

RKL REGULATORY COMPLIANCE FOR FINANCIAL INSTITUTIONS >

April 2021

National Credit Union Administration “NCUA” Interim Final Rule – Asset Thresholds

March 23, 2021

- NCUA issues Interim Final Rule with request for comments.
- 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.
- Effective March 23 , 2021, except for amendatory instruction 4, which is effective January 1, 2021.
- Comments due by May 24, 2021

[Additional Information](#)

Federal Bank Regulators Issue Rule Supporting Treasury's Investments in Minority Depository Institutions and Community Development Financial Institutions

March 9, 2021

- Federal bank regulatory agencies today announced an interim final rule that supports the Treasury Department's implementation of a program established by Congress to make capital investments in minority depository institutions and community development financial institutions.
- The [Treasury Department's Emergency Capital Investment Program](#) (ECIP) will support the efforts of these financial institutions to provide loans, grants, and forbearance to small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, which may be disproportionately affected by COVID-19. Under the program, Treasury will purchase preferred stock or subordinated debt from qualifying minority depository institutions and community development financial institutions, with the corresponding dividend or interest rate based on the institution meeting lending targets.
- To facilitate implementation of ECIP, the agencies are revising their capital rules to provide that Treasury's investments under the program qualify as regulatory capital of insured depository institutions and holding companies. The rule is effective immediately upon publication in the *Federal Register* and comments will be accepted for 60 days after publication.

[Additional Information](#)

CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal

March 9, 2021

- The Consumer Financial Protection Bureau (CFPB) issued an interpretive rule clarifying that the prohibition against sex discrimination under the Equal Credit Opportunity Act (ECOA) and [Regulation B](#) includes sexual orientation discrimination and gender identity discrimination. This prohibition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations.
- “In issuing this interpretive rule, we’re making it clear that **lenders cannot discriminate based on sexual orientation or gender identity**,” said CFPB Acting Director David Uejio. “The CFPB will ensure that consumers are protected against such discrimination and provided equal opportunities in credit.”

[Additional Information](#)

NCUA – CAMELS Rating System

March 9, 2021

- 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.
- Comments due by May 20, 2021

[Additional Information](#)

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date

March 5, 2021

- The Consumer Financial Protection Bureau (CFPB) is proposing to delay the mandatory compliance date of the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule) until October 1, 2022.
- Comments due by April 5, 2021

[Additional Information](#)

FDIC Consumer Compliance Supervisory Highlights

March 31, 2021

- FDIC Financial Institution Letter (FIL) applies to all FDIC-supervised financial institutions.
- This FDIC publication provides an overview of consumer compliance issues identified through the FDIC's supervision of state non-member banks and thrifts in 2020.
- This edition of the FDIC's Consumer Compliance Supervisory Highlights can be viewed through the link provided below, and includes:
 - A summary of the FDIC's supervisory approach in response to COVID-19
 - A description of the most frequently cited violations and other consumer compliance examination observations
 - Information on regulatory developments; and
 - A summary of consumer compliance resources and information available to financial institutions

[Additional Information](#)

The Federal Financial Institutions Examination Council (FFIEC) issues 2021 Version of *A Guide to HMDA Reporting: Getting It Right!*

March 30, 2021

- The FFIEC has issued the 2021 edition of *A Guide to HMDA Reporting: Getting It Right!* for Home Mortgage Disclosure Act (HMDA)-related data collected in 2021 and reported in 2022. This compliance resource can help financial institutions better understand HMDA requirements, including the data collection and reporting provisions.
- A copy of the [Getting It Right](#) guide can be found on the [FFIEC's website](#).
- **Statement of Applicability to Institutions with Total Assets Under \$1 Billion:** This Financial Institution Letter applies to all FDIC-supervised institutions covered by HMDA based on the asset threshold and other conditions stated in the Consumer Financial Protection Bureau's Regulation C.
- Effective January 1, 2021

[Additional Information](#)

Agencies Seek Wide Range of Views on Financial Institutions' Use of Artificial Intelligence

March 29, 2021

- Five federal financial regulatory agencies are gathering insight on financial institutions' use of artificial intelligence (AI). The agencies seek information from the public on how financial institutions use AI in their activities, including fraud prevention, personalization of customer services, credit underwriting, and other operations.
- The Federal Reserve Board, the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) and the Office of the Comptroller of the Currency (OCC) announced the request for information (RFI) to gain input from financial institutions, trade associations, consumer groups, and other stakeholders on the growing use of AI by financial institutions.
- More specifically, the RFI seeks comments to better understand the use of AI, including machine learning, by financial institutions; appropriate governance, risk management, and controls over AI; challenges in developing, adopting, and managing AI; and whether any clarification would be helpful.
- Comments will be accepted for 60 days following publication in the *Federal Register*.

[Additional Information](#)

CFPB Issues 2020 Consumer Response Annual Report

March 29, 2021

- The CFPB has issued its [Consumer Response Annual Report](#), which analyzes the approximately 542,300 complaints received by the CFPB between January 1 and December 31, 2020. The number of complaints received in 2020 represents a nearly 54% increase over the approximately 352,400 complaints received in 2019. The report details the trends in consumer complaints across various categories and provides information about the CFPB's process for handling complaints.

[Additional Information](#)

CFPB Issues Annual FDCPA report

March 29, 2021

- The CFPB has issued its [annual Fair Debt Collection Practices Act report](#) covering the CFPB's and FTC's activities in 2020. Debt collectors should expect increased scrutiny from the CFPB in 2021, with both Acting Director Uejio and Director-nominee Rohit Chopra having identified unlawful debt collection practices as a CFPB priority target.

[Additional Information](#)

CFPB Hints at Revising Payday Lending Rule

March 23, 2021

- The CFPB released a blog post by Acting CFPB Director, Dave Uejio, explaining ongoing concerns with the small dollar lending market.
- The 2017 Payday Lending Rule became effective January 16, 2018, but the Mandatory Underwriting Provisions were delayed in 2019, and eventually revoked on July 7, 2020.
- In this recent blog post it was made clear that the CFPB still intends to take action to limit harm relating to the small dollar lending market.

[Additional Information](#)

NCUA Imposes its first Marijuana-Related Cease and Desist Order

March 22, 2021

- The National Credit Union Administration (NCUA) recently published an [administrative order](#) against Live Life Federal Credit Union, a small federal credit union based in Michigan. The order states NCUA believed there were grounds to initiate a cease and desist action, and that Live Life – which wished to avoid the “time, cost, and expense” of administrative litigation – consented to the cease and desist order without admitting to any compliance violations or other grounds the NCUA believed to exist. While the order does not provide any specific factual allegations, the actions it requires Live Life to take could hint at possible deficiencies found by regulatory examiners.
- Some context could be helpful here: In 2018, Michigan voters legalized marijuana for recreational use. NCUA’s cease and desist order instructs Live Life to take a number of actions regarding their marijuana relates business (MRB) programs and policies, hinting that NCUA may have found deficiencies with Live Life’s compliance regarding that topic. This is notable, as it is the first NCUA enforcement action regarding marijuana related businesses (MRBs) and shows NCUA will be taking a serious look at MRB policies, procedures and practices during Bank Secrecy Act (BSA) examinations.
- Serving MRBs can be complicated. Even though marijuana has been legalized at the state level for medicinal or even recreational use in a growing number of states, marijuana [remains a schedule I drug](#) under the federal Controlled Substance Act, meaning possession, cultivation, sale or other activities relating to marijuana remain illegal at the federal level.

[Additional Information](#)

Agencies Release Proposed New Interagency Q&A Regarding Private Flood Insurance

March 11, 2021

Five federal regulatory agencies today requested public comment on 24 proposed Interagency Questions and Answers Regarding Private Flood Insurance.

The proposal is intended to help lenders comply with the agencies' joint rule promulgated in 2019 to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012.

The proposal incorporates new questions and answers in a number of areas including:

- Mandatory Acceptance,
 - Discretionary Acceptance, and
 - Private Flood Insurance General Compliance.
- These Questions and Answers would supplement the 118 Interagency Questions and Answers Regarding Flood Insurance that the agencies proposed on July 6, 2020.
 - Comments will be accepted for 60 days after publication in the *Federal Register*.

[Additional Information](#)

CFPB Rescinds 2020 Policy Statement on Abusive Acts or Practices

March 11, 2021

- The CFPB announced that it is rescinding its January 2020 policy statement, “Statement of Policy Regarding Prohibition on Abusive Acts or Practices.” The rescission is effective on the date the CFPB’s notice of the rescission is published in the Federal Register.
- Based on its review of, and experience in applying the policy statement, the Bureau concluded that the principles in the statement “do not actually deliver clarity to regulated entities” and, in fact, “afford the Bureau considerable discretion in its application and uncertainty to market participants.”
- By only citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concluded that the harms to consumers from the conduct outweighed its benefits to consumers, the Bureau would be applying the abusiveness standard “differently from the normal considerations that guide the Bureau’s general use of its enforcement and supervisory discretion.”
- Declining to apply the full scope of the statutory standard pursuant to the statement “has a negative effect on the Bureau’s ability to achieve its statutory objective of protecting consumers from abusive practices.”

[Additional Information](#)

Effective Date	Implementing Rule/Regulation	Additional Details
December 28, 2019	Taxpayer First Act	• Rule
January 1, 2020	Simplify “Volcker Rule”	• Rule
January 1, 2020	CRA Asset Size Adjustment for Small and Intermediate Small Institutions	• Rule
January 1, 2020	HMDA Adjustment to Asset Size Exemption Threshold	• Rule
July 1, 2020	Final Amendments to Reg. CC Funds Availability	• Rule
November 1, 2020	New URLA Required Use – POSTPONED DUE TO COVID-19	• Issuance
November 19, 2020	Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date	• Issuance
January 1, 2021	Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA and Qualified Mortgages)	• Rule
January 1, 2021	CRA Asset Size Adjustment for Small and Intermediate Small Institutions	• Rule
January 1, 2021	HMDA Adjustment to Asset Size Exemption Threshold	• Rule
March 1, 2021	New URLA Required Use	• Issuance
November 30, 2021	Final rule creating implementing regulations for the Fair Debt Collection Practices Act	• Rule
January 1, 2022	Reg C Final rule establishing 200 loans as the permanent HMDA data reporting threshold for open-end lines of credit	• Rule

DID YOU KNOW?

Decades ago, when banks were heavily regulated and were not allowed to offer extra interest rates or other inducements to draw customers, they began the practice of offering free toasters to customers who signed up for new accounts, as a way of attracting new business. Many institutions have continued this practice, but may be unaware of the additional advertising disclosure requirements of Regulation DD – Truth in Savings.

Reg DD defines Bonus in 1030.2(f) as a premium, gift, award, or other consideration worth more than \$10 (whether in the form of **cash, credit, merchandise, or any equivalent**) given or offered to a consumer **during a year** in exchange for opening, maintaining, renewing, or increasing an account balance.

Additional disclosure requirements for bonuses include:

- (1) The “annual percentage yield,” using that term;
- (2) The time requirement to obtain the bonus;
- (3) The minimum balance required to obtain the bonus;
- (4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and
- (5) When the bonus will be provided.

Are your institution’s advertisements for rewards, bonuses and gifts compliant?



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BARRY PELAGATTI

Partner & Leader, Financial Services Industry Group

BPelagatti@rklcpa.com

JULIYA KOFMAN GREENFIELD

Principal, Financial Services Industry Group

JKofmanGreenfield@RKLcpa.com

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