



Compliance Hot Topics

and

Common Exam Findings

September 2020

WIPFLI

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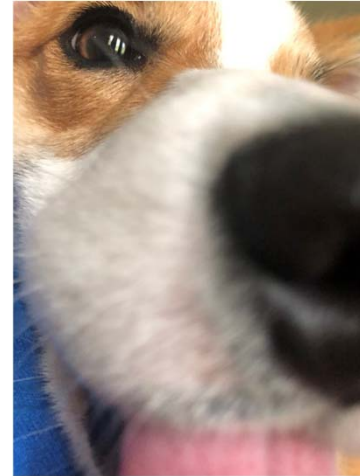
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Cangialosi, Katherine, 9/15/2020

Co-presenters



Sergeant Murphy
Corgi



Pop Tart
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NCUA Supervisory Priorities

NCUA Letter 20-CU-22

- Published July 15, 2020; amends the Agency's supervisory priority letter published in January (20-CU-01) and shifts the focus of its priorities in response to the COVID-19 pandemic. Areas of focus include:
 - ▶ Bank Secrecy Act Compliance and Anti-Money Laundering
 - ▶ LIBOR Transition
 - ▶ Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
 - ▶ Credit Risk Management and Allowance for Loan & Lease Losses
 - ▶ Consumer Financial Protection
 - ▶ Information Systems and Assurance (Cybersecurity)
 - ▶ Liquidity Risks
 - ▶ Hemp-related Businesses



BSA

FFIEC BSA Exam Procedures Update

- April 2020 FFIEC Interagency Statement - Updates to the Bank Secrecy Act/Anti-Money Laundering Examination Manual
- Clarify mandatory regulatory requirements versus supervisory expectations set forth in guidance.
- Incorporate regulatory changes since the last update of the Manual in 2014.
- Significant revisions include:
 - ▶ Risk-Focused BSA/AML Supervision
 - ▶ Assessing the BSA/AML Program
 - ▶ BSA/AML Risk Assessment
 - ▶ Developing Conclusions and Finalizing the Exam

Joint Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements – August 2020

- Does not create any new expectations or standards
- Describes circumstances for a C&D or other informal or formal enforcement actions
 - ▶ Isolated or technical violations would not result in C&D
 - ▶ Pillar violations could result in a C&D
 - ▶ CIP and CDD
 - ▶ Repeat violations

FinCEN FAQs Regarding CDD Requirements for Covered FIs Institutions – August 3, 2020

▶ I. Customer Information – Risk-Based Procedures

- Q- Is it a requirement under the CDD Rule that covered financial institutions:
 - collect information about expected activity on all customers at account opening, or on an ongoing or periodic basis;
 - conduct media searches or screening for news articles on all customers or other related parties, such as beneficial owners, either at account opening, or on an ongoing basis; or
 - collect information that identifies underlying transacting parties when a financial institution offers correspondent banking or omnibus accounts to other financial institutions (i.e., a customer's customer)?
- A – No, but.....

FinCEN FAQs Regarding CDD Requirements for Covered FIs

▶ II. Customer Risk Profile

- Q - Is it a requirement under the CDD Rule that covered financial institutions:
 - use a specific method or categorization to risk rate customers, or;
 - automatically categorize as “high risk” products and customer types that are identified in government publications as having characteristics that could potentially expose the institution to risks?
- A – No, No

FinCEN FAQs Regarding CDD Requirements for Covered FIs

▶ III. Ongoing Monitoring of the Customer Relationship

- Q - Is it a requirement under the CDD Rule that financial institutions update customer information on a specific schedule?
- A - No. But if you become aware of risk changes through normal monitoring, the customer information must be updated accordingly.

FinCEN Hemp Guidance FINAL

- FIN-2020-G001 – June 29, 2020
- Addresses questions related to BSA/AML regulatory requirements for hemp-related business customers.
- Intended to enhance the availability of financial services for and the financial transparency of, hemp-related businesses in compliance with federal law.
- Provides risk considerations only for hemp-related businesses (i.e., businesses or individuals that grow hemp and processors and manufacturers who purchase hemp directly from such growers).
- BSA/AML program expectations – CIP/BO/CDD
 - ▶ License verifications

FinCEN Hemp Guidance FINAL

- Additional information - crop inspection or testing reports, license renewals, updated attestations from the business, or correspondence with the state, tribal government, or USDA.
- Suspicious Activity Reporting – follow standard SAR procedures
 - ▶ Hemp production in a state or jurisdiction in which hemp production remains illegal.
 - ▶ Use of a hemp business as a front or pretext to launder money derived from other criminal activity or derived from otherwise illegal marijuana-related activity.
 - ▶ Customer engaged in hemp production seeks to conceal or disguise involvement in marijuana-related business activity.
 - ▶ Unable or unwilling to certify or provide sufficient information of valid licensure, or the financial institution becomes aware that the customer continues to operate (i) after a license revocation or (ii) inconsistently with applicable law.

FinCEN on COVID

- March 16, 2020
- FinCEN requests financial institutions affected by the COVID-19 pandemic to contact FinCEN and their functional regulator as soon as practicable if a COVID-19-affected financial institution has concern about any potential delays in its ability to file required Bank Secrecy Act (BSA) reports. Financial institutions seeking to contact FinCEN should call FinCEN's Regulatory Support Section (RSS) at 1-800-949-2732 and select option 6 or email at FRC@fincen.gov. FinCEN's RSS will continue to be available to support financial institutions for the duration of the COVID-19 pandemic.

FinCEN on COVID

- FinCEN also advises financial institutions to remain alert about malicious or fraudulent transactions similar to those that occur in the wake of natural disasters. FinCEN is monitoring public reports and BSA reports of potential illicit behavior connected to COVID-19 and notes the following emerging trends:
 - ▶ **Imposter Scams** (additional advisory on imposter scams and money mule schemes issued July 7, 2020 FIN-2020-A003)
 - ▶ **Investment Scams**
 - ▶ **Product Scams**
 - ▶ **Insider Trading**
 - ▶ Medical scams added to this list on May 18, 2020 (FIN-2020-A002)
 - ▶ Cybercrime and Cyber-Enabled Crime added July 30, 2020 (FIN-2020-A005)

FinCEN on COVID

- April 3, 2020
- FinCEN expects financial institutions to continue following a risk-based approach and to diligently adhere to their BSA obligations (This was reiterated in a May 18, 2020, FinCEN notice).
- Addressed Beneficial Ownership information collection for existing customers.
- Suspended implementation of the February 6, 2020, ruling on CTR filing obligations for transactions involving sole proprietorships and DBSs until further notice.
- Announced COVID-19 specific online contact mechanism

Loans



FHFA FNMA FHLMC LIBOR

- FHFA Announces Fannie Mae and Freddie Mac Update on LIBOR Transition **2/5/2020**
- The Federal Housing Finance Agency announced additional steps Fannie Mae and Freddie Mac (the Enterprises) are taking as they transition from the London Interbank Offered Rate (LIBOR), the world's most widely used interest rate benchmark:
 - New language will be required for single-family Uniform Adjustable Rate Mortgage (ARM) instruments closed on or after June 1, 2020;
 - All LIBOR-based single-family and multifamily ARMs must have loan application dates on or before September 30, 2020, to be eligible for acquisition; and,
 - Acquisitions of single-family and multifamily LIBOR ARMs will cease on or before December 31, 2020.

Interagency Statement Small Dollar Lending

- **March 26, 2020 - Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19**
- Encouraged financial institutions to offer responsible small-dollar loans to both consumers and small businesses.
 - ▶ Assist with temporary cash-flow imbalances, unexpected expenses, or income short-falls during periods of economic stress or disaster recoveries.
- Also working on future guidance and lending principles for responsible small-dollar loans to facilitate the ability of financial institutions to more effectively meet the ongoing credit needs of their communities and customers.
- Reminder for PAL loans: NCUA permits Credit Unions to offer only one type of payday alternative loan (PAL or PAL II)

NCUA FAQs on Flood Insurance during COVID

- "If a credit union works with its borrowers by extending maturities or payments or creating balloon payments due to COVID-19, would the credit union be required to make a new flood zone determination and provide new notices of special flood hazards for the extended loan?"
 - ▶ Under the NCUA's regulation [12 CFR Part 760](#), if a credit union modifies a loan by extending the loan term, then this change is a triggering event, and flood insurance requirements would apply, provided no other existing exception to the requirements under the NCUA's regulation is applicable.
 - ▶ The federal flood statutes and the NCUA's implementing regulation do not provide for a waiver of these requirements in emergency situations.
 - ▶ The NCUA will evaluate, using the Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus, the unique circumstances impacting borrowers and institutions resulting from COVID-19.

CFPB FCRA Consumer Reporting FAQ-COVID-19 2020-06

- Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic
- Q1: Shortly after Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, the Bureau issued a statement addressing consumer reporting and the CARES Act. What did that statement say?
- A1: In the Statement, the Bureau informed furnishers of their responsibilities under the CARES Act amendments to the Fair Credit Reporting Act (FCRA) and stated that the Bureau expects furnishers to comply with the CARES Act. Under the CARES Act amendments to the FCRA, a consumer whose account was not previously delinquent is current on their loan if they have received an accommodation and make any payments the accommodation requires.

CFPB FCRA Consumer Reporting FAQ-COVID-19 2020-06

- QUESTION 6: If a furnisher provides a consumer an accommodation, what are its consumer reporting obligations?
- ANSWER If the credit obligation or account was current before the accommodation, during the accommodation, the furnisher must continue to report the credit obligation or account as current. If the credit obligation or account was delinquent before the accommodation, during the accommodation, the furnisher cannot advance the delinquent status.

CFPB Interim Final Rule on Loss Mitigation Options for Homeowners Recovering from Pandemic-Related Financial Hardships

- June 23, 2020
- The CARES Act provides forbearance relief for consumers with federally-backed mortgage loans. The mortgage industry developed different options for borrower repayment.
- These programs require the servicer to collect only minimal information from the borrower before offering the option.
- The interim final rule allowed collection of limited information for loss mitigation applications, as well as, long as certain criteria are met.

CFPB Final-Rule Home Mortgage Disclosure Regulation C 2020-04

- On April 16, 2020, the Consumer Financial Protection Bureau (Bureau) issued a final rule amending Regulation C. This final rule adjusts Regulation C's institutional and transactional coverage thresholds for closed-end mortgage loans and open-end lines of credit. Effective July 1, 2020, the final rule permanently raises the closed-end coverage threshold from 25 to 100 closed-end mortgage loans in each of the two preceding calendar years. Effective January 1, 2022, when the temporary threshold of 500 open-end lines of credit expires, the final rule sets the permanent open-end threshold at 200 open-end lines of credit in each of the two preceding calendar years.

Deposits



FRB Reserve Limits

- Elimination of Reserve Requirements – Announced March 15, 2020
- Q2. What reserve requirement ratios did the Board of Governors of the Federal Reserve System (Board) reduce to zero percent?
- A2. The Board reduced the reserve requirement ratios on net transaction accounts to zero percent effective March 26, 2020. Reserve requirement ratios on nonpersonal time deposits and Eurocurrency liabilities have been set to zero percent since 1990.
- Q5. Is the elimination of reserve requirements permanent?
- A5. Currently, the Board has no plans to re-impose reserve requirements. However, the Board may adjust reserve requirement ratios in the future if conditions warrant.

FRB 6 Per Month Savings Limit Lifted and Related FAQs

- The Board is amending its Regulation D (Reserve Requirements of Depository Institutions) to delete the numeric limits on certain kinds of transfers and withdrawals that may be made each month from “savings deposits.” The amendments are intended to allow depository institution customers more convenient access to their funds and to simplify account administration for depository institutions. There are no mandatory changes to deposit reporting associated with the amendments.
- Effective date: This rule is effective on April 24, 2020
- Credit Unions should determine
 - ▶ Continue imposing limits on transactions?
 - ▶ Fee structure for excessive transactions
 - ▶ Changes in disclosures

Regulation CC Funds Availability Inflation Adjustment Requirements

- The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made amendments to Regulation CC (Expedited Funds Availability Act), effective July 21, 2011, to provide the dollar amounts under Regulation CC be adjusted for inflation every five years after December 31, 2011.
- There had been 0 adjustments since December 31, 2011. Effective July 1, 2020, the Board and CFPB implemented changes which adjust the dollar amounts under Regulation CC for inflation. Credit Unions should ensure they are testing to ensure funds are made available at the increased limits. Notices should have been provided to members no later than 7/30/2020.
- Looking forward:
 - ▶ Q1 2024: Board and CFPB to publish second set of adjustments.
 - ▶ April 1, 2025 (tentative): Effective date of adjustment changes.

Common Exam Violations



Exams – What we are seeing - BSA

- Validation of monitoring systems – none, or inadequate scope
- High risk member list not routinely updated
- No review of high-risk members with ATMs
- Lack of effective processes to identify and monitor high-risk members
- New products/services introduced without analysis of risk
- Unresolved CIP/MIP exceptions
- Process/data collection for beneficial ownership

Exams – What we are seeing - BSA

- Lack of specific criteria for identifying high risk customers
- High and moderate risk customer monitoring not in accordance with written policy
- Account opening forms lack sufficient detail to prompt account opening personnel to gather relevant information
- Baseline for expected transaction activity not obtained at account opening
- No procedures for reassessing risk ratings throughout the customer relationship
- Training not in accordance with written policy
- Training not job specific
- Training not including Credit Union's own policies and procedures

Exams – What we are seeing – Loans

- ARM Rate Changes
 - ▶ Lookback period
 - ▶ Delay in updating index
 - ▶ Caps/floor – 1st and subsequent adjustments
 - ▶ Index value – monthly, weekly, weekly average
- Finance charge
 - ▶ Title fees at closing – construction loans where policy not issued until post construction
 - ▶ Draw fees

Exams – What we are seeing – Loans

- Late fees – not consistent with loan documents
- TRID
 - ▶ Payees incorrect or missing on Closing Disclosure
 - ▶ Fees on service provider list not consistent with the Loan Estimate
 - ▶ Inadequate document of change in circumstance
 - ▶ All fees not update on revised Loan Estimate

Exams – What we are seeing – Loans

- HELOC

- ▶ Fees not identified as finance charges in loan agreement
- ▶ Estimate of third-party fees on the early disclosure grossly inaccurate (UDAAP?)
- ▶ Historical table or examples not updated timely
- ▶ Applying rate change on date other than what was disclosed in agreement
- ▶ Different language for rate changes
- ▶ Balance for interest includes unpaid finance charges – contrary to agreement
- ▶ Start up fees that are financed not disclosed as finance charges on statement

Exams – What we are seeing – Loans

- Reg B / ECOA
 - ▶ Appraisal notice for 1st lien mortgage loans
 - Not provided when application denied
 - File doesn't evidence delivery, timing
 - ▶ Appraisal delivery – file doesn't evidence delivery, timing

Exams – What we are seeing – Deposits

- Regulation DD

- ▶ CD renewal notice for auto renew CD > 12 months – terms not disclosed
- ▶ Parameters – in general, not consistent with disclosure
- ▶ Minimum balance to obtain APY not disclosed in advertising
- ▶ Accrued interest not paid on early CD withdrawal – contract to TISA disclosure
- ▶ “Free checks” advertised – but limited to 1/year (UDAAP?)

Exams – What we are seeing – Deposits

- Regulation E
 - ▶ Disclosures not provided for new services
 - ▶ Requiring consumer to provide notice of error in writing
 - ▶ Requiring consumer to contact merchant
 - ▶ Not refunding fees or interest lost due to errors
- Regulation CC
 - ▶ Timing for release of funds – first \$200 (\$225) and \$5000 (\$5525) on a large deposit
 - ▶ Timing for release of funds overall – dictated by time of day when core releases

Exams – What we are seeing – Fair Lending

- Redlining – have you completed an analysis?
- Waiving of overdraft fees or late payment fees
- Lenders interpreting discretion differently
 - ▶ When will you make an exception?
 - ▶ When will you ask for an exception to be made?
- Inadequate tracking of policy exceptions – pricing, fees, LTV, DTI, other criteria

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