

Regulatory and Legislative Recap
June 2020

We are hoping that the second half of 2020 is less eventful than the first half.

With everything that is going on, we want to let you know that we are here for you and your institution. In this uncertain time, we are committed to providing you with the quality consulting and audit services upon which you depend.

In a time of so much uncertainty, it is common to look for a sense of reassurance as well as sources of strength. At CSG, we are here to help you manage compliance risks and recover from the unexpected.

The Centers for Disease Control and Prevention has published webpages for banks and employees for reopening and reducing the risks associated with COVID-19.

- [COVID-19 Employer Information for Banks](#)
- [What Bank Employees Need to Know About COVID-19](#)

Also, monitor your local health department and state requirements for dealing with the pandemic.

Paycheck Protection Program - We have developed a Paycheck Protection Program on our website - <https://complianceservicesgroup.com/paycheck-protection-program/>. This is updated frequently to reflect updates as they are released.

No Legal Advice Intended

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FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
07/01/2020	Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA & Reg X) (CFPB)	85 FR 39055	The amendments temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. Eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by the Federal Housing Administration (FHA), the mortgage insurance terminates. These amounts include, without limitation, all principal and interest payments forborne through payment forbearance programs made available to borrowers experiencing financial hardships due, directly or indirectly, to the COVID-19 emergency, including a payment forbearance program offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act. These amounts also include principal and interest payments that are due and unpaid by borrowers experiencing financial hardships due, directly or indirectly, to the COVID-19 emergency.
06/26/2020	Determining “Underserved” Areas Using Home Mortgage Disclosure Act Data (Reg Z) (CFPB)	85 FR 38299	This interpretive rule construes the CFPB’s Regulation Z, which implements the Truth in Lending Act. The Bureau produces annually a list of rural and underserved counties and areas that is used in applying various Regulation Z provisions, such as the exemption from the requirement to establish an escrow account for a higher-priced mortgage loan and the ability to originate balloon-payment qualified mortgages. Regulation Z states that an area is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in Regulation Z, secured by first liens on properties in the county five or more times. The official commentary provides an interpretation relating to this standard that refers to certain data elements from the previous version of the Bureau’s Regulation C, which implements HMDA, that were modified or eliminated in the 2015 amendments to Regulation C. The Bureau is issuing this interpretive rule to supersede that now outdated interpretation, specifically by describing below the HMDA data that will instead be used in determining that an area is “underserved.”
07/21/2020	Remittance Transfers Under the Electronic Fund Transfer Act (Reg E) (CFPB)	85 FR 34870	The CFPB is amending Regulation E and the official interpretations of Regulation E to provide tailored exceptions to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of a statutory exception that allows insured institutions to disclose estimates instead of exact amounts to consumers. That exception expires on July 21, 2020. In addition, the Bureau is increasing a safe harbor threshold in the Rule related to whether a person makes remittance transfers in the normal course of its business.

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06/01/2020	Interagency Policy Statement on Allowances for Credit Losses (OCC, FRB, FDIC, NCUA)	85 FR 32991	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.
06/01/2020	Interagency Guidance on Credit Risk Review Systems (OCC, FRB, FDIC, NCUA)	85 FR 33278	This guidance is relevant to all institutions supervised by the agencies and replaces Attachment 1 of the 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses. The final guidance discusses sound management of credit risk, a system of independent, ongoing credit review, and appropriate communication regarding the performance of the institution's loan portfolio to its management and board of directors.
08/03/2020	Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred (OCC)	85 FR 33530	This rule clarifies that when a bank transfers a loan, the interest permissible before the transfer continues to be permissible after the transfer.

PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
08/04/2020	Facilitating the LIBOR Transition (Regulation Z)	85 FR 36938	The CFPB is proposing changes to open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The Bureau also is proposing to permit creditors for home equity lines of credit and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after March 15, 2021, if certain conditions are met. The proposal also addresses change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to accounts transitioning away from using a LIBOR index. Lastly, the CFPB is proposing to address how the rate reevaluation provisions applicable to credit card accounts apply to the transition from using a LIBOR index to a replacement index.
07/06/2020	Joint Ownership Share	85 FR 34545	Under the proposal, even if an insured credit union cannot produce membership cards or account

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	Accounts (NCUA)		signature cards signed by the joint accountholders, the signature card requirement could be satisfied by information contained in the account records of the insured credit union establishing co-ownership of the share account.
TBD	Interagency Questions and Answers Regarding Flood Insurance (FRS, FCA, FDIC, NCUA, OCC)	TBD	The proposal incorporates new questions and answers in several areas, including: the escrow of flood insurance premiums; the detached structure exemption to the mandatory purchase of flood insurance requirement; and force-placement procedures. The proposal also revises existing questions and answers to improve clarity and reorganizes questions and answers by topic to make it easier for users to find and review information related to technical flood insurance topics. The proposal is intended to help reduce the compliance burden for lenders related to the federal flood insurance laws. Separately, the agencies plan to propose new questions and answers at a later date on the private flood insurance requirements implemented by their February 2019 final rule. We have reprinted the Q&A's on our blog .

RESOURCES/GUIDANCE

Guidance	Summary
Consumer Compliance Outlook (FRS)	The latest Outlook is available which focuses on COVID-19 and includes articles on: How Banks Can Help Consumers and Communities Respond to Major Disasters and Emergencies, Furnishers' Obligations for Consumer Credit Information Under the CARES Act, FCRA, and ECOA, Compliance Spotlight: E-Sign Act and the COVID-19 Pandemic, Federal Reserve Statements Related to the COVID-19 Emergency and Consumer Compliance, and the Regulatory Calendar.
Joint Statement on Managing the LIBOR Transition (FFIEC)	The Statement highlights the financial, legal, operational, and consumer protection risks that will result from the expected discontinuation of the London Interbank Offered Rate (LIBOR) and to encourage supervised institutions to continue their efforts to prepare for this change and address its associated risks. Supervisory focus "will be tailored to the size and complexity of each institution's LIBOR exposures."
Semiannual Risk Perspective (OCC)	The OCC noted that "compliance risk is elevated due to a combination of operations, employees working remotely, and the requirement to operationalize new federal, state and proprietary programs designed to support consumers," The OCC also identified interest rate risk, operational risks related to banks' COVID-19 response, heightened cyber risks and compliance risks related to BSA/AML, consumer compliance and fair lending as areas of concern
Comptroller's Handbook UDAAP (OCC)	The updated Handbook provides expanded procedures to assist examiners in evaluating UDAP and UDAAP risks and in assessing associated risk management (including evaluating a bank's Compliance Management Systems)

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<p>Examiner Guidance Considering the Effect of the COVID-19 Pandemic on Institutions (FRB, FDIC, NCUA, OCC)</p>	<p>The four federal agencies in conjunction with the state bank and credit union regulators today issued examiner guidance to promote consistency and flexibility in the supervision and examination of financial institutions affected by the COVID-19 pandemic. No action on the part of supervised institutions is required. Stresses caused by the spread of COVID-19 have led to significant economic strain and adversely affected global financial markets. The interagency guidance instructs examiners to consider the unique, evolving, and potentially long-term nature of the issues confronting institutions due to the COVID-19 pandemic and to exercise appropriate flexibility in their supervisory response.</p>
<p>2019 HMDA Data</p>	<p>The FFIEC released the 2019 Home Mortgage Disclosure Act (HMDA) data on mortgage lending transactions. Available data products include: the HMDA Dynamic National Loan-Level Dataset, which is updated on a weekly basis to reflect late submissions and resubmissions; the Aggregate and Disclosure Reports, which provides summaries on individual institutions and geographies; the HMDA Data Browser where users can customize tables and download datasets for further analysis; and modified Loan/Application Registers for 2019 HMDA data.</p>
<p>FHFA Extends Foreclosure and Eviction Moratorium</p>	<p>To help borrowers and renters who are at risk of losing their home due to the coronavirus national emergency, the Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac will extend their single-family moratorium on foreclosures and evictions until at least August 31, 2020. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. The current moratorium was set to expire on June 30th.</p>
<p>FHFA Extends COVID-Related Loan Processing Flexibilities for Fannie Mae and Freddie Mac Customers Through July</p>	<p>The Federal Housing Finance Agency (FHFA) is extending several loan origination flexibilities currently offered by Fannie Mae and Freddie Mac designed to help borrowers during the COVID-19 national emergency. Flexibilities extended until at least July 31st include:</p> <ul style="list-style-type: none"> • Alternative appraisals on purchase and rate term refinance loans; • Alternative methods for verifying employment before loan closing; • Expanding the use of power of attorney and remote online notarizations to assist with loan closings; and • Authority to purchase mortgages in forbearance.
<p>FraudClassifier Model (FRB)</p>	<p>The FraudClassifier model was developed to help address the industrywide challenge of inconsistent classifications for fraud involving ACH, wire or check payments. The key advantage of the FraudClassifier model is the ability to classify fraud independently of payment type, payment channel or other payment characteristics. The model focuses on a series of questions, beginning with who initiated the payment to differentiate payments initiated by authorized or unauthorized parties. The result is a holistic view of fraudulent events, which can help with more strategic fraud management. Each of the classifications is supported by definitions to facilitate consistent application of the model across the industry. The model's classifications provide information on what fraud occurred and how it was perpetrated. Adding payment attributes (such as payment amount, date, type and channel) to these classifications can provide additional insight to help aid the organization in identifying fraud trends.</p>
<p>Remittance Transfers - Small Entity Guide (CFPB)</p>	<p>The CFPB updated its Small Entity Compliance Guide to reflect the increase in the normal course of business safe harbor threshold, the expiration date of the 1005.32(a) temporary exception, and two new permanent exceptions that permit financial institutions to use estimates in disclosures of certain fees and exchange rates in certain circumstances. Related – NCUA Regulatory Alert 20-RA-05</p>

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<p>Enforcement Actions Manual for Flood Insurance Civil Money Penalties (FDIC)</p>	<p>The Flood Act requires the FDIC to assess a penalty of up to \$2,000, adjusted annually for inflation, per violation per loan against an insured depository institution (IDI) for certain pattern and practice violations of the Flood Act. When calculating the appropriate amount of mandatory Flood Act CMPs, the FDIC will generally use a two-step process by determining a base CMP and adjusting the base CMP for smaller institutions with reduced ability to pay such penalties.</p> <ul style="list-style-type: none"> • The base CMP takes into account the type and repeat nature of the violations. • The Institution Asset Size Factor takes into account the institution’s asset size based on the last Call Report prior to the date of the examination.
<p>Risk Management Manual of Examination Policies (FDIC)</p>	<p>Updates to Section 22.1 include revisions to the Capital Adequacy, Loan Portfolio Review, and Loan Operations Review modules, including changes for the Community Bank Leverage Ratio, Allowance for Credit Losses, and other minor technical edits. Updates to Section 21.1 include additions made to the Examination Profile Script to promote the availability of options for off-site loan review and examiner connectivity. The Examination Profile Script and related cover letter were also revised to address modifications related to the COVID-19 pandemic.</p>
<p>Phased Approach to On-site Operations (NCUA)</p>	<p>The NCUA developed a multi-phase transition plan for the resumption of its on-site operations and is now preparing to implement that plan. The phased transition plan provides a framework for how and when staff resumes an on-site presence at both NCUA offices and credit unions. The NCUA’s top priority is that of ensuring the health, safety, and well-being of its staff while executing the agency’s mission. The transition plan may begin as early as Monday, July 6, 2020, and has built-in flexibility if a later implementation date is necessary. In the transition plan’s first phase, the NCUA may begin conducting voluntary on-site examinations. The NCUA will communicate specific implementation details before we begin the first phase. During the first phase, the NCUA will continue to encourage both field and office staff to work remotely when possible and has placed prudent limits on the number of staff working in our offices. The NCUA will also implement social distancing and other precautionary measures in its offices to ensure the health and safety of its staff. Additional precautionary measures will include the distribution of appropriate protective supplies to both field and office staff.</p>
<p>Amended Guidance to Washington State Regulated and Exempt Residential Mortgage Loan Servicers Regarding Support for Consumers Impacted by COVID-19 (WA-DFI)</p>	<p>This amended guidance urges all mortgage servicers to continue to do their part to alleviate the adverse impact caused by COVID-19 on consumers. Servicers are urged to take reasonable and prudent actions through September 30, 2020, subject to the requirements of any related guarantees or insurance policies, to support those adversely impacted mortgagors by:</p> <ul style="list-style-type: none"> • Forbearing mortgage payments; • Refraining from reporting late payments to credit rating agencies; • Offering mortgagors additional time to complete trial loan modifications, and ensuring that late payments during the COVID-19 pandemic does not affect their ability to obtain permanent loan modifications; • Waiving late payment fees and any online payment fees; • Postponing foreclosures; • Ensuring that mortgagors do not experience a disruption of service if the mortgage servicer closes its office, including making available other avenues for mortgagors to continue to manage their accounts and to make inquiries; and • Proactively reaching out to mortgagors via app announcements, text, email or otherwise to explain the assistance being offered to mortgagors.

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<p>CARES Act Credit Reporting FAQs (CFPB)</p>	<p>The FAQs address the credit reporting requirements of the CARES Act, including considerations for furnishers when reporting consumers as current as required by the CARES Act. The FAQs also clarify that reporting that a consumer is affected by a natural or declared disaster is not a substitute for complying with the CARES Act credit reporting requirements. In addition, the FAQs address the Bureau’s guidance that provides temporary and targeted flexibility in the event CRAs or the furnisher experience challenges as a result of the pandemic in investigating consumer disputes. All CRAs and furnishers remain responsible for conducting reasonable investigations of consumer disputes in a timely fashion. The Bureau’s statement makes clear that the Bureau expects CRAs and furnishers to make good faith efforts to investigate disputes as quickly as possible.</p>
<p>Additional Guidance Regarding Servicing Hemp-Related Businesses (NCUA)</p>	<p>The NCUA published additional guidance, in the form of Q&As related to service hemp businesses.</p>
<p>Increased Use of Mobile Banking Aps Could Lead to Exploitation (FBI)</p>	<p>In response to increased usage of mobile banking applications due to COVID-19, the FBI expects cyber actors to attempt to exploit these platforms using a variety of techniques, including app-based banking Trojans and fake banking apps. This FBI alert (I-061020-PSA) provides the tips to help individuals and organizations protect themselves from these malicious programs.</p>
<p>Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (CFPB)</p>	<p>The Statement indicates that the CFPB will take a “flexible supervisory and enforcement approach during this pandemic” for financial institutions wishing to provide certain disclosures electronically. The covered disclosures are: account opening disclosures under section 1026.6, temporary APR or fee reductions on existing accounts under sections 1026.9(c)(2)(v)(B)(i) and 1026.55(b)(1) and those related to balance transfers. The applicability of the statement is limited specifically to these disclosures.</p>
<p>TRID Integrated Disclosures (CFPB)</p>	<p>The CFPB published guidance related to the TILA-RESPA Integrated Disclosure (TRID) Rule. First, the Bureau published a Factsheet on how to disclose title insurance on the Loan Estimate and Closing Disclosure, including when a negative owner’s title insurance cost disclosure is appropriate. Second, the Bureau updated the TRID FAQs to include guidance on the total of payments disclosure, using the optional signature line on the Loan Estimate and Closing Disclosure, and the requirement to include seller information on the consumer’s disclosures if providing separate Closing Disclosures.</p>
<p>Prompt Corrective Action Regulatory Relief Measures in Response to the COVID-19 Pandemic</p>	<p>This letter discusses the enclosed administrative order approved pursuant to § 702.201 that reduces the amount of earnings retention required for credit unions classified as adequately capitalized. Additionally, the letter discusses credit unions’ authority to submit a streamlined net worth restoration plan (NWRP) if their net worth ratio declined to undercapitalized predominantly due to temporary share growth during the COVID-19 pandemic.</p>

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(NCUA)	
LIBOR Transition (CFPB)	<p>The CFPB issued three items related to the LIBOR Transition for the sunset of LIBOR which is expected to be discontinued after 2021:</p> <ul style="list-style-type: none"> • Proposed Rule: First, the Bureau has issued a proposed rule to amend Regulation Z generally to address the sunset of LIBOR, and to facilitate creditors’ transition away from using LIBOR as an index for variable-rate consumer products. The Bureau is proposing changes to certain open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The Bureau is also proposing changes to certain open-end provisions restricting index changes, requiring change-in-terms notices, and addressing how credit card rate reevaluation requirements apply. To assist understanding of the proposed revisions, the Bureau is releasing a Fast Facts high-level summary and an unofficial redline. Comments on the proposed rule are due August 4, 2020. (Redline) • Additional FAQ Guidance: Second, the Bureau has released additional companion FAQ guidance to address other LIBOR transition topics and regulatory questions under the existing rule. This guidance deals with issues related to general implementation considerations, and requirements for adjustable-rate mortgage servicing notices, adjustable-rate mortgage and HELOC origination disclosures, and requirements under AMTPA. (Fast Facts for 2020 LIBOR Transition Rule, LIBOR Transition FAQs) • CHARM Booklet Revisions: Third, the Bureau has revised the CHARM Booklet to provide updates based on consumer testing and remove LIBOR-based rate examples.
Remittance Rule FAQs Related to the COVID-19 Pandemic (Regulation E) (CFPB)	<p>The FAQs state that a provider’s failure to deliver remittance transfer funds to a designated recipient by the disclosed date of availability due to a government-mandated closure of commercial activity in response to Covid-19 would not be considered an error under the rule if the provider could not have reasonably anticipated the closure. The FAQs note that a provider would not be able to reasonably anticipate a closure, for example, if the closure of remittance transfer services was announced in the foreign country after the provider initiated the transfer, but before the guaranteed availability date.</p>
Cares Act Forbearance & Foreclosure (CFPB & CSBS)	<p>The CFPB and the Conference of State Bank Supervisors (CSBS) issued joint guidance for borrowers on the mortgage relief provisions included in the CARES Act. The Act requires servicers of federally backed mortgages to provide forbearance to borrowers facing financial hardships due to COVID-19 for up to two consecutive 180-day periods, and waive additional interest, fees or penalties beyond the amounts scheduled. (updated Small Entity Compliance Guide)</p>
Exam Focus Update – COVID-19 (DFI-DCU)	<p>The Bulletin (B-20-02) outlines Division exam focus for 2020. The Division’s 2020 examination focus areas continue to be: 1. Cybersecurity, 2. Consumer protection law compliance, 3. Liquidity, 4. Business Continuity/Disaster Recovery Testing</p>

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Mixed in among the abundance of emails I received this month relating to COVID-19, Safe-Start, and the Paycheck Protection Program were a couple of Fair Credit Reporting Act violation settlements.

In the first, Kohl's violated the FCRA by [refusing to provide complete records of transactions to consumers whose personal information was used by identity thieves](#).

In a complaint filed by the Department of Justice on behalf of the FTC, the Commission alleges that Kohl's refused to provide information identifying the thieves to identity theft victims, despite the fact that the FCRA guarantees victims access to this information. The FTC also alleges that the company failed to provide the information within 30 days, as required by the FCRA. The information sought by identity theft victims included records of sales made by the identity thieves using stolen personal information, along with the perpetrator's name and contact information.

Section 609(e) requires that (after verifying the identity of the victim) businesses that have "provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records..." [609(e)]

According to the FTC, Kohl's required record requests from law enforcement or attorneys, and sometimes did not turn over complete records or failed to respond within 30 days.

Kohl's agreed to pay a civil penalty of \$220,000.

The [second settlement](#), from the CFPB, involved a group of companies that issued contracts for deeds to consumers. They acquired foreclosed properties and resold them to high-risk consumers providing financing through, and servicing of, contracts for deeds.

When borrowers called the companies to dispute errors on their credit reports regarding their obligation with the companies, they were sometimes told that they had to file a dispute with the credit bureaus. The FCRA requires furnishers to conduct reasonable investigations of direct disputes when the dispute relates to liability, terms, performance, or other information that bears on a consumer's creditworthiness. [12 CFR 1022.43]

The civil money penalty totaled \$45,000.

Got questions on the FCRA? Want to avoid penalties? CSG has trained auditors and consultants who are familiar with the ins and outs of the FCRA. [Contact us for more information](#).

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