

**M&M Consulting, LLC  
Compliance Group**

Jay Friedland  
(207) 650-4665  
[jaybanker@mandm.consulting](mailto:jaybanker@mandm.consulting)

Edward Bambauer  
(774) 275-7017  
[ebambauer@mandm.consulting](mailto:ebambauer@mandm.consulting)

Daniel Capozzi  
(781) 507-4579  
[dcapozzi@mandm.consulting](mailto:dcapozzi@mandm.consulting)

Jessica Coulombe  
(774) 218-1004  
[jcoulombe@mandm.consulting](mailto:jcoulombe@mandm.consulting)

Martha Howell  
(207) 604-4454  
[mhowell@mandm.consulting](mailto:mhowell@mandm.consulting)

Jeff Hubbard  
(603) 440-3702  
[jhubbard@mandm.consulting](mailto:jhubbard@mandm.consulting)

Kevin Hughes  
(603) 339-7088  
[khughes@mandm.consulting](mailto:khughes@mandm.consulting)

Deanne Kiilsgaard  
(207) 929-0757  
[dkiilsgaard@mandm.consulting](mailto:dkiilsgaard@mandm.consulting)

Eddie Milhorn  
(207) 653-3015  
[emilhorn@mandm.consulting](mailto:emilhorn@mandm.consulting)

Gary Moore  
(207) 400-5121  
[gmoore@mandm.consulting](mailto:gmoore@mandm.consulting)

Bruce Ray  
(207) 712-2587  
[bray@mandm.consulting](mailto:bray@mandm.consulting)

Marcy Rodrigue  
(207) 240-6527  
[mrodrigue@mandm.consulting](mailto:mrodrigue@mandm.consulting)

Dean Stockford  
(207) 458-8559  
[dstockford@mandm.consulting](mailto:dstockford@mandm.consulting)

Jeffrey Sullivan  
(413) 478-4299  
[jsullivan@mandm.consulting](mailto:jsullivan@mandm.consulting)

Roy Thattacherry  
(978)-646-7149  
[rthattacherry@mandm.consulting](mailto:rthattacherry@mandm.consulting)

Deborah Yates  
(207) 677-6354  
[dyates@mandm.consulting](mailto:dyates@mandm.consulting)

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**Military Lending... More Than Just an Act!**

With so much emphasis placed on the recently enacted changes to the [Military Lending Act](#) (MLA), and the questions that have yet to be answered about how to comply with certain aspects of these new requirements, it's not totally surprising (human nature being what it is) that not so much attention has been paid to the other, and more familiar, military lending law; the [Servicemembers' Civil Relief Act](#) (SCRA).

The MLA is not new. It is, however, something new to traditional banks and credit unions. The recently enacted amendments to the Act significantly expanded its scope and its requirements. Whereas the MLA previously applied only to payday lenders, the new MLA applies to all institutions making consumer loans. As such, the emphasis placed on the MLA is understandable. Information on the specific requirements of the new MLA can be found in the April 2016 and August 2016 editions of *Practical Compliance*.

**Loans Covered - MLA versus SCRA**

The recent changes to the MLA did not eliminate or otherwise impact any of the existing SCRA requirements. The loans covered under each Act are separate and distinct. Specifically:

- The MLA protections and requirements deal primarily with new extensions of credit to active members of the military and their families.

The new MLA covers all consumer loans as defined in Regulation Z, except for residential mortgages and purchase-money automobile and purchase-money personal property-secured loans.

- The SCRA protections and requirements deal with existing extensions of credit to individuals who subsequently become active members of the military and their families.

The SCRA can apply to any loan a service member had before joining active duty service, including student loans, credit cards, mortgages, installment loans, title loans, etc. The SCRA also applies to joint loans, provided the service member's name was on the loan before joining the military.

**SCRA Compliance Issues Remain**

Compliance with the SCRA remains an issue in the banking industry. Based on the most recent CFPB Report (Report) on servicemember complaints, [Servicemembers 2015: A Year in Review](#), there appear to be several areas where lenders / servicers do not consistently comply with certain SCRA

requirements.

The Report shows that the total number of complaints received from servicemembers in 2015 increased 11% from 2014. The most significant percentage increases were noted in the categories of consumer loans (59%), credit reporting (35%), and mortgages (10%). Debt collection remains the area receiving the highest number of complaints, with nearly 4x the number of complaints as mortgages, the second highest complaint category. The following is a summary of the types of complaints received in each of the above categories. A number of these types of complaints related directly to areas covered under the SCRA. Others raise potential UDAP concerns:

#### **Consumer Loan Complaints:**

- Managing the loan, lease or line of credit (43%)
- Problems when you are unable to pay (23%)
- Taking out loan or lease or account terms and changes (21%)
- Shopping for a loan, lease, or line of credit (9%)
- Charged unexpected fees or interest (2%)
- Other (2%)

#### **Mortgage Complaints:**

- Problems when unable to pay (40%)
- Making payments (38%)
- Applying for the loan (12%)
- Signing the agreement (6%)
- Receiving a credit offer (4%)

#### **Credit Reporting Complaints:**

- Incorrect information on credit report (72%)
- Credit reporting company's investigation (11%)
- Improper use of credit report (8%)
- Unable to obtain report or score (4%)
- Credit monitoring or identity protection (4%)

#### **Debt Collection Complaints:**

- Continued attempts to collect debt not owed (44%)
- Communication tactics (17%)
- Disclosure verification of debt (14%)
- False statements or representation (10%)
- Taking or threatening an illegal action (10%)
- Improper contact or sharing of info (6%)

### **MLA Determination of Military Service / Safe Harbor Provisions as an SCRA Compliance Tool**

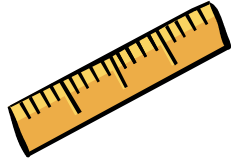
The MLA provides two safe harbor methods for determining if a consumer is a covered borrower: (1) using information obtained directly or indirectly from the [MLA Database](#); or (2) relying on information contained in a consumer report obtained from a nationwide consumer reporting agency.

This MLA requirement also provides a mechanism for lenders to identify loans subject to the SCRA. For example, if a borrower with existing loans applies for a new loan, and the search of the Department of Defense (DoD) database determines that the borrower is on Active Duty, the lender has not only determined that the new loan is subject to the MLA, but the lender is now also aware that the borrower has existing loans that are subject to the SCRA. The lender can flag these loans accordingly, and better ensure compliance by inadvertent compliance violations with these loans as they relate to debt collection, credit reporting, etc. Failure to proactively identify existing loans subject to the SCRA could raise potential UDAA concerns.

### **Conclusion**

Lenders / servicers should consider approaching MLA and SCRA compliance holistically, and take advantage of the new MLA Military Service Determination requirements to proactively identify loans subject to the SCRA. As Lenders must perform this determination for MLA purposes, why not maximize the benefits of this Determination by identifying SCRA covered loans in this process? Doing so could help minimize potential MLA, SCRA, and UDAP concerns down the road.

## Short Clips



### CFPB UPDATES MORTGAGE SERVICING COMPLIANCE GUIDE

On November 30, 2016, the Consumer Financial Protection Bureau (CFPB) published an updated version of the [Mortgage Servicing Small Entity Compliance Guide](#). The updated guide incorporates amendments made to mortgage servicing provisions in Regulation X and Regulation Z by the 2016 Mortgage Servicing final rule.

### CFPB ISSUES BULLETIN ON INCENTIVE COMPENSATION EXPECTATIONS

On November 28, 2016, the CFPB issued [Compliance Bulletin 2016-03](#) outlining its expectations for incentive compensation programs. The bulletin compiles guidance previously issued by the bureau in other contexts and highlights examples from the agency's supervisory and enforcement experience. The bureau reiterated its expectation that banks using incentive programs have proper compliance management systems in place to monitor and quickly respond to any potential violations of consumer protection laws.

While the CFPB does not require any particular compliance management system, it recommends that a CMS be appropriately tailored to reflect the risk, nature and significance of the institution's incentive programs.

### CFPB NOTICE AND REQUEST FOR COMMENT – COMPLAINT HANDLING RATING SYSTEM

On November 29, 2016, the CFPB published a [Notice and Request for Comment](#) in the Federal Register regarding its plan to add consumer ratings of responses to complaints to its complaint database. Under the request for regulatory approval, the CFPB would replace the function of the database that allows a customer to dispute the company's response to the complaint with a "short survey", and an option to provide a narrative, that would allow the customer to provide feedback on the company's

handling of the complaint. Comments on the bureau's notice are due by December 29, 2016.

### AGENCIES ISSUE FINAL RULE ON METHOD TO ADJUST THRESHOLDS FOR EXEMPTING CERTAIN CONSUMER CREDIT AND LEASE TRANSACTIONS

On November 23, 2016, the Federal Reserve Board (Fed) and the CFPB jointly issued a [Final Rule](#) on the method to be used to adjust the thresholds for exempting certain consumer credit and lease transactions from the Truth in Lending Act (Reg. Z) and Consumer Leasing Act (Reg. M).

The Dodd-Frank Act (DFA) requires that the exemption thresholds in these be adjusted annually based on the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The calculation method adopted in the final rule will allow the thresholds to keep pace with the CPI-W. Among other clarifications, the final rule details that if there is no annual percentage increase in the CPI-W, the agencies will not adjust the exemption thresholds from the prior year.

The Final Rule also applies the calculation method to the thresholds for exempt credit and lease transactions for 2017; \$54,600 (unchanged) based on the CPI-W in effect on June 1, 2016.

The protections of the Reg. Z and the Reg. M generally apply to consumer credit transactions and consumer leases at or below the thresholds. However, private education loans and loans secured by real property (e.g., mortgages) are subject to Reg. Z, regardless of loan amount.

The DFA transferred most rulemaking authority under Reg. Z and the Reg. M to the CFPB. However, as the Fed retains authority to issue rules for certain motor vehicle dealers, the agencies jointly issued this Final Rule.

### CFPB ISSUES FINAL RULE FOR PREPAID ACCOUNTS

On November 22, 2016, the [CFPB final rule](#) establishing new consumer compliance requirements for prepaid accounts pursuant to Regulations E and Z was published in the Federal Register. These new requirements govern disclosures, limited liability and error resolution protections, credit features, and making account agreement information publicly available for prepaid accounts, among other provisions.

Financial institutions must comply with the rule beginning October 1, 2017, though certain provisions are not effective until October 1, 2018 or October 1, 2019.

### CFPB RELEASES 2017 LISTS OF RURAL, UNDERSERVED COUNTIES

On November 17, 2016, the CFPB released [lists of rural counties and rural or underserved counties](#) to use in 2017 in conjunction with the bureau's Ability-to-Repay, escrow, HOEPA and appraisal rules. The CFPB noted that Rural counties were generally defined by using a U.S. Department of Agriculture classification system and underserved counties were defined by data collected under the Home Mortgage Disclosure Act.

### FFIEC FINALIZES NEW CONSUMER COMPLIANCE RATING SYSTEM

On November 7, 2016, the Federal Financial Institutions Examination Council (FFIEC) finalized its [new uniform interagency consumer compliance rating system](#), reflecting changes in consumer compliance supervision since the system was first introduced in 1980. The system was adopted substantially as proposed with a few points of clarification. The new system will begin to be used by FFIEC member agencies for exams beginning on or after March 31, 2017.

The revisions reflect the adoption by the regulatory agencies of risk-based supervision focused on institutions' compliance management systems (CMS), retains the 1-to-5 rating scale, which would be "based primarily on the adequacy of its CMS," FFIEC said. Institutions would be assessed in three categories: board and management oversight, compliance program and violations of law and consumer harm.

### AML 'SPECIAL MEASURE' IMPOSED ON N. KOREA

On November 9, 2016, the Financial Crimes Enforcement Network (FinCEN) issued a [final rule imposing a special measure against North Korea](#) as a jurisdiction of primary money laundering concern under the USA Patriot Act. The rule prohibits U.S. financial institutions from opening or maintaining a correspondent account on behalf of a North Korean financial institution, and from processing transactions involving North Korean

financial institutions. In addition, the special measure requires U.S. financial institutions to apply special due diligence to guard against such use by North Korean financial institutions.

### AGENCIES ISSUE PRIVATE FLOOD INSURANCE PROPOSAL

On November 7, 2016, a [joint notice of proposed rulemaking](#) regarding private flood insurance issued by the Comptroller of the Currency (OCC), Fed, FDIC, the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) was published in the Federal Register. The new proposal amends existing regulations involving loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

Specifically, the proposed rule would require regulated lending institutions to accept policies that meet the statutory definition of private flood insurance in the Biggert-Waters Act and permit regulated lending institutions to accept flood insurance provided by private insurers that does not meet the statutory definition of "private flood insurance" on a discretionary basis, subject to certain restrictions.

Comments on the proposed rule are due by January 6, 2017.

### FED Q&A INTERPRETS DURBIN AMENDMENT ROUTING ON EMV

On November 2, 2016, the Federal Reserve added a new Q&A item to the *\$235.7 Network Exclusivity and Routing Provisions* section on its [Regulation II Frequently Asked Questions page](#). In Q&A #4, the Fed indicated that the Durbin Amendment prohibits card networks from requiring merchants to allow debit cardholders to choose EMV chip application when one application routes to a single network. By limiting consumers' choice of routing at the point of sale, the Fed's interpretation could push more debit transactions to be processed as PIN transactions rather than via signatures.



## CFPB ISSUES GUIDANCE ON SERVICING REVERSE MORTGAGES AND STUDENT LOANS

On October 31, 2016, the CFPB issued new / updated examination procedures for the servicing of reverse mortgages and student loans. The [reverse mortgage procedures](#) came in response to complaints to the bureau about these loans. The [student loan procedures](#) reflect changes based on the bureau's experience in this market since its procedures were last issued in 2013.

## TREASURY FURTHER EASES FINANCIAL SANCTIONS ON CUBA

On October 17, 2016, a Final Rule amending the [Cuban Assets Control Regulations](#) issued by the Treasury Department's Office of Foreign Assets Control (OFAC) was published in the Federal Register. The amendments result in easing of additional financial sanctions and limitations affecting interactions between the U.S. and Cuba.

Effective October 17, 2016, persons subject to U.S. jurisdiction may open and maintain bank accounts in Cuba for transactions related to medical research or pharmaceutical importation. Persons subject to U.S. jurisdiction will also be permitted to remit funds to nationals of third countries for travel to, from or within Cuba, subject to certain conditions.

## CFPB UPDATES TRID COMPLIANCE GUIDE

On October 13, 2016, the CFPB issued an updated [Small Entity Compliance Guide to the TILA-RESPA integrated Disclosures](#). The Guide incorporates guidance from recent compliance webinars on records retention; construction loans; disclosures of seller-paid costs; and form completion, formatting, revision and delivery, among other topics. The Bureau also issued a revised [Guide to the Loan Estimate and Closing Disclosure forms](#).

## UPDATED MLA EXAMINATION PROCEDURES

On September 30, 2016, the CFPB issued [updated examination procedures](#) for the amendments to the Military Lending Act rule taking effect on October 3, 2016. The procedures are based on those developed jointly by other banking agencies, which issued their [updated interagency examination procedures](#) on September 29, 2016.

Early MLA compliance examinations will focus on financial institutions' compliance management systems and overall efforts to comply, including implementation plans, actions to update policies and procedures, staff training and handling of early implementation hurdles.

The MLA amendments, which extend MLA restrictions to cover credit cards, lines of credit, installment loans and deposit advances offered to service members and their dependents, take effect on October 3, 2016 (however, credit cards have a compliance deadline of October 1, 2017).

## 2015 MORTGAGE LENDING DATA AVAILABLE

On September 29, 2016, the FFIEC announced the [availability of data on mortgage lending transactions](#) at 6,913 U.S. financial institutions covered by the Home Mortgage Disclosure Act (HMDA). Covered institutions include banks, savings associations, credit unions, and mortgage companies. The HMDA data made available today cover 2015 lending activity.

The available data also include disclosure statements for each financial institution, aggregate data for each MSA, nationwide summary statistics regarding lending patterns, and Loan/Application Registers (LARs) for each financial institution (LARs are modified to protect borrower privacy). The FFIEC prepares and distributes this information on behalf of its member agencies.

## NACHA LAUNCHES SAME-DAY ACH

On September 23, 2016, the National Automated Clearing House Association (NACHA) launched [Phase 1 of its same-day ACH initiative](#), which allows for the sending and receiving of ACH credit transactions. All banks are now required to accept same-day ACH transactions and will receive a per-transaction fee for doing so. While originating same-day ACH payments is optional, NACHA said it expects that many banks will opt to begin sending same-day transactions as well.

The next phase of same-day ACH will launch in September 2017, and will introduce faster processing and settling of debit transactions in addition to credit transactions.

## Good to Know

Send your questions to the [answerperson@mandm.consulting](mailto:answerperson@mandm.consulting)

*Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received and responded to five days a week.*

**Q:** In July of this year, the CFPB announced a proposed rule that would add section e to 1016.5 that would basically exempt qualifying institutions from providing the annual privacy notice if they meet a few requirements.

As this rule has not yet been finalized, am I correct that we still have to issue our annual privacy notice for 2016, unless the rule is finalized before the end of the year?

**A:** Your interpretation of the current status of Annual Privacy Notice requirements is correct. The July 2016 Regulation P Amendment is still in “proposal” stage with the CFPB, which makes the current statute, and final rules the governing authority. As soon as the amendment is finalized by the CFPB, the Annual Notice burden should decrease significantly. I would not recommend changing anything yet, as there’s no telling how an examiner would view the matter.

**Q:** Can we report a Letter of Credit renewal as a CRA small business Loan?

**A:** You cannot report a letter of credit as a CRA small business loan, but you can list these items in your CRA reporting software coded as “Other” so that they are readily retrievable for possible consideration by the examiners in your CRA Examination. This allows you to retain a record of all such items without having them included in your CRA small business loan submission.

The FFIEC’s *A Guide to CRA Data Collection and Reporting* states the following with respect to Loan Commitments and Letters of Credit:

*“Institutions are not required to collect data on loan commitments and letters of credit. They may, however, provide for examiner consideration information on letters of credit and commitments.”*

**Q:** There is a section in the FCRA requiring that a written notice be provided when the bank

furnishes negative information to a reporting agency regarding credit extended to a customer. Does this requirement apply to business loans? I don’t think so, but I’m not 100% certain.

**A:** I’ve reviewed the FCRA, and clarified that the references to a “customer” within this section of the Act (which is defined in another Act) do in fact mean to a “consumer”, and as such you are correct that the Negative Information Notice does not apply to business entities.

**Q:** If a bank escrows for flood insurance and also escrows for taxes and hazard insurance, should the flood insurance be listed as “Other”, “Yes” (in Escrow) in the subsection of the Estimated Taxes, Insurance and Assessments of the Projected Payments sections on the LE and CD?

**A:** Flood insurance premiums are included in the “homeowner’s insurance” total, and not listed separately in “Other”.

If you look at the Table of Contents page for the [CFPB’s October 1, 2014 webinar](#), and click on the Projected Payments Table link (and have sound enabled on your laptop, you’ll hear the specific question and response provided.

**Q:** We allow their borrowers to shop for the title examination and lender’s coverage premium, but essentially the borrower selects the title attorney whom selects the provider of the lender’s coverage premium. With that being said, should we just indicate that they allow their borrowers to shop for the title examination fee or can we still list both as they indirectly shopped.

**A:** In my opinion, you are handling this appropriately. The Bank needs to designate which required services a borrower can and cannot shop for to properly perform a “good faith determination”. If it does not specifically designate the Lender’s Title Insurance Policy as “shopable”, examiners could interpret this, by default, as a service the borrower cannot shop for, making it subject to the zero tolerance rule.

As the Bank has no involvement in selecting the provider of the Lender’s Title Insurance Policy, why risk exposing itself to absorbing any charge in excess of the charge disclosed on the LE?

**Q:** We offer life and disability insurance on our lot loans, but we don’t finance the premiums.

However, we do create an escrow bucket for the customer for the monthly premiums. Are we required to include those premiums in the MAPR?

**A:** In response to your specific question, the escrowed unfinanced life and disability premiums are to be included in the MAPR calculation.

However, in researching this matter, we noted the following statements made by the Department of Defense (DOD) within the preamble of the Final Rule on [Page 43582 of the 07/22/15 Federal Register](#), which adds another element regarding these types of products that should be considered. Specifically:

- *“...The Department believes that most, if not all, of the credit insurance products, debt cancellation contracts, or debt suspension agreements customarily offered to consumers are not suitable for a covered borrower because the military services already provide insurance or other benefits to a Service member that would adequately provide financial resources even if an event of coverage (e.g., disability) were to occur to the borrower...”*
- *“...For example, a Service member currently holds health insurance as part of his or her benefits in the Service and, if that Service member were to become ill, the Service member still would be employed, thereby allowing him or her (or the relevant dependent who relies on the Service member’s income) to continue to make payments on the debts incurred without triggering a condition of the credit insurance...”*

With this information in mind, the Bank may want to re-evaluate its position on selling any credit products considered by the DoD as “not suitable” for covered service members.

**Q:** We are not presently offering land loans, but as we may want to resume offering these loans at some point, we have been discussing what needs to be included in the MAPR calculation. Land loans have some fees that aren’t typically associated with other types of consumer loans, so we’d like to an independent opinion as to whether we are correct in our determination that the following fees must be included in the MAPR calculation: Appraisal fee, Attorney’s fees (title search), Transfer tax (if purchase), Power of

Attorney trust review fee (if applicable), Recording fees and Title insurance fee?

**A:** I’ve reviewed both the new MLA requirements in conjunction with §1026.4 of Regulation Z with respect Finance Charges, and in my opinion, none of the items listed would be included in the MAPR calculation for land loans. The following summarizes the reasons for this opinion for each of the charges you listed:

- *Appraisal fee, Attorney’s fees (title search), Power of Attorney trust review fee (if applicable), and Title insurance fee:*
  - While these fees are not included in the types of fees outlined in the MLA, they are exempted from the definition of finance charges in Regulation Z under §1026.4(c)(7), Real-Estate Related Fees, which applies to loans secured by real property, as well as for residential mortgage transactions.
- *Transfer tax (if purchase), and Recording fees:*
  - These fees are not included in the MAPR calculation, as they are not included in the types of fees outlined in the MLA, and they are not finance charges per Regulation Z.

**Q:** I have a question on the new rules involving Mortgage Loan 45-day delinquent letters. Are these letters required to be sent each time a borrower is 45-days late on a mortgage? For instance, if they are 45-days 4 times within a year, are we required to send four letters?

**A:** I think you might be confusing the live contact requirements of the early intervention rule with the written notice requirements.

The CFPB guidance on early intervention states (*emphasis added*):

*“...The Early Intervention Rule also requires that a written notice be sent to the borrower not later than the 45th day of delinquency, unless the borrower has submitted payment in the meantime. However, in contrast to the live contact rule, the written notice is required no more than once during any 180-day period. Thus, written notice provided to a borrower pursuant to the rule need not be provided again for 180 days, even if another delinquency occurs and the 45th day after that delinquency falls within the 180-day timeframe.”*

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## Important Dates– Don't Forget!

*Generally, we retain the prior month, and go forward for at least a year as known. Dates are either effective dates of Final Rules, or end of the comment period for proposed rules.)*

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12/29/2016 [CFPB, Complaint Handling Rating System](#). End of Comment Period.

01/01/2017 [CFPB, Reg. Z Adjusted Dollar Thresholds for Certain Credit Transactions](#). Effective date.

01/01/2017 [NCUA, Final Member-Business Lending Rule](#). Provides CUs greater business lending flexibility.

01/01/2017 [HMDA, Regulation C](#). Low volume institutions further excluded from coverage.

01/06/2017 [Flood Insurance Regulations](#). End of Comment Period for private flood insurance joint NPRM.

03/17/2017 [FFIEC, Consumer Compliance Rating System](#). Applies to exams starting on/after this date.

09/29/2017 [NACHA Rule on Registration of Third Party Senders](#). Effective date for compliance by ODFIs.

10/01/2017 [Military Lending Act Regulation](#). Sections on credit card accounts become mandatory.

10/01/2017 [CFPB, Prepaid Accounts Rule](#). Mandatory compliance date for most Reg. E and Reg. Z changes.

01/01/2018 [HMDA, Regulation C](#). Revised transaction coverage and expanded fields effective.

05/11/2018 [FinCEN, CDD / Beneficial Ownership Rules](#). Mandatory compliance date.

10/01/2018 [CFPB, Prepaid Accounts Rule](#). Mandatory compliance date for most other PAR requirements.

01/01/2019 [HMDA, Regulation C](#). Effective date for changes to enforcement and reporting provisions.

10/01/2019 [CFPB, Prepaid Accounts Rule](#). Mandatory compliance date for remaining PAR requirements

01/01/2020 [HMDA, Regulation C](#). Quarterly reporting for high volume reporters starts.

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