

JANUARY 2020

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UPCOMING EVENTS

- Friday Compliance Briefings, *CBANC Webinar*
Last Friday of each month in 2020!
- January 9, 2020, *CBANC Webinar*
Developing & Refining
Your BSA Risk Assessment
- January 16, 2020, *CBANC Webinar*
Explaining CBD
- January 17, 2020, *CBANC Webinar*
Winter Regulatory & Compliance Update
- January 21, 2020, *CBANC Webinar*
HMDA 101
- January 24, 2020, *CBANC Webinar*
CRB Coffee Break:
Quarterly Cannabis Banking Update

CRITICAL DATES

February 1, 2020: Deadline to comply with CTR changes re: conductors that fulfill multiple roles

March 1, 2020: HMDA LAR Submission Deadline

July 1, 2020: Implementation Date for Regulation CC Adjustments

July 2020: Expiration of Exception under Remittance Transfer Rule for Estimates for Certain FIs

September 30, 2020: NFIP Expiration

January 1, 2022: Temporary coverage threshold for open-end lines of credit under HMDA expires



P.O. Box 1546
Hermitage, PA 16148
www.sterlingcompliance.com
412.356.3787

CRA REFORM IS ON THE MOVE

After 25 years, we may finally see changes to the Community Reinvestment Act in 2020! Just prior to the New Year, the FDIC and OCC issued a joint Notice of Proposed Rulemaking ([NPR](#)) to comprehensively amend CRA implementing regulations. While the changes would apply to all FDIC-supervised financial institutions, the proposed rule would allow banks with \$500 million or less in total assets to opt into the performance standards outlined within the proposal. Comments are currently being solicited by the agencies and will continue for 60 days after the NPR is published in the Federal Register. Let's dig in and see what these changes would entail.

Modernization efforts under the NPR would:

- **Clarify and expand what qualifies for CRA credit.** This is a critical component of the proposed rule. Under this provision, the rule would establish clear criteria for the type of activities that qualify for CRA credit; require the agencies to periodically publish a non-exhaustive list of examples of qualifying activities; and, establish a process for banks to seek agency confirmation that an activity is a qualifying activity.
- **Expand where CRA activity counts by creating additional “assessment areas” tied to where deposits are originated.** To ensure CRA activities continue to have a local community focus where banks maintain their physical presence and conduct a substantial portion of their lending activity, you would still be required to delineate assessment areas around your main office, branches and deposit-taking facilities as well as where you have originated or purchased a substantial portion of your loans (i.e. “facility-based” assessment areas.). Additionally, the proposed rule would require you to delineate additional, non-overlapping “deposit-based” assessment areas where you have significant concentrations of retail domestic deposits (defined as 50% or more of retail domestic deposits from geographic areas outside of facility-based assessment areas).
- **Provide a more objective method to measure CRA performance by establishing activity thresholds as a percentage of domestic deposits.** The proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the rule, would continue to be evaluated under the small bank performance standards. However, the proposed rule would establish new performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards. The new general performance standards would assess two fundamental components: (1) the distribution (i.e. number) of qualifying retail loans to LMI individuals, small farms, small businesses and LMI geographies, and (2) the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits. Both components would be compared to specific benchmarks and thresholds that would be

established prior to beginning a bank's evaluation period. Banks evaluated under the general performance standards would also be required to meet minimum community development lending and investment requirements in each assessment area and at the bank level to achieve a satisfactory or outstanding rating.

- **Revise data collection, recordkeeping and reporting requirements.** The proposal would require banks evaluated under the small bank performance standards to collect and maintain, but not to report, data related to their retail domestic deposits to allow the agencies to validate their deposit-based assessment area delineations, as applicable. Banks evaluated under the general performance standards would be required to collect, maintain and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits and assessment areas. Those banks would also be required to use that information to make the calculations necessary to determine their ratings, based on the application of the outlined performance standards. Prior to a performance evaluation, the evaluating agency would validate the data used to determine the bank's ratings...similar to how HMDA data integrity is determined prior to your performance evaluations now.

The proposed rule is designed to achieve specific outcomes, such as creating incentives to do more. Specifically, the proposed rule would allow regulators to set benchmarks at levels high enough to increase the level of qualifying lending, investment and services, and adjust those benchmarks on a periodic basis.

Achieving a satisfactory or outstanding rating may no longer be a mystery. The new rule would incent greater CRA activity in areas beyond those immediately surrounding bank branches, including those currently in need of financial resources, and those identified for aid, distressed or Indian country. Additionally, by providing clear standards and an illustrative list of qualifying activities, the proposed rule is designed to reduce uncertainty regarding the activities that would qualify for CRA credit and provide banks greater ability to plan reinvestment activity without the risk of activities not qualifying for credit. Better yet, the rule would provide processes for confirming that an activity would receive CRA credit.

You would theoretically know your results much sooner. By making the evaluation of CRA performance more objective and improving reporting, the proposed rule should reduce the time required to conduct CRA evaluations and produce performance evaluations. The objectivity and consistency build into revised performance evaluation should also improve transparency and increase regulatory efficiency. Additionally, by providing a method by which you can essentially calculate your rating in advance of your evaluation, the likelihood of unwelcome surprises should be minimized.

While the proposed rule would provide for significant overhaul of current CRA evaluation standards, the community bank model would be preserved. The rule would maintain the importance of branches

in assessing a bank’s record of serving its communities and the retention of the performance context would continue to encourage banks to meet the needs of their entire communities, including low- and moderate-income neighborhoods.

As we head into 2020, we can be sure that we will see further momentum for CRA changes. Industry stakeholders, financial institutions and regulators, alike, have voiced their concerns over the current CRA evaluation process, and have been working together to effect change. We will continue to keep you updated on the status of the proposed rule and its impact, including timelines for implementing provisions and requirements of the inevitable final rule. Stay tuned.

PROPOSED CHANGES TO THE REMITTANCE RULE

If you were concerned about the recent changes proposed to the Remittance Rule, we may have some news that will stabilize that increased heart rate: The changes may not impact you, and better yet, they may provide some regulatory relief to some of you!

The Rule generally requires companies that provide remittance transfers in the normal course of business to disclose to consumers certain fees and exchange rates that apply to such transfers. The Rule includes an exception that allows certain banks and credit unions to estimate certain fee and exchange rate information rather than disclosing exact amounts in certain circumstances. However, this exception is scheduled to expire in July 2020. The Notice of Proposed Rulemaking recently issued proposed to allow certain banks and credit unions to continue to provide estimates where it could be economically infeasible to these institutions to provide exact amounts. The proposed rule would also increase the safe harbor threshold that determines whether a company makes remittance transfers in the normal course of business from 100 to 500 or fewer remittance transfers in the current and prior calendar years. Please refer to the chart above, published by the CFPB, to determine whether a remittance transfer conducted by your institution would count under the safe harbor threshold.

Example	Yes	No
Consumer sends cash at a money transmitter located in Colorado to a business recipient in France	✓	
Business sends cash at a money transmitter located in Colorado to a consumer recipient in France		✓ - business is not a "sender"
Consumer wires money from a bank account in California to a consumer bank account in Brazil	✓	
Consumer sends an ACH from a bank account in California to make a mortgage payment in Brazil	✓	
Consumer sends cash at a money transmitter in California to a consumer recipient in Colorado		✓ - recipient is not located in a foreign country
Consumer buys a prepaid card in the U.S., and provider gives or mails the prepaid card to that consumer in the U.S.		✓ - provider does not know whether consumer will send the card abroad
Consumer buys a prepaid card in the U.S., and the provider mails the prepaid card directly to a recipient abroad	✓	
Consumer has a U.S.-based bank account, and the consumer's bank mails an ATM card associated with that U.S. account to a recipient abroad		✓

Comments on the Notice of Proposed Rulemaking must be received on or before January 21, 2020.



BANKING HEMP

In response to questions that have arisen since the passage of the 2018 Farm Bill, which removed hemp from Schedule I under the Controlled Substances Act, the Federal Reserve, FDIC, OCC and FinCEN issued a statement, in coordination with the Conference of State Bank Supervisors, to provide clarity on the legal status of commercial growth and production

of hemp and relevant requirements for banks under the Bank Secrecy Act and associated regulations. FinCEN plans to issue additional guidance after further reviewing and evaluating the USDA's interim final rule.

The USDA initially issued its interim final rule establishing the U.S. Domestic Hemp Production Regulatory Program in October 2019 to facilitate the legal production of hemp. The guidelines under the rule were then issued for public comment; all comments are due by January 29, 2020.

The agencies' clarification provides that hemp may be grown only with a valid USDA-issued license or under a USDA-approved state or tribal plan. Research and development initiatives under the 2014 Farm Bill remain in effect until one year after the effective date of the USDA interim final rule. While hemp has been legalized at the Federal level, a state or triable government may prohibit the production of hemp.

What does this clarification mean for your institution? It could mean a number of things. First and foremost, if you have not done so already, you will need to expand upon your Marijuana Banking Program to be inclusive of cannabis-related activities. Transitioning your Marijuana Banking Program into a Cannabis Banking Program can provide a logical and inclusive place to address your risk appetite and policy for offering financial services to direct and indirect marijuana-related businesses, hemp and CBD customers, as well as those employed by such businesses. You can expect that your regulators will be assessing the adequacy of your Cannabis Banking Program, comprised of your risk assessment and policy, during your BSA examination.

You will likely see an increase in requests for financial services, including financing options, for hemp businesses, covering cultivation, extraction, distribution and other related activities. You should be prepared to address these requests and have controls implemented to identify, measure, manage and control associated risk. While hemp has been legalized at the Federal level, this legalization does not

relieve you of your due diligence requirements. You will need to have in place sufficient due diligence to ensure your customer is operating in accordance with applicable guidance and hemp production plans at the time of account opening and on an ongoing basis.

You will not, however, be required to file Marijuana-Limited SARs for hemp-related businesses. You are expected to follow standard SAR procedures, as you would for any customer, if suspicious activity warrants.

INDUSTRY HIGHLIGHTS

- As featured, the CFPB issued a Notice of Proposed Rulemaking related to the Remittance Rule.
- FinCEN released a new strategic analysis of BSA reporting, indicating that elders face an increased threat to their financial security by both domestic and foreign actors, as shown by an increase in SARs filed for elder financial exploitation between 2013 and August 2019. The primary scams identified included romance, emergency/person in need, and prize/lottery scams.
- December 11th marked the one-year anniversary for CFPB Director Kathleen Kraninger. Over the last year under Director Kraninger's leadership, the CFPB:
 - Issued the first proposed rule to implement the requirements and prohibitions applicable to debt collectors under the Fair Debt Collections Practices Act.
 - Released Notices of Proposed Rulemaking on Payday Lending to delay the compliance date and to rescind requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans and issued a final rule to delay the compliance date.
 - Created a system for prepaid issuers to submit account agreements in advance of the April 1, 2019 effective date of the Bureau's Prepaid Rule.
 - Issued an Advance Notice of Proposed Rulemaking on Property Assessed Clean Energy Financing.
 - Requested public comment on an assessment of the TRID Rule.
 - Issued an assessment of the effectiveness of the ATR and Qualified Mortgage Rule and the RESPA Mortgage Servicing Rule.
 - Issued a policy for conducting reviews of rules that are having substantial impact on a significant number of small entities and completed the first review under the policy.
 - Issued an interpretive rule on screening and training requirements for Mortgage Loan Originators to provide clarity to financial institutions.

- Issued 14 research reports covering the Consumer Credit Card Marketplace, third-party debt collection and 2018 HMDA data.
- Released an Advance Notice of Proposed Rulemaking to allow the GSE QM patch to expire in January 2021, or after an extension to facilitate a smooth and orderly transition from the patch, and requesting comments about possible amendments to the definition of a qualified mortgage in light of the expiration.
- Published joint with the FRB amendments to Regulation CC.
- Published 24 compliance aides and tools to facilitate compliance with CFPB rules.
- Published a revised No Action Letter Policy and issued the first NAL in response to an application from HUD on behalf of 1,600 housing counseling agencies to facilitate lender funding for thousands of housing counselors. The CFPB also issued the first NAL template for mortgage lenders to apply for similar NALs for the same purpose.
- Published a revised Policy to Encourage Trial Disclosure Programs (TDP) to permit companies to conduct in-market testing of innovative consumer disclosures designed to improve upon existing disclosures.
- Published a new Compliance Assistance Sandbox (CAS) Policy to enable testing of a financial product or service where there is regulatory uncertainty.
- Launched the American Consumer Financial Innovation Network to facilitate innovation through coordination.
- Issued a rule to implement HMDA-related provisions of the Economic Relief Act and to extend for two years a temporary increase in the loan volume reporting threshold for open-end lines of credit; issued proposed rules to increase the permanent loan volume reporting thresholds for closed-end mortgage loans and open-end lines of credit; issued an ANPR to assist in the development proposed rules related to certain data points added or revised by the 2015 HMDA Rule; issued final policy guidance regarding how the Bureau intends to modify publicly disclosed HMDA data to protect consumer privacy; and, released the 2018 HMDA data applying the final policy guidance.
- Implemented measures to streamline and improve the CFPB's rulemaking process.
- Implemented enhancements to the CFPB's advisory committee charters.
- Launched a symposia series to provide a public forum for the Bureau to hear a range of diverse views related to upcoming rulemaking and policy development.
- Announced the establishment of a Taskforce on Federal Consumer Financial Law to examine ways to harmonize and modernize federal consumer financial laws.

- Issued a request for information and NPRM on the Remittance Rule.
- The FDIC and OCC issued a joint Notice of Proposed Rulemaking to amend the Community Reinvestment Act's implementing regulations.
- The FRB, OCC and FDIC announced the availability of data on small business, small farm and community development lending reported by certain commercial banks and savings associations under the CRA.
- The FRB issued its Consumer Compliance Supervision [Bulletin](#) that features articles on promoting effective fintech risk management; online and mobile banking; and, managing fair lending risks of targeted internet-based marketing. The bulletin also features the FRB's fintech resources.
- The CFPB issued guide for construction loans under the TRID Rule addressing separate construction and permanent phase disclosures, and combined, one-transaction disclosures.
- Fannie Mae and Freddie Mac announced a revised implementation timeline for the revised URLA. You may begin using the revised URLA and submit applications to the new automated underwriting system on September 1, 2020. All applications received on or after November 1, 2020 must use the revised URLA. Fannie Mae and Freddie Mac will discontinue acceptance of the current URLA on November 1, 2021.
- FinCEN released [maps](#) showing SAR filings by industry covering casinos and card clubs; depository institutions; GSEs; insurance companies; loan or finance companies; MSBs; other filers; and securities and futures dealers.
- The FRB, FDIC and OCC issued an interagency statement to explain that the federal banking agencies will exercise discretion to not taken enforcement action against depository institutions or asset managers that become principal shareholders of institutions with respect to certain extension of credit by institutions that would otherwise violate Regulation O.

PENDING LEGISLATION

- **Home Mortgage Disclosure Act:** NPRM proposes to raise the coverage thresholds for collecting and reporting data about closed-end mortgage loans and open-end lines of credit; ANPRM addresses certain data points and coverage of business-or commercial-purpose properties
- **Qualified Mortgages:** ANPRM seeks information related to the expiration of the temporary qualified mortgage provision applicable to certain mortgage loans eligible for purchase or guarantee by the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac. This provision is scheduled to expire no later than January 10, 2021.
- **Overdraft Programs:** CFPB is conducting a review of the Overdraft Rule, specifically

seeking comment on the economic impact of the Rule on small entities. This review may assist the Bureau in determining whether the Overdraft Rule should be continued without change or amended or rescinded to minimize any significant economic impact of the rule upon small entities.

- **Escrow Relief for HPMLs:** Relief would exempt from certain escrow requirements a 1st lien HPML made by an insured depository institution or credit union that has assets of \$10B or less and originated 1,000 or fewer mortgages in the preceding year. This provision is currently awaiting rulemaking.
- **Debt Collection:** ANPRM has been issued to provide consumers with clear protections against debt collector harassment; set clear, bright-line limits on the number of calls a debt collector may make; clarify how debt collectors may communicate (e.g. phone, text, email, etc.); and, require debt collectors to provide additional information to consumers to help them identify debts and respond to collection attempts.
- **Larger Participants and Non-Bank Lender Registration:** The CFPB is continuing rulemaking activities that will further establish the Bureau's nonbank supervisory authority by defining larger participants of certain markets for consumer financial products and services.
- **Women-Owned, Minority-Owned and Small Business Data Collection:** Rulemaking remains on hold as there does not appear to be a permissible way to collect this data under Regulation B.
- **Regulatory Reviews and Assessments:** The CFPB continues its review of rules it has issued and those it has adopted from other agencies to determine their ongoing effectiveness.

CANNABIS BANKING UPDATE

- The DEA finalized plans to authorize the cultivation of 3,200,000 grams of marijuana for research purposes in 2020.
- The FRB, FDIC, FinCEN and OCC issued a statement to provide clarity on the legal status of commercial growth and production of hemp and relevant requirements for banks under the Bank Secrecy Act.
- During a hearing, FDIC Chairwoman Jelena McWilliams communicated that she will look into clarifying the ability of hemp businesses to process credit cards.
- The USDA extended the comment period for the U.S. Domestic Hemp Production Program interim final rule under January 19, 2020.
- The USDA's Risk Management Agency announced a new pilot crop insurance [Program](#) for hemp producers.

- The USDA approved the first set of plans submitted by states and Indian tribes for the domestic production of hemp under the U.S. Domestic Hemp Production Program. Plans were submitted by Louisiana, New Jersey and Ohio, and the Flandreau Santee Sioux, Santa Rosa Cahiulla, and La Jolla Band of Luiseno Indian Tribes.



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