

Regulatory and Legislative Recap February 2020

CFPB Supervisory Highlights *and how we can help* – Winter 2020

In February, the CFPB released its 21st [Supervisory Highlights Report](#). This report covered findings identified in examinations conducted by the CFPB between April 2019 and August 2019. Areas included in the report include mortgage servicing, payday lending (including general Regulation Z requirements), debt collection, and student loan servicing.

Focusing on the first two of these areas:

Mortgage Servicing

- Regulation X violations including failing to provide certain required loss mitigation notices, providing incomplete notices, or not providing notices within the time required by the regulation. While the violations were, in part, caused by increased applications due to natural disasters, the CFPB still expects institutions to comply with the requirements of Regulation X.
- The CFPB identified violations in the timing requirements for providing an acknowledgement of a loss mitigation application, and written notification showing what, if any, loss mitigation options are available.

CSG provides mortgage servicing reviews. During our review, loan files are reviewed for delinquency servicing issues; evaluation of the conduct of the loan servicing, including collection techniques, partial payments, default reporting, physical inspections and property preservation activities, loss mitigation techniques including short term forbearance, loans subject to the Service members' Civil Relief Act, special forbearance agreements, mortgage modifications, techniques involving loans affected by the natural disasters, and loans subject to bankruptcy proceedings. [Contact Us](#) to find out more.

Payday Lending

The findings in this area can apply to more than just payday lending. They are violations under Regulation Z, Regulation B, and unfair acts or practices.

- Certain payday lenders failed to apply payments to borrowers' loans, thus overcharging the borrowers for unapplied payments.
- When systems were down, some lenders required staff to calculate the annual percentage rates applicable to loans. Because of errors in calculating the term of the loans, the APRs were sometimes misstated to borrowers.
- Some lenders were not including certain fees when disclosing the finance charge on a loan.
- In some cases, lenders were unable to prove compliance with Regulation Z because they did not retain evidence for two years. While payment histories and loan data may have been retained on computer systems, other loan origination documentation was not consistently maintained, and evidence of Truth-in-Lending compliance could not be determined.
- When providing adverse action notices, per Regulation B, certain lenders did not include the specific reason or reasons the action was taken.

CSG can help you avoid all of the violations identified above. We have knowledgeable, trained staff that can consult and audit for Regulation Z and Regulation B requirements. We also have a nationally known expert that can help determine and verify APRs. Take a look at our [audit menu](#) which lists most of the major audits that we can help with. If you don't see what you are looking for, just ask. Reach out to us at contactus@complianceservicesgroup.com or at 360.943.7137. We're here to help.

No Legal Advice Intended

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FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
01/24/2020	Statement of Policy Regarding Prohibition on Abusive Acts or Practices (CFPB)	85 FR 6733	Section 1031(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that the Bureau of Consumer Financial Protection (Bureau) may use its supervisory and enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Section 1031(d) of the Dodd-Frank Act sets forth general standards for when the Bureau may declare that an act or practice is abusive for purposes of the Dodd-Frank Act. Uncertainty remains as to the scope and meaning of abusiveness. This uncertainty creates challenges for covered persons in complying with the law. The Bureau wants to make sure that such uncertainty does not impede or deter the provision of otherwise lawful financial products or services that could be beneficial to consumers. To convey and foster greater certainty about the meaning of abusiveness, this general statement of policy (Policy Statement) provides a framework for the Bureau's exercise of its supervisory and enforcement authority to address abusive acts or practices.

PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
TBD	Debt Collection Practices Supplemental Proposal on Time-Barred Debt Regulation F (CFPB)	TBD	The Bureau of Consumer Financial Protection proposes to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA. On May 21, 2019, the Bureau published in the Federal Register a proposed rule that would prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. This proposal supplements the May 2019 proposed rule by proposing to require debt collectors to make certain disclosures when collecting time-barred debts.
03/19/2020	Request for Information on FDIC Sign and Advertising Requirements and	85 FR 10997	The FDIC released a request for information on how it can modernize and revise its official sign requirements and advertising rules. The RFI is also seeking input on misrepresentations (either intentional or unintentional) concerning deposit insurance and on how new technologies or other solutions could be used to help consumers better distinguish FDIC insured institutions.

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	Potential Technological Solutions (FDIC)		
04/21/2020	Guides Concerning the Use of Endorsements and Testimonials in Advertising (FTC)	85 FR 10104	The Federal Trade Commission (“FTC” or “Commission”) requests public comments on its Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Endorsement Guides” or “Guides”). The Commission is soliciting the comments as part of its systematic review of all current Commission regulations and guides.
04/10/2020	Brokered Deposits Restrictions (FDIC)	85 FR 7453	The FDIC is inviting comment on proposed revisions to its regulations relating to the brokered deposits restrictions that apply to less than well capitalized insured depository institutions. The proposed rule would create a new framework for analyzing certain provisions of the “deposit broker” definition, including “facilitating” and “primary purpose.” The proposed rule would also establish an application and reporting process with respect to the primary purpose exception. The application process would be available to insured depository institutions and third parties that wish to utilize the exception.

RESOURCES/GUIDANCE

Guidance	Summary
Conducting Business with Banks: A Guide for Third Parties (FDIC)	The Guide is designed to help third parties understand the environment in which banks operate and navigate the requirements unique to banking.
Financial Secrecy Index (Tax Justice Network)	Interesting read on international monetary transparency. The Index reports that the United States is now #2, behind the Cayman Islands, for being the most complicit in helping individual to hide their finances from the rule of law.
Interagency Policy on Allowances for Credit Losses (OCC, Treasury, FRS, FDIC, NCUA)	This interagency policy statement describes the measurement of expected credit losses under the current expected credit losses (CECL) methodology and the accounting for impairment on available-for-sale debt securities in accordance with FASB ASC Topic 326; the design, documentation, and validation of expected credit loss estimation processes, including the internal controls over these processes; the maintenance of appropriate ACLs; the responsibilities of boards of directors and management; and examiner reviews of ACLs.

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Risk Management Manual of Examination Polices update (FDIC)	<p>The RMS Manual provides FDIC examiners information relating to examination activities and supervisory practices. The FDIC conducts examinations at financial institutions to ensure public confidence in the banking system and to protect the Deposit Insurance Fund. The RMS Manual promotes consistency in examination activities, which center on evaluating an institution’s capital, assets, management, earnings, liquidity, sensitivity to market risk, and adherence to laws and regulations. This update includes: <i>Section 20.1 – Risk-Focused, Forward-Looking Safety and Soundness Supervision</i>: The examination planning segment of this section was incorporated into the new Section 21.1. <i>Section 21.1 – Examination Planning</i>: This new section provides detailed instructions related to planning a Risk-Focused, Forward-Looking Safety and Soundness examination.</p>
2020 A Guide to HMDA Reporting: Getting it Right (FFIEC)	<p>This guide edition is effective as of January 1, 2020 for HMDA submissions due on March 1, 2021. The Guide includes a summary of responsibilities and requirements; directions for assembling the necessary tools; and instructions for reporting HMDA data.</p>
(CFPB)	<p>HMDA – Small Entity Guide</p>
Stress Test Scenarios (FDIC)	<p>The supervisory scenarios include baseline and severely adverse scenarios. The baseline scenario is in line with a survey of private sector economic forecasters. The severely adverse scenario is not a forecast, rather, it is a hypothetical scenario designed to assess the strength and resilience of financial institutions. Each scenario includes 28 variables—such as gross domestic product, the unemployment rate, stock market prices, and interest rates—covering domestic and international economic activity.</p>
FCRA Exam Procedures (CFPB)	<p>The CFPB issued updates to its Supervision and Examination Manual to include requirements of the FCRA created by the EGRR and Consumer Protection Act. The updates apply to the examination procedures covering consumer reporting, larger participants, and education loans, and aim to reduce instances of consumer compliance law violations by companies that provide consumer financial products and services.</p>
CTRs & DBAs FIN-2020-R001 (FinCEN)	<p>The Administrative Ruling clarifies requirements for CTR reporting involving sole proprietorships and legal entities operating under a “doing business as” (DBA) name.</p>

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“Never Happen Here”

Here is another [oops story](#) that gives auditors and risk management professionals a not-so warm and fuzzy feeling. 20 years and \$42.2 million. Embezzlement, lack of dual control, falsification of records, inadequate supervisory committee audits, and “impress women less than half his age with trips on private jets to international vacation resorts.”

For a deeper view, take a look at the [NCUA Material Loss Review of C B S Employees Federal Credit Union \(Report #OIG-20-01\)](#). The IG’s review also identified a lack of NCUA examiners to identify and report findings during their audits.

We recommend that you share the Material Loss Review with your internal auditors, risk management staff, and senior staff. While you may think that “it will never happen here,” it happened there.

BSA

The Tax Justice Network’s [Financial Secrecy Index 2020](#) has placed the United States as number two, behind only the Cayman Islands, as a haven for money laundering and tax evasion. The 2020 Index ranks each country based on how intensely the country’s legal and financial system allows wealthy individuals and criminals to hide and launder money extracted from around the world. The index grades each country’s legal and financial system with a secrecy score out of 100 where a zero out of 100 is full transparency and a 100 out of 100 is full secrecy. The country’s secrecy score is then combined with the volume of financial activity conducted in the country by non-residents to calculate how much financial secrecy is supplied to the world by the country.

The US Treasury Department, in consultation with the Departments of Justice, Homeland Security, and Office of the Director of National Intelligence, published the [2020 National Strategy for Combating Terrorist and Other Illicit Financing](#) report. The report examines the threats and vulnerabilities of the US financial system and objectives in strengthening the system.

FinCEN issued Administrative Ruling [FIN-2020-R001](#) to clarify the requirements of financial institutions when reporting transactions involving sole proprietorships and legal entities operating under a “doing business as” (DBA) name. It is intended to enhance regulatory efficiency, and provide complete and accurate CTR data to law enforcement.

TRID

The CFPB added [ten new FAQs](#) to their website addressing lender credits. The new FAQs answer:

1. What is a lender credit for purposes of the TRID Rule?
2. What is the difference between a specific lender credit and a general lender credit?
3. Is a creditor required to disclose a closing cost and a related lender credit on the Loan Estimate if the creditor will absorb the cost?

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4. Is a creditor required to disclose a closing cost and related lender credit on the Closing Disclosure if the creditor will absorb the cost?
5. How are lender credits disclosed on the Loan Estimate?
6. How are lender credits disclosed on the Closing Disclosure?
7. How does a creditor disclose lender credits for a loan that the creditor refers to as a “no-cost loan”?
8. How does a creditor disclose lender credits if the creditor provides a credit, rebate, or reimbursement to offset specific closing costs charged to the consumer?
9. How does a creditor disclose lender credits when it is offsetting a certain dollar amount of closing costs charged to the consumer without specifying which costs it is offsetting?
10. Can lender credits change?



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The Oregon legislature has a short calendar this year. The 2020 legislative session starts February 3 and goes through March 7, 2020. A couple pre-filed bills that may impact institutions in Oregon are:

Senate Bill	Title / description	Senate Status
House Bill		House Status
SB 1540	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.	Do Pass Recommendation
HB		
SB	Establishes Oregon Hemp Commission To enable the hemp industry, with the aid of the state, to develop, maintain and expand the state, national and international markets for hemp and hemp products produced, processed or manufactured in this state, and the use and consumption of hemp and hemp products in the state, national and international markets.	
HB 4051		Do Pass Recommendation

The Washington legislature also has a short year. Session began on January 13 and runs through March 12, 2020. February 7th is the cutoff date to report bills out of committee from the house of origin. February 19th is the last day to pass bills out of the house of origin, and February 28th is the last day for bill from opposite houses to be passed out of committee. A few of the bills that we are tracking are:

Senate Bill	Title / description	Senate Status
House Bill		House Status
SSB 6281	Provides Washington residents with the consumer personal data rights of access, correction, deletion, data portability, and opt out of the processing of personal data for specified purposes.	Passed Chamber
		In Committee
	Adds provisions to the Collection Agency Act (CAA) which are specific only to debt buyers, including requirements with respect to what must be attached to a complaint in a legal action, the evidence that must be submitted in support of a claim or obligation, and disclosures that must be prominently disclosed in the complaint.	In Committee
SHB 2476		Passed Chamber

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