Regulatory and Legislative Recap
January 2021

Paycheck Protection Program Audit Available

If your institution participated in the Small Business Administration's (SBA) Paycheck Protection Program (PPP) loan program:

- Do you have concerns that your PPP loans are not fully compliant with the ever-changing regulations?
- Do you worry that in a rush to make PPP loans your institution may have overlooked potential regulatory and risk management pitfalls?
- Do you have uncertainty that that your customers' PPP loans will be forgiven by the SBA?

If you answered "yes" to any of the above questions, you are not alone. CSG is here to help.

CSG has developed a unique loan audit program designed to meet individualized needs. Whether your concerns are origination and onboarding, forgiveness and payoff, or both – we can help.

Our primary focus includes:

- Ensuring proper PPP program enrollment documentation is maintained.
- Reviewing a sampling of PPP loans originated and onboarded.
- Verifying PPP loan applications are complete and properly supported.
- Reviewing promissory notes for accuracy and completeness.
- Ensuring that lender applications are complete and that SBA approvals are documented.
- Tracing and reconciling SBA fee reimbursements.
- Ensuring that BSA and ECOA/Regulation B requirements are met.
- Reviewing a sampling of PPP loans forgiven and paid off.
- Ensuring forgiveness applications are complete and that SBA approvals are documented.
- Tracing and reconciling SBA loan forgiveness amounts.

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Please note that auditing specifically for fraud is not part of our scope.

Contact us today to schedule your PPP loan audit!

Having difficulties keeping up with all of the changes and updated guidance related to the Paycheck Protection Program? We have a custom page with links to the rules, guidance, and applications that you can visit to see the latest information.

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FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
01/15/2021	Civil Penalty Inflation Adjustments (CFPB)	86 FR 3767	The CFPB increased the civil penalty amounts based on an inflation adjustment – we have included a copy of the chart showing the adjustments below.
TBD	HPML Escrow Requirements (CFPB)	TBD	Exempts from the HPML escrow requirement any loan made by an insured depository institution or insured credit union and secured by a first lien on the principal dwelling of a consumer if: (1) The institution has assets of $10 billion or less, (2) The institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) Certain existing HPML escrow exemption criteria are met. Executive Summary, Unofficial Redline, updated Small Entity Compliance Guide.
TBD	Role of Supervisory Guidance (CFPB)	TBD	The Rule confirms the difference between regulations and guidance. From the Guidance, unlike laws or regulations, supervisory guidance does not have the full force and effect of law.
~~04/01/2021~~ TBD	Fair Access (OCC)	TBD	The final rule ensures that covered national banks, federal savings associations, and federal branches and agencies of foreign bank organizations provide fair access to financial services. It codifies more than a decade of OCC guidance stating that fair access to financial services, capital, and credit should be based on the risk assessment of individual customers, rather than broad-based decisions affecting whole categories or classes of customers. On January 28, the OCC announced that it has paused the publication to allow the next confirmed Comptroller of the Currency to review the final rule and the public comments.
11/30/2021	Debt Collection Practices (CFPB)	86 FR 5766	The final rule governs certain activities by debt collectors, as that term is defined in the FDCPA. Among other things, the final rule clarifies the information that a debt collector must provide to a consumer at the outset of debt collection communications, prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt, and requires debt collectors to take certain actions before furnishing information about a consumer's debt to a consumer reporting agency.
01/15/2021	Equal Credit Opportunity (Regulation B); Special Purpose Credit Programs (CFPB)	86 FR 3762	This AO clarifies the content that a for-profit organization must include in a written plan that establishes and administers a special purpose credit program under Regulation B. In addition, this AO clarifies the type of research and data that may be appropriate to inform a for-profit organization's determination that a special purpose credit program is needed to benefit a certain class of persons.
04/01/2021	Unsafe and Unsound	86 FR 6742	The FDIC is finalizing revisions to its regulations relating to the brokered deposits and interest rate

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	Banking Practices: Brokered Deposits and Interest Rate Restrictions (FDIC)		restrictions that apply to less than well capitalized insured depository institutions. For brokered deposits, the final rule establishes a new framework for analyzing certain provisions of the "deposit broker" definition, including "facilitating" and "primary purpose." For the interest rate restrictions, the FDIC is amending its methodology for calculating the national rate, the national rate cap, and the local market rate cap. Further, the FDIC is explaining when nonmaturity deposits are accepted and when nonmaturity deposits are solicited for purposes of applying the brokered deposits and interest rate restrictions.

PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
02/16/2021	Overdraft Protection Programs (NCUA)	86 FR 3879	The proposed rule would modify the requirement that an FCU's written overdraft policy establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the FCU to cover each overdraft. The proposed rule would remove the 45-day limit and replace it with a requirement that the written policy must establish a specific time limit that is both reasonable and applicable to all members, for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft.
TBD	Mortgage Servicing Rights (NCUA)	TBD	The NCUA proposes to amend its investment regulation to permit federal credit unions (FCUs) to purchase mortgage servicing rights from other federally insured credit unions under certain conditions. Under the proposed rule, eligible FCUs may purchase the mortgage servicing rights of loans that the FCU is otherwise empowered to grant, provided these investments are consistent with safety and soundness and made in accordance with the FCU's policies and procedures that address the risk of these investments and servicing practices.
02/22/2021	Bank Secrecy Act – SARs (NCUA)	86 FR 6586	This proposed rule would allow the NCUA to issue exemptions from the requirements of its SAR regulation. Specifically, the proposed rule would add a provision to 12 CFR 748.1 that would provide that the NCUA may exempt a FICU from the requirements of that section. Under the proposed rule, the NCUA would determine whether the exemption is consistent with the purposes of the BSA, if applicable, and with safe and sound practices, and may consider other appropriate factors. The NCUA would also seek FinCEN's determination on whether the exemption would be consistent with the purposes of the BSA. The exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.
02/22/2021	Exemptions to Suspicious Activity Report Requirements	86 FR 6580	The proposed rule would amend the FDIC's SAR regulation to allow the FDIC to issue exemptions from the SAR requirements. The proposed rule would make it possible for the FDIC to grant relief to FDIC-supervised institutions that develop innovative solutions to meet Bank Secrecy Act (BSA)

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	(FDIC)		requirements more efficiently and effectively.
02/22/2021	Exemptions to Suspicious Activity Report Requirements (OCC)	86 FR 6572	The proposed rule would amend the OCC's Suspicious Activity Report regulations to allow the OCC to issue exemptions from the requirements of those regulations. The proposed rule makes it possible for the OCC to grant relief to national banks or federal savings associations that develop innovative solutions intended to meet Bank Secrecy Act requirements more efficiently and effectively.
02/10/2021	Chartering and Field of Membership – Shared Facility Requirements (NCUAO	86 FR 1826	The NCUA proposes to amend its chartering and field of membership rules to modernize requirements related to service facilities for multiple common bond federal credit unions. The NCUA is proposing to include any shared branch, shared ATM, or shared electronic facility in the definition of "service facility" for an FCU that participates in a shared branching network. The FCU need not be an owner of the shared branch network for the shared branch or shared ATM to be a service facility. These changes would apply to the definition of service facility both for additions of select groups to MCB FCUs and for expansions into underserved areas.
04/12/2021	Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Provider (FDIC, OCC, FRB)	86 FR 2299	The proposed rule would require such notification upon the occurrence of a notification incident as soon as possible and no later than 36 hours after the banking organization believes in good faith that the incident occurred. This notification requirement is intended to serve as an early alert to a banking organization's primary federal regulator and is not intended to provide an assessment of the incident. Moreover, a bank service provider would be required to notify at least two individuals at affected banking organization customers immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided for four or more hours.
03/01/2021	Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets (FinCEN)	86 FR 3897	FinCEN is providing an additional 15 days for comments on the proposed reporting requirements regarding information on CVC or LTDA transactions greater than $10,000, or aggregating to greater than $10,000, that involve unhosted wallets or wallets hosted in a jurisdiction identified by FinCEN. FinCEN is providing an additional 45 days for comments on the proposed requirements that banks and MSBs report certain information regarding counterparties to transactions by their hosted wallet customers, and on the proposed recordkeeping requirements.

RESOURCES/GUIDANCE

Guidance	Summary
Consumer Compliance Outlook (FRS)	The issue contains HMDA Data Collection and Reporting: Keys to an Effective Program, Mortgage Servicing: Managing Change, Compliance Alert: Federal Reserve Board Issues CRA ANPR, News from Washington: Regulatory Updates, On the Docket: Recent Federal Court Opinions, and the Regulatory Calendar.

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CRA Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Value (OCC)	The OCC announced the availability of the 2021 list of bank type determinations, the 2021 list of distressed and underserved areas, and the banking industry median hourly compensation value. These two lists and the determined compensation value apply only to national banks, federal and state savings associations, and federal branches of foreign banks that are subject to the OCC's regulations under Community Reinvestment Act (CRA) published in the Federal Register on June 5, 2020.
Data reporting elements for reporting 2020 CRA data (FFIEC)	Data entry software, file specifications and edits to reporting records for 2021 anti-redlining regulation reporting were released by the FFIEC.
Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations (FinCEN, FR, FDIC, NCUA, OCC)	Answers to frequently asked questions regarding suspicious activity reports and other anti-money laundering considerations for financial institutions covered by SAR rules. The answers to these FAQs clarify the regulatory requirements related to SARs to assist such financial institutions with their compliance obligations, while enabling financial institutions to focus resources on activities that produce the greatest value to law enforcement agencies and other government users of Bank Secrecy Act reporting. The answers to these FAQs neither alter existing BSA/AML legal or regulatory requirements, nor establish new supervisory expectations. Blog Post
NCUA's 2021 Supervisory Priorities 21-CU-02 (NCUA)	The NCUA's supervisory priorities listed in the Letter to Credit Unions include: Allowance for Loan and Lease Loss (ALLL), BSA/AML, CARES Act, Consumer Financial Protection, Credit Risk Management, Cybersecurity, LIBOR Transition, Liquidity Risk, and Serving Help-Related Businesses.
Debt Collection Rule Small Entity Compliance Guide (CFPB)	The Consumer Financial Protection Bureau has issued a small entity compliance guide summarizing its debt collection rule issued in October 2020.
Statement Regarding the Provision of Financial Products and Services to Consumers With Limited English Proficiency	See our blog.

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(CFPB)	
2021 HMDA Beta Platform (CFPB)	The beta release provides financial institutions an opportunity to determine whether their sample LAR data comply with the reporting requirements outlined in the Filing Instructions Guide for HMDA data collected in 2021. The Bureau also announced that the filing period for HMDA data collected in 2020 opened on January 1, 2021. Submissions will be considered timely if received on or before Monday, March 1, 2021. Financial institutions can access the HMDA Platform to begin the filing process for data collected in 2020 at https://ffiec.cfpb.gov/filing/.
Taskforce on Federal Consumer Financial Law Vol 1 Vol 2, (CFPB)	The CFPB released a report with recommendations on how to improve consumer protection in the financial marketplace. The report uses five interrelated principles that serve as the foundation for proposed systematic changes to the current legal and regulatory framework: consumer protection, information and education, competition and innovation, regulatory modernization and flexibility, and inclusion and access. The two volume report makes approximately 100 recommendations to the Bureau, Congress, and state and federal regulators to strengthen consumer protection.
Supervisory Highlights COVID-19 Prioritized Assessments Special Edition (CFPB)	The CFPB published a special edition of Supervisory Highlights detailing the agency's Covid-19 prioritized assessment observations. The CFPB has conducted prioritized assessments in response to the pandemic in order to obtain real-time information from supervised entities operating in markets that pose an elevated risk of pandemic-related consumer harm. The assessments are not designed to identify federal consumer financial law violations, but are intended to spot and assess risks in order to prevent consumer harm.
Consumer Financial Protection Bureau and National Credit Union Administration Sign Memorandum of Understanding (CFPB, NCUA)	Under this MOU, CFPB and NCUA will pursue opportunities to proactively and efficiently share supervisory information, including drafts of Covered Reports of Examination and final Reports of Examination for credit unions over $10 billion dollars in assets, using secure, two-way electronic means. CFPB and NCUA will jointly collaborate in semi-annual strategy planning sessions to identify and address areas of alignment and coordination in examinations for covered institutions.
Underserved Area Expansions 21-FCU-03 (NCUA)	Any federal credit union with a multiple common bond field of membership may include in its field of membership, without regard to location, underserved communities as defined by the Federal Credit Union Act. To promote greater financial inclusion and strengthen communities, the NCUA encourages such credit unions to expand their service to underserved areas.
2020 Annual Report (OCC)	The OCC issued their annual report to Congress which provides an overview of the condition of the federal banking system. The annual report discusses the OCC's strategic priorities and details agency regulatory and policy initiatives.
Summary of the Consolidated Appropriations Act, 2021	The letter provides information about the provisions of the Consolidated Appropriations Act, 2021 that directly affect credit unions and their members. This act was signed into law on December 27, 2020, and, among other things, extends several provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

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21-CU-01 (NCUA)	
Community Charter Conversions and Expansions 21-FCU-01 (NCUA)	The NCUA is providing updated guidance and templates to assist federal credit unions seeking to convert to a community field of membership or expand their existing community field of membership. This letter replaces the guidance previously provided in NCUA Letter to Federal Credit Unions 11-FCU-03, Community Charter Conversions and Expansions.

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Civil Penalty Inflation Adjustments

Law	Penalty description	Penalty amounts established under 2020 final rule	OMB "Cost-of-Living Adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	$5,883	1.01182	$5,953
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	29,416	1.01182	29,764
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,176,638	1.01182	1,190,546
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Per violation	2,050	1.01182	2,074
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Annual cap	2,048,915	1.01182	2,073,133
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Per failure	96	1.01182	97
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Annual cap	192,768	1.01182	195,047
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	193	1.01182	195
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	29,707	1.01182	30,058
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	11,767	1.01182	11,906
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	23,533	1.01182	23,811

Examples of how not to do it –
FinCEN Announces $390,000,000 Enforcement Action Against Capital One, National Association for Violations of the Bank Secrecy Act

OCC Fines Former Wells Fargo General Counsel $3.5 Million in Settlement

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Oregon State Legislature:

Senate Bill 209 - *Allows owner of interest held in financial institution or holder of traveler's check or money order to demonstrate lack of abandonment by electronic communication or other records by institution or issuer.*	
House Standing:	Senate Standing: In Senate Committee
Senate Bill 210 - *Provides that certain banking institutions may pay dividend in amount greater than previous statutory maximum amount if such payment is approved by Director of Department of Consumer and Business Services.*	
House Standing:	Senate Standing: In Senate Committee
Senate Bill 339 - *Establishes Bank of the State of Oregon. Specifies purposes of bank. Establishes Bank of the State of Oregon Board to operate and manage bank. Creates advisory board of directors to advise bank board and management on operation of bank.*	
House Standing:	Senate Standing: In Senate Committee
House Bill 2268 - *Exempts interest received on financial institution loans made to small business concerns from commercial activity subject to corporate activity tax.*	
House Standing: In House Committee	Senate Standing
House Bill 2356 - *Prohibits certain financial institutions from charging fee to customer for cashing check drawn on account at financial institution, if check is presented in Oregon.*	
House Standing: In House Committee	Senate Standing
House Bill 2563 - *Creates program through which certain lenders may receive award moneys to fund accounts out of which lenders may reimburse themselves for losses on certain loans to business owners and entrepreneurs who currently lack access to capital*	
House Standing: In House Committee	Senate Standing

Washington State Legislature:

Senate Bill 5188 - *Concerning the creation of the Washington state public bank*	
House Standing:	Senate Standing: In Senate Committee
Senate Bill 5106 - *The condition that limits credit unions from accepting public deposits greater than the maximum insured amount from a county with a population greater than 300,000, or from public funds depositors located in a county with a population greater than 300,000 persons is eliminated.*	
House Standing:	Senate Standing: In Senate Committee
House Bill 1165 - *The Director shall determine, by rule, the definition of small credit unions for the purpose of providing relief from certain credit union requirements in state law or rule. State-chartered credit unions may have all of the powers and authorities held by federal credit unions as of December 31, 1993, or a subsequent date not later than the effective date of this act. The list of services credit unions may provide includes cashing checks, money orders, and other payment instruments for members and persons who are eligible for membership. Credit*	

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unions may impose reasonable charges for providing services to non-members. Credit unions may invest in the equity interest of corporations and other limited liability entities. The requirement that credit unions partially occupy property acquired for future expansion within a designated amount of time from acquisition is removed.	
House Standing: In House Committee	Senate Standing:
House Bill 1015 - *The Department of Commerce is directed to create and operate the Equitable Access to Credit Program (Program). The purpose of the Program is to award grants to qualified lending institutions (QLIs) to provide access to credit for historically underserved communities. The grants are funded by taxpayers who may receive a B&O tax credit for contributions to the Program.*	
House Standing: In House Committee	Senate Standing:
Senate Bill 1062 - *A consumer has the following rights regarding their personal data: access; correction; deletion; obtaining personal data they provided to the controller in a portable format; and opt out of the processing of their personal data for purposes of (1) targeted advertising, (2) the sale of personal data, or (3) profiling in furtherance of decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer. Consumers may exercise these rights at any time. In the case of processing of personal data concerning a known child or a consumer subject to protective arrangements, the parent or legal guardian of the known child or the conservator of the consumer shall exercise these rights on their behalf.*	
Senate Standing: In Senate Committee	House Standing:
House Bill 1104 – *Extends the expiration date for the Mortgage Lending Fraud Prosecution Account and for the $1 surcharge on deeds of trust is extended until June 30, 2027.*	
House Standing: In House Committee	Senate Standing:
Senate Bill 5025 - Increases maximum civil penalties for a violation of the Consumer Protection Act (CPA). Enhances penalties that may apply to unlawful acts or practices targeting specific individuals or communities based on demographic characteristics. When a prevailing defendant under the CPA is not a small business, allows reasonable attorneys' fees to only be awarded when the state's action is found to be frivolous.	
House Standing:	Senate Standing: In Senate Committee
Substitute Senate Bill 5062 - *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. Specifies the thresholds a legal entity must satisfy for the requirements set forth in this act to apply. Identifies controller responsibilities such as transparency, purpose specification, and data minimization. Requires controllers to conduct data protection assessments under certain conditions. Authorizes sole attorney general enforcement under the Consumer Protection Act. Regulates the processing of data collected for certain contact tracing purposes.*	
House Standing:	Senate Standing: In Senate Committee
Senate Bill 5138 - *Beginning August 1, 2021, the deduction of interest on investments or loans secured by first mortgages or deeds of trust for entities engaged in banking, loan, security, or other financial businesses is repealed. The statute that limited the deduction to community banks is also repealed. The interest and related fees would become fully taxable. By October 15, 2022, and each October 15th thereafter, the Department of Revenue is directed to estimate any increase in state general fund revenues as a result of repealing this deduction. After informing the state treasurer of any increase, the state treasurer must transfer that amount from the general fund into the housing trust fund beginning November 1, 2022, and by each November 1st thereafter. The Department of Revenue may not make any adjustments to the estimate after the state treasurer makes the fund transfer.*	
House Standing:	Senate Standing: In Senate Committee

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