



Be Prepared!

1st Q 2021 Compliance Update

March 25, 2021

Sheshunoff
RISK MANAGEMENT DIVISION

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 35 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.

1st Q 2021 Compliance Update

- News From the Agencies
- New Interagency FAQs
- Regulatory Changes
- Advisory Opinions
- BONUS - Compliance Management System Checklists

News From The Agencies





Fall 2020 Rulemaking Agenda

Planned Regulatory Activities – Remainder of 2020 thru Spring 2021

- Debt Collection – time-barred debt and disclosures
- LIBOR Index – rulemaking to address the anticipated expiration of LIBOR
- FIRREA – interagency rulemaking to implement Dodd-Frank Act amendments concerning appraisals
- Mortgage Servicing – additional updates to address natural disasters and emergencies
- HMDA – additional updates to address business loans and public disclosure of HMDA data



<https://www.consumerfinance.gov/about-us/blog/fall-2020-rulemaking-agenda/>



Limited English Proficiency (LEP) Consumers

- Issued January 13, 2021
- Guiding principles for servicing LEP consumers
- Guidelines for developing compliance solutions when servicing LEP consumers



https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf



1st Q 2021 Director's Notebook

- Jan 13 – Bureau Takes Additional Steps to Foster an Inclusive Financial System
- Jan 28 – Bureau Taking Much-Needed Action to Protect Consumers, Particularly the Most Economically Vulnerable
- Feb 4 – Bureau is Working Hard to Address Housing Insecurity, Promote Racial Equity, and Protect Small Businesses' Access to Credit
- Feb 9 – Calling Attorneys Interested in Joining the CFPB
- Feb 10 – Consumers and Their Experiences to be at the Foundation of CFPB Policymaking
- Feb 23 – Making Our Housing Market Work Better for all Americans
- Mar 1 – New Report Highlights Housing Insecurity and the Need for Aggressive Action



Reg. B Interpretive Rule

- Issued March 5, 2021
- Clarifies that the ECOA and Reg. B prohibition against sex discrimination encompasses:
 - Sexual orientation discrimination, and
 - Gender identity discrimination.
 - This includes discrimination on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination on an applicant's associations.
- Exempt from notice and comment rulemaking requirements and will be effective on the same date that it is published in the Federal Register



<https://www.federalregister.gov/documents/2021/03/16/2021-05233/equal-credit-opportunity-regulation-b-discrimination-on-the-bases-of-sexual-orientation-and-gender>



Abusive Acts or Practices

- **Rescission** of Policy Statement - Published March 19, 2021
- “Statement of Policy Regarding Prohibition on Abusive Acts or Practices” was announced in January, 2020.
- The 2020 policy statement outlined the application of principles during the Bureau’s supervision and enforcement work related to abusive acts and to resolve uncertainty in the industry.
- It was determined that in applying the policy statement, the principles set forth did not actually deliver clarity to regulated entities.



https://www.federalregister.gov/documents/2021/03/19/2021-05437/statement-of-policy-regarding-prohibition-on-abusive-acts-or-practices-rescission?utm_campaign=subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email



Supervisory Guidance – Final Rules

- The CFPB, FDIC, NCUA, and OCC issued final rules codifying that regulatory guidance does not have the force and effect of law.
- Per the final rules, the agencies indicated that they do not “take enforcement actions or issue supervisory criticisms based on non-compliance with supervisory guidance. Rather, supervisory guidance outlines supervisory expectations and priorities, or articulates views regarding appropriate practices for a given subject area.”



- CFPB: <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-final-rule-on-the-role-of-supervisory-guidance/>
- FDIC: <https://www.fdic.gov/news/press-releases/2021/pr21005.html>
- NCUA: <https://www.ncua.gov/newsroom/press-release/2021/ncua-board-approves-final-rule-role-supervisory-guidance>
- OCC: <https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-12.html>



Proposed Interagency Flood Q&As

- The FRB, FDIC, FCA, NCUA, and OCC issued **proposed** new interagency flood FAQs.
- The newly proposed 24 FAQs were published on March 18, 2021 and address three areas:
 - **Private flood insurance – mandatory acceptance**
 - **Private flood insurance – discretionary acceptance**
 - **Private flood insurance – general compliance**
- The comment period ends May 17, 2021



<https://www.federalregister.gov/documents/2021/03/18/2021-05314/loans-in-areas-having-special-flood-hazards-interagency-questions-and-answers-regarding-private>



FinCEN Notice FIN-2020-NTC4

- FinCEN Asks Financial Institutions to Stay Alert to COVID-19 Vaccine-Related Scams and Cyberattacks
- Potential for fraud, ransomware attacks, or similar types of criminal activity related to COVID-19 vaccines and their distribution
- May include the sale of unapproved and illegally marketed vaccines, the sale of counterfeit versions of approved vaccines, illegal diversion of legitimate vaccines, and fraudsters offering (for a fee) to provide potential victims with the vaccine sooner than permitted



<https://www.fincen.gov/sites/default/files/shared/COVID-19%20Vaccine%20Notice%20508.pdf>

New Interagency FAQs





Answers to FAQs Regarding Suspicious Activity Reporting and Other AML Considerations

- 7 new FAQs issued January 19, 2021
- Issued by FinCEN, Federal Reserve, FDIC, NCUA, OCC, & other regulators
- Provides clarification
- Does not alter existing requirements or set new expectations



Should a financial institution file a SAR solely on the basis of receiving a grand jury subpoena or other law enforcement inquiries?

*No. The receipt of a law enforcement inquiry, such as a grand jury subpoena, **does not by itself indicate that the criteria requiring the filing of a SAR** have been met. However, receipt of a grand jury subpoena or other law enforcement inquiry is **pertinent information** relevant to a financial institution's overall assessment of risk and the risk profile for the relevant customer(s) and account(s). Generally, a financial institution will assess and review all relevant information it has about a customer that is the subject of a grand jury subpoena or other law enforcement inquiries, in accordance with its risk-based AML program. For example, the receipt of a grand jury subpoena should cause a financial institution to review relevant account activity and transactions.*

The financial institution should determine whether SAR filing is necessary based on its assessment of all information available and applicable regulatory requirements. If a financial institution files a SAR on a customer or transaction following the receipt of a grand jury subpoena or other law enforcement inquiry, the SAR should focus on the facts and circumstances that support a finding of suspicious activity rather than the subpoena or inquiry itself.



Is a financial institution required to file a SAR based solely on negative news?

No. The existence of negative news related to a customer or other activity at a financial institution **does not by itself indicate that the criteria requiring the filing of a SAR have been met**, and does not automatically require the filing of a SAR by a financial institution. A financial institution may review media reports, news articles and/or other references to assist in its performance of customer due diligence, as well as its evaluation of any transactions or activity it considers unusual or potentially suspicious. For example, negative news may cause a financial institution to review customer activity as well as other related information, such as that of third parties with transactions involving the customer's account. As with other identified unusual or potentially suspicious activity, financial institutions should comply with applicable regulatory requirements and follow their established policies, procedures, and processes to determine the extent to which it investigates and evaluates negative news, in conjunction with its review of transactions occurring by, at, or through the institution, to determine if a SAR filing is required.



<https://www.fincen.gov/sites/default/files/2021-01/Joint%20SAR%20FAQs%20Final%20508.pdf>



New FAQs Regarding CRA and the COVID-19 Pandemic

- 5 new FAQs issued March 8, 2021
- Issued by Federal Reserve, FDIC, & OCC
- Provides clarification on consideration of SBA Paycheck Protection Program (PPP) loans as community development, flexible, or innovative lending
- Addresses consideration of community development services provided virtually



Can banks receive CRA service test consideration for processing Paycheck Protection Program (PPP) or other pandemic-focused loan applications and related loan servicing activities?

The CRA regulatory criteria for the service test **do not include loan processing and servicing activities** for retail loans originated by the bank. Additionally, the agencies generally consider building new lending platforms and technical assistance provided to borrowers during a loan application process to be activities that banks engage in during the normal course of doing business. Therefore, the agencies will not extend CRA Service Test consideration for PPP-related activities.

The agencies do recognize the Paycheck Protection loan program is responsive to community credit needs. Therefore, these activities will be considered under the CRA Lending Test when evaluating flexible or innovative lending programs offered by the bank.



Are PPP loans over \$1 million that are also in low- or moderate-income geographies or in distressed or underserved nonmetropolitan middle-income geographies automatically considered to be community development activities?

Yes, a PPP loan greater than \$1 million in one of these geographies will be considered an **eligible community development activity**. Pursuant to the Interagency Questions and Answers Regarding Community Reinvestment, activities that revitalize or stabilize a low- or moderate-income geography or a distressed or underserved nonmetropolitan middle-income geography help to attract new, or retain existing, jobs, businesses, or residents. The PPP was enacted and signed into law in order to support smaller businesses and retain jobs.



Due to the economic distress caused by the COVID-19 pandemic, some banks have been: (a) waiving withdrawal penalties on certificates of deposit (CDs); (b) fulfilling early distribution requests regarding individual retirement accounts (IRAs); (c) allowing draws on home equity lines of credit (HELOCs) during the repayment periods; (d) increasing transaction limits; (e) eliminating overdraft fees; and (f) eliminating ATM fees. Will CRA community development service credit be given for these types of actions during the pandemic? How should banks document these activities and the number of customers served by them?

The Joint Statement on CRA Consideration for Activities in Response to COVID-19 (Joint Statement) on March 19, 2020, explains that the agencies will **provide favorable CRA consideration** to retail banking services and retail lending activities in a bank's assessment area(s) that are **responsive to the needs of low- and moderate-income individuals, small businesses, and small farms** affected by the pandemic and that are consistent with safe and sound banking practices. The Community Reinvestment Act (CRA) Consideration for Activities in Response to the Coronavirus Frequently Asked Questions (FAQs) include additional examples of such activities.

The waiving of ATM fees, overdraft fees, and early withdrawal penalties on CDs are examples of retail services considered responsive to the needs of low- and moderate-income individuals as explained in the Joint Statement. The waiving of a bank's withdrawal fees on savings accounts is not included in the Joint Statement or the FAQs, but is another example of a responsive service. Allowing a low- or moderate-income individual to make draws from a HELOC during the repayment period could constitute a flexible lending practice. On the other hand, allowing a low- or moderate-income individual to make a withdrawal from an IRA, as allowed under the CARES Act, or to draw on a HELOC during the draw period are routine banking services and, as such, are not eligible for CRA consideration.

Examiners will consider any relevant information a bank provides that demonstrates a service is responsive or tailored to the convenience and needs of its assessment area(s), particularly the convenience and needs of low- or moderate-income individuals.



Should banks report, and should examiners give CRA consideration to, PPP loans that have been rescinded or returned under the SBA's safe harbor?

No. Banks should neither report these loans on their CRA loan register nor will examiners consider the loans in their CRA evaluations of banks during the applicable time period, as these loans ultimately had no impact on the relevant business, its employees, or its community.



<https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-12a.pdf>

Regulatory Changes





ATR/QM Amendment – General QMs

- The CFPB published a final rule on December 29, 2020, amending their Ability to Repay / Qualified Mortgage (ATR/QM) rule.
- It adjusts the General QM definition by removing the prior existing criterion that the ratio of the consumer's total monthly debt to total monthly income not exceed 43% and replaces it with a **new price-based threshold**.
- It removes Appendix Q and implements **verification provisions**.



<https://www.federalregister.gov/documents/2020/12/29/2020-27567/qualified-mortgage-definition-under-the-truth-in-lending-act-regulation-z-general-qm-loan-definition>



ATR/QM Amendment – General QMs

New Priced-Based Thresholds

Transaction	Threshold Limit
First-lien covered transaction with a loan amount greater than or equal to \$110,260	2.25 percentage points
First-lien covered transaction with a loan amount greater than or equal to \$66,156 but less than \$110,260	3.5 percentage points
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
For a subordinate-lien covered transaction with a loan amount less than \$66,156	6.5 percentage points



ATR/QM Amendment – General QMs

Verification Provision Amendments

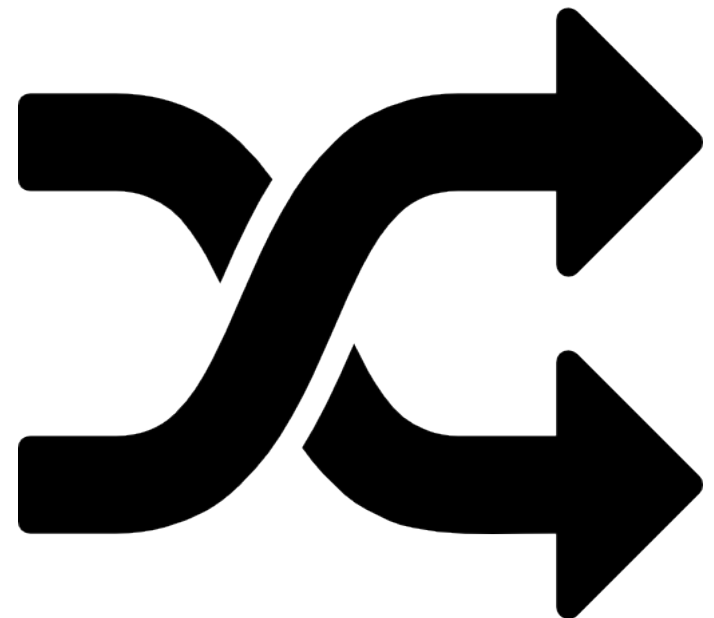
- Retains the basic requirement that creditors must consider and verify a consumer's income, assets, debt, and DTI or residual income.
- Retains the general verification standard of using reasonably-reliable third party records and reasonable methods.
 - However, the new rule removes Appendix Q (Standards for Determining Monthly Debt and Income) and instead includes consideration and verification requirements within the revised General QM definition. For example, among other things, a creditor must maintain written policies and procedures for how it takes into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination.
- The rule also includes a list of specific verification standards that creditors may use to meet the revised General QM definition's verification requirement. *Related to this, a safe harbor is provided if a creditor satisfies the verification standards in one or more specified manuals, for example, specified versions of the Fannie Mae Single Family Selling Guide and the Freddie Mac Single-Family Seller / Servicer Guide.*



Effective March 1, 2021. Mandatory Compliance Date July 1, 2021

Possible Change of Direction

General QM Proposed Rule





Proposed Rule – General QMs

- The CFPB issued a **proposed** rule to amend Reg. Z and the related recent General QM final rule.
- The rule **proposes** to delay the **mandatory compliance date** of the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule) until **October 1, 2022**.



<https://www.federalregister.gov/documents/2021/03/05/2021-04698/qualified-mortgage-definition-under-the-truth-in-lending-act-regulation-z-general-qm-loan-definition>



ATR/QM Amendment – Seasoned QMs

- The CFPB published another final rule on December 29, 2020, amending their Ability to Repay / Qualified Mortgage (ATR/QM) rule.
- It establishes a **new** category of QMs called Seasoned QMs.
- It establishes qualifying criteria for 1st lien covered transactions, which generally includes a “seasoning period” as well as performance and portfolio requirements.



<https://www.federalregister.gov/documents/2020/12/29/2020-27571/qualified-mortgage-definition-under-the-truth-in-lending-act-regulation-z-seasoned-qm-loan>



Basic Requirements

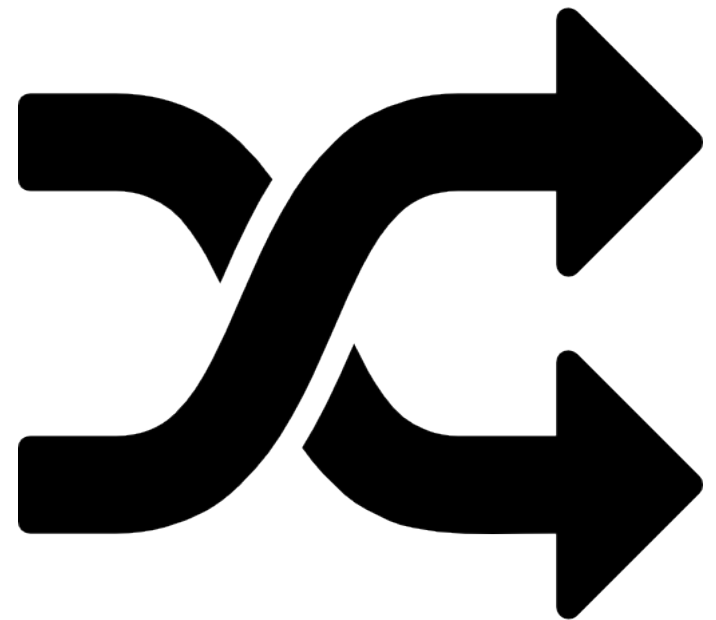
- **Fixed rate; 1st lien** loan with a term of **no more than 30 years** (step rate loans not considered fixed rate);
- Loan provides for **regular periodic payments** that are substantially equal and will fully amortize the loan over its term, and the loan **does not have an interest-only or negative amortization** feature;
- The **total points and fees do not exceed** the applicable limit for a QM loan;
- The loan is **not a high-cost loan** under Regulation Z.
- The creditor, in underwriting the loan, complies with the requirements under the new rule to **consider the consumer's income or assets, debt obligations, alimony, child support and monthly DTI ratio or residual income**, and to **verify** the consumer's income or assets and debt obligations, alimony and child support.
- Subject to exceptions for transfers required by supervisory action or in connection with a merger or entity acquisition, and an additional exception not included in the proposed rule (which is addressed below), the creditor **may not sell, assign or otherwise transfer the legal title** to the loan before the end of the 36-month seasoning period (calculated from the due date of the first periodic payment). The loan also could not, at consummation, be subject to a commitment to be acquired by another person, with exception.
- During the 36-month seasoning period the loan may have **no more than two delinquencies of 30 or more days, and no delinquency of 60 or more days** (if there is a delinquency of 30 or more days when the 36-month point is reached, the seasoning period is essentially extended as it would not end until there is no delinquency).



Effective March 1, 2021.

Possible Change of Direction

Seasoned QM Public Statement





Public Statement – Seasoned QMs

- The CFPB issued a **public statement** to announce possible reconsideration of the Seasoned QM final rule.
- The Bureau is considering whether to initiate a rulemaking to revisit the Seasoned QM Final Rule. If the Bureau decides to do so, it expects that it will consider in that rulemaking whether any potential final rule revoking or amending the Seasoned QM Final Rule should affect covered transactions for which an application was received during the period from March 1, 2021, until the effective date of such a final rule.



<https://www.federalregister.gov/documents/2021/02/26/2021-03987/public-statement-on-general-qm-and-seasoned-qm-final-rules>



Higher Priced Mortgage Loan (HPML) Amendment

- The CFPB published a final rule to amend Reg. Z on February 17th.
- The amendments exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain HPMLs.



<https://www.federalregister.gov/documents/2021/02/17/2021-01572/higher-priced-mortgage-loan-escrow-exemption-regulation-z>

Reg. Z – New HPML Escrow Exemption



The new rule reflects a new exemption from the HPML escrow rule. Under this new rule, the escrow requirement will not apply to any loan made by an insured depository institution or insured credit union that is secured by a first lien on the consumer's principal dwelling, provided certain criteria are met, which generally includes:

- the institution or credit union having assets of **\$10 billion or less** as of the preceding Dec. 31;
- the creditor and its affiliates together extended **no more than 1,000 covered transactions** secured by a first lien on a principal dwelling during the preceding calendar year;
- the institution extended at least one covered transaction in the preceding year that was secured by a first lien on a property located in a **rural or underserved area**;
- an escrow account is not required under § 1026.35(b)(2)(v), which requires that an escrow account be established for an HPML that was originated under a forward commitment for sale (i.e., your organization will not hold the loan in portfolio) **unless** the loan is **otherwise exempt** (for example, it is a reverse mortgage) or **the acquirer is also eligible** for either the small creditor or the insured institution exemption; and
- the institution and its affiliates do not maintain an escrow for HMPLs, unless: **a)** the escrow was established after consummation as an accommodation to distressed consumers in avoiding default or foreclosure, or **b)** the escrow was established at a time when the institution may have been required by regulation to do so (**on or after April 1, 2010, and before June 17, 2021**).



Effective February 17, 2021, w/a 120 day transition period

Advisory Opinions





What is it?

- The CFPB's Advisory Opinion Program provides written guidance to help institutions better understand their regulatory obligations.
- A primary focus is to clarify ambiguities in the Bureau's regulations.
- Requests for an advisory opinion may be submitted.



https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_policy_2020-11.pdf



Private Education Loans (PEL)

- The PEL advisory opinion clarifies 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 Reg. Z.



https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_private-education-loans_2020-11.pdf

Earned Wage Access (EWA) Programs

- The EWA advisory opinion is intended to resolve uncertainty related to the definition of credit in Reg. Z to certain EWA programs.



https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_earned-wage-access_2020-11.pdf



Special Purpose Credit Programs (SPCP)

- The SPCP advisory opinion addresses Reg. B applicability to certain aspects of SPCP by for-profit organizations to meet social needs. The opinion clarifies the content that must be included in a written plan that establishes the program. It also clarifies the research and data used to support that the SPCP is needed to benefit a certain group of people.



https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_special-purpose-credit-program_2020-12.pdf

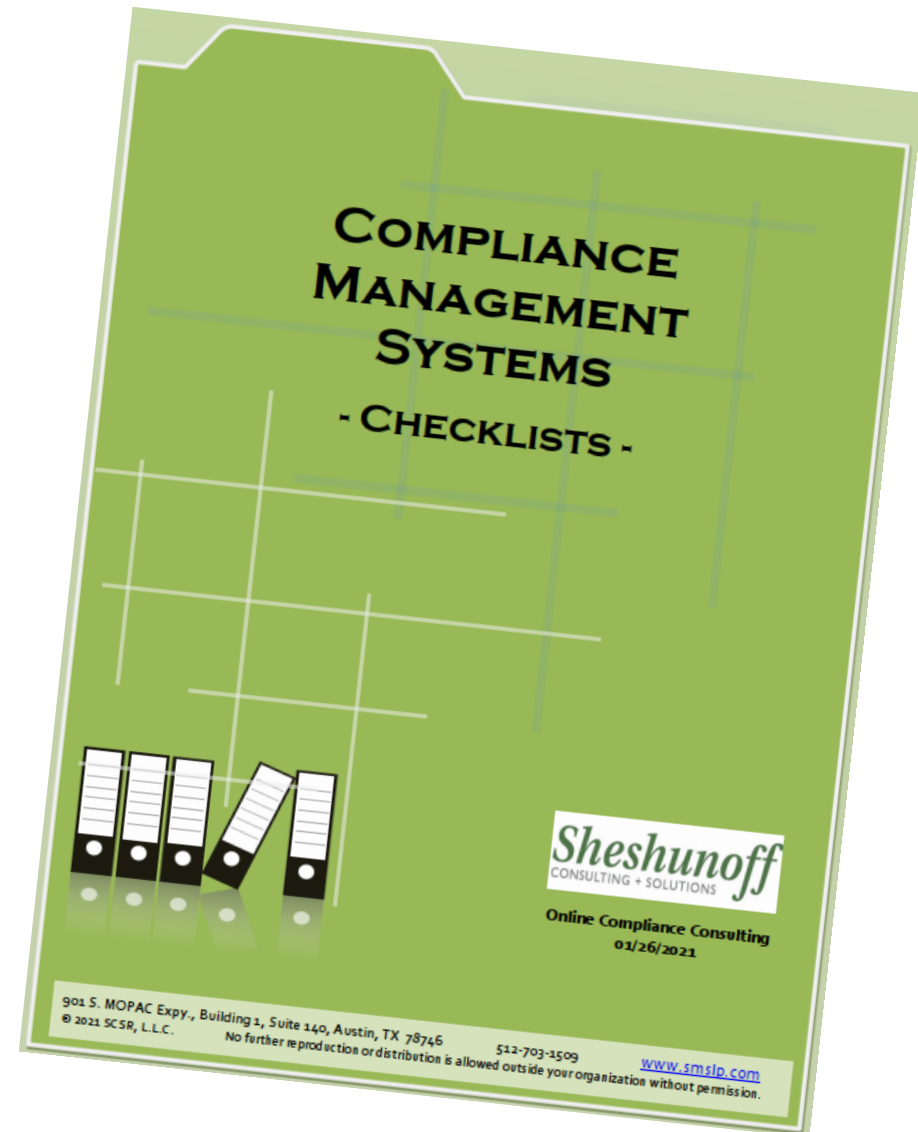
BONUS Handout



Compliance Management Systems



- Board of Directors & Senior Management Oversight
- Compliance Program Oversight
- Compliance Officer / Dept. / Committee
- Risk Assessments
- Compliance Responsibilities
- Compliance Monitoring & Reviews
- Customer Service
- Vendor Management Contracts, Risk Assessments, & Monitoring
- Training – Compliance / Board / Employees
- Resources
- Fair Lending & UDAAP





Fair Lending

- Ensure an up-to-date fair lending risk assessment and policy statement is in place.
- Implement ongoing monitoring for compliance with fair lending policies and procedures and appropriate corrective action.
- Implement ongoing monitoring for compliance with other policies and procedures intended to reduce fair lending risk (controls on discretion).
- Review lending policies for potential fair lending violations, including disparate impact.
- Ensure a customer complaint program is in place and operating effectively. Report complaint data to board and management.
- Depending on size/complexity of institution, regular statistical analysis, as appropriate, of loan-level data for potential disparities on a prohibited basis in pricing, underwriting and other aspects (mortgage and non-mortgage products).
- Regular assessment of the marketing of loan products, to include institution marketing and any marketing support by third parties.
- Meaningful oversight of fair lending compliance (Mgmt. or Board)
- Assess whether the use of any scoring models resulted in disparities or other fair lending concerns.
- As needed, consider a review of your CRA assessment area and branch locations.
- Implement regular fair lending training.



UDAAP

- Implement a UDAAP policy
- Build a process that monitors written and unwritten complaints from various parts of the institution. Then, use that information to refine disclosures and processes as needed.
- Consider UDAAP in new product development and advertising.
- For new product discussions, provide retail staff with scripting. *TIP – It is important what is said, as well as what is not said.*
- Consider customer surveys. *Tip – Ask “exit” questions when customers leave – why are they closing their account? Ask existing customers for their opinion.*

Thank you for attending our presentation.

QUESTIONS?

More Information



<http://compliance.smslp.com/>



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