
 - Points and fees may not exceed **\$1,099** – for loans greater than or equal to **\$13,737** but less than **\$21,980**
 - Points and fees may not exceed **8%** - for loans less than **\$13,737**

See:

<https://www.federalregister.gov/documents/2019/08/01/2019-16300/truth-in-lending-regulation-z-annual-threshold-adjustments-credit-cards-hoepa-and-qualified>



Annual Threshold Adjustments

Reg. Z – Higher Priced Mortgage Loans (HPMLs) & Appraisals

- Effective **January 1, 2020**, the regulation is adjusting the amount of credit exception under the HPML appraisal requirement provisions. The threshold is increasing from \$26,700 to **\$27,200**
- See:
<https://www.federalregister.gov/documents/2019/10/30/2019-21559/appraisals-for-higher-priced-mortgage-loans-exemption-threshold>



BSA / CTR Amendment

CTR Instructions Amendment

In October, **FinCEN** issued an “**Important Notice to BSA Discrete and XML Batch E-Filers.**”

After identifying an issue with CTR filing instructions related to an individual that has multiple roles (Part I, Item 2) in a transaction, an adjustment is being made. Prior to this notice, certain CTRs were being rejected and, in some cases, prevented the understanding of transactions.

BSA / CTR Amendment cont.

CTR Instructions Amendment, cont.

As the notice highlights, the instructions for such a scenario currently state:

*If more than one Item 2 option applies to a person involved in the transaction(s), complete **only one Part I on that person with only one entry in Item 2.** Select “Common Carrier” if multiple options that include 2d “Common Carrier” apply. Select 2a “Person conducting transaction on own behalf” if options 2a, 2b, and 2c or options 2a and 2b or options 2a and 2c apply. Select 2b “Person conducting transaction for another” if both 2b and 2c apply.*

The revised instructions; however, are best captured in FinCEN’s example that was included in the notice, as follows:

*If more than one Item 2 option applies to a Part I person, **a separate Part I section will be prepared on that person for each Item 2 option.** For example, if the Part I person conducted a \$5,000 deposit into their personal account and a separate \$7,000 deposit into the account of another person/entity, there will be one Part I on that person reporting option 2a on the personal deposit with that amount and account number in Item 21 “Cash in amount”. There will be a second Part I on that person reporting option 2b on the person/entity account transaction with that amount and account number in Item 21.*

BSA / CTR Amendment cont.

CTR Instructions Amendment, cont.

As noted, this change will potentially require an update to software used to create batch files. Financial institutions **must** start filing this way by **February 1, 2020**.

BSA/AML staff, as well as other stakeholders, should review FinCEN's notice and adjust procedures accordingly. Interested persons may find the complete FinCEN notice here -

[https://bsaefiling.fincen.treas.gov/docs/IMPORTANT_NOTICE_TO_BSA_XML_B
ATCH_E-FILERS_October2019.pdf](https://bsaefiling.fincen.treas.gov/docs/IMPORTANT_NOTICE_TO_BSA_XML_B
ATCH_E-FILERS_October2019.pdf)

HMDA / Reg. C

New Final Rule

Recently, the **Consumer Financial Protection Bureau** (Bureau) issued a new final rule amending **HMDA** provisions contained in **Regulation C**.

Stakeholders may recall that earlier this year, the Bureau issued a notice of proposed rulemaking. While most of the proposed amendments were addressed in this October, 2019, new final rule, the suggested increase to the closed-end mortgage loan threshold was not included. The Bureau intends to address that in future rulemaking.

HMDA / Reg. C cont.

New Final Rule, cont.

This new final rule contains two main components:

- *It extends to January 1, 2022, the current temporary threshold of 500 open-end lines of credit for reporting data about open-end lines of credit.*
- *It incorporates into Regulation C the Bureau's August 2018 interpretive and procedural rule that implemented the HMDA partial exemptions.*

The new final rule is effective on **January 1, 2020**, *except for certain amendatory instructions that are effective on **January 1, 2022**.*

Interested persons may access the Bureau's final rule here -

https://files.consumerfinance.gov/f/documents/cfpb_hmda_final-rule-2019.pdf

HMDA / Reg. C cont.

And, Don't Forget The "Older" New Final Rule

Don't forget that **January 1, 2020**, is the effective date for the rule requiring quarterly reporting that is applicable to certain institutions, i.e. larger-volume reporters:

- This additional reporting applies to an institution that reported at least **60,000** originated Covered Loans and Applications (combined) for the preceding calendar year (not counting purchased covered loans).
- If required, the institution must report all data required to be recorded for the quarter within **60 calendar days after the end of the quarter**.
- This must be done for the **1st, 2nd, and 3rd quarters**. **4th quarter** data will be part of the **annual submission**, which will include a resubmission of the 1st thru 3rd quarter data.

May 30, 2020, is the date the 1st quarterly submission will be due.

One
“Sunsetting”
Calendar
Item
Removed



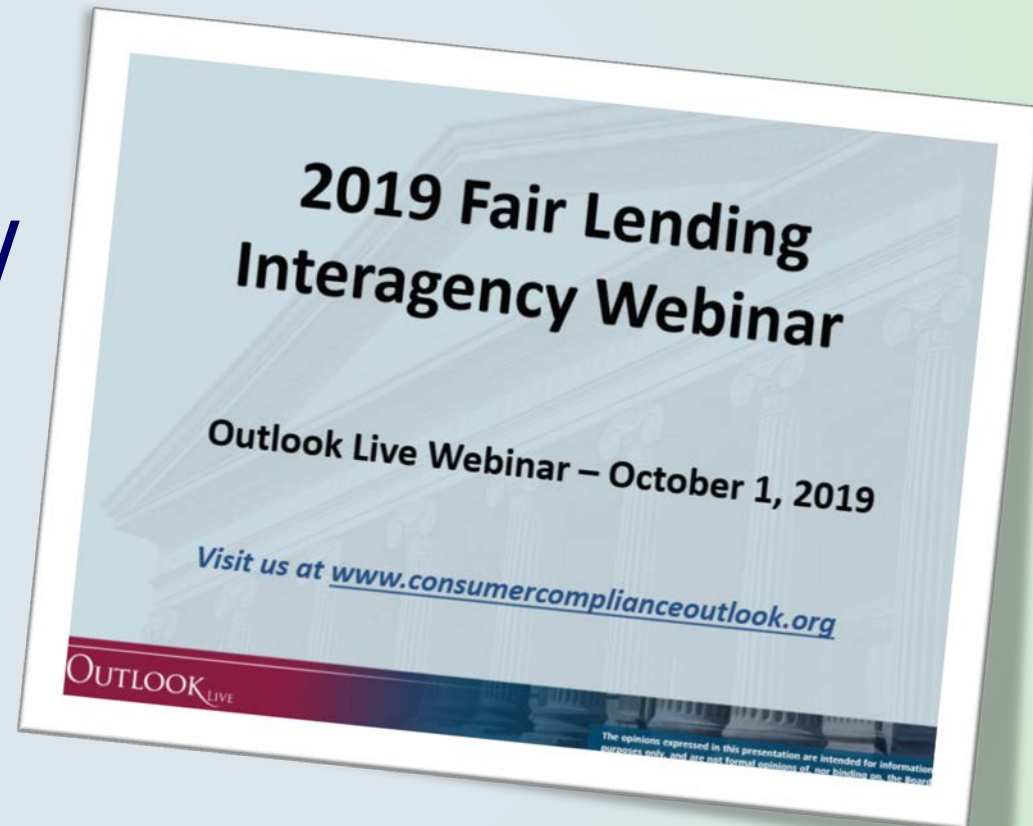
SCRA – Extended Foreclosure Protection

Foreclosure Relief and Extension for Servicemembers

The **SCRA** provides certain protections against foreclosure. More specifically, real or personal property owned by a servicemember before the servicemember's military service that secures a mortgage, trust deed, or similar security interest cannot be sold, foreclosed upon, or seized based on a breach of such a secured obligation during the period of military service or **one year thereafter*** without a court order.

** Over the past several years, the timeframe of extended foreclosure protection is one that has been established via temporary amendments. One of the most recent amendments established a December 31, 2019, sunset. However, with the passage of S. 2155 and the Economic Growth, Regulatory Relief, and Consumer Protection Act, a Title III provision makes the one year grace period **permanent**.*

Recap – Interagency Fair Lending Update



Interagency Fair Lending Update

Complaints & Fair Lending

- Fair lending risk assessments
- Utilization of HMDA data and risk assessment-related information
- Complaints
- Customer Assistance Group (CAG)

Interagency Fair Lending Update cont.

Complaints & Fair Lending cont.

Determine if a bank has an effective customer complaint system:

- Defines a complaint, include level of significance or risk
- Identifies individuals responsible for addressing complaints
- Includes an escalation process for significant or high-risk complaints
- Addresses internal whistleblower referrals to identify potential compliance risk or consumer harm
- Monitors third party service providers
- Analyses complaints to determine root cause
- Reports complaint data and trends to board and management



Interagency Fair Lending Update cont.

Complaints & Fair Lending cont.

Examiner Actions:

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



Interagency Fair Lending Update

Advanced Topics in Redlining

Good Background Information:

- **Definition of Redlining**: Providing **unequal access** to credit, or **unequal terms** of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside on in which the property will be located
- **Redlining is a Multi-factored Analysis**:
 - Redlining is based on an **analysis of several risk factors** that are set forth in the 2009 Interagency Fair Lending Examination Procedures, as well as federal and state enforcement actions
 - Determination of a **pattern or practice of lending discrimination**, including redlining, is based on the totality of the circumstances and the facts of a particular matter

Interagency Fair Lending Update

Advanced Topics in Redlining cont.

Considerations and Risk Factors

- Lending disparities
- Branching
- Marketing and outreach
- Assessment area(s)
- Overt statements and complaints

Interagency Fair Lending Update

HMDA Review Observations

HMDA violations can often impact fair lending risk evaluation.

- When more than one party is involved, there is a failure to report originations as required. The party making the credit decision reports the origination.
- Erroneous reporting of prequalification requests as preapproval requests. Prequalification requests are not applications under HMDA.
- Reporting applications as “withdrawn” that were not expressly withdrawn by the applicant before the institution made a credit decision.
- Incorrect race, ethnicity, and sex information. HMDA LAR does not match information provided, includes only one entry when more than one provided, or does not include race / ethnicity detail.
- Reporting the institution’s NMLSR ID instead of the loan originator’s ID.

Interagency Fair Lending Update

Fair Lending in CRA Protests

When certain bank applications are considered, the FDIC must consider an applicant's performance under CRA.

What is a CRA Protest?

- A CRA protest means any written adverse comment from the public related to a pending filing that raises a negative issue relative to CRA. The comment does not have to expressly reference CRA.

The FDIC shared that common fair lending issues raised in protests include:

- Lending – *residential mortgage lending and small business lending*
- Branching – *lack of or low number of branches in certain areas*

Interagency Fair Lending Update

Fair Lending in CRA Protests cont.

FDIC recommendations to be proactive:

- Monitor HMDA data
- Review your branching strategy
- Understand the impact of your application
- Engage with community groups



Interagency Fair Lending Update

Redlining Enforcement

Investigations and examinations often focus on the following categories of evidence:

- CRA assessment area
- Branch locations
- Marketing and advertising
- Statistical analysis

Presentation included discussion of First Merchants Bank

- *It began with a “horseshoe-shaped” AA*

Interagency Fair Lending Update

Fair Lending and Innovation

- Taking innovative steps to expand access must be done responsibly
- Starting in 2018, supervisory reviews of third-party scoring models were performed
- Focus was on learning about these models and compliance systems to assess fair lending risk

Three new policies issued:

- NAL – no action letter policy
- TDP – trial disclosure policy
- CAS – compliance assistance sandbox policy

Interagency Fair Lending Webinar Q&As

To provide additional clarity, some of those Q&As were transcribed. For purposes of this presentation, some information has been shortened and/or paraphrased.

Q *What are the primary types of complaints received by OCC's Customer Assistance Group ?*

A *Service issues* account for **51%** of all complaints for our largest institutions. And, in fact account for **46%** of all complaints processed by CAG. The reason for service issues can vary widely. Communication problems are the most common reason, followed by contractual disputes. And, complaints can also involve factual disputes, bank error, or consumer error.

Q *How does DOJ analyze marketing efforts in connection with redlining investigations?*

A *Sure.* We certainly look at a variety of factors and sources of information. We review all of the bank's **marketing materials**. If the bank has outsourced the marketing to an **outside company**, we review that as well. We **interview** marketing officials to learn more about strategic planning and marketing campaigns. We also look at how the lender tracks the **return it receives** on advertising dollars. (The answer also included a recap of the First Merchants example, which at one point in time excluded certain neighborhoods.)

Interagency Fair Lending Webinar Q&As cont.

Q *Does the Federal Reserve only consider mortgages in its redlining review?*

A *The answer is no. We don't consider only mortgages. We review both **HMDA lending** and **CRA small business lending** to see if there is significant disparity. Our redlining analysis for CRA small business lending is the same as it is for HMDA lending. We review to see if there is disparity between the bank's CRA small business lending and majority and minority census tracks as compared with what we call the adjusted aggregate.*

Q *Were most of the HMDA errors NCUA examiners observed for HMDA LAR reviews caused by mapping issues?*

A *We did observe **some mapping issues** in 2018 when institutions were mapping new HMDA data tools to be recorded for the first time. But, I believe most of those issues were worked out **before** our regulated entities filed their 2018 HMDA LARs this year. The errors described in today's presentation were commonly caused by a **misunderstanding of regulatory requirements** and not necessarily mapping issues. Failing to understanding HMDA's reporting requirements might have caused some credit unions to incorrectly map their data, but in those instances, incorrect mapping was a result of the problem, **not a source**.*

Interagency Fair Lending Webinar Q&As cont.

Q *What emerging issues are you seeing based on complaints received by the OCC?*

A *Across banks of all sizes, we're noting an increase in issues with **fair credit reporting**, particularly as it pertains to **accurate reporting** to credit bureaus. We're also seeing an increase in issues related to **fraud and elder abuse**. And, these often go hand in hand. People who are either responsible for or have access to funds of the elderly, unfortunately will take advantage of an opportunity to steal from the elderly. This includes **not only family members or caregivers** but also includes **bank employees**. So specifically, banks should be attuned to situations where their employees recommend investment decisions or where controls breakdown and employees have the opportunity, or have the ability, to withdraw funds from customer accounts. Finally, we're also seeing an increase in complaints from customers who use **payment networks**. While these networks were designed for person-to-person or person-to-business payments, increases in fraudulent transactions have been evident. And, this can be very challenging for banks because consumers want fast, same day transactions and yet they still expect their bank to protect them and stop suspicious transactions. So education of the consumer is the key here.*



Compliance Planning

Complying with regulatory requirements is an integral part of working in the financial industry.

And, beginning the New Year with an action plan can make all the difference.

The goal... to organize compliance priorities that must be met over the next 12 months, while remaining flexible enough to allow the incorporation of new requirements that arise during that same time period.

The attached checklists were compiled to assist in this process.

Regulations or supervisory guidance should be consulted for additional information related to definitions, detailed specifics, exemptions and clarifications. These checklists were developed as of the date referenced on the cover.

2020 Checklists

Compliance Management Systems

Compliance Calendar Items

Policy Reviews / Updates

Compliance Audits (External)

Compliance Reviews (Internal)

Training



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QUESTIONS?

More Information –

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