

Regulatory and Legislative Recap
September 2019

FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
12/02/2019	Payday Alternative Loans (PALs II)	84 FR 51942	The NCUA Board issued a final rule (referred to as the PALs II rule) to allow federal credit unions to offer additional payday alternative loans (PALs) to their members. The final rule does not replace the NCUA's current PALs rule (referred to as the PALs I rule). The NCUA states that the PALs II rule grants FCUs additional flexibility to offer their members meaningful alternatives to traditional payday loans while maintaining many of the key structural safeguards of the PALs I rule. See below for more information and other NCUA Board actions.
01/01/2020 (DOL)	Overtime Rule (DOL)	84 FR 51230	<ul style="list-style-type: none"> • White Collar threshold exemption = \$684/week or \$35,568/year • Highly Compensated Employee threshold = \$107,432/year • Employers can use Nondiscretionary Incentive Compensation to meet up to 10% of salary threshold • No automatic threshold adjustments • Duties test does not change

PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
11/04/2019	Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized (FDIC)	84 FR 46470	The FDIC is seeking comment on proposed revisions to its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions. Under the proposed rule, the FDIC would amend the methodology for calculating the national rate and national rate cap for specific deposit products. The national rate would be the weighted average of rates paid by all insured depository institutions on a given deposit product, for which data are available, where the weights are each institution's market share of domestic deposits. The national rate cap for particular products would be set at the higher of the 95th percentile of rates paid by insured depository institutions weighted by each institution's share of total domestic deposits, or the proposed national rate plus 75 basis points. The proposed rule would also greatly simplify the current local rate cap calculation and process by allowing less than well capitalized institutions to offer up to 90 percent of the highest rate paid on a particular deposit product in the institution's local market area.

No Legal Advice Intended

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RESOURCES/GUIDANCE

Guidance	Summary
2020 HMDA Filing Guide (CFPB)	The CFPB published its Filing Instruction Guide for data collected in 2020, along with a Supplemental Guide for Quarterly Files.
SAFE Act FAQs (CFPB)	The CFPB published four frequently asked questions regarding the SAFE Act. The addressed questions are: (1) What are the categories of loan originators in the SAFE Act? (2) Where can loan originator exercise temporary authority? (3) What is the Bureau’s guidance regarding state transitional licenses availability under the SAFE Act? (4) Does EGRRCPA impact the status of state transitional licenses under the SAFE Act?
Summer 2019 Supervisory Highlights (CFPB)	The CFPB released its Summer 2019 Supervisory Highlights, which includes findings in auto loan origination (specifically GAP sales), credit card account management, debt collection, credit information furnishing, and mortgage originations.
Practical Implementation Checklists for SOFR Adoption	The Alternative Reference Rates Committee issued an implementation checklist to help institutions working to transition away from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR), the ARRC’s recommended replacement for LIBOR. The checklist covers 10 key areas where action is needed, including governance, risk management and operational readiness. The ARRC noted that while the checklist is designed to provide institutions steps they can consider when transitioning, it is not intended to be a prescriptive plan for them to strictly follow.
Consumer Compliance Outlook (FRB)	The issue includes articles on promoting change management, vendor management considerations for flood insurance requirements, news from Washington, and recent federal court opinions, among others.
Consumer Compliance Examination Manual (FDIC)	The FDIC updated its Consumer Compliance Examination Manual with changes to the sections and questions of the Fair Lending Scope and Conclusions and incorporating the private flood insurance rule’s relating to the mandatory and discretionary acceptance of private flood insurance.
Risk Management Manual of Examination Policies (FDIC)	The FDIC updated section 3.2-Loans, of their RMS Manual including revised loan evaluation instructions, technical updates for accounting, appraisal thresholds, and syndicated lending instructions, along with various technical edits to update terminology.

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September 2019

The NCUA will be hosting two webinars regarding Small Business Administration loan programs. The [first webinar](#) will be on October 16th. (Pre-registration required.)

FinCEN updated, and then reversed, Question 16 of its [CTR FAQs](#), without any announcement or change to the [XML CTR Users Guide](#).

FinCEN changed its answer to Question 16:

What if more than one “role” (Item 2) applies to the person being listed in Part I?

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 his/her personal account and a separate \$7,000 deposit into the account of an incorporated business on the same business day, there will be a Part I on that person reporting option 2a on the personal deposit with that amount, \$5,000, and account number in Item 21 “Cash in amount...” There will be a second Part I on that same person, reporting option 2b on the transaction they conducted on the business account, with that amount, \$7,000, and account number in Item 21. Filers would proceed with creating a Part I for all other persons involved in the transactions, which in this example would be the incorporated business, reporting option 2c, with that amount, \$7,000, and account number in Item 21 “Cash in amount...”

Then, again without any announcement or explanation, FinCEN reverted its answer back to its previous answer:

If more than one Item 2 option applies to a person involved in the transaction(s), filers should complete only one Part I on that person with only one entry in Item 2 pursuant to the following construct:

When to select Option 2a: In addition to when only Option 2a applies, filers should select Option 2a "Person conducting transaction on own behalf" if 1) Options 2a, 2b, and 2c apply; 2) Options 2a and 2b apply; or 3) Options 2a and 2c apply.

When to select Option 2b: In addition to when only Option 2b applies, filers should select Option 2b "Person conducting transaction for another" if both Options 2b and 2c apply and Option 2a does not apply.

When to select Option 2c: Filers should select Option 2c "Person on whose behalf transaction was conducted" only on the person for whom the transaction is conducted. This person cannot have other roles within the transaction or the options would apply.

When to select Option 2d: In addition to when only Option 2d applies, filers should select "Courier Service (private)" if multiple options that include 2d "Courier service (private)" apply.

So, no change in reporting is required, but may be a hint of things to come.

The CFPB issued several Policies regarding [No-Action Letters](#), [Compliance Assistance Sandbox](#), and [Trial Disclosure Programs](#).

The No Action Letter (NAL) policy provides a NAL recipient assurance that the CFPB will not bring a supervisory or enforcement action against the company for providing a product or service under the covered facts and circumstances. The CFPB will grant or deny the request within 60 days after an application is considered complete. The Bureau intends to publish NALs on its website and, in some cases, a version or summary of the application. The Bureau may also publish denials and an explanation

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of why the application was denied. The policy notes that disclosure of information is governed by the Dodd-Frank Act, FOIA and the Bureau's rule on Disclosure of Records and Information, which generally would prohibit the Bureau from disclosing confidential information.

The Compliance Assistance Sandbox (CAS) policy will evaluate a product or service for compliance with relevant laws and will offer approved applicants a "safe harbor" from liability for certain covered conduct during the testing period under TILA, ECOA, or the EFTA. The CAS was originally proposed as the "Proposed Sandbox Policy," and included, in addition to the now listed carve-outs, exemptions by order from statutory provisions of ECOA, HOEPA, and the Federal Deposit Insurance Act (FDIA). The final CAS policy does not include the exemption program. The Bureau noted that, based on the comments received on the proposal, it will issue, at a later date, a new proposal to establish a program for exemptions by order through a separate notice-and comment rulemaking.

The Trial Disclosure Programs (TDP) policy creates the "CFPB Disclosure Sandbox," which carries out the requirements of Section 1032(e) of the Dodd-Frank Act. The Bureau's first TPD policy was finalized in 2013, allowing for approved company disclosures to be deemed in compliance with, or exempted from, applicable federal disclosure requirements during the testing period. Under the previous policy, the Bureau did not approve a single company program for participation. The updated TDP policy streamlines the application process, including providing formal determinations within 60 days of deeming an application complete. The policy provides procedures for requesting extensions of successful testing programs, as the Bureau expects most testing periods will start at two-years.

NCUA's September Board meeting had three items approved.:

- **PALs II** - The [PALs II](#) Rule does not replace the existing PAL Rule, but provides another option for short-term, small-dollar loans for federal credit unions. The Rule:
 - Allows a federal credit union to offer a PAL II loan up to \$2,000.
 - Requires PALs II to have a minimum term of one month and a maximum of 12 months.
 - Does not require pre-existing membership to qualify for a PALs II loan.

A chart comparing PALs I & PALs II along with the highlights is available [here](#).
Effective December 2, 2019.

- **Supervisory Committee** - The [final rule](#) updates outdated provisions of the regulation and provides added flexibility to federally insured credit unions with assets less than \$500 million while continuing to ensure appropriate financial oversight. The Rule:
 - Replaces the outdated Supervisory Committee Guide Audit alternative to a financial statement audit and replaces it with a simplified appendix to the regulation.
 - Eliminates two types of audits federally insured credit unions seldom use.
 - Eliminates the 120-day deadline for receiving a third-party audit report and gives credit unions the ability to negotiate a delivery date.

Effective 90 days after publication in the Federal Register.

- **Bylaws Simplification** – The [Final Rule](#) permits federal credit unions to conduct hybrid membership meetings, which consist of an in-person meeting that also allows virtual attendees, as long as the credit union has adequate technology and cybersecurity protections to successfully do so.

Effective 90 days after publication in the Federal Register.

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