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Inside

Technological Innovation Is Essential to the Future of Community Banking in America

By Governor Michelle W. Bowman

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Over the past year, the COVID-19 pandemic has illustrated the importance of technology across financial services and other industries. In banking, innovation and technology have enabled community banks to continue to meet the needs of their customers during the pandemic and hold great promise to help community banks compete and succeed in the evolving financial services landscape.

Together with the members of the Board of Governors of the Federal Reserve System, I am committed to supporting community bank efforts to implement technology solutions that align with their business strategy and make sense for their customers.

COMMUNITY BANK AND FINTECH PARTNERSHIPS AND CHALLENGES

A community bank can provide critical improvements in efficiencies and effectiveness by successfully implementing financial technology. One pathway to achieve these benefits is through responsible partnerships with fintech firms. The fintech partnership model is particularly important for smaller banks, which may have limited resources to develop or implement technology solutions on their own. By obtaining needed technology resources from a third party, community banks can meet their innovation needs and continue to focus on relationships with their customers and communities.

A variety of options are available for fintechs and community banks to partner, including:

- Customer-oriented partnerships, in which a bank selects a fintech partner to provide a product or service that enhances the customer's banking experience;
- Operational technology partnerships that improve a bank's back-end operations, including partnerships that enhance the efficiency and effectiveness of the compliance and regulatory functions; and
- Banking-as-a-service partnerships, in which a bank combines its financial infrastructure with a fintech partner's user-interface to provide seamless digital banking products to a broader range of customers.

While many community banks have successfully partnered with fintechs to meet their

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Understanding Regulation Z's Advertising Requirements

By Allison Burns, Senior Examiner, Federal Reserve Bank of Minneapolis

Federal Reserve System examination data for state member banks indicate that Regulation Z advertising requirements continue to be a challenge for financial institutions. To facilitate compliance, this article discusses the key advertising provisions in Regulation Z for open- and closed-end credit, provides examples from recent examinations, and highlights sound practices for managing compliance risks associated with marketing and advertising.[1]

COVERAGE

Regulation Z broadly defines *advertisements* as commercial messages provided in any medium that promote — directly or indirectly — a credit transaction.[2] This definition encompasses messages in newspapers, magazines, leaflets, promotional fliers, radio announcements, television commercials, Internet advertisements, direct mailers, interior and exterior signage, point-of-sale displays, and telephone solicitations. However, advertisements do not include direct, personal contacts such as follow-up letters to customers about specific transactions (including oral or written negotiations).[3]

ADVERTISING REQUIREMENTS FOR BOTH OPEN- AND CLOSED-END CREDIT

Regulation Z has separate advertising requirements for open- and closed-end credit, but two key provisions apply to both types of credit: (1) advertised terms must actually be available[4] and (2) required disclosures must be clear and conspicuous.[5]

Actually Available *Terms*

The *actually available* terms provision prohibits creditors from enticing an applicant to apply for credit with an offer that is not available as advertised. Accordingly, if an advertisement mentions specific credit terms, the creditor must provide those terms to applicants qualifying for the offer. Comment 24(a)-1 clarifies this:

> For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This provision is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

The following example from an examination illustrates the requirement that when an advertisement states specific terms, the terms must be available to qualified applicants.

> A financial institution began offering a new home equity line of credit(HELOC) product with a discounted floor rate. Marketing materials advertised the discounted floor rate, but borrowers did not actually receive that rate. Account parameters and periodic statements were not set up properly to reflect the advertised rate. While the financial institution did not intend to advertise a term it did not offer, staff turnover within the loan administration area, human error, and misinterpreting procedures surrounding the HELOC discount contributed to the violation.

Clear and Conspicuous Advertisements

The clear and conspicuous standard applies to all Regulation Z disclosures, including advertisements subject to the open- and closed-end rules.[6] It requires that disclosures be in a "reasonably understandable form."[7] While a specific format generally is not required for advertisements, they should not make it difficult for borrowers to understand the terms.

ADVERTISING REQUIREMENTS FOR OPEN-END CREDIT (12 C.F.R. §1026.16)

Triggering Terms and Additional Disclosures

The open-end credit advertising rules specify that when certain terms are used in advertisements (triggering terms), additional disclosures are required for both non-home secured loans and home-secured, open-end credit plans (i.e., HELOCs). Additional disclosure requirements apply to television and radio advertisements.

Finance and other charges. When the finance charge and other charges required to be disclosed at account opening are included in an advertisement for open-end credit,[8] the advertisement must also clearly and conspicuously state the following additional disclosures:

- Minimum, fixed, transaction, activity, or similar charge that is a finance charge under §1026.4 that could be imposed;
- Periodic rate that may be applied expressed as an annual percentage rate (APR). If the plan provides for variable rates, that must also be disclosed; and
- Membership or participation fees that could be imposed.[9]

Account opening disclosures that would trigger the additional disclosures include, but are not limited to, information about the finance charge (such as the APR and the balance computation method), and the amount of other charges that may be imposed as part of the plan or how they will be determined.

Keep in mind that negative as well as affirmative statements trigger the requirement for additional information. For example, stating that a plan has no interest or no annual membership fee in an advertisement would require additional disclosures.[10]

Periodic payment amounts. Payment information in an advertisement is also a triggering term requiring additional disclosures. Specifically, if an advertisement for credit to finance the purchase of goods or services states the amount of the periodic payment, the advertisement must also disclose the *total of payments* (i.e., the total amount of payments made over the term of the loan) and the time period to repay the obligation, assuming the consumer pays only the periodic payment amount advertised. These disclosures must be equally prominent to the statement of the periodic payment amount.[11]

Misleading terms. Regulation Z prohibits misleading terms in open-end credit advertisements. For example, an advertisement may not refer to APRs as fixed unless the advertisement also specifies a time period in which the rate will not change or that the rate will not increase while the plan is open.[12]

Additional Disclosures for Home-Equity Plans

If any of the previously mentioned open-end triggering terms (finance and other charges or payment terms) are included — affirmatively or negatively — in an advertisement for a HELOC, the advertisement must also clearly and conspicuously set forth:

- Any loan fee that is a percentage of the credit limit under the plan and an estimate or any other fees imposed for opening the plan, stated as a single-dollar amount or a reasonable range;
- Any periodic rate used to compute the finance charge, expressed as an APR; and
- The maximum APR that may be imposed in a variable-rate plan.[13]

HELOC advertisements have other triggering terms requiring additional disclosures. **Table 1** (Regulation Z's Triggering Requirements for HELOCs) lists the triggering term, when it applies, as well as the additional required disclosures.[14]

Additional Disclosures for Non-Home Secured Plans

For non-home secured plans, special rules apply when advertisements include promotional rates or fees[15] and deferred interest or similar offers:[16]

- For promotional rates or fees, when APRs or fees are introductory, the term *introductory* must be immediately proximate to each rate or fee listed.[17]
- When APRs or fees are promotional, the advertisement must indicate when the promotional period will end and the APR or fee that will apply after the promotional period.[18]
- For deferred interest, if a deferred interest offer is advertised, it should include the period in a clear and conspicuous manner.[19]
- In addition, if the advertisement includes the phrase *no interest,* it should include the phrase *if paid in full* in a clear and conspicuous manner.[20]

Alternative Disclosures for Television and Radio Advertisements

For television or radio advertisements of either HELOCs or non-home secured open-end credit that include triggering terms, the creditor has two options to provide the additional disclosures: (1) clearly and conspicuously state the additional required disclosure, or (2) state the APR and whether it

Table 1: Regulation Z's Triggering Requirements for HELOCs

Additional Disclosures for HELOCs		
Triggering Term	**When It Applies**	**Additional Disclosures***
Discounted/Premium Rate	Initial rate not based on the index and margin used to make adjustments in a variable-rate plan	• Period of time the initial rate will be in effect; and • A reasonably current APR that would have been in effect using the index and margin
Balloon Payments	If an advertisement states a minimum periodic payment and a balloon payment may result if only the minimum payments are made	• That a balloon payment will result; and • The amount and timing of the balloon payment
Tax Implications	If a paper or Internet advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling	• The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes; and • The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges
Promotional Rates/Payments	If any APR that may be applied to the plan is a promotional rate or any payment applicable to the plan is a promotional payment	• The period of time the promotional APR and/or payment will apply; • For a promotional rate, any APR that will apply under the plan; and • For a promotional payment, the amounts and time periods of any payments that will apply under the plan. For variable-rate transactions, payments that will be based on an index and a margin must be disclosed based on a reasonable current index and margin

*Must be stated with equal prominence and within close proximity to the triggering term.

may increase, as well as a toll-free telephone number the consumer can call for additional cost information.[21]

ADVERTISING REQUIREMENTS FOR CLOSED-END CREDIT (12 C.F.R. §1026.24)

For closed-end credit advertising, the regulation has several different requirements for dwelling-secured loans versus nondwelling-secured loans. The regulation also incorporates the same special rules for television and radio advertisements previously discussed that apply to advertisements for open-end credit.

Finance Charge

Regulation Z restricts how rates can be included in advertisements for closed-end credit.[22] The APR must always be listed (and must state that the APR is subject to increase after consummation, if applicable).[23] The interest rate may also be listed but not more conspicuously than the APR. **Table 2** (Closed-End Credit Disclosures When Advertising the Finance Charge or Interest Rate) summarizes the finance charge requirements for nondwelling- and dwelling-secured closed-end loans.

In a recent examination, a financial institution mailed an advertisement for a fixed-rate mortgage loan to a prescreened group. The advertisement included both an interest rate and an APR at the top; however, the interest rate was displayed in a larger and more conspicuous font than the APR. This advertisement violated Regulation Z because the interest rate cannot be more conspicuous than the APR.

Triggering Terms and Additional Disclosures

The following terms in closed-end credit advertisements trigger the requirement for additional disclosures:[24]

- **Down payment:** A reference to a down payment in an advertisement acts as a triggering term only if a down payment is actually required for the credit product. For example, stating that no down payment is required does not trigger additional disclosures.[25]
- **Payment period:** Including the *payment period* requires referencing the number of payments required or the total period of repayment. However, statements such as *pay weekly* or *take years to repay* do not trigger additional disclosures because they do not indicate a time period over which the loan may be financed.[26]
- **Payment amount:** The *payment amount* means including the dollar amount of any payment. Statements such as *monthly payment to suit your needs* or *regular monthly payments* do not trigger additional disclosures because they do not include statements of the amount of any payment.[27]
- **Finance charge amount:** Mentioning the *finance charge amount* includes stating the dollar amount of the finance charge or any portion of it. However, disclosing the APR violated Regulation Z or stating there is no particular charge for credit (such as *no closing costs*) is not a triggering term.[28]

Triggering terms need not be stated explicitly; additional disclosures are still required if the term may be readily determined from the advertisement. For example, if the advertisement says “80% financing available,” the statement is indicating a 20% down payment is required (a triggering term).[29] For closed-end credit, **Table 3** (Triggering Terms for Closed-End Credit Advertising) identifies the triggering terms, including some examples of these terms, as well as the required additional disclosures.

Table 2: Closed-End Credit Disclosures When Advertising the Finance Charge or Interest Rate

Closed-End Credit Finance Charge Advertising Disclosures		
Product	**Finance Charge Listed in Advertisement** *Required Disclosures*	**Interest Rate Listed in Advertisement** *Optional Disclosures*
Nondwelling-secured	APR (including any increases)	Simple annual rate or periodic rate
Dwelling-secured	APR (including any increases)	Simple annual rate

Table 3. Triggering Terms for Closed-End Credit Advertising

<table>
<tr><th>Triggering Terms</th><th>Examples</th><th>Additional Disclosures (as applicable)</th></tr>
<tr><td>The amount of any down payment</td><td>• Only 5 percent down
• As low as $100 down
• Total move-in costs of $800[30]</td><td rowspan="4">• The amount or percentage of any down payment;
• The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
• The “annual percentage rate” using that term and disclose (if applicable) that the APR may be increased after consummation</td></tr>
<tr><td>The number of payments or period of repayment</td><td>• 48-month payment term
• 30-year mortgage
• Repayment in as many as 36 monthly installments[31]</td></tr>
<tr><td>The amount of any payment</td><td>• Payable in installments of $103
• $25 weekly
• $500,000 loan for just $1,650 per month[32]</td></tr>
<tr><td>The amount of any finance charge</td><td>• $500 total cost of credit
• $2 monthly carrying charge
• $50,000 mortgages, 2 points to the borrower[33]</td></tr>
</table>

Formatting and Related Requirements for Additional Disclosures

Generally, creditors can use illustrative credit transactions to make necessary disclosures. The examples must be labeled and reflect representative credit terms made available by the creditor to present and prospective customers.[34] For example, when a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions as long as each example contains all of the applicable terms required by §1026.24(d)(2).

- *Amount of down payment*: The down-payment disclosure should include the total amount as a dollar amount or percentage; the word *down payment* is not required, however.[35] For example, *10 percent cash required from buyer* or *credit terms require minimum $100 trade-in* would suffice.
- *Repayment terms*: Repayment terms disclosures have some flexibility and may be expressed in a variety of ways in addition to an exact payment schedule. However, the disclosures must reflect the borrower’s repayment obligations over the full term of the loan, not just repayment terms that will apply for a limited period of time. For example, *48 monthly payments of $27.83 per $1,000 borrowed*.[36] If applicable, the creditor must also disclose any balloon payment that may be due if a borrower only makes the minimum payments. The advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment.[37]

Advertising Requirements for Dwelling-Secured Credit

Under Regulation Z, advertisements for closed-end credit secured by a dwelling are subject not only to the requirements discussed previously but to several other requirements as well.

Disclosure of rates and payments. When an advertisement of a dwelling-secured loan includes an interest rate, and more than one rate will apply over the term of the loan, it must also disclose in a clear and conspicuous manner each interest rate that will apply. For variable-rate loans, the creditor should disclose a reasonably current index and margin. In addition, the advertisement should include the period of time each rate will apply and the APR for the loan. [38]

Further, when an advertisement for a dwelling-secured loan includes payments, it must include the amount of each payment that will apply over the term of the loan, including any balloon payments.[39] For advertisements of variable-rate loans, a reasonably current index and margin used to determine the payment must be disclosed. In addition, the advertisement must include the period of time each payment will apply. In advertisements for credit secured by a first lien on a dwelling, it must include a statement that payments do not include amounts for taxes and insurance.

When disclosing rates or payments, the additional required information should be disclosed with equal prominence and in close proximity to the term triggering the additional disclosure.[40]

In one recent example, a financial institution was cited for not providing a reasonably current index and margin (it used an April index rate when the loan was originated in December) and for not displaying additional information in close proximity or with equal prominence when the disclosure was contained in a smaller footnote.

Tax implications. Similar to the HELOC advertising requirements; see Table 1 (Regulation Z's Triggering Requirements for HELOCs), if a printed or online advertisement for dwelling-secured credit states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must clearly and conspicuously state that:

- the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes, and
- the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.[41]

Prohibited acts or practices in advertisements for credit secured by a dwelling. Regulation Z includes several specific prohibited acts or practices in advertisements for closed-end credit secured by a dwelling. This list provides a high-level summary of the prohibited practices.[42]

- Misleading advertisements of fixed rates and payments when the payment will increase.
- Misleading comparisons in advertisements between actual and hypothetical credit transactions.
- Misrepresenting government endorsements unless an actual government endorsement was made.
- Misleading use of the current lender's name if the advertisement is not sent by or on behalf of the lender.

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- Misleading claims for a lender's mortgage product suggesting it will eliminate debt or result in waiving or forgiving the consumer's debt with another lender.
- Misleading use of the term counselor when mortgage brokers, the creditor, or its employees are for-profit.
- Misleading foreign-language advertisements when part of the advertisement provides information about triggering terms or disclosures only in a foreign language but provides other triggering terms or disclosures only in English.

Alternative Disclosures for Television and Radio Advertisements

Similar to the requirements for open-end credit, when television or radio advertisements for closed-end credit (dwelling-secured or nondwelling-secured) have triggering terms, the financial institution has two options for providing the additional disclosures: (1) clearly and conspicuously state the additional required disclosure[43] or (2) state the APR, whether it may increase, and provide a toll-free telephone number the consumer can call for additional cost information.[44]

Websites

Examiners often identify violations in advertisements on financial institutions' websites. This can result when a third-party vendor is retained to design the website and the vendor is unaware of the advertising rules. This example illustrates why it is important to include websites in advertising reviews:

> A financial institution updated its website and included the current interest rate for a consumer closed-end product but failed to disclose the APR. In addition, the webpage included a repayment period of up to two years (which is a triggering term under Regulation Z) but did not include the required additional disclosures. These violations resulted from oversight issues, as the financial institution had not intended to disclose rates or include triggering terms on its webpages for these products. Further, the external auditor identified a similar triggering term issue on the webpage of an advertisement for a different loan product. While action was taken to correct the webpage the auditor flagged, management failed to review the webpage advertisements for other loan product to verify they were complying with the advertising requirements.

SOUND PRACTICES TO MANAGE REGULATION Z ADVERTISING RISKS

The sound practices financial institutions can implement to manage advertising risks are similar to the practices for an effective compliance management system. In both instances, these practices should be tailored to the size and complexity of the institution. Here are examples of sound practices financial institutions can use to comply with Regulation Z's advertising requirements.

"The sound practices financial institutions can implement to manage advertising risks are similar to the practices for an effective compliance management system."

Effective Oversight from the Board and Senior Management

The board of directors and senior management are ultimately responsible for overseeing the financial institution's compliance management system; it is therefore important they clearly understand the compliance risks to the institution and establish appropriate controls to mitigate those risks. As such, the board and senior management will want to understand the various advertising methods the institution uses to ensure appropriate allocation of compliance resources.

For financial institutions that use third parties to create advertising content, oversight is key. First, the board and senior management may consider taking steps to appropriately select and oversee the third party.[45] Second, senior management will want to ensure that processes and procedures are in place for the compliance department to review third-party advertisements. This review acts as a safeguard for confirming that the advertisements meet the financial institution's requirements and comply with Regulation Z.

Policies, Procedures, and Tools

Financial institutions with strong compliance management systems have policies, procedures, and tools in place for staff to ensure the institution is complying with the advertising requirements of Regulation Z. Examples include: (1) creating worksheets or checklists for staff who create advertisements to help them understand the advertising requirements, (2) ensuring the compliance department completes a secondary review (with a checklist), and approves any advertisements prior to use, and (3) ensuring the compliance department reviews and verifies any changes made to the website to ensure that all of the changes were made as intended and there are no unintentional compliance implications.

While smaller financial institutions may rely on knowledgeable and long-tenured staff to ensure compliance with the advertising requirements, strong policies, procedures, and tools are beneficial to address staff turnover. As noted in an earlier example, staff turnover was the root cause of Regulation Z violations. As the saying goes, the only constant in life is change; financial institutions with strong compliance systems proactively prepare for eventual staff turnover instead of reacting to changes when they happen to avoid losing important institutional knowledge.[46]

Training

As *Outlook* discussed in a prior article, training programs are one of the most important investments a financial institution can make in its employees.[47] The benefits to the financial institution include mitigating compliance risk, promoting a proactive compliance culture, facilitating effective change management, and improving the customer experience. Providing periodic training to staff who are in charge of Regulation Z advertising requirements helps the financial institution mitigate its compliance risk by ensuring that staff understand the nuances of the rules.

One theme throughout our examples was that financial institutions did not intend to advertise triggering terms or to violate the equal prominence rules. One way institutions can avoid similar errors is to have well-trained staff who can (1) avoid inadvertently including these terms in the advertisements and (2) identify any disclosure errors during a second review. This includes providing training to anyone who creates advertisements for the institution and those reviewing advertisements. It is important to understand employee roles to tailor training appropriately. For example, some financial institutions allow individual lenders to create advertisements while others have a centralized marketing department.

Audits and Corrective Action

Audits are an important tool in a financial institution's compliance management system. For advertising requirements, the scope of the audit is key. Effective compliance audits incorporate the different advertising mediums used by the financial institution in the scope of review. As the examination violation examples show, examiners continue to find violations related to rate sheets, print advertisements, and web pages in particular.

When advertising issues are identified, management will want to ensure that corrective action is implemented effectively. Appropriate resolution should correct identified errors and, more importantly, address their root cause.[48] Failing to correct the underlying cause of an issue, or to partially correct an issue, could contribute to advertising violations similar to the examples previously discussed.

CONCLUSION

This article reviewed the technical requirements under Regulation Z for credit advertising. Training appropriate staff on these requirements, combined with other aspects of a strong compliance management system, such as policies, procedures and controls, will help financial institutions maintain compliance with these requirements. Specific issues or questions should be discussed with your primary regulator. ■

COVID–19 RESOURCES

The Federal Reserve Board has created a resource page of COVID-19 resources and supervisory actions, which is available at

https://www.federalreserve.gov/covid-19.

Endnotes*

[1] Compliance requirements of §5(a) of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices (UDAP), are beyond the scope of this article. However, institutions should recognize that UDAP also applies to financial institution's advertising and marketing campaigns.

[2] See 12 C.F.R. §1026.2(a)(2).

[3] See Comment 2(a)(2) -1(ii)(A).

[4] See 12 C.F.R. §1026.16(a) and 12 C.F.R. §1026.24(a).

[5] See 12 C.F.R. §1026.5(a)(1)(i) (imposing a clear and conspicuous standard on all open-end disclosures in subpart B of Regulation Z) and §1026.24(b)(imposing a clear and conspicuous standard on disclosures required for closed-end advertisements).

[6] See Endnote 5.

[7] Comment 17(a)(1)-1 clarifies this requirement: "For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated (except for the interest rate and payment summary for mortgage transactions required by §1026.18(s)), the disclosures must be legible, whether typewritten, handwritten, or printed by computer."

[8] See 12 C.F.R. §1026.6(b)(3) (non–home secured); 12 C.F.R. §1026.6(a)(1) and (a)(2) (home-secured).

[9] See 12 C.F.R. §1026.16(b)(1)(i)-(iii).

[10] See Comment 16(b)(1)-1.

[11] See 12 C.F.R. §1026.16(b)(2).

[12] See 12 C.F.R. §1026.16(f).

[13] See 12 C.F.R. §1026.16(d)(1).

[14] See 12 C.F.R. §1026.16(d)(2)-(6).

[15] See 12 C.F.R. §1026.16(g).

[16] See 12 C.F.R. §1026.16(h).

[17] See 12 C.F.R. §1026.16(g)(3).

[18] See 12 C.F.R. §1026.16(g)(4).

[19] See 12 C.F.R. §1026.16(h)(3).

[20] See 12 C.F.R. §1026.16(h)(4).

[21] See 12 C.F.R. §1026.16(e).

[22] See 12 C.F.R. §1026.24(c),(d),(f),(g), and (i).

[23] See Comment 24(d)(2)-4.

[24] See 12 C.F.R. §1026.24(d).

[25] See Comment 24(d)(1)-1(ii).

[26] See Comment 24(d)(1)-2(ii).

[27] See Comment 24(d)(1)-3(ii).

[28] See Comment 24(d)(1)-4(ii).

[29] See Comment 24(d)(1)-1.

[30] See Comment 24(d)(1)-1(i).

[31] See Comment 24(d)(1)-2(i).

[32] SeeComment 24(d)(1)-3(i).

[33] See Comment 24(d)(1)-4(i).

[34] See Comment 24(d)(1)-5.

[35] See Comment 24(d)(2)-1.

[36] See Comment 24(d)(2)-2(i).

[37] See Comment 24(d)(2)-3.

[38] See 12 C.F.R. §1026.24(f)(2)(i)(A).

[39] See 12 C.F.R. §1026.24(f)(3)(i)(A).

[40] See 12 C.F.R. §1026.24(f)(2)(ii) and (f)(3)(ii).

[41] See 12 C.F.R. §1026.24(h).

[42] See 12 C.F.R. §1026.24(i).

[43] See 12 C.F.R. §1026.24(g)(1).

[44] See 12 C.F.R. §1026.24(g)(2).

[45] See Allison Burns, "Compliance Risk Management Considerations for Vendors," *Banking in the Ninth* (Federal Reserve Bank of Minneapolis, January 22, 2020).

[46] See Kathleen Benson, "The Benefits of a Proactive Compliance Program," *Consumer Compliance Outlook* (Third Issue 2020).

[47] See Kathleen Benson, "Enhancing Your Compliance Training Program," *Consumer Compliance Outlook* (First Issue 2019).

[48] See Mark D. Serlo, "The Importance of the Consumer Compliance Internal Audit Function," *Consumer Compliance Outlook* (Third Quarter 2013).

*Note: The links for the references listed in the Endnotes are available on the *Consumer Compliance Outlook* website at consumercomplianceoutlook.org.

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Technological Innovation Is Essential to the Future of Community Banking in America

needs, I have heard from many banks about the challenges they face in finding the right technology partners and in understanding, monitoring, and mitigating the partnership's risks. First, with the rapid increase in fintech options, and the relatively limited resources to conduct due diligence on potential fintech partners, some banks struggle to identify a technologically compatible partner that aligns with their overall strategy and risk appetite. And even when a community bank successfully partners with a fintech firm, some banks struggle with the complexities of managing the partnership over time to ensure that the fintech complies with consumer protection laws and regulations and performs according to service-level agreements. Successful management of these challenges is critical, since community banks that fall behind in offering digital banking services to their customers run the risk of being at a competitive disadvantage or of failing to meet the needs of the communities they serve.[1]

FEDERAL RESERVE INITIATIVES

Over the past year, the Federal Reserve has undertaken several initiatives to facilitate community banks' technological innovation efforts. In 2020, we launched a series of Innovation Office Hours to promote discussions between Federal Reserve System staff and bankers and fintechs to better understand their use of technology solutions and business objectives.[2] Thus far, four of our Reserve Banks (Atlanta, San Francisco, Cleveland, and Richmond) have hosted Innovation Office Hours, and we plan to continue hosting them throughout 2021. These Innovation Office Hours have been productive two-way discussions, with firms sharing information on new business models and seeking feedback and general guidance on a variety of topics. For example, we have received requests from the industry for guidance or regulatory clarity on the use of machine learning for areas such as fraud surveillance and credit underwriting. To that end, the Federal Reserve has been working with the other banking agencies on a possible interagency request for information on the risk management of artificial intelligence (AI) applications in financial services to determine if additional supervisory clarity is needed to facilitate responsible adoption of AI.

We have also established a web page on innovation containing supervisory information, publications, and research related to technology innovation.[3] The web page facilitates interaction with Federal Reserve System specialists by enabling bankers and tech industry participants to submit questions about technology issues in the financial services industry or to request an in-person meeting.

We have also convened experts to learn of additional ways and best practices that encourage technological innovation by banks. For example, in January, the Federal Reserve Board hosted a symposium on AI and its use in banking. This symposium featured discussions with leaders in academia on cutting-edge AI topics including fairness, transparency, and accuracy.[4]

> "The Federal Reserve will seek to tailor the resource commitments of onsite examinations to the bank's capacity to manage them."

To help increase awareness of the fintech–community bank partnership landscape, we plan to publish a paper in the second quarter of 2021 that describes the spectrum of community bank partnerships with fintech firms and outlines considerations in seeking such arrangements. This paper will describe a range of partnership models, identify potential benefits and challenges of each, and share practices that some community banks are adopting to gain from these partnerships while managing the risk inherent in these arrangements.

To support community bankers in addressing challenges in conducting due diligence on potential fintech partners, I have directed Federal Reserve staff to begin work on two separate initiatives. First, the Federal Reserve is working with our interagency colleagues to develop a vendor due diligence guide. This guide would align with existing supervisory expectations and include sample questions a community bank could pose as it conducts due diligence on a prospective fintech partner, key considerations when evaluating related responses, and examples of documents to collect in support of the due diligence. Second, Federal Reserve staff are working with our colleagues at the Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation (FDIC) to enhance and align interagency guidance for third-party risk management. This guidance would eliminate the need for community banks to navigate multiple supervisory guidance documents on the same issue. This updated interagency guidance, combined with the community bank due diligence guide, should help reduce the burdens on smaller banks in initiating and maintaining partnerships with fintech companies.

The Federal Reserve has also taken steps to improve our own service provider supervision program's regulatory response to innovation by making reports of supervisory assessments readily available to banks that rely on service providers. These steps will support the banks' use of the reports in their own third-party risk management efforts. In December 2020, the Federal Reserve coordinated with the FDIC to establish a process for automatically notifying client financial institutions when service provider examination reports are available to download. State member banks interested in receiving this notification should contact their Reserve Bank to participate in this process.

EXAMINATION ACTIVITIES

As a former community banker, I am particularly sensitive to the burden the Fed's examination activities can have on our member banks. In spring 2020, in response to the COVID-19 pandemic, the Federal Reserve temporarily paused most examination activity for banks with less than $100 billion in assets.[5] In June 2020, after banks had time to adapt their operations, the Federal Reserve announced it would resume examination activity, but that examinations would continue to be conducted offsite until conditions improve.[6] We understand the greatest impacts of the pandemic reached different regions at different times. Accordingly, we plan to continue monitoring the effects of the pandemic, and we will resume onsite examination activities when the Reserve Banks determine it is appropriate and safe to do so in their District after consulting with the member banks.

We also understand that banks of different sizes have different capacities to handle onsite examination activities. A small community bank may not have the same resources as a large bank does to resume full onsite operations and host examiners. The Federal Reserve will seek to tailor the resource commitments of onsite examinations to the bank's capacity to manage them.

Additionally, the Federal Reserve has continued to work to refine our Community Bank Risk-Focused Consumer Compliance Supervision Program. We carry out our community bank supervisory function by basing our examination intensity on the individual financial institution's risk profile.[7] We understand the importance of effective communication practices in maintaining an efficient, effective, consistent, and transparent supervisory program. As part of this effort, the Federal Reserve is standardizing its consumer compliance information request process to enhance our examination planning and scoping activities to more effectively communicate with bank management and streamline this stage of the examination. To the extent possible, we will tailor all information requests to fit the character and profile of the institution and to leverage available information sources to avoid duplication in requests needed for effective supervision.

Finally, I believe that open communication and transparency are essential to a strong and innovative banking industry and effective supervision. I am committed to continuing to share our supervisory plans to ensure that financial institutions can maintain effective risk management programs while meeting their mission to serve their customers and support their communities as we all work toward a full economic recovery. ■

Endnotes*

1 The Federal Reserve has published guidance for its supervised institutions on supervisory expectations for vendor management. See SR 13-19/CA 13-21: Guidance on Managing Outsourcing Risk.

2 Links to prior Innovation Office Hours sessions are available on the Board's website.

3 See https://www.federalreserve.gov/innovate.

4 Recordings of the AI Symposium are available on the Board's website.

5 See the March 24, 2020, Federal Reserve Statement on Supervisory Activities.

6 See June 15, 2020, press release.

7 See CA letter 13-19, Community Bank Risk-Focused Consumer Compliance Supervision Program.

*Note: The links for the references listed in the Endnotes are available on the *Consumer Compliance Outlook* website at consumercomplianceoutlook.org.

Agencies Issue Statements on LIBOR Transition

The London Interbank Offered Rate (LIBOR) is a reference rate many institutions use in their financial instruments, including variable-rate consumer mortgages, credit cards, home equity lines of credit (HELOCs), reverse mortgages, and student loans. A typical consumer loan instrument has a variable rate tied to LIBOR plus a margin. LIBOR's administrators are phasing it out beginning at the end of 2021, and regulators have issued guidance to address this. This Compliance Alert discusses recent developments in LIBOR's phaseout from a consumer compliance perspective.

In response to the phaseout, the Federal Financial Institutions Examination Council issued the Joint Statement on Managing the LIBOR Transition (statement), which highlights the financial, legal, operational, and consumer protection risks resulting from LIBOR's sunset. With respect to consumer compliance implications of the LIBOR transition, the statement notes:

> Retail loans, such as adjustable-rate home mortgages, home equity lines of credit, student loans, credit cards, and other personal loans may reference LIBOR. If LIBOR is no longer available, a replacement reference rate may be necessary. Any alternative rate not specified in fallback language may impact consumers, increase reputation risk, and result in legal exposure to institutions and the financial industry. Institutions should understand the legal, operational, and other risks they face associated with various consumer financial products as a result of the LIBOR transition. Institutions should plan appropriate actions to address or mitigate these risks. Transition plans should identify affected consumer loan contracts, highlight necessary risk mitigation efforts, and address development of clear and timely consumer disclosures regarding changes in terms. Disclosure of these altered terms should, and in some cases are required by law to, be communicated to borrowers in advance of a reference rate change to help them understand how a new reference rate affects their contractual principal and interest payments, APR, and other terms.

The statement also discusses the implications for institutions using third-party vendors:

> The LIBOR transition could also affect critical activities performed by third-party service providers. Institutions should evaluate their reliance on third-party service providers that provide valuation/pricing services that reference or use LIBOR and associated discount curves in the services they deliver. Institutions should determine whether those third-party service providers will be able to accommodate alternative reference rates after LIBOR's discontinuation. Third-party service providers that provide modeling, document preparation, accounting or other services should also be considered. When relying on third-party service providers for the processing of loan, investment, funding, or derivative transactions, institutions should evaluate the preparedness and transition planning of those entities for the LIBOR transition to mitigate potential risk.

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency also addressed LIBOR's phaseout in their Statement on LIBOR Transition, which was issued on November 30, 2020. The agencies "encourage banks to transition away from U.S. dollar (USD) LIBOR as soon as practicable" and to not enter into new contracts using LIBOR as a reference rate after December 31, 2021. The agencies further suggested that "[n]ew contracts entered into before December 31, 2021 should either utilize a reference rate other than LIBOR or have robust fallback language that includes a clearly defined alternative reference rate after LIBOR's discontinuation."

The Consumer Financial Protection Bureau (Bureau) has also addressed the phaseout in a June 18, 2020, rulemaking proposal under Regulation Z titled Facilitating the LIBOR Transition, which permits creditors for HELOCs and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after March 15, 2021, if certain conditions are met. The proposal also addresses the effect of the phaseout on Regulation Z's rate reevaluation provisions for credit card accounts as well as the regulation's change-in-terms notice provisions for HELOCs and credit card accounts and includes model forms for that purpose. The comment period closed on August 4, 2020, and the Bureau has not yet issued a final rule.

Finally, the Bureau has taken these additional steps to facilitate transitioning from LIBOR:

- Updated its CHARM consumer booklet explaining adjustable-rate mortgages; and
- Issued an FAQ to address consumer compliance issues.

News From Washington: Regulatory Updates*

The Board of Governors of the Federal Reserve System (Board) issues a final rule to codify the 2018 statement on the role of supervisory guidance. On March 31, 2021, the Board adopted a final rule outlining and confirming its use of supervisory guidance for the institutions it regulates, including state member banks, bank holding companies, savings and loan holding companies, and foreign banking organizations. The rule codifies, with certain clarifications, the principles set forth in the September 2018 Interagency Statement Clarifying the Role of Supervisory Guidance (statement), which clarified the distinction between laws and regulations and supervisory guidance. The rule confirms that supervisory guidance, unlike a law or regulation, does not have the force and effect of law, and the Board does not take enforcement actions or issue supervisory criticisms based on noncompliance with supervisory guidance. Instead, supervisory guidance outlines supervisory expectations and priorities, or articulates views about appropriate practices in a given subject area. The rule is effective on May 10, 2021.

The Consumer Financial Protection Bureau (Bureau) releases a report on Federal Consumer Financial Law. On January 4, 2021, the Bureau released a two-volume report of its Taskforce on Federal Consumer Financial Law, which the Bureau created in January 2020 to conduct research and which provides recommendations about consumer protection laws. The report examines the legal framework for consumers and financial services providers and suggests ways to improve it. The report's recommendations include the following:

- Expand access to the payment system by unbanked and underbanked consumers;
- Research and develop policies to address problems of financial inclusion in rural communities;
- Research consumer reporting issues that arise in connection with a consumer's bankruptcy;
- Identify opportunities to coordinate regulatory efforts. For example, the Bureau and prudential regulators should eliminate overlapping examination subject areas and reconcile inconsistent examination standards that unnecessarily expend multiple resources and can cause confusion;
- Continue to increase dialogue with state regulators to bridge knowledge gaps and streamline regulation;
- Work with other agencies to create a unified regulatory regime for new and innovative technologies providing services similar to banks;
- Establish independent review of the Bureau's regulatory cost-benefit analyses;
- Exercise caution in restricting the use of nonfinancial alternative data because it can be a useful tool to evaluate creditworthiness; and
- Clarify the obligations of consumer reporting agencies and furnishers for disputes under the Fair Credit Reporting Act and periodically assess the accuracy and completeness of consumer credit reports.

The report is available in Volume 1 and Volume 2.

The Bureau issues a final rule to exempt eligible banks and credit unions from the requirement to establish an escrow account for certain higher-priced mortgage loans (HPMLs). The Bureau published a final rule in the *Federal Register* on February 17, 2021, which also serves as the rule's effective date, to implement §108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (codified at 15 U.S.C. §1639d(c)(2)), which creates an additional exemption for certain banks and credit unions from the requirement in the Truth in Lending Act, as implemented by Regulation Z, to establish escrow accounts for certain HPMLs. See 15 U.S.C. §1639d; 12 C.F.R. §1026.35(b). Under the final rule, insured depository institutions or insured credit unions meeting the following requirements are exempt from having to establish an escrow account for HPMLs that are not subject to a forward commitment:

- an institution with assets of $10 billion or less (adjusted annually for inflation);
- an institution and its affiliates together originated no more than 1,000 covered loans (including portfolio and nonportfolio loans) secured by a first lien on a principal dwelling during the preceding calendar year;
- an institution that originated at least one first-lien loan in the preceding calendar year on a property in a rural or underserved area; and
- an institution and its affiliates do not maintain an escrow for HPMLs unless the escrow was established on or after April 1, 2010, and before February 17, 2021, to comply with the regulation, or established postconsummation as an accommodation for distressed borrowers.

This new exemption is in addition to the existing HPML escrow exemption under §1026.35(b)(2)(iii) that is available for an institution with less than $2 billion in assets (including its mortgage lending affiliates), that originates no more than 2,000 first-lien, nonportfolio loans secured by a dwelling in the prior year and meets certain other requirements.

* Links to the announcements are available in the online version of *Outlook* at consumercomplianceoutlook.org.

Agencies propose computer-security incident notification requirements. On January 12, 2021, the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) published a rulemaking proposal in the *Federal Register* to require supervised banking organizations to promptly notify their primary federal regulator of any computer-security incident that rises to the level of a ''notification incident.'' The proposal defines these as incidents that could result in the organization being unable to deliver services to a material portion of its customer base, jeopardize the viability of key operations of the organization, or impact the stability of the financial sector. The proposal would require organizations to notify their regulator as soon as possible and no later than 36 hours after determining an incident has occurred. In addition, the proposal would require service providers to notify affected organizations immediately when the service provider experiences computer security incidents that materially disrupt, degrade, or impair certain services they provide. The comment period closed on April 12, 2021.

The Board and the FDIC release annual Community Reinvestment Act (CRA) asset-size threshold adjustments for small and intermediate small institutions. On December 23, 2020, the Board and the FDIC published in the *Federal Register* the annual adjustments to the CRA asset-size thresholds used to define small banks and intermediate small banks. The annual adjustments are required by the agencies' CRA regulations. Effective January 1, 2021:

- *Small bank* means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion, and
- *Intermediate small bank* means a small institution with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

Financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification. In addition, financial institutions meeting the small and intermediate small institution asset-size thresholds are not subject to the reporting requirements for large institutions unless they choose to be evaluated as a large institution.

The Bureau announces its Advisory Opinions Policy (AOP). On December 3, 2020, the Bureau published in the *Federal Register* its AOP, which sets forth procedures to allow interested parties to request that the Bureau issue an advisory opinion to resolve regulatory uncertainty and the manner in which the Bureau will evaluate and respond to such requests. Although the opinions will not be subject to notice and comment rulemaking, interested parties can comment on them after they are published in the *Federal Register* or on the Bureau's website. The AOP indicates the following factors will support issuing an advisory opinion:

- the Bureau indicated during examinations that additional regulatory clarity would be beneficial;
- the issue has significant importance or would provide significant benefit; or
- the issue involves an ambiguity not previously addressed by an authoritative source.

The following factors will weigh against issuing an advisory opinion:

- the Bureau has a current investigation or enforcement action relating to the issue;
- the issue is the subject of a current or planned rulemaking;
- the issue is better addressed through notice-and-comment rulemaking;
- the issue could more effectively be addressed through a Compliance Aid; or
- the issue is addressed in clear existing Bureau or court precedent.

One of the two advisory opinions the Bureau recently issued is summarized next.

The Bureau issued an advisory opinion to clarify the requirements of one of the special purpose credit programs under the Equal Credit Opportunity Act (ECOA) and Regulation B. On January 15, 2021, the Bureau published an advisory opinion in the *Federal Register* to clarify the requirements of a special purpose credit program to meet special social needs. Under ECOA and Regulation B, a creditor may extend special purpose credit in three circumstances, including a program to meet special social needs. See 12 C.F.R. §1002.8(a)(3). To qualify, the program must be administered under a written plan, identify the class of persons it is designed to benefit, and set forth the procedures and standards for extending credit. The regulation also requires that the program is administered to extend credit to a class of persons who under the creditor's lending standards likely would not receive credit, or on less favorable terms, than are ordinarily available to other applicants applying for credit under similar terms. The advisory opinion clarifies these requirements.

The opinion was effective on January 15, 2021.

On the Docket: Recent Federal Court Opinions*

CONSUMER DATA SECURITY BREACHES

Eleventh Circuit dismisses plaintiff's class-action lawsuit for a data security breach for lack of standing because he failed to allege a concrete injury. *Tsao v. Captiva MVP Restaurant Partners, LLC,* 986 F3d. 1332 (11th Cir. 2021). The federal appeals courts are divided on whether a plaintiff whose payment card data was exposed in a data breach without specific harm has a constitutional standing to file a lawsuit for the risk of identity theft. The Eleventh Circuit has now weighed in on this issue. In 2017, a hacker infiltrated the point-of-sale systems of the PDQ restaurant chain and may have accessed customers' debit and credit card information, including cardholders' names, account numbers, expiration dates, card verification value codes, and PIN data for debit cards. A PDQ customer whose credit card data may have been exposed during the breach period filed a class-action lawsuit alleging class members whose data were exposed were at risk for identity theft and fraud but did not allege any specific fraud had actually occurred. The court addressed a threshold issue of whether the plaintiff had standing under Article III of the Constitution, which requires a plaintiff to allege an injury fairly traceable to the challenged conduct that likely can be redressed by a favorable court ruling. To satisfy the injury requirement, a plaintiff must allege plausible, clear facts of concrete harm that are actual or imminent and not hypothetical.

Because the lawsuit only alleged the *threat* of harm, the court relied on a 2013 Supreme Court case, *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013), which held that legal standing in threat-of-harm cases requires "certainly impending" harm or a substantial risk of it occurring. The court concluded the plaintiff did not satisfy this requirement because he only alleged his credit card data *may* have been accessed. The court noted the findings of a 2007 Government Accountability Office report (GAO-07-737) that hackers generally cannot open unauthorized new accounts based solely on credit or debit card information without additional personal identifying information and that most data breaches have not resulted in detected incidents of fraud on existing accounts. Thus, the court found the plaintiff failed to demonstrate a substantial risk that members of the class would suffer identity theft in the future. The court also contrasted this case with other data breach cases among the federal appeals courts that conferred standing after a data breach, in which the plaintiffs offered evidence of *actual* misuse of their data. The court also noted that some prior decisions conferring standing for the risk of future identity threat were decided before *Clapper,* which clarified and tightened standing requirements for future harm cases. While the plaintiff also alleged he suffered damages in his efforts to mitigate the risk of harm by cancelling his cards, including lost opportunity for credit card reward points, costs in cancelling and replacing his cards, and restricted access to his preferred cards, the court found that plaintiffs cannot "manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." Accordingly, the court affirmed the dismissal of the case.

REGULATION E — ELECTRONIC FUND TRANSFER ACT (EFTA)
REGULATION Z — TRUTH IN LENDING ACT (TILA)

A federal district court vacates two provisions of the prepaid card rule. *PayPal, Inc. v. Consumer Financial Protection Bureau*, 2020 U.S. Dist. LEXIS 244761 (D.D.C. December 30, 2020). In 2016, the Consumer Financial Protection Bureau (Bureau) published a final rule under Regulation E, which implements the EFTA, and Regulation Z, which implements TILA, to create new consumer protections for prepaid accounts that store funds, such as a prepaid debit card and digital wallets. The rule became effective on April 1, 2019. PayPal, a provider of digital wallets subject to the rule, filed a lawsuit against the Bureau in 2019 to challenge two provisions: the mandated short-form disclosure requirements and the 30-day credit linking restriction. The short-form provision, codified at 12 C.F.R. §1005.18(b)(6)(iii), requires financial institutions offering a prepaid account to disclose certain information in a tabular format using specified language. The 30-day credit linking restriction, codified at 12 C.F.R. §1026.6l(c)(l)(iii), requires that if a prepaid account with a credit feature that is considered a hybrid-prepaid credit card under Regulation Z can be used for certain purposes and is offered by the issuer, its affiliate, or business partner, the credit feature cannot be linked to the prepaid account until 30 days after the consumer registered the prepaid account. PayPal argued that these provisions of the rule exceeded the Bureau's rulemaking authority under the EFTA and TILA and were therefore invalid under the Administrative Procedure Act, the federal law governing agency rulemaking.

The district court found the Bureau exceeded its rulemaking authority by mandating the use of its model forms because the EFTA directs the Bureau to "issue model clauses for *optional* use by financial institutions." 15 U.S.C. §1693b(b) (emphasis

* Links to the court opinions are available in the online version of *Outlook* at consumercomplianceoutlook.org.

added). The court therefore vacated 12 C.F.R. §1005.18(b) "to the extent that the short-form disclosure requirement provides mandatory disclosure." Similarly, with respect to the 30-day waiting period for the credit feature, the court found that "the statutory language and legislative history of TILA establish that the Bureau's authority under TILA is limited to disclosure of credit terms" and that the credit feature was substantive and not a disclosure. Accordingly, the court vacated 12 C.F.R. §1026.61(c)(l)(iii) as well. On March 10, 2021, the Bureau filed a notice of appeal with the D.C. Circuit Court of Appeals.

FAIR HOUSING ACT (FHA)

The U.S. Department of Housing and Urban Development (HUD) announces it will enforce the FHA prohibition on sex discrimination to include discrimination based on sexual orientation or gender identity. On January 20, 2021, President Joseph Biden issued an executive order to implement the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), which held that the federal law prohibiting employment discrimination based on a person's sex (Title VII of the Civil Rights Act of 1964) includes sexual orientation and gender identity. The order announced a policy statement against this discrimination and directs federal agencies enforcing statutes or regulations prohibiting sex discrimination to review existing orders, regulations, guidance documents, and policies that may be inconsistent with *Bostock* and revise them accordingly. On February 11, 2021, HUD issued a directive in response to the order announcing that the FHA's provisions prohibiting sex discrimination are comparable to those of Title VII and therefore prohibit discrimination because of sexual orientation and gender identity. HUD announced the steps it is initiating to comply with the order, including:

- Accepting and investigating complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that meet other jurisdictional requirements and referring cases to the Office of General Counsel, if it believes discrimination occurred, and
- Having its Office of Fair Housing & Equal Opportunity conduct activities involving the Fair Housing Act's prohibition on sex discrimination to include discrimination because of sexual orientation and gender identity.

The directive also instructs HUD's offices and grantees to review their records for complaints based on gender identity or sexual orientation since January 20, 2021, and to notify the persons their claims may be timely and jurisdictional.

The Ninth Circuit addresses the FHA's requirement to make reasonable accommodations in sale or rental of housing to a disabled person necessary to afford an "equal opportunity to use and enjoy a dwelling." *Howard v. HMK Holdings, LLC,* 988 F.3d 1185 (9th Cir. 2021). The plaintiffs (husband, wife, and their daughter) rented a home in Los Angeles in September 2012 for $4,700 a month under a one-year lease, which became a month-to-month tenancy when they did not renew it. In 2017, the landlord proposed to increase the plaintiffs' monthly rent to $5,966 and established a deadline for them to answer. After they failed to respond, the landlord sent a 60-day notice to terminate the tenancy as of April 25, 2017. The plaintiffs requested to extend this to July 2017 because of the husband's medical disability. The landlord granted the request while also stating it would not grant any other extensions. In June, the plaintiffs asked for an additional extension because of the husband's medical condition without disclosing the plaintiffs intended to drive to Florida to relocate and were advised to delay the long drive until his condition stabilized. The landlord denied the request as open ended and unreasonable and filed suit to regain possession. In response, the plaintiffs filed a federal lawsuit alleging the landlord violated the Fair Housing Amendments Act of 1988, which requires "reasonable accommodations in rules, policies, practices, or services [for a person with a disability] when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. §3604(f)(3)(B).

The district court granted the landlord's motion for summary judgment to dismiss the case. On appeal, the Ninth Circuit affirmed. The court found the plaintiffs failed to establish the accommodation was necessary to afford the husband an opportunity "to use and enjoy" the house that was also offered to a person without a disability. The court noted the plaintiffs were offered a new lease with a higher rent, which put them in the same position as a person without a disability. They rejected this offer and failed to provide evidence they could not relocate somewhere else in Los Angeles without jeopardizing the husband's health (i.e., they did not show a connection between the requested accommodation and the disability). The plaintiffs also argued that the landlord violated the FHA by failing to engage in an "interactive process" to address the accommodation request. The court found that neither the FHA nor its implementing regulations impose such a requirement. Accordingly, the court affirmed the dismissal of the lawsuit.

Regulatory Calendar

Effective Date or Proposal Date†	Implementing Regulation	Regulatory Change
01/01/22	Reg. C	Final rule establishing 200 loans as the permanent Home Mortgage Disclosure Act (HMDA) data reporting threshold for open-end lines of credit
05/10/21	N/A	Federal Reserve's final rule on the role of supervisory guidance
03/18/21	Reg. H	Second proposed revisions to interagency flood insurance Q&As
03/03/21	Reg. Z	Proposed rule to delay the mandatory compliance date of the General Qualified Mortgage (QM) final rule and continue the government-sponsored enterprise (GSE) patch until October 1, 2022
02/17/21	Reg. Z	Final rule under the Economic Growth, Regulatory Relief, and Consumer Protection Act to create a new exemption from escrow requirements for higher-priced mortgage loans
12/29/20	Reg. Z	Final rule creating new QM category for Seasoned Loans
12/28/20	Reg. Z	Final rule to extend the sunset date for the temporary GSE QM loan definition
11/30/20*	Reg. F	Final rule creating implementing regulations for the Fair Debt Collection Practices Act
10/20/20	12 C.F.R. Part 1041	Final rule revoking the underwriting requirements for payday, vehicle title, and certain high-cost installment loans
09/21/20	Reg. BB	Advanced notice of proposed rulemaking seeking comment on framework to modernize the Federal Reserve Board's implementing regulation for the Community Reinvestment Act
07/21/20	Reg. E	Final rule that permits insured institutions to estimate the exchange rate for a remittance transfer and increases exemption threshold from 100 to 500 remittance transfers per year

† Because proposed rules do not have an effective date, we have listed the *Federal Register* publication date.

*On April 7, 2021, the Bureau proposed to delay the effective date until January 29, 2022.

Effective Date or Proposal Date†	Implementing Regulation	Regulatory Change
07/10/20	Reg. H	First of two proposed revisions to interagency questions and answers regarding flood insurance
07/01/20	Reg. X	Interim final rule to require servicers to offer COVID-19-related loss mitigation options based on the evaluation of an incomplete loss mitigation application
07/01/20	Reg. C	Final rule increasing HMDA reporting threshold for closed-end loans from 25 to 100
07/01/20 (most provisions)	Reg. CC	Final rule implementing required adjustments to the Expedited Funds Availability Act's dollar amounts
06/26/20	Reg. Z	Interpretive rule to update the definition of "underserved area" that applies to certain provisions of Regulation Z to reflect amendments to Regulation C on which the definition is based
06/18/20	Reg. Z	Proposed rule to address the effect of the sunset of LIBOR on sections of Regulation Z
05/04/20	Reg. X/Reg. Z	Interpretive rule regarding the application of certain provisions in the TILA-RESPA Integrated Disclosure Rule and Regulation Z Right of Rescission Rules in light of the COVID-19 pandemic
04/28/20	Reg. D	Interim final rule eliminating the six-per-month limit on transfers and withdrawals from savings deposits
04/27/20	Reg. E	Interpretive rule that government pandemic relief payments are not subject to prohibition against compulsory electronic fund transfers

† Because proposed rules do not have an effective date, we have listed the *Federal Register* publication date.

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2021 Calendar of Events

June 22–24 — **American Bankers Association Regulatory Compliance Conference**
Virtual Conference

October 18–22 — **American Bankers Association Compliance School – Advanced**
Emory Conference Center Hotel, Atlanta, GA

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