

Regulatory and Legislative Recap
January 2019

FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
01/31/2019	Civil Penalty Inflation Adjustment	84 FR 517	The CFPB adjusted civil penalty amounts for inflation. (See below for adjusted penalty amounts.)
01/01/2019	Regulation Z - TILA Threshold Adjustments (CFPB)	TBD	Creditors with assets of less than \$2.167 billion (including assets of certain affiliates) as of Dec. 31, 2018, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2019.
01/01/2019	Regulation C – HMDA Threshold Adjustments (CFPB)	84 FR 513	Banks, savings associations, and credit unions with assets of \$46 million or less as of Dec. 31, 2018, are exempt from collecting data in 2019.
01/01/2019	FCRA Fee Adjustments (CFPB)	84 FR 515	For calendar year 2019, the maximum allowable charge to consumers for credit reports is \$12.50
07/01/2019	Private Flood Insurance	TBD	The OCC, Federal Reserve, FDIC, FCA, and NCUA are amending their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Specifically, the final rule requires regulated lending institutions to accept policies that meet the statutory definition of “private flood insurance”; and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of “private flood insurance,” subject to certain restrictions.

On January 3, 2019, President Trump signed Senate Bill 3628, extending the National Flood Insurance Program until May 31, 2019.

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PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
02/19/2019	Stress Testing Requirements (FDIC)	83 CFR 67149	The FDIC issued a proposed rule to revise the requirements for stress testing by FDIC-supervised institutions. The proposed rule would amend the FDIC's existing stress testing regulations to change the minimum threshold for applicability from \$10 billion to \$250 billion, the frequency of required stress tests, and reduce the number of required stress testing scenarios from three to two.

January 1 – March 1, 2019 – [HMDA Reporting for 2018](#)
 January 1, 2019 – Presentment warranties – Regulation CC
 April 1, 2019 – [Prepaid accounts](#) – Regulation E & Z
 August 19, 2019 – [ATR for short-term & longer-term balloon-payment loans](#)

RESOURCES/GUIDANCE

Guidance	Summary
HMDA Reference Chart (CFPB)	The CFPB released a HMDA reporting reference chart for data collected in 2019.
Disclosure of Loan-Level HMDA Data (CFPB)	The CFPB issued final policy guidance describing modifications that it intends to apply to the loan-level data that financial institutions report under HMDA/Regulation C requirements before the data is disclosed to the public.
Consumer Compliance Regulatory Resources (NCUA)	Provides resources for credit unions to use to comply with regulatory requirements. The page includes Update 19-04 Submission of 2018 Home Mortgage Disclosure Act Data, and Update 19-03 Home Mortgage Disclosure Act Data Collection Requirements for Calendar Year 2019.
Servicemember Complaint Report (CFPB)	The CFPB's Office of Servicemember Affairs released an annual report highlighting issues faced by military consumers based on complaints submitted.
Consumer & Community Context (Federal Reserve)	The Federal Reserve released its inaugural issue featuring analysis about the financial conditions and experiences of consumers. This issue covers student loans.

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Consumer Compliance Manual Update (FDIC)	<p>The FDIC updated several sections of the Consumer Compliance Manual, including communicating findings, investigations and visitations, enforcement actions, determining whether TIL restitution is required, and the Federal Trade Commission Act.</p>
Letter to Credit Unions 19-CU-01 (NCUA)	<p>See below for summary on the NCUA’s supervisory Priorities for 2019.</p>
National Illicit Finance Strategy & Supporting Risk Assessments (Treasury)	<p>The Treasury issued the National Strategy for Combating Terrorist and Other Illicit Financing, which describes government efforts to combat illicit finance threats and risks and identifies priorities, objectives, and potential areas for improvement.</p>
<p>Overview of BSA/AML & OFAC requirements (FDIC)</p>	<p>The FDIC released an updated technical assistance video on the Bank Secrecy Act (BSA), anti-money laundering (AML) requirements, and the Treasury Department’s Office of Foreign Assets Control (OFAC) sanctions programs. The updated video provides an overview of current BSA/AML and OFAC requirements for directors of FDIC-supervised banks and savings associations. The video is available at: https://www.fdic.gov/regulations/resources/director/virtual/bsa.html.</p>
<p>HMDA Data Disclosure Policy Guidance (CFPB)</p>	<p>The CFPB issued final policy guidance (executive summary) describing modifications that it intends to apply to the HMDA data reported by financial institutions before the date are made available to the public on the loan level. The modifications are designed to protect consumer privacy. Property addresses, credit scores and automated underwriting results will not be released, and ages, loan amounts and number of units in a dwelling will be released with “reduced precision.” This applies to data compiled in 2018 and after.</p>
ATR/QM Assessment Report	<p>The CFPB released its required assessment report on the effect of the Ability-to-Repay and Qualified Mortgage (ATR/QM) Rule.</p>
Consumer Compliance Outlook (Federal Reserve)	<p>The latest issue includes preparing for a compliance examination, escrow accounting rules, along with news from Washington and docket events.</p>

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How not to do it

Regulation E & USAA Federal Savings Bank [Consent Order](#) – The Order addresses the institution’s practices of failing to properly stop preauthorized EFTs, failing to initiate and conduct adequate error resolution investigations, and unfair acts or practices relating to reopening closed consumer deposit accounts without providing timely notice. This is a recommended read for Operations Departments.

TCPA – Expect more in 2019

In December, the FCC released its plan establishing a reassigned numbers database – [Advance Methods to Target and Eliminate Unlawful Robocalls](#), in order to cut down on the number of unwanted robocalls. One thing missing from the plan is an implementation date. This release follows the FCC’s [Public Notice](#), from back in October, on what actually constitutes an “automatic telephone dialing system,” after a 9th Circuit Court questioned the FCC’s definition of an automatic telephone dialing system. The system is the backbone of the TCPA. Expect more guidance, and confusion, in 2019.

The National Flood Insurance Program was extended until May 31, 2019, after expiring on December 7, 2018. The effective date of the extension was December 7, 2018, so there was no lapse in coverage.

CFPB & MLA

The CFPB has [asked](#) Congress to grant the Bureau the authority to conduct examinations relating to the Military Lending Act. If you remember, last year, the then acting CFPB Director, Mick Mulvaney, determined that the existing law did not grant the Bureau the authority to examine institutions for compliance with the MLA.

NCUA Restructuring

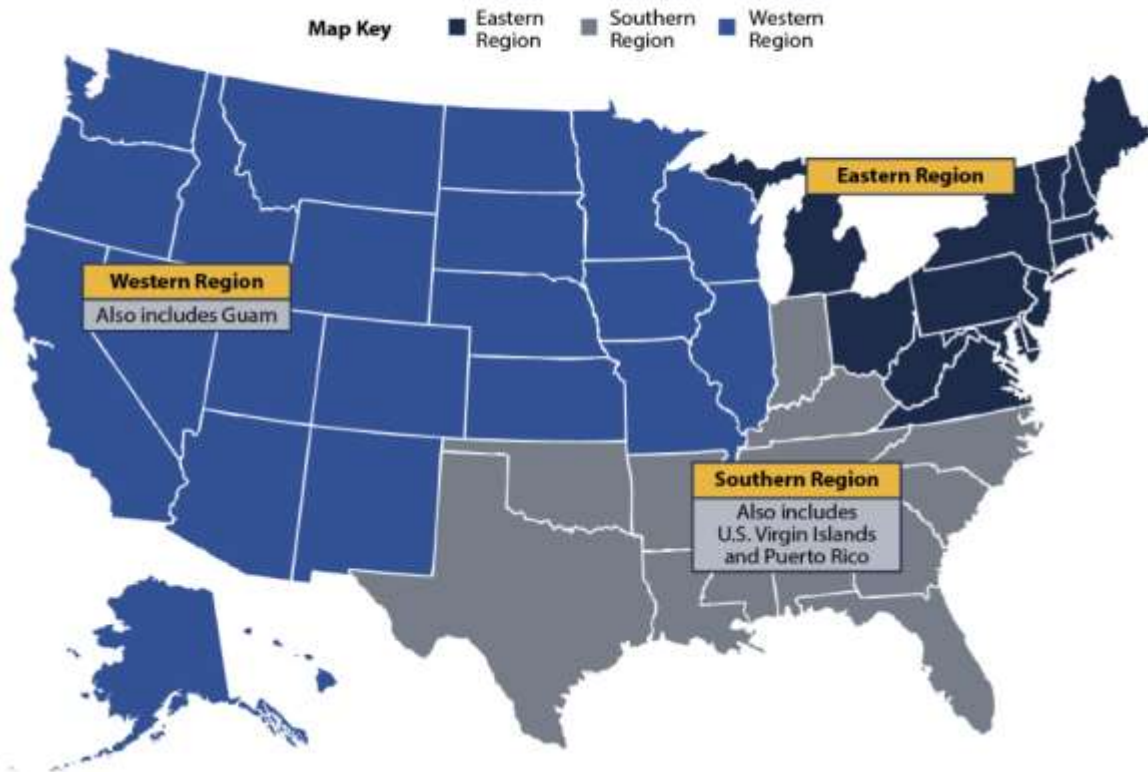
The NCUA is now comprised of three regions, down from five: The [Eastern Region](#) includes: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. The [Southern Region](#) includes: Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and the U.S. Virgin Islands. The [Western Region](#) includes: Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

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NCUA Regional Structure as of January 2019



Eastern Region

1900 Duke Street
Suite 300
Alexandria, Virginia 22314
Regional Director Jane Walters
EasternMail@ncua.gov
703.519.4600

Western Region

1230 West Washington Street
Suite 301
Tempe, Arizona 85281
Regional Director Cherie Freed
WesternMail@ncua.gov
602.302.6000

Southern Region

4807 Spicewood Springs Road
Suite 5200
Austin, Texas 78759-8490
Regional Director Keith Morton
SouthernMail@ncua.gov
512.342.5600

The NCUA also recently revamped its websites at NCUA.gov and MyCreditUnion.gov to make them more user and mobile friendly.

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In [Letter to Credit Unions 19-CU-01](#) the NCUA outlines its primary areas of supervisory focus for 2019. Included in the priorities are:

- Bank Secrecy Act compliance (as always). This will include the new Customer Due Diligence requirements that became effective in 2018.
- Concentrations of Credit.
- Consumer Compliance – including
 - HMDA loan/application registers,
 - Military Lending Act,
 - Regulation B's adverse action notification requirements, and
 - Overdraft policies and procedures for compliance with Regulation E.
- CECL Compliance Efforts,
- Information Systems and Assurance, including:
 - Assessment of the credit union's IT risk management to ensure it effectively identifies, remediates, and controls inherent risks to appropriate residual risk levels, and
 - Oversight of service provider arrangements to ensure credit unions implement effective risk-based supply change management.
- Liquidity and Interest Rate Risks.

[Hoang v. Bank of America](#) – rescission versus statute of limitations

The panel reversed the district court's dismissal of an action brought by a borrower against Bank of America, N.A., alleging claims under the Truth in Lending Act after the bank declared the borrower in default on a loan and initiated non-judicial foreclosure proceedings. If a creditor fails to make required disclosures under TILA, borrowers are allowed three years from the loan's consummation date to rescind certain loans. [15 U.S.C. § 1635(f)] The borrower sent the bank notice of intent to rescind the loan within three years of the consummation date. The panel held that under *Jesinoski v. Countrywide Home Loans*, borrowers may affect rescission of such a loan simply by notifying the creditor of their intent to rescind within the three-year period from the loan's consummation date. The panel further held that because TILA did not include a statute of limitations outlining when an action to enforce such a rescission must be brought, courts must borrow the most analogous state law statute of limitations and apply that limitation period to TILA rescission enforcement claims. The panel held that in Washington, the state's six-year contract statute of limitations was the most analogous statute. The panel rejected the district court's application of TILA's one-year statute of limitations for legal damages claims. The panel also the bank's argument that Washington's two-year catch-all statute of limitations should apply. Because the borrower brought this action within six years, the district court erred in dismissing the TILA claim as time barred. The panel held that the district court improperly denied the borrower leave to amend the complaint. The district court made its determination based on its determination that amendment would be futile because the claims were time- barred. The panel held that because the borrower's TILA rescission enforcement claim was not time-barred, an amendment by the borrower would not be futile.

Government Shutdown While the government is currently up and running now, we may see another shutdown before month end, so this information is provided as a 'just in case.'

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The FDIC, Federal Reserve, OCC, NCUA, and CFPB issued [FIL-1-2019](#) encouraging financial institutions to work with customers affected by the shutdown. “While the effects of the federal government shutdown on individuals should be temporary, affected borrowers may face a temporary hardship in making payments on debts such as mortgages, student loans, car loans, business loans, or credit cards. As they have in prior shutdowns, the agencies encourage financial institutions to consider prudent efforts to modify terms on existing loans or extend new credit to help affected borrowers.

Prudent workout arrangements that are consistent with safe-and-sound lending practices are generally in the long-term best interest of the financial institution, the borrower, and the economy. Such efforts should not be subject to examiner criticism.

Consumers affected by the government shutdown are encouraged to contact their lenders immediately should they encounter financial strain.”

Fannie Mae released Lender Letter LL-2019-01 on January 11, explaining their expectations and requirements with respect to credit reporting:

Fannie Mae – LL-2019-01: Impact of Federal Government Shutdown

In response to questions and feedback from servicers and other industry participants, we are issuing this Lender Letter to clarify our expectations and requirements with respect to credit reporting regarding mortgage loans made to government employees and other workers impacted by the federal government shutdown. These temporary requirements will provide servicer guidance to assist borrowers who have been impacted by the shutdown that began on December 22, 2018. This guidance is effective immediately and will automatically expire when the federal government resumes full operations. If the shutdown lasts for a prolonged period, we may provide additional guidance.

Clarification Regarding Credit Reporting for Borrowers Impacted by the Shutdown

Fannie Mae extends the flexibility to servicers to determine the appropriate method for reporting the status of a mortgage loan for a borrower impacted by the federal government shutdown to the credit repositories. Servicers are permitted, but not required, to suspend credit reporting in these instances. As a reminder, servicers are responsible for complying with all applicable laws when reporting a mortgage loan status to the four major credit repositories.

Freddie Mac released temporary guidance ([Bulletin 2019-1](#)) that certain loans made to impacted borrowers are still eligible for sale to Freddie Mac

Washington State DFI published a [list of financial resources](#) for federal workers.

CFPB Civil Penalty Inflation Adjustments:

Law	Penalty Description	2018 Penalty Amounts	New Penalty Amount
Consumer Financial	Tier 1 penalty	\$5,639	\$5,781

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Protection Act 12 USC 5565(c)(2)(A)			
Consumer Financial Protection Act 12 USC 5565(c)(2)(B)	Tier 2 penalty	\$28,195	\$28,906
Consumer Financial Protection Act 12 USC 5565(c)(2)(C)	Tier 3 penalty	\$1,127,799	\$1,156,242
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Per violation	\$1,964	\$2,014
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Annual cap	\$1,963,870	\$2,013,399
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Per failure	\$92	\$94
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Annual cap	\$184,767	\$189,427
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	\$185	\$190
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	\$28,474	\$29,192
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	\$11,279	\$11,563
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	\$22,556	\$23,125

For those BSA folks who like to read – The Treasury released the [National Strategy for Combating Terrorist and Other Illicit Financing](#). The Strategy describes and assesses current U.S. government efforts to combat illicit finance threats and risks and identifies priorities, objectives, and potential areas for future improvement. The National Illicit Finance Strategy addresses the threats and risks to the U.S. financial system that were identified in three separate risk assessments, also released today: the [National Proliferation Financing Risk Assessment](#), the [National Terrorist Financing Risk Assessment](#), and the [National Money Laundering Risk Assessment](#).

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Washington State Legislature

The Legislature convened on January 14, 2019, with the last day of regular session of April 28, 2019. Upon first glance, we identified the following bills that may impact financial institutions -

HB 1001 SB 5030	Service Contract Providers Addresses service contract providers and protection product guarantee provisions regarding: (1) A provider's net worth threshold, ability to pay its debts, and the use of generally accepted accounting standards in regard to unearned contract fees or expected contract claims; and (2) The authority of the insurance commissioner to take action against a provider.	In House Committee
HB 1066 SB 5034	Requiring debt collection complaints to be filed prior to service of summons and complaint Requires that debt collection complaints be filed before service of the summons and complaint on defendants to ensure that defendants: (1) Understand that it is an existing court case; (2) Are informed of the case number; and (3) Receive adequate notice and a reasonable opportunity to respond and be heard to avoid default judgment. Prohibits a licensee or employee of a licensee from serving a debtor with a summons and complaint unless the summons and complaint have been filed with the court and bear the case number assigned by the court	In House Committee
HB 1071 SB 5064	Protecting personal information Addresses personal information and the breach of security systems.	In House Committee
HB 1105	Protecting taxpayers from home foreclosure Modifies home foreclosure provisions regarding the protection of taxpayers. Creates the counselor referral hotline account.	In House Committee
HB 1150	Concerning compliance requirements of the revised uniform fiduciary access to digital assets act Imposes penalties on custodians that fail to comply requests from a fiduciary regarding digital assets and electronic communications.	In House Committee
SB 5107 HB 1171	Addressing trust institutions Revises the Washington trust institutions act.	In Senate Committee

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Oregon State Legislature

The Oregon Legislative Session started January 22, 2019.

HB2426	Permits credit unions to prescribe terms of executive officers in bylaws. Changes threshold date to January 1, 2019, from January 1, 2017, for exercise by state credit unions of powers available to federal credit unions without Director of Department of Consumer and Business Services approval. Modifies laws relating to meetings of members of credit unions.	In House Committee
HB2273	Permits business to communicate with owner by electronic mail regarding abandoned securities. Removes exception to abandonment presumption for securities whose dividends automatically reinvest.	In House Committee
HB2341	Makes unlawful employment practice for employer to deny reasonable accommodation to known limitations related to pregnancy, childbirth or related medical condition or to take certain actions related to reasonable accommodations to known limitations related to pregnancy, childbirth or related medical condition. Requires employer to post notice to employees of provisions of law prohibiting employment discrimination because of pregnancy and protections provided under Act. Requires employer to provide copy of notice to employees at certain times. Requires Commissioner of Bureau of Labor and Industries to adopt rules to establish training and outreach to inform employers and employees of rights and protections related to pregnancy-related employment discrimination and reasonable accommodations available for pregnancy, childbirth and related medical conditions.	In House Committee
HB2740	Establishes Oregon Industrial Hemp Commission. Aligns state definition of "industrial hemp" with federal definition. Takes effect on 91st day following adjournment sine die.	In House Committee
HB2459	Provides procedure for certain persons that hold interest in real property to request and obtain lien information statement that shows amounts necessary to satisfy encumbrance against real property from other person that holds encumbrance. Requires encumbrance holder to respond to request for lien information statement within 30 days after receiving request. Permits encumbrance holder to require evidence that person requesting lien information statement is authorized recipient. Specifies model form for request and information that lien information statement must include. Provides remedies for encumbrance holder's failure to provide lien information statement or to postpone action or proceeding to enforce	In House Committee

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	encumbrance to allow reasonable time for authorized recipient to satisfy encumbrance. Permits authorized recipient to treat lien information statement as payoff statement for purposes of satisfying obligation that encumbrance secures.	
HB2411	Allows financial institutions, after obtaining person's permission, to swipe person's driver license or identification card for purpose of establishing or maintaining contract or account.	In House Committee
SB361	Modifies prudent investor rule to allow trustee to consider environmental, social and governance factors of investments when making investment decisions.	In Senate Committee
HB2588	Requires certain persons that service student loans in this state to obtain or renew license. Specifies license application and renewal procedures and required fees. Prescribes duties of licensee and requires licensee to maintain specified liquidity, operating reserves and tangible net worth. Prescribes civil penalty against person that engages in business as student loan servicer without license. Permits Director of Department of Consumer and Business Services to participate in multistate examinations under specified circumstances. Becomes operative January 1, 2020. Declares emergency, effective on passage.	In House Committee
HB2089	Prohibits title loan lender and payday loan lender from making loan to consumer until seven days after consumer has fully repaid outstanding title loan or payday loan. Becomes operative on January 1, 2020. Takes effect on 91st day following adjournment sine die.	In House Committee
SB109	Specifies that certain documents prepared by or for internal use of financial institutions are not real estate appraisal activity requiring preparer of document to carry real estate appraiser certification, license or registration.	In Senate Committee
HB2312	Requires seller of property to disclose whether property is identified by FEMA as Special Flood Hazard Area or whether flood insurance is required by local ordinance or in order to obtain federally regulated loan.	In House Committee

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