



Be Prepared! 3rd Q 2021 Compliance Update

September 30, 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 36 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.

3rd Q 2021 Compliance Update

- 2021 Mortgage Servicing Rule
- Proposed Reg. B Changes
- Supervisory Highlights
- Interpretive Guidance on Juneteenth
- Third Party Relationship Proposed Guidance
- New e-CFR
- The Importance of Follow-Through

2021 Mortgage Servicing Rule

Regulation X Amendments



2021 Mortgage Servicing Rule



Final Rule

- Published on June 30, 2021
- Became effective on August 31, 2021

Amends Regulation X – implements protections for borrowers affected by COVID-19. Includes 4 primary provisions:

- Implements procedural safeguards
- Provides for streamlined loan modifications
- Requires additional information be provided
- Establishes timing requirements for diligence efforts

2021 Mortgage Servicing Rule



Background & High Level Points

- Prior to this rule, Reg. Z and Reg. X already addressed mortgage loan servicing and provided for early intervention and loss mitigation.

- Coverage –

*“The 2021 Mortgage Servicing COVID-19 Rule generally has the same coverage requirements as the Mortgage Servicing Rules. The 2021 Rule only applies to a mortgage loan **secured by the borrower’s principal residence**, and as such, generally does not apply to investment properties or second homes. The 2021 Rule **does not apply to reverse mortgages**, as defined by the Mortgage Servicing Rules. Similarly, **small servicers**, as defined in the Rules, are generally not subject to the new requirements.”*



Let's Take a Look Back....

Prior to the 2021 Rule, various servicing provisions, in Regulations X & Z, were already in place

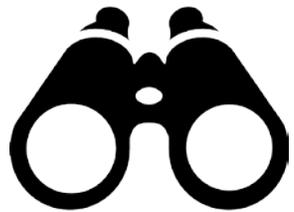
These have evolved over time -

- Mortgage servicing obligations became effective in 2014
- Amended in 2016, 2017, & 2018

Provisions include -

- Early intervention w/delinquent borrowers
- Loss Mitigation

2021 Mortgage Servicing Rule



Let's Take a Look at Our Current Environment....

- Early 2021 – Housing Insecurities Voiced
- CFPB Issues “Housing Insecurity and the COVID-19 Pandemic”
- As Forbearance and Foreclosure Moratoria Expire – Housing Insecurity Increases
- Bureau Issues a Proposed Rule to Amend Reg. X (April 2021) & a Final Rule (June 2021)



https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf



Reg. X – a new definition

COVID-19-related hardship means a **financial hardship** due, **directly or indirectly**, to the national emergency for the **COVID-19 pandemic** declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)).



2021 Rule – 4 Main Components

- Procedural Safeguards
- Streamlined Loan Modifications
- Provision of Additional Information
- Timing Requirements for Diligence Efforts



Component 1 – Procedural Safeguards § 1024.41(f)

Background: In general, to provide a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that **one of the procedural safeguards** has been met **before making the first notice or filing** required by applicable law, because of a delinquency, if:

- The mortgage loan became more than 120 days delinquent on or after March 1, 2020; and
- The statute of limitations applicable to the foreclosure expires on or after January 1, 2022.



Procedural Safeguard provisions are temporary – 8/31/2021 through 12/31/2021.



Component 1 – Procedural Safeguards cont.

Procedural Safeguard #1

Complete loss mitigation application evaluated

What does this mean?

- The borrower submitted a complete loss mitigation application and it was evaluated.
- The borrower remained delinquent at all times since submitting the application.
- The foreclosure protection conditions in the existing Mortgage Servicing Rules are met, permitting the servicer to make a foreclosure referral.



Component 1 – Procedural Safeguards cont.

Procedural Safeguard #2

Abandoned Property

What does this mean?

- The property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any foreclosure process.



Component 1 – Procedural Safeguards cont.

Procedural Safeguard #3

Unresponsive Borrower

What does this mean?

- The servicer did not receive **ANY** communications from the borrower for at least 90 days before the servicer makes the first notice or filing, and **ALL** of the following conditions are met:
 - Good faith efforts were made to establish live contact after EACH payment due date;
 - The early intervention written notice (1024.39(b)) was provided at least 10 days and no more than 45 days before making first notice or filing;
 - The servicer sent all notices required by 1024.41, as applicable, during the 90-day period before making the first notice or filing; and
 - The forbearance program, if applicable, ended at least 30 days before making first notice or filing.



Component 1 – Procedural Safeguards cont.

Exceptions

The Bureau has clarified that the procedural safeguards not required if:

- The foreclosure referral occurs on or after 1/1/2022.
- The borrower was more than 120 days delinquent prior to 3/1/2020.
- The applicable statute of limitations will expire before 1/1/2022.

“If the servicer has met the temporary procedural safeguards, or if the safeguards do not apply, the servicer may proceed with foreclosure referral, to the extent permitted by other law and the existing foreclosure protections in the Mortgage Servicing Rules.”

*CFPB – Executive Summary of the 2021
Mortgage Servicing COVID-19 Rule*



Component 1 – Procedural Safeguards cont.



Reg. X contains general requirements in §1024.38(c) that states:

*“A servicer shall **retain records** that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.”*

The Bureau has clarified record retention includes documentation regarding satisfaction of loss mitigation procedural safeguards.



Component 2 – Streamlined Loan Modification § 1024.41(c)(2)

Background: Prior to the 2021 Rule, a general prohibition existed that prevented servicers from evading the requirement to evaluate a complete loss mitigation application for all options, by offering a loss mitigation option based on the evaluation of information from an **incomplete** loss mitigation application. Limited exceptions existed, such as the offering of a short-term payment forbearance program.

The 2021 Rule adds a new exception to that list.



Component 2 – Streamlined Loan Modification cont.

Streamlined Loan Modification – New Exception To General Prohibition

Certain COVID-19-Related Loan Modification Options

What does this mean?

- This means that a servicer may offer a borrower a loan modification based upon the evaluation of an incomplete application, provided that certain criteria are met.



Component 2 – Streamlined Loan Modification cont.

A servicer may offer a loan modification based on the evaluation of an incomplete application, provided that **ALL** of the following are met:

- ✓ **TERM** – the loan term is extended by no more than 40 years from effective date of modification.
- ✓ **PAYMENTS** – monthly P&I payments for the modified term are not increased beyond the monthly P&I required prior to modification.
- ✓ **INTEREST ACCRUAL** – modifications that permit delayed payments must not allow interest to accrue on those amounts.
- ✓ **COVID** – the modification is made available to borrowers experiencing a COVID-19 related hardship.
- ✓ **ENDING DELINQUENCY** – such modification ends, or is designed to end, any pre-existing delinquency.
- ✓ **FEES** – the servicer must not charge fees in connection with the modification and must waive certain existing fees that are owed that were incurred on or after March 1, 2020.



Component 3 – Provision of Additional Information § 1024.39

Background: Prior to the 2021 Rule, provisions required that a servicer make good faith efforts to establish live contact with delinquent borrowers no later than the 36th day of delinquency, and thereafter. When live contact is established, the borrower is to be informed about the availability of loss mitigation options, if appropriate. The servicer has discretion in determining what is appropriate.

The 2021 Rule adds temporary, additional early intervention live contact requirements for servicers to provide specific information during the COVID-19 emergency.



Provisions to provide additional information are temporary and are only required until 10/01/2022.



Component 3 – Provision of Additional Information cont.

Temporary COVID-19 Related Live Contact Information

What does this mean?

This means that, until October 1, 2022, a servicer, after establishing live contact, comply with additional requirements to provide information to a delinquent borrower. The information to be provided differs, depending on whether or not the borrower is in a forbearance program, or not, at the time of live contact.



Component 3 – Provision of Additional Information cont.

For Borrowers Not in a Forbearance Program at the Time of Live Contact:

If the owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID-19-related hardship, the servicer must inform the borrower:

- that forbearance programs are available for experiencing a COVID-19 hardship, and unless the borrower states that they are not interested, shall provide information on any such forbearance programs made available at that time and what the borrower must do to be evaluated for such programs; and
- at least one way in which the borrower can find contact information for homeownership counseling services.

For Borrowers in a Forbearance Program at the Time of Live Contact:

If the borrower is in a forbearance program for a COVID-19-related hardship, during the live contact established that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program, or if the scheduled end date of the forbearance program occurs between August 31, 2021, and September 10, 2021, during the first live contact made after August 31, 2021, the servicer must inform the borrower:

- the date the current forbearance program is scheduled to end;
- information on each type of forbearance extension, repayment options, and other loss mitigation options made available at the time of live contact and actions the borrower must take to be evaluated for such programs; and
- at least one way the borrower can find contact information for homeownership counseling services.



Component 4 – Timing Requirements § 1024.41(b) for Diligence Efforts

Background: Prior to the 2021 Rule, a servicer is to exercise reasonable diligence in completing an incomplete loss mitigation application. This process could be suspended during a short-term payment forbearance program until the borrower is near the end of that forbearance program.

The 2021 Rule adds additional staff interpretations that a servicer must renew reasonable diligence efforts, in certain circumstances, to complete a loss mitigation application by contacting the borrower no later than 30 days before the scheduled end of a forbearance period.



Component 4 – Timing Requirements for Diligence Efforts cont.

*“iv. If the borrower is in a **short-term payment forbearance program** made available to borrowers experiencing a **COVID-19-related hardship**, including a payment forbearance program made pursuant to the Coronavirus Economic Stability Act, section 4022 (15 U.S.C. 9056), that was offered to the borrower based on evaluation of an **incomplete application**, and the borrower **remains delinquent**, a servicer must contact the borrower no later than **30 days before the scheduled end of the forbearance period** to **determine if the borrower wishes to complete the loss mitigation application** and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance period.”*

2021 Mortgage Servicing Rule



Resources



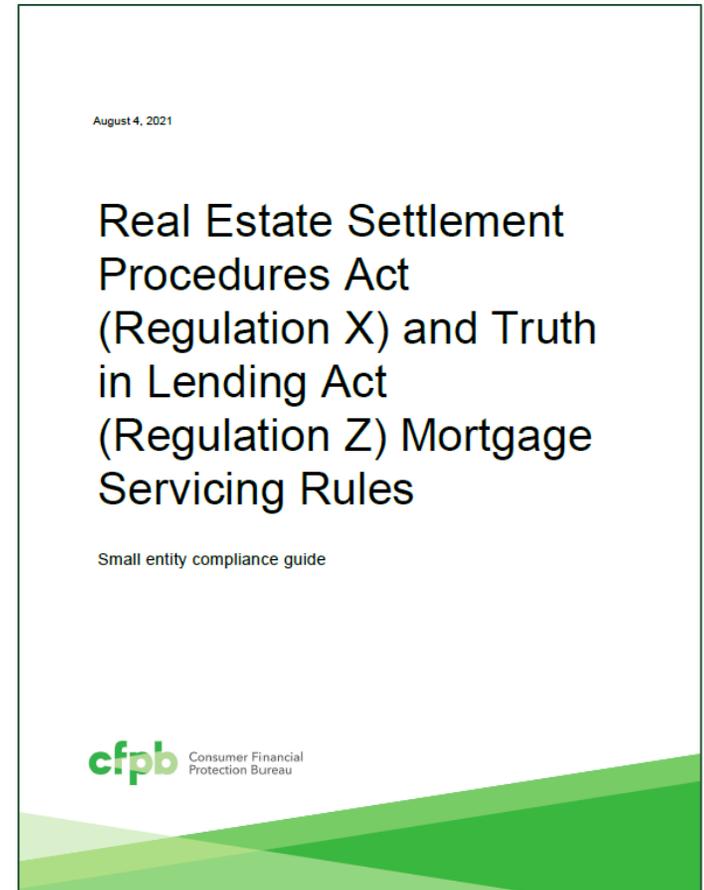
CFPB Small Entity Compliance Guide -
https://files.consumerfinance.gov/f/documents/cfpb_mortgage_servicing_small-entity-compliance-guide.pdf



CFPB Executive Summary -
https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing-rule_executive-summary_2021-06.pdf



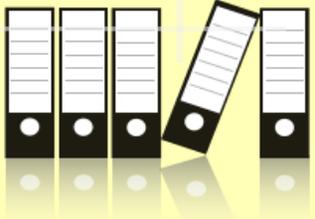
CFPB Unofficial Redline -
https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing-rule_unofficial-redline_2021-06.pdf





Resources cont.

**RESPA
MORTGAGE
SERVICING
TEMPORARY PROCEDURAL
SAFEGUARDS
- CHECKLIST -**



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Proposed Reg. B Changes



CFPB – Proposed Reg. B Amendment Small Business Lending Data Collection

Regulation B

- The proposed rule, if approved, establishes a Subpart B to implement small business lending data collection provisions. Covered financial institutions refers to those that have originated at least 25 covered credit transactions in each of the two preceding calendar years.



https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

Small Business Lending Data Collection

Important Terms

- Covered Applications – requests for a covered credit transaction made in accordance with your procedures. Does not include reevaluations, extensions or renewal requests unless additional credit amounts requested.
- Covered Credit Transactions – an extension of business credit that is not excluded.
- Businesses that are Small Businesses – Gross Annual Revenue in its Preceding Fiscal Year is **\$5 million or less.**

Small Business Lending Data Collection

Data Points

- Unique Identifier
- Application Date
- Application Method
- Application Recipient
- Credit Type
- Credit Purpose
- Amount Applied For
- Amount Approved or Originated
- Action Taken
- Action Taken Date
- Denial Reasons
- Pricing Information
- Census Tract
- Gross Annual Revenue
- N. American Industry Classification System Code
- Number of Workers
- Time in Business
- Minority-Owned Business Status
- Women-Owned Business Status
- Ethnicity of Principal Owners
- Race of Principal Owners
- Sex of Principal Owners
- Number of Principal Owners

Small Business Lending Data Reporting

- Annual Reporting – On or by June 1st
- Provisions address reporting by subsidiaries, as well as reporting where multiple institutions are involved
- Reporting shall include identifying information on the institution
- The Bureau shall provide a Filing Instructions Guide (FIG)

Small Business Lending Data - Other

- Bureau to make certain information public
- Covered institutions are to make available to the public a statement that it's small business lending application register will be available on the Bureau's website
- Recordkeeping provisions cover evidence of compliance for at least three years after submission
- Provisions address the implementation of a "firewall" to address the separation of certain information about minority/women owned status and the ethnicity, race & gender of principal owners.
- Compliance not required until 18 months after publication.

Other Noteworthy Issuances





Supervisory Observations - CFPB

Findings from Supervisory Work since Last Edition (Jan. 2021)

Review Observations. Then, Look at Your Program/Process.

- UDAAP Issues Noted in **Auto Loan Servicing**
- Deficiencies Found in **Consumer Reporting**
- Violations of **Fair Debt Collection Practices Act**
- Violations of Error Resolution under **Regulation E**
- Various Violations Related to **Overdraft Opt-in** Requirements
- **Fair Lending** Violations & **HMDA** Errors
- **Mortgage Origination & Servicing** Violations
- Issues on **Payday Lending**, **Private Education Loan** Origination, & **Student Loan** Servicing



https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf



CFPB – Reg. Z Interpretive Rule

Certain Mortgage & Disclosure Timing Requirements for 2021 Juneteenth Federal Holiday

The version of the specific business day definition that applies is the version of the definition in effect when the relevant time period begins. For example, in the context of the 2021 Juneteenth holiday and the affected rescission and TRID provisions:

- IF the relevant time period began **on or before June 17, 2021**, then June 19th was a business day.
- IF the relevant time period began **after June 17, 2021**, then June 19th was a federal holiday.



https://files.consumerfinance.gov/f/documents/cfpb_juneteenth-holiday_interpretive-rule_2021-08.pdf



Practical Example - Rescission

For purposes of § 1026.23(a)(3)(i), the rescission period is determined based on the version of the specific business day definition in effect when the rescission period begins. Similarly, for purposes of § 1026.23(b)(1) (v), the rescission period expiration date disclosed on the notice of the right to rescind is determined based on the version of the specific business day definition in effect when the rescission period begins. Therefore, if the rescission period began on or before June 17, 2021, for purposes of determining the rescission period and the disclosed rescission period expiration date, Saturday, June 19, 2021, is a business day notwithstanding the addition of Juneteenth as a Federal holiday.

For example, assume the rescission period began on Wednesday, June 16, 2021. Consistent with the version of the specific business day definition in effect when the rescission period began, the creditor disclosed June 19, 2021, as the rescission period expiration date on the notice of the right to rescind. Because the rescission period began on or before June 17, 2021, Saturday, June 19, 2021, is a business day for purposes of determining the rescission period and the disclosed rescission period expiration date. In this example, the rescission period expired on Saturday, June 19, 2021; the original rescission period expiration date did not change as a result of the addition of Juneteenth as a Federal holiday. The Bureau notes, however, that for purposes of compliance with § 1026.23(a)(3)(i) and (b) (1)(v), a creditor may provide a longer rescission period.



Practical Example – Delivery of Loan Estimate Prior to Consummation

Section 1026.19(e)(1)(iii)(B) provides that creditors generally must deliver or place in the mail the Loan Estimate to consumers no later than seven business days before consummation of the transaction. Consistent with the guidance described above, the Bureau concludes that the seven-business-day waiting period in § 1026.19(e)(1)(iii)(B) is determined based on the version of the specific business day definition in effect on the date the creditor delivers the Loan Estimate or places it in the mail.

For example, if a creditor delivered or placed the Loan Estimate in the mail on Monday, June 14, 2021, the creditor complied with § 1026.19(e)(1)(iii)(B) if consummation occurred on or after Tuesday, June 22, 2021, because the Loan Estimate was delivered or mailed seven business days (including June 19, 2021) before consummation. The Bureau notes, however, that it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of § 1026.19(e)(1)(iii)(B) because creditors may provide the Loan Estimate earlier than seven business days before consummation.



https://files.consumerfinance.gov/f/documents/cfpb_juneteenth-holiday_interpretive-rule_2021-08.pdf



Interagency Guidance - Proposed Third Party Relationships & Risk Management

- Proposed guidance – Federal Reserve, FDIC, & OCC
- Framework based on sound risk management principles
- Considerations for the **life cycle** of the relationship
- Designed to replace each agency's existing guidance on the topic.
- Agencies also seek comment on incorporating the **OCC's 2020 FAQs**



2021 Proposed Interagency Guidance -

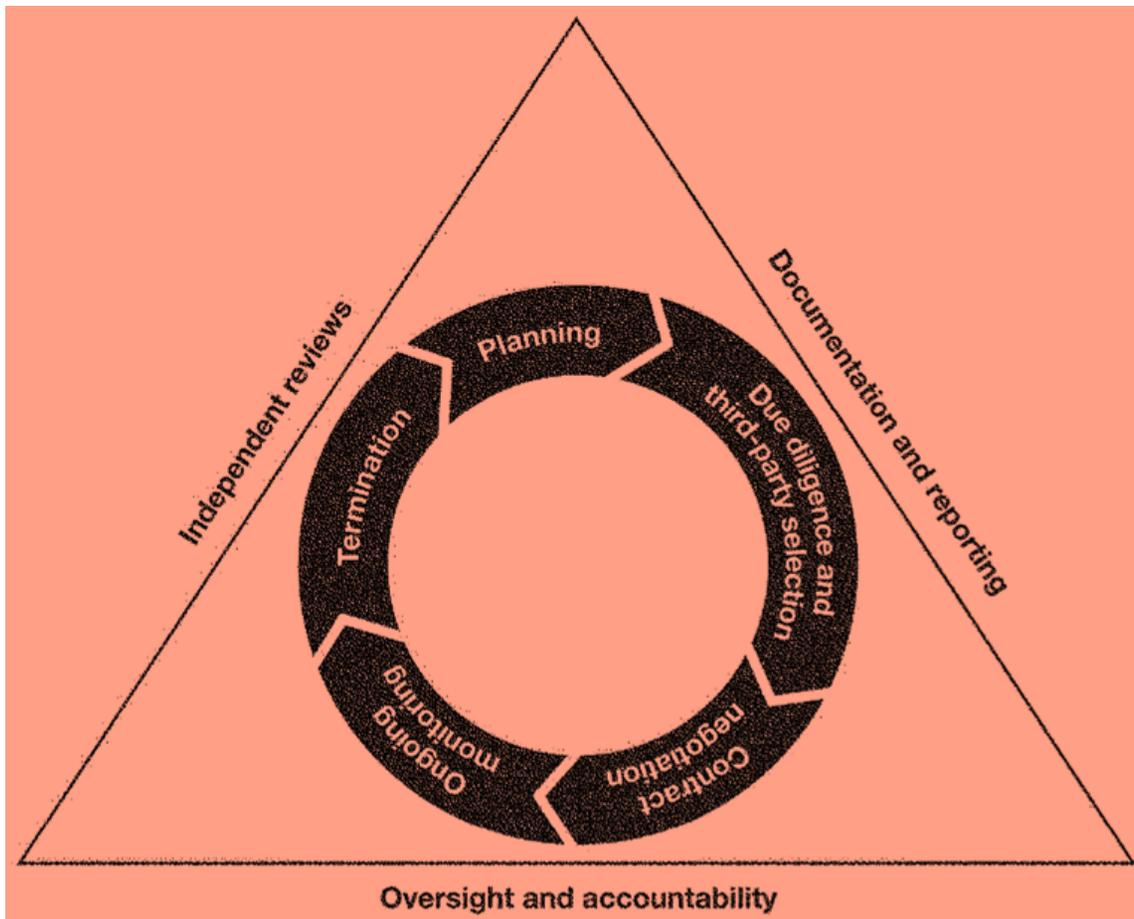
<https://www.federalregister.gov/documents/2021/07/19/2021-15308/proposed-interagency-guidance-on-third-party-relationships-risk-management>



OCC's 2020 Third-Party Relationship FAQs – <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-10.html>



Proposed Guidance – Life Cycle



1. Planning
2. Due Diligence & Selection
3. Contract Negotiation
4. Ongoing Monitoring
5. Termination

The Guidance also Addresses Oversight & Accountability.



Snapshot of Step 1 – Planning Considerations

- Identifying and Assessing Risk
- Strategic Purpose of the Arrangement
- Complexity – Volume, Potential for Subcontractor(s), Technology
- Evaluating Benefits vs. Cost
- Impact on Bank’s Strategic Initiatives
- Affect on Bank Employees
- Assessing Nature of Customer Interaction
- Determining Potential Information Security Implications
- Understanding the Selection, Assessment, and Oversight of the Third Party
- Assessing Institution’s Ability to Provide Adequate Oversight
- Contingency Plans In the Event of Transition to Another Third Party or Bringing the Activity In-House



Recommendations

- Watch for Final Guidance... ***and then do a Deep Dive!***
- Ensure Risk Management is Aware of Final Guidance
- Consider a Workgroup Effort to Implement New Guidance
- Review & Update Existing Policy as Appropriate
- Re-establish and/or Adjust Internal Controls

“A banking organization's failure to have an effective third-party risk management process that is commensurate with the level of risk, complexity of third-party relationships, and organizational structure of the banking organization may be an unsafe or unsound practice.”

*Proposed Interagency Guidance on
Third-Party Relationships: Risk Management*

Other Hot Topics





New & Improved e-CFR

Electronic Code of Federal Regulations

New & Improved Accessibility

- Web version of the Code of Federal Regulations
- For informational purposes & is updated daily
- After an amendment is published in the Federal Register, the amendment integrates the change into the e-CFR shortly after the effective date
- Future changes are displayed as “Cross References” in the content



<https://www.ecfr.gov/reader-aids/using-ecfr/getting-started>



New & Improved e-CFR



<https://www.ecfr.gov/>



<https://www.ecfr.gov/current/title-12>

- Chapter I - OCC
- Chapter II – Federal Reserve
- Chapter III – FDIC
- Chapter VII – NCUA
- Chapter X – CFPB



<https://www.ecfr.gov/current/title-31>

- Chapter X – FinCEN & Dept. of the Treasury



CFPB Sues Lender for Violating Consent Order

Continued Deceptive Practices Alleged

- 2016 Consent Order – Deception Involving Tens of Thousands of Borrowers
 - Restitution, CMP, & an Order to Stop False Claims
- 2021 Complaint Alleges Continued Same Illegal & Deceptive Marketing, and Failure to Provide Timely & Accurate Notices of Adverse Action

“Knowledge without follow-through is worse than no knowledge.”

Charles Bukowski



<https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-lendup-loans-for-violating-2016-consent-order-and-deceiving-borrowers/>

Thank you for attending our presentation.



QUESTIONS?

More Information



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