

JANUARY 2022 FREE COMPLIANCE NEWSLETTER – HAPPY NEW YEARS!

FFIEC UPDATES BSA/AML EXAMINATION MANUAL

The FFIEC has updated the following sections of the BSA/AML Examination Manual: Introduction – Customers, Charities and Nonprofit Organizations, Independent Automated Teller Machine Owners or Operators, and Politically Exposed Persons. You can read more about it through the link [here](#).

AGENCIES ANNOUNCE DOLLAR THRESHOLDS IN REGULATIONS Z AND M FOR EXEMPT CONSUMER CREDIT AND LEASE TRANSACTIONS

The Federal Regulatory Agencies announced the dollar thresholds used to determine whether certain consumer credit and lease transactions in 2022 are exempt from Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing).

Based on the annual percentage increase in the CPI-W as of June 1, 2021, the protections of Regulations Z and M generally will apply to consumer credit transactions and consumer leases of \$61,000 or less in 2022. However, private education loans and loans secured by real property (such as mortgages) are subject to Regulation Z regardless of the amount of the loan.

AGENCIES ANNOUNCE THRESHOLD FOR SMALLER LOAN EXEMPTION FROM APPRAISAL REQUIREMENTS FOR HIGHER-PRICED MORTGAGE LOANS

The Federal Regulatory Agencies announced that the 2022 threshold for exempting loans from special appraisal requirements for higher-priced mortgage loans will increase from \$27,200 to \$28,500.

CFPB REPORT HIGHLIGHTS SUPERVISORY FINDINGS OF WIDE-RANGING VIOLATIONS OF LAW IN 2021

Examiners found violations in areas including mortgage servicing, fair lending, payday lending, and remittances. They found mortgage servicers charged improper fees to borrowers enrolled in CARES Act forbearance. They found fair lending violations, specifically on how lenders lacked oversight and control over how mortgage loan officers granted pricing exceptions to customers. They found payday lenders failed to investigate notice of errors timely. These are just a few of the findings. If you would like to read more, you can find the report [here](#).

FINCEN ISSUES PROPOSED RULE FOR BENEFICIAL OWNERSHIP REPORTING

FinCEN issued a Notice of Proposed Rulemaking (NPRM) to implement the beneficial ownership information reporting provisions of the Corporate Transparency Act (CTA). FinCEN explains that the proposed rule is designed to protect the U.S. financial system from illicit use and prevent malign actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts.

According to the release, the proposed rule addresses, among other things, who must report beneficial ownership information, when they must report, and what information they must provide. Collecting this information and providing access to law enforcement, financial institutions, and other authorized users will diminish the ability of malign actors to hide, move, and enjoy the proceeds of illicit activities.

In addition, the proposed rule will be further highlighted at the forthcoming Summit for Democracy. The proposed rule also reflects stated concerns in the newly released U.S. Government Strategy on Countering Corruption which addresses the money laundering risks posed by anonymous shell companies as well as the need to protect the international financial system from abuse by corrupt and other illicit actors. It is also consistent with the efforts of the Financial Action Task Force and G7 and G20 leaders to curtail the ability of illicit actors to hide wealth behind anonymous shell companies. You can read the full release [here](#).

FINCEN STARTS PROCESS FOR REPORTING REQUIREMENTS TO CURB ILLICIT FINANCE

FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a potential rule to address the vulnerability of the U.S. real estate market to money laundering and other illicit activity. According to the release, this ANPRM is important as the systemic money laundering vulnerabilities presented by the U.S. real estate sector threatens U.S. national security and the integrity of the U.S. financial system.

According to its release, FinCEN explains that it has long been concerned with the potential for corrupt officials and illicit actors to launder the proceeds of criminal activity through the purchase of real estate in the United States and has worked to increase transparency in the real estate sector. Given the relative stability of the real estate sector as store of value, the opacity of the real estate market, and gaps in industry regulation, the U.S. real estate market continues to be used as a vehicle for money laundering and can involve businesses and professions that facilitate acquisitions of real estate in the money laundering process.

According to the release, the ANPRM will assist FinCEN in preparing a proposed rule that would enhance the transparency of the domestic real estate market on a nationwide basis and protect the U.S. real estate market from exploitation by criminals and corrupt officials. You can read the full release [here](#).

CFPB RESEARCH ON BANKS' DEPENDENCE ON OVERDRAFT FEES

The CFPB released research finding that banks continue to rely heavily on overdraft and non-sufficient funds (NSF) revenue. According to the research, overdraft and NSF revenue reached an estimated \$15.47 billion in 2019. According to the CFPB' release, three banks—JPMorgan Chase, Wells Fargo, and Bank of America—brought in 44% of the total reported that year by banks with assets over \$1 billion. The CFPB also found that while small institutions with overdraft programs charged lower fees on average, consumer outcomes were similar to those found at larger banks. The research also notes that, despite a drop in fees collected, many of the fee harvesting practices persisted during the COVID-19 pandemic.

Previous CFPB research has shown that overdraft presents serious risks to consumers, with under 9% of consumer accounts paying 10 or more overdrafts per year, accounting for close to 80% of all overdraft revenue. On November 30, the Federal Deposit Insurance Corporation released data revealing that insured banks earned \$69.5 billion in the third quarter of 2021, which is 36% higher compared to 2020. What this report tells us is the Overdraft Fees and NSFs are going to come under greater scrutiny and banks should do everything they can to make sure they have not only a compliant, but a consumer friendly program. You can find the report [here](#). The opt-in program was born over a decade ago based on a similar FDIC study. What will this one bring?

What are some ways to ensure you have a consumer friendly overdraft program?

- **Di minimus amounts** – consider limiting the item amount that triggers an overdraft fee (e.g. OD item must be more than \$10), and/or the aggregate amount that limits a fee (e.g. \$10 or less total in a day)
- **Daily limits** – consider limiting how many fees you charge in a day. The most consumer friendly we have seen is 4 fees in a day, but some go as high as 6 fees.
- **Processing order of items** – This is an oldie but a goodie. Consider processing items in amounts from the lowest to the highest. That will limit the amount of fees charged in a day.

CFPB UPDATES THE FREQUENTLY ASKED QUESTIONS FOR ELECTRONIC FUND TRANSFERS

The CFPB has updated its FAQs to address several recently asked questions on the topic of Electronic Fund Transfers. Topics include covered transactions, covered financial institutions, error resolution, and unauthorized EFTs. The FAQs can be found [here](#).

OCC ISSUES FINAL RULE TO RESCIND ITS 2020 COMMUNITY REINVESTMENT ACT RULE

It's about time!! The Office of the Comptroller of the Currency (OCC) issued a final rule to rescind the June 2020 Community Reinvestment Act (CRA) rule and replace it with a rule based on the rules adopted jointly by the Federal banking agencies in 1995, as amended. This action is intended to facilitate the ongoing interagency work to modernize the CRA regulatory framework and promote consistency for all insured depository institutions. The final rule applies to national banks and both federal and state savings associations and takes effect on January 1, 2022. You can read the final rule [here](#).

AGENCIES RELEASE ANNUAL ASSET-SIZE THRESHOLDS UNDER COMMUNITY REINVESTMENT ACT REGULATIONS

Annual adjustments to these asset-size thresholds are out. The definitions of small and intermediate small banks for CRA examinations will change as follows:

- Small bank means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.384 billion.
- Intermediate small bank means a small institution with assets of at least \$346 million as of December 31 of both of the prior two calendar years and less than \$1.384 billion as of December 31 of either of the prior two calendar years.

CFPB ISSUES ASSET-SIZE EXEMPTION THRESHOLD FOR CERTAIN REGULATIONS

The CFPB has updated the annual threshold for depository institutions under Regulation C – HMDA and certain thresholds under Regulation Z. Under Reg Z, asset-size exemption thresholds for certain creditors under the escrow requirements and small creditor portfolio and balloon-payment qualified mortgage requirements, and the small creditor exemption from the prohibition against balloon-payment high-cost mortgages have been updated. You can find the Reg C update [here](#) and the Reg Z updates [here](#).