

Regulatory and Legislative Recap
March 2021

On March 22, 2021, NCUA Chairman Todd M. Harper [addressed the Maine Credit Union League Town Hall meeting](#). Along with COVID's impact on the credit union industry, he spoke about the NCUA's focus on consumer financial protection. Equally vital to the members of credit unions are consumer financial protection and fair and equitable access to credit.

"In 2020, NCUA examiners completed targeted reviews in all risk-focused and small credit union examinations to evaluate compliance with various consumer financial protection laws and regulations. Through quality control checks, we then observed several issues suggesting that some credit unions may not be paying close attention to consumer financial protection.

In some cases, NCUA's examiners found weaknesses in credit unions' management systems, which can lead to compliance issues, violations or harm to consumers if not adequately addressed. We also observed notable shortfalls in complying with the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and the Truth in Lending Act.

If left unchecked, these problems could lower consumer credit scores, lead to expensive fees, and increase the cost of credit. To address these and other issues, especially as the industry grows in complexity, the NCUA must create a dedicated program to supervise for compliance with consumer financial protection and fair lending laws."

CSG's [John Bley](#) works with institutions to develop and improve Compliance Management Systems (CMS). The proposed overall objective of a CMS tactical plan is to create an institutionalized CMS process of continual improvement and relevance unique to the needs of your institution. CSG acts as a facilitator to create a customized solution for your institution.

John's process includes:

1. **Forming the Work Group.** Identify those in the credit union that are materially involved in the CMS process. This group of employees (or part of this group of employees) would likely form the basis of the credit union's compliance committee.
2. **Conducting a SWOT Analysis.** Once the key persons are identified, CSG would facilitate a SWOT analysis by interviewing each individual in the work group. We have created a self-assessment discussion guide to assist with this analysis.
3. **Preparation for a Collaborative Session.** From these interviews, CSG would create presentation materials in preparation of a collaborative session with all participants to validate the SWOT.
4. **Conducting a SWOT Collaborative Session.** The next step is to conduct a collaborative session with all participants in order to validate the SWOT. The goal of this meeting is to achieve consensus on the strategic and tactical direction the credit union will take on the CMS.
5. **Creation of the First Draft of the CMS Tactical Plan.** From the collaborative session we create the first draft of tactical action items derived from issues identified in the SWOT process.
6. **Conducting a CMS Tactical Plan Collaborative Session.** CSG and the credit union compliance committee would engage in a second collaborative session to validate and identify the tactical action items, including the responsible parties, tasks, and deadlines. The structure of the tactical plan follows the structure of the CFPB examination module for a CMS.

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On March 31, 2021, the CFPB [released seven notices](#) rescinding certain COVID-19 regulatory flexibility guidance.

The rescinded policy statements and MRA Bulletin are:

- [Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic](#) (March 26, 2020)

The rescission also withdraws the CFPB as a signatory to the [Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus](#) (April 7, 2020) and the [Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus](#) (April 14, 2020).

- [Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act](#) (March 26, 2020)

The rescission also instructs all financial institutions required to file quarterly to do so beginning with their 2021 first quarter data, due on or before May 31, 2021, for all covered loans and applications with a final action taken date between January 1 and March 31, 2021.

- [Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers](#) (March 26, 2020)

The rescission also provides guidance as to how entities should now meet the specified information collections requirements relating to credit card and prepaid accounts.

- [Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act](#) (April 1, 2020)

The rescission leaves intact the section entitled “Furnishing Consumer Information Impacted by COVID-19” which articulates the CFPB’s support for furnishers’ voluntary efforts to provide payment relief and that the CFPB does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

- [Statement on Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act \(ILSA\) and Regulation J](#) (April 27, 2020)

The rescission instructs land developers subject to ILSA and Regulation J to resume filing of annual reports of activity and financial statements as specified in Regulation J.

- [Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic](#) (May 13, 2020)
- [Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic](#) (June 3, 2020)
- [Bulletin 2018-01: Changes to Types of Supervisory Communications](#)

The rescinded bulletin is replaced by Bulletin 2021-01 announcing changes to how CFPB examiners articulate supervisory expectations. The new bulletin states that the CFPB will continue to rely on MRAs, explains the circumstances under which it will do so, and announces that the CFPB will discontinue use of Supervisory Recommendations.

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FINAL REGULATIONS/RULES

Effective Date	Regulation	Citation	Summary
03/19/2021	Statement of Policy Regarding Prohibition on Abusive Acts or Practices; Rescission (CFPB)	86 FR 14808	The Bureau of Consumer Financial Protection is rescinding the Statement of Policy Regarding Prohibition on Abusive Acts or Practices.
03/22/2021	Regulatory Capital Rule: Emergency Capital Investment Program (OCC, FRS, FDIC)	86 FR 15076	In order to support and facilitate the timely implementation and acceptance of the Congressionally authorized Emergency Capital Investment Program (ECIP) for the Department of the Treasury to make capital investments in low- and moderate-income community financial institutions, the OCC, Board, and FDIC (together, the agencies) are issuing an interim final rule that provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies' capital rule.
03/23/2021	Asset Thresholds (NCUA)	86 FR 15397	To mitigate transition costs on credit unions related to the coronavirus disease 2019 (COVID-19 Pandemic), the NCUA Board (Board) is issuing this temporary interim final rule to permit federally insured credit unions (FICUs) to use asset data as of March 31, 2020, in order to determine the applicability of certain regulatory asset thresholds during calendar years 2021 and 2022. Specifically, the interim final rule allows a FICU to use March 31, 2020, financial data when determining whether the institution is subject to capital planning and stress testing requirements under the NCUA's regulations and supervision from the Office of National Examinations and Supervision.
03/16/2021	Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity (CFPB)	86 FR 14363	On March 9, 2021, the CFPB issued an Interpretive Rule to clarify that, with respect to any aspect of a credit transaction, the prohibition against sex discrimination in the Equal Credit Opportunity Act and Regulation B encompasses sexual orientation discrimination and gender identity discrimination. This includes discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations. See our email for more information.

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PROPOSED REGULATIONS

Comments Due	Regulation	Citation	Summary
04/05/2021	Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date (CFPB)	86 FR 12839	On March 5, 2021, the CFPB issued a notice of proposed rulemaking to delay the mandatory compliance date of changes to the general QM definition until October 1, 2022. For applications received on or after March 1, 2021 and before October 1, 2022, institutions would have the option to comply with the new APOR-based general QM definition or the previous DTI-based definition that was in effect prior to March 1, 2021. Credit unions could utilize the GSE Patch until the proposed October 1, 2022 mandatory compliance date, or the date of the GSEs exiting conservatorship, whichever is earlier.
05/17/2021	Loans in Areas Having Special Flood Hazards; Interagency Q & As Regarding Private Flood Insurance (FRB, FCA, FDIC, NCUA, & OCC)	86 FR 14696	See our blog post .
05/10/2021	CAMELS Rating System (NCUA)	86 FR 13494	The Board is proposing to add the “S” (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefine the “L” (Liquidity Risk) component, thus updating the rating system from CAMEL to CAMELS. The proposal to add the “S” component will enhance transparency and allow the NCUA, State Supervisory Authorities, and federally insured credit unions to better distinguish between liquidity risk (“L”) and sensitivity to market risk (“S”). The amendment would also enhance consistency between the regulation of credit unions and other financial institutions. The Board is proposing to implement the addition of the “S” rating component and a redefined “L” rating as early as the first quarter of 2022.
05/10/2021	Simplification of Risk Based Capital Requirements (NCUA)	86 FR 13498	The NCUA is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments on two approaches to simplify its risk-based capital requirements. The NCUA's risk-based capital requirements are set forth in a final rule dated October 29, 2015, which is currently scheduled to become effective on January 1, 2022. The delayed effective date has provided the NCUA with additional time to evaluate the capital standards for federally-insured credit unions that are classified as “complex” (those with total assets greater than \$500 million). The first approach would replace the risk-based capital rule with a Risk-based Leverage Ratio (RBLR) requirement,

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			<p>which uses relevant risk attribute thresholds to determine which complex credit unions would be required to hold additional capital (buffers). The second approach would retain the 2015 risk-based capital rule but enable eligible complex FICUs to opt-in to a “complex credit union leverage ratio” (CCULR) framework to meet all regulatory capital requirements. The CCULR approach would be modeled on the “Community Bank Leverage Ratio” framework, which is available to certain banks.</p>
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RESOURCES/GUIDANCE

Guidance	Summary
Request for Information and Comment on Financial Institutions’ Use of Artificial Intelligence, including Machine Learning (CFPB, FDIC, FRB, NCUA, OCC)	<p>The agencies are gathering information and comments on financial institutions’ use of artificial intelligence (AI), including machine learning (ML). The purpose of this request for information (RFI) is to understand respondents’ views on the use of AI by financial institutions in their provision of services to customers and for other business or operational purposes; appropriate governance, risk management, and controls over AI; and any challenges in developing, adopting, and managing AI. The RFI also solicits respondents’ views on the use of AI in financial services to assist in determining whether any clarifications from the agencies would be helpful for financial institutions’ use of AI in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection.</p>
Consumer Compliance Supervisory Highlights (FDIC)	<p>This edition of Consumer Compliance Supervisory Highlights includes a summary of the FDIC’s supervisory approach in response to COVID-19, supervisory observations related to consumer protection laws, examples of practices that may be useful in mitigating risks, regulatory developments, and consumer compliance resources.</p>
A Guide to HMDA Reporting: Getting it Right (FFIEC)	<p>The FFIEC issued its 2021 version of the Guide. The Guide is effective as of January 1, 2021 for HMDA Submissions due on March 1, 2022.</p>
Fair Debt Collection Practices Act (CFPB & FTC)	<p>The Report provides a broad overview of the debt collection industry during the Covid-19 pandemic and highlights enforcement actions, education efforts, policy initiatives, and supervisory findings.</p>
Consumer Response Annual Report (CFPB)	<p>The CFPB published its annual report summarizing the kinds of complaints consumers made throughout the prior year. The report is generally divided into two broad categories – complaints that relate to COVID-19 issues, and complaints that are part of trends that predate the pandemic.</p>
Statement of Policy Regarding Prohibition on Abusive Acts or Practices; Rescission	<p>The CFPB rescinded a January 2020 policy statement that clarified the bureau’s approach to citing and challenging “abusive” conduct in supervision or enforcement actions. In the now-rescinded statement, the CFPB had said that it would consider whether the harm to consumers outweighs the benefit to consumers, and that it would generally avoid “dual pleading” both abusiveness and unfairness or deception violations that stem from the same or nearly all of the same facts. In addition, the CFPB had said it</p>

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(CFPB)	would generally not seek monetary relief for abusive violations in instances where there is a good-faith effort to comply with the abusiveness standard, except to address consumer injuries caused by the conduct. Going forward, the CFPB said it “intends to exercise its supervisory and enforcement authority consistent with the full scope of its statutory authority under the Dodd-Frank Act as established by Congress.”
2020 Financial Institution Diversity Self-Assessments FIL-17-2021 (FDIC)	The FDIC’s Office of Minority and Women Inclusion (OMWI) encourages all FDIC-supervised financial institutions with 100 or more employees to submit voluntary self-assessments of their diversity policies and practices. The FDIC gathers and analyzes this information in accordance with Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The window for submissions for the 2020 reporting period is open until June 30, 2021.
Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism Deficiencies FIN-2021-A003 (FinCEN)	On March 11, the FinCEN released <i>Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism Deficiencies</i> . The Financial Action Task Force (FATF) updated its list of jurisdictions with strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. The changes may affect U.S. financial institutions’ obligations and risk-based approaches with respect to relevant jurisdictions.
FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art FIN-2021-NTC2	The Financial Crimes Enforcement Network (FinCEN) is issuing this Notice to inform financial institutions about (1) the Anti-Money Laundering Act of 2020 (the AML Act) efforts related to trade in antiquities and art, (2) select sources of information about existing illicit activity related to antiquities and art, and (3) provide specific instructions for filing Suspicious Activity Reports (SARs) related to trade in antiquities and art. FinCEN encourages financial institutions to continue filing SARs regarding these topics.
Advisory on Financial Crimes Targeting COVID-19 Economic Impact Payments FIN-2021-A002	This advisory contains descriptions of EIP fraud, associated red flag indicators, and information on reporting suspicious activity. This Advisory is part of a series published by FinCEN on COVID-19-related frauds and criminal activity.
Housing insecurity and the COVID-19 pandemic (CFPB)	This report summarizes some of the relevant data and research on the impact of the pandemic on the rental and mortgage market, and particularly its impact on low income and minority households.
Risk Management Manual of Examination Policies (FDIC)	Updates to the Examination Policies include: <i>Section 1.1 – Basic Examination Concepts and Guidelines</i> : This section was updated to clarify that when FDIC staff contact a bank between examinations (an interim contact), staff should discuss an institution’s progress in addressing Matters Requiring Board Attention (MRBA) that are cited in prior Reports of Examination (ROE), including ROEs issued by the State regulatory authority. <i>Section 21.1 – Examination Planning</i> : This section was updated to clarify for FDIC

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	staff that all previously issued MRBA, including those issued by the state banking authority, are to be considered when planning and scoping an examination.



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Oregon State Legislature: As of March 31, 2021

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: In House Committee	Senate Standing: Passed Senate
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: As of March 31, 2021

Senate Bill E2SSB 5188 - Concerning the creation of the Washington state public bank	
House Standing: In House Committee	Senate Standing: Passed Senate
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: In House Committee	Senate Standing: Passed Senate
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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<i>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.</i>	
House Standing: Passed House	Senate Standing: In Senate Committee
House Bill 2SHB 1015 - <i>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.</i>	
House Standing: Passed House	Senate Standing: In Senate Committee
Senate Bill 2SSB 5062 - <i>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.</i>	
House Standing: In House Committee	Senate Standing: Passed Senate
House Bill 1104 – <i>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.</i>	
House Standing: Passed House	Senate Standing: Passed Senate
Senate Bill SSB 5025 - <i>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.</i>	
House Standing: In House Committee	Senate Standing: Passed Senate
Senate Bill 5138 - <i>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.</i>	
House Standing:	Senate Standing: In Senate Committee

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A couple of bills are making their way through Congress that we are keeping an eye on. The first, [H.R. 2040 The Financial Reporting Threshold Modernization Act](#). This would raise the CTR threshold from \$10,000 to \$30,000 and the SAR threshold from \$5,000 to \$10,000 for financial institutions. The second, *Secure and Fair Enforcement Banking Act of 2021*, or SAFE Act of 2021, would allow financial institutions to provide their services to cannabis – marijuana and hemp – clients without fear of federal sanctions.

And, while we are looking ahead, Dave Uejio of the CFPB [blogged](#) on the risks and harm of not determining the ability to repay payday loans -

The CFPB is acutely aware of consumer harms in the small dollar lending market, and is particularly concerned with any lender’s business model that is dependent on consumers’ inability to repay their loans. Years of research by the CFPB found the vast majority of this industry’s revenue came from consumers who could not afford to repay their loans, with most short-term loans in reborrowing chains of 10 or more. One-in-five payday loans, and one-in-three vehicle title loans, ended in default, even including periods of reborrowing. And one-in-five vehicle title loan borrowers ended up having their car or truck seized by the lender. That is real harm to real people.

In 2020, the prior administration issued a rule revoking parts of a 2017 CFPB rule that would have addressed these harms. The later rule was challenged in court and the Bureau had a legal obligation to respond to the lawsuit. Accordingly, yesterday the Bureau filed a brief addressing only the court’s jurisdiction to hear the case. The brief does not address the merits of the underlying rule, and the Bureau’s filing should not be regarded as an indication that the Bureau is satisfied with the status quo in this market. To the contrary, the Bureau believes that the harms identified by the 2017 rule still exist, and will use the authority provided by Congress to address these harms, including through vigorous market monitoring, supervision, enforcement, and, if appropriate, rulemaking.

The Bureau continues to believe that ability to repay is an important underwriting standard. To the extent small dollar lenders’ business models continue to rely on consumers’ inability to repay, those practices cause harm that must be addressed by the CFPB.

Currently, in Texas, there is a case revolving around Visa’s merchant data breach compensation program, *Visa, Inc. v. Sally Beauty Holdings, Inc.* The program, Global Compromised Account Recovery (CGAR), reimburses card-issuing banks for costs incurred because of a merchant data breach when a Visa merchant has violated, for example, certain data-security standards. It generally enables issuing financial institutions to efficiently recover a portion of the damages from a data breach. Sally Beauty claims that the compensation to financial institutions were an illegal contractual penalty. A district court agreed, and Visa has appealed. If upheld, the decision may cause ripple effects throughout the card industry and increase financial institutions’ costs for card program losses.

[Legislation was introduced](#) to repeal the OCC’s “true lender” rule that was finalized last October. Under the final rule, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan. A loan originated by a bank that satisfies either part of this test would

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retain its status as a bank-originated loan if the loan is sold, assigned, or otherwise transferred to a nonbank entity.



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