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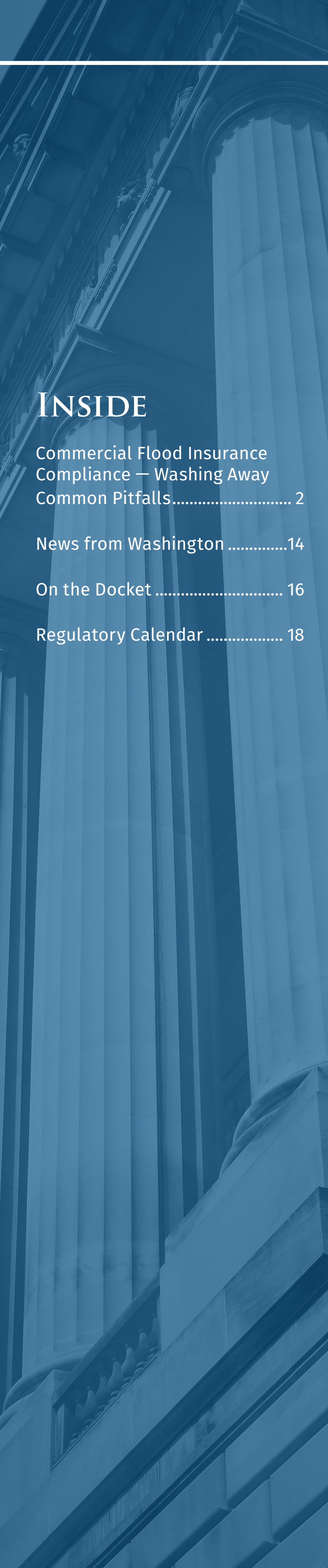
Consumer Compliance Outlook®

A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS



Inside

Merger Lessons Learned

By Guye Pennington, Federal Reserve Bank of Cleveland; Meghan Clodius Karellas and Caterina Petrucco-Littleton, with contributions from Westra Miller, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System[†]

Mergers and acquisitions (M&A) are a crucial test of an institution's compliance management system (CMS). Although M&A is common in the banking industry, it is rare that everything goes exactly to plan. Perfection is not expected: Even the most effective CMS and the most talented management team cannot foresee all consumer compliance risk in complex acquisitions. A critical aspect of an effective CMS is the ability to reasonably anticipate compliance risks, allocate resources to mitigate these issues, promptly identify compliance breakdowns, and provide timely restitution to any impacted customers.

This article is intended to assist compliance professionals and enhance consumer protection by providing a glimpse into compliance risks[1] resulting from M&A activity. This brief horizontal perspective provides insight into real-world challenges, allowing readers to think through these situations in anticipation of their own future M&A activity.

Federal Reserve staff have identified five themes of consumer compliance risk in recent acquisitions. Each of these themes is broadly applicable to M&A activities, whether the reader is engaged with money center, regional, or community banks.

GEOGRAPHIC CONSIDERATIONS

Consumer compliance risk arises from the geographies in which the acquirer and acquiree have their trade area for operation and their assessment area for Community Reinvestment Act (CRA) purposes. An acquirer must understand this geography, such as considering if there will be significant increases in loans requiring flood insurance coverage. An acquirer should also meaningfully consider other ways geography may impact consumer compliance. Here are some examples of this risk:

- A bank extends its geographic footprint into a part of the United States with a significant Spanish-language speaking population, and the acquiring bank chooses to retain its own call centers postacquisition. After Legal Day One, when all calls are routed to the acquirer, the number of call center representatives who can speak Spanish is limited. This leads to extended hold times and call abandonment for Spanish speakers, indicating customer dissatisfaction.
- An acquirer has a significant overlap in its branch network and assessment areas with the acquiree. Both banks operate in many of the same cities and towns, often with branches in close proximity. Consequently, bank staff are unprepared for the volume of low- and moderate-income and majority–minority census tract analysis necessary

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Commercial Flood Insurance Compliance — Washing Away Common Pitfalls

By Danielle Martinage, Senior Examiner, Federal Reserve Bank of Boston

> [F]looding is the most common and costly natural disaster in the United States. Ninety-eight percent of counties across our country have experienced a flooding event, and flood waters continue to pose a greater potential for damage than any other natural disaster. Moreover, in the last decade, floods alone have caused over $155 billion in property damages and they continue to account for the majority of federally declared disasters.
>
> *— Michael Grimm, FEMA Assistant Administrator for Risk Management [1]*

Congress created the National Flood Insurance Program (NFIP) "to provide access to flood insurance for properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards."[2] The NFIP provides flood insurance to property owners and businesses to safeguard against the risk of loss in the event of a flood. In 1973, Congress enacted the Flood Disaster Protection Act of 1973 (FDPA)[3] to ensure that loans secured by property in a special flood hazard area originated by a regulated lending institution or certain federal agency lenders, or loans sold to the government sponsored enterprises, are covered by flood insurance for the life of the loan.[4] Loans subject to flood insurance purchase requirements are defined as "designated loans" in the agencies' implementing regulations.[5]

Although compliance staff often focus on flood insurance purchase requirements for designated loans for residential properties, the FDPA also applies to commercial properties. According to the Flood Emergency Management Agency (FEMA), approximately 40 percent of businesses close after a disaster, while another 25 percent close within one year of reopening.[6] FEMA also indicates that over 90 percent of natural disasters involve floods and that "high-risk flood areas are not the only ones at risk: about 25% of flood insurance claims come from moderate- to low-risk areas."[7]

To facilitate compliance, this article discusses some common pitfalls for commercial flood insurance compliance, provides examples to assist in ensuring appropriate flood insurance coverage is in place, and reviews FEMA's recent Risk Rating 2.0 initiative and its effect on premiums for commercial properties. FEMA does not use the terminology commercial property but instead uses the broader term nonresidential property, which it defines as a "building where the primary use is commercial or non-habitational."[8] To align with FEMA's terminology, this article uses the term *nonresidential* to discuss the requirements for commercial loans.

KEY FLOOD INSURANCE REQUIREMENTS

The FDPA requires the borrower of a designated loan to obtain flood insurance for the entire term of the loan when:

- lenders make, increase, extend, or renew a loan (nonresidential or residential) secured by improved real estate or a mobile home that is affixed to a permanent foundation;

- the loan is secured by property located or will be located in a Special Flood Hazard Area (SFHA)[9] as identified by FEMA; and
- the community in which the property is located participates in the NFIP.[10]

Table 1 lists the maximum amount of coverage available under the NFIP for residential and nonresidential structures and their contents.

In addition, the revised Interagency Questions and Answers regarding flood Insurance (Flood Q&As)[11] specify that "if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan that a building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation, the lender or its servicer must notify the borrower to obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the Regulation."[12]

To provide additional clarity, the revised Flood Q&As defines *nonresidential loans* and provides examples of both. **Table 2** provides examples in the "Interagency Questions and Answers Regarding Flood Insurance" and the *NFIP Flood Insurance Manual*.[13]

Table 1: Distinguishing Between Residential and Nonresidential Loans

Coverage Type	Residential	Nonresidential
Structure	$250,000	$500,000
Contents	$100,000	$500,000

Table 2: Examples of Residential and Nonresidential Flood Insurance Coverage

Residential	Nonresidential[14]
A noncommercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, 2- to 4-family, or other residential building • Single-Family Dwelling - A residential building in which the total floor area devoted to nonresidential use is less than 50% of the buildings total floor area; or - A single-family residential unit within a 2- to 4-family building, other residential building, business, or nonresidential building, in which commercial uses within the unit are limited to less than 50% of the unit's total floor area • 2- to 4-Family Dwelling - A residential building, containing 2- to 4-residential units and in which nonresidential uses are limited to less	A building whose primary use is commercial or nonhabitational. This category includes, but is not limited to: • A building where the policyholder is a commercial enterprise primarily carried out to generate income and the coverage is for: - A building used as an office, retail space, wholesale space, factory, hospitality space, or for similar uses, or - A building not used for habitation or residential use • A mixed-use building in which the total floor area devoted to nonresidential uses is: - 50% or more of the total floor area within the building, if a single-family building, or - 25% or more of the total floor area within the building for all other buildings

Residential	Nonresidential[14]
than 25% of the buildings total floor area - Includes apartment buildings and condominiums - Excludes hotels and motels with normal room rentals for less than 6 months • Other Residential Buildings - Residential buildings containing 5 or more residential units or a mixed-use building in which the total floor area devoted to nonresidential uses is less than 25% of the building's total floor area – - Includes the following buildings where normal occupancy is 6 months or more: • Apartment buildings • Assisted living facilities • Condominiums[15] • Dormitories • Hotels and motels • Rooming houses • Tourist homes	The following buildings where the normal occupancy is for less than 6 months in duration: • Apartment buildings • Assisted living facilities • Condominiums[16] (if not eligible for a Residential Condominium Building Association policy) • Cooperative buildings • Dormitories • Hotels and motels • Rooming houses • Tourist homes Other buildings not used for habitation, including but not limited to: • Agricultural buildings • Detached garages • Nonresidential condominium buildings • Houses of worship • Recreational buildings (including pool houses and clubhouses) • Schools • Storage or toolsheds • Strip malls

HOW TO DETERMINE PROPER FLOOD INSURANCE AMOUNTS

Once a property has been properly classified as residential or nonresidential, the lender or servicer must determine the proper amount of flood insurance coverage. The required amount is: 1) the outstanding principal balance of the loan(s), or 2) the maximum amount of insurance available under the NFIP.[17] It is important to note that the latter actually has two tests; the lesser of the maximum amount available for the type of structure or the insurable value of the property.[18]

To demonstrate how this works, let's review an example:

Example 1: A loan is secured by a warehouse in an SFHA in a participating community. The principal loan's outstanding balance is $1,000,000. The insurable value of the warehouse is $475,000. What is the minimum amount of flood insurance coverage required for the warehouse?

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:	
Principal Loan Outstanding	$1,000,000
Maximum Amount Available Under the NFIP	$500,000
Insurable Value	$475,000

Answer: The minimum required amount of coverage is $475,000 because the property's insured value is less than the outstanding loan balance and the maximum amount of coverage under the NFIP.

Note: Because the warehouse is a nonresidential property, the maximum amount of insurance available under the National Flood Insurance Program is $500,000 for the building. See 44 C.F.R. §61.6(a).

HOW TO CALCULATE INSURABLE VALUE

Insurable value is defined as the overall value of the property securing the designated loan minus the value of the land on which the property is located.[19] It is important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance.[20]

According to the Flood Q&As, the insurable value of a building is generally 100 percent of its replacement cost value (RCV), which is the cost to replace the building with the same kind of material and construction without deducting depreciation.[21] In calculating the amount of insurance to require, the lender and borrower may choose from a variety of ways to establish the insurable value, including:

- an appraisal based on a cost-value (not market-value) approach
- a construction-cost calculation
- the insurable value used in a hazard insurance policy (recognizing that adjustments may be necessary as this value does not include the value of the foundation), or
- any other reasonable approach, so long as it can be supported.[22]

Nonetheless, the RCV may not always be practical in determining insurable value. For nonresidential properties, the insurable value might be based on actual cash value (ACV), which is RCV minus the value of its physical depreciation.[23] In these situations, using RCV rather than ACV could cause borrowers to be insured for more coverage than they would recover in the event of a loss.

CALCULATING COVERAGE FOR MULTIPLE BUILDINGS

Another challenging issue is the required amount of insurance for a loan secured by multiple properties, when at least one of them is in an SFHA. To clarify, the lender must first determine whether the community in which the buildings securing the loan are located participates in the NFIP.[24] For those buildings, the lender must calculate the required amount of insurance required on each building and add them together.[25] Similar to the prior example, the total amount of required flood insurance is the lesser of 1) the outstanding principal balance of the loan(s), or the maximum amount of insurance available under the NFIP, which is the lesser of (a) the maximum limit available for the type of structures, or the insurable value of the structures. All buildings in the SFHA must be covered, though the amount of total required flood insurance can be allocated among the secured buildings in varying amounts.[26]

Example 2: A loan is secured by a factory and 3 warehouses. All 4 buildings are nonresidential properties in an SFHA in a participating community. The outstanding loan balance is $350,000. The insurable value (IV) for the factory is $150,000. The insurable value for each of the warehouses is $50,000.

IV=$150,000	IV=$50,000	IV=$50,000	IV=$50,000

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:

Principal Loan Outstanding	$350,000
Maximum Amount Available Under the NFIP	$2,000,000 ($500,000 per building x 4)
Insurable Value	$300,000 ($150,000 + $50,000 + $50,000 + $50,000)

Answer: The minimum amount of required flood insurance coverage is $300,000, which is the combined insurable value of the properties.

Example 3: Six nonresidential buildings secure a loan; 4 are in an SFHA in a participating community. The outstanding loan balance is $370,000. The insurable value (IV) for each building is $100,000.

Note: Flood insurance coverage is only required on the buildings securing the loan that are located in the SFHA.

IV=$100,000	IV=$100,000	IV=$100,000	IV=$100,000	IV=$100,000	IV=$100,000

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:

Principal Loan Outstanding	$370,000
Maximum Amount Available Under the NFIP	$2,000,000 (4 buildings in the SFHA x $500,000)
Insurable Value	$400,000 (4 buildings in the SFHA x $100,000)

Answer: The minimum amount of required flood insurance coverage is $370,000. The bank must distribute the coverage among all the buildings in the SFHA.

Example 4: Three buildings secure a loan: a residential farmhouse with a commercial barn and a commercial silo. All buildings are in an SFHA and in a participating community. The loan's outstanding principal balance is $1,000,000. The insurable value of the farmhouse is $150,000, the barn is $100,000, and the silo is $600,000.

Structure	Maximum Amount of NFIP	Insurable Value
	$250,000	$150,000
	$500,000	$100,000
	$500,000	$600,000
Aggregate Maximum Amount Available Under the NFIP	$750,000 ($150,000 + $100,000 + $500,000)	
Principal Loan Outstanding	$1,000,000	

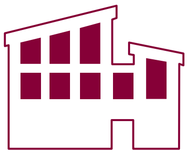
Answer: The minimum required amount of flood insurance coverage is the aggregate maximum National Insurance Flood Program coverage of $750,000, which is less than the loan's outstanding balance of $1,000,000.

Note: The aggregate maximum National Flood Insurance Program coverage reflects that the silo's insurable value of $600,000 exceeds the program's maximum nonresidential coverage of $500,000. The farm is also a residential property; therefore, the maximum residential coverage under the program is $250,000.

MIXED-USE PROPERTIES

A property can be used for both residential and nonresidential purposes. Here is an example of a property qualifying as a mixed-use building.

Example 5: A loan is secured by a building that contains a restaurant and 3 apartment units. The building is in an SFHA in a participating community.

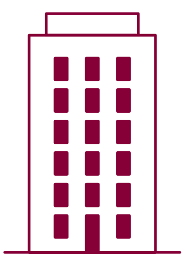


- The principal loan outstanding is for $800,000.
- The insurable value of the property is $1,000,000.
- The restaurant is 4,000 square feet. The apartments are 800 square feet each.
- The total floor area for the building is 4,000 + 800 + 800 + 800 = 6,400.
- The restaurant covers 62.5% of the total floor area (4,000 ÷ 6,400 x 100).
- This building is considered a nonresidential building because it is a mixed-use building in which 25% or more of the total floor area within the building is devoted to nonresidential use (refer to Example 4).
- The maximum amount of coverage available under the National Flood Insurance Program is $500,000 for this mixed-use, nonresidential building.

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:	
Principal Loan Outstanding	$800,000
Maximum Amount Available Under the NFIP	$500,000 (nonresidential building)
Insurable Value	$1,000,000

Answer: The bank is required to obtain $500,000 in flood insurance coverage because it's the lesser of the maximum amount of insurance available for a nonresidential building under the National Flood Insurance Program coverage and the outstanding loan amount or the property's insurable value.

Example 6: A loan is secured by an apartment building that contains a convenience store and 15 apartment units. Normal occupancy is 6 months or more. The building is in an SFHA in a participating community.



- The principal loan outstanding is $2,000,000.
- The insurable value is $1,500,000.
- The store is 2,100 square feet; each apartment is 700 square feet.
- Total floor area for the building is 2,100 + (700 square feet x 15) = 12,600 square feet.
- The store is 16.7% of the total floor area (2,100 ÷ 12,600 x 100).
- This is an example of an Other Residential Building because it is a mixed-use building in which the total floor area devoted to nonresidential uses is less than 25% of the buildings total floor area.
- The maximum amount of coverage available under the National Flood Insurance Program is $500,000 for the structure.

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:	
Principal Loan Outstanding	$2,000,000
Maximum Amount Available Under the NFIP	$500,000 (noncondominium, other residential building)
Insurable Value	$1,500,000

Answer: The 15-unit apartment building is considered a residential building because it is a mixed-use building in which the total floor area devoted to nonresidential use is less than 25% of the building's total floor area. The maximum amount of coverage under the National Flood Insurance Program for residential buildings is $250,000. See 61 C.F.R. §61.6. However, as of June 1, 2014, the Biggert–Waters Act increased the maximum amount of coverage for a noncondominium residential building designed for use of five or more families from $250,000 to $500,000. This is a 15-unit apartment building with normal occupancy of 6 months or more. Therefore, the maximum amount of flood insurance coverage under the program for this property is $500,000, which is also the minimum required flood insurance coverage for this loan because it is less than outstanding principal loan balance and the insurable value.

CONTENTS COVERAGE

When a loan is secured by a building and its contents, and the building is in a SFHA in a participating community, flood insurance coverage is required for both the building and the contents.[27] As noted previously, the maximum amount of coverage available through the NFIP is $100,000 for residential contents and $500,000 for nonresidential contents.

Here are some examples in which the building and its contents are taken as collateral.

Example 7: A loan is secured by a restaurant that contains commercial equipment. The loan agreement indicates that the restaurant and all equipment are taken as collateral. The outstanding principal loan amount is $650,000. The insurable value of the restaurant is $700,000 and the equipment is valued at $50,000.

Structure	Maximum Amount of NFIP	Insurable Value
Building	$500,000	$700,000
Contents	$500,000	$50,000
Aggregate Maximum NFIP Coverage	$550,000 ($500,000 building +$50,000 contents)	
Outstanding Loan Balance	$650,000	

Answer: The maximum amount of insurance available under the NFIP is the lesser of the NFIP max for the structure ($500,000) and the RCV of the structure ($750,000), which is $500,000 plus the lesser of the NFIP max for the contents ($500,000) and value of the contents ($50,000), which is $50,000. The required amount of flood insurance is the lesser of the outstanding loan balance ($650,000) and the maximum amount of insurance available under the NFIP ($500,000 building + $50,00 contents = $550,000). Therefore, the minimum required amount of flood insurance is $550,000.

Example 8: A loan is secured by a warehouse and its contents of commercial inventory. The outstanding principal loan is $200,000. The insurable value of the warehouse is $150,000, and the inventory is valued at $100,000.[28]

Structure	Maximum Amount of NFIP	Insurable Value
Warehouse	$500,000	$150,000
Contents	$500,000	$100,000
Aggregate Max NFIP Coverage	$250,000 ($150,000 +$100,000)	
Outstanding Loan Balance	$200,000	

Answer: The required amount of flood insurance is the lesser of the outstanding loan balance ($200,000) and the maximum amount of insurance available under the NFIP ($500,000 for the building + $100,00 contents = $600,000). Therefore, the answer is the outstanding loan balance at $200,000, which is the lesser amount. Both the contents and the building will be considered to have sufficient amount of flood insurance coverage for regulatory purposes as long as some reasonable amount of insurance is allocated to each category. The flood insurance requirements could be satisfied by placing $150,000 of flood insurance coverage on the warehouse and $50,000 of flood insurance coverage on the contents.

It is important to note that lenders can review loan agreements[29] and security instruments to verify whether a security interest is taken in the building and contents. Examiners frequently see situations in which a lender obtains flood insurance for the building but not its contents, often because the lender did not intend to take the contents as collateral. The Interagency Flood Q&As clarify the lender cannot exempt the contents from required coverage because the lender took a security interest inadvertently or out of an abundance of caution. Where the loan agreements and security instruments create a security interest in the contents, regardless of whether the security interest is perfected under applicable law, flood insurance must be purchased to cover the contents.[30]

EFFECT OF RISK RATING 2.0 ON PREMIUMS NONRESIDENTIAL FOR PROPERTIES

Outlook recently reviewed FEMA's Risk Rating 2.0 initiative to revise its methodology for pricing flood insurance to more accurately capture the actuarial risk of a flood based on a property's individual risk factors, rather than the flood insurance zone in which it is located.[31]

Some policyholders will see decreases in premiums, while others will see increases. As discussed in the article, the Homeowner Flood Insurance Affordability Act generally limits annual increases in food insurance premiums to no more than 18 percent for individual policies. However, the annual limit for business properties and certain other properties is 25 percent.[32] While the annual limit prevents immediate implementation of full risk pricing for policies whose premiums are increasing, premiums will eventually rise to full-risk pricing.

CONCLUSION

Congress enacted the NFIP and FDPA to mitigate flood risk and provide access to flood insurance for properties at high risk of flooding. It is important for lenders to ensure borrowers maintain the required amount of flood insurance through the life of a designated loan to protect their collateral and to protect their borrowers against flooding. This is achieved through strong flood insurance compliance management programs for all applicable business lines, including residential and nonresidential. Specific issues and questions about consumer compliance matters should be raised with your primary regulator. ■

Endnotes*

1 See Testimony of Michael Grimm, FEMA assistant administrator for Risk Management, before the Committee on Science, Space, and Technology of the House of Representatives, February 27, 2020.

2 See "Introduction to the National Flood Insurance Program (NFIP)," Congressional Research Service Updated on December 9, 2021.

3 See Pub. L. 93-234, 87 Stat. 975 (December 31, 1973). Codified, as amended, at 42 U.S.C. §4012a.

4 See 12 C.F.R. §208.25(c)(1) for the requirements for federally regulated lenders. The agencies' implementing regulations for the FDPA are found at 12 C.F.R. §208.25 (Regulation H) for institutions supervised by the Board, 12 C.F.R. part 22 for institutions supervised by the Office of the Comptroller of the Currency, 12 C.F.R. part 339 for institutions supervised by the Federal Deposit Insurance Corporation, 12 C.F.R. part 614 for institutions supervised by the Farm Credit Administration, and 12 C.F.R. part 760 for institutions supervised by the National Credit Union Administration. This article refers to the flood insurance requirements of the Board's Regulation H, but the other agencies' regulations, which are issued on an interagency basis, are substantially similar.

5 See 12 C.F.R. §208.25(b)(5).

6 See FEMA.gov.

7 See FEMA Fact Sheet Flooding: Our Nation's Most Frequent and Costly Natural Disaster (2010).

8 See Sections_1–6_October 2021 RR 2.0 NFIP Flood Insurance Manual at 3.11.

9 The *Special Flood Hazard Area* (SFHA) is a high-risk area defined as any land with at least a 1 percent chance of flooding within a given year. On flood maps, SFHA are labeled as zones starting with A or V. Answers to Questions About the National Flood Insurance Program.

Endnotes*

[10] See Federal Reserve Supervision Manual Flood Insurance at p. 2.

[11] The agencies recently revised the Q&As. See 2022 Interagency Questions and Answers Regarding Flood Insurance at 87 *Federal Register* 32826 (May 31, 2022).

[12] See Force Placement Q&A 1 of the 2022 Q&As. In the new Q&As, the agencies also revised the numbering methodology from consecutive numbering of all of the Q&As to subcategories, with consecutive numbering for each of the questions within the subcategory, such as *Construction 2*.

[13] This list is not exhaustive. See NFIP Flood Insurance Manual. Sections_1-6_Oct 2021 RR 2.0 NFIP Flood Insurance Manual at p. 75.

[14] The Flood Q&As add language to clarify that the description of a nonresidential building is based on language in the NFIP Flood Insurance Manual and revised the answer to more clearly indicate that the building does not have to be one in which the named insured is a commercial enterprise.

[15] For more information on condominiums, see "Flood Insurance Compliance Requirements," *Consumer Compliance Outlook* (Third/Fourth Quarter 2015).

[16] For loans secured by individual commercial condominium units, the regulation does not have mandatory purchase requirement since the NFIP does not provide coverage for such units other than contents coverage. See Condo and Co-Op 9 87 *Federal Register* at 32883.

[17] See 12 C.F.R. §208.25(c)(1).

[18] We discuss the amount of insurance required by the FDPA, but lenders may require flood insurance coverage in excess of that amount. For example, for a commercial property, the maximum coverage available under the NFIP is $500,000. If the loan amount exceeds $500,000, the lender may want supplemental coverage through a private flood insurance policy to protect its collateral. See Answers to Questions About the National Flood Insurance Program.

[19] See Q&A Amount 7. The implementing regulations also provides that "flood insurance under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself." See 12 C.F.R. §208.25(c)(1).

[20] See Flood Q&A Amount 1 (87 *Federal Register* at 32878).

[21] See Flood Q&A Amount 2 (87 *Federal Register* at 32878): "In calculating the amount of flood insurance to require, the lender and borrower may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on cost-value (not market-value) approach, a construction-cost calculation, the insurable value based on a hazard insurance policy, or any other reasonable approach so long as it can be supported." See also FEMA's discussion of Replacement Cost Value (RCV).

[22] See Flood Q&A Amount 2.

[23] FEMA pays Replacement Cost Value for primary residences and Actual Cash Value for all other structures *(National Flood Insurance Program April 2021 Flood Insurance Manual).* The NFIP used the term *principal residence*, as defined in the Standard Flood Insurance Policy (SFIP), to determine the amount of the loss settlement. The SFIP defines this term as a single-family dwelling in which, at the time of loss, the named insured (or the named insured's spouse) has lived for either 80 percent of the 365 days immediately preceding the loss, or 80 percent of the period of ownership, if the dwelling was owned less than 365 days. If the dwelling does not meet this definition, the NFIP will settle the claim using actual cash value, under the terms of the SFIP.

[24] See 12 C.F.R. §208.25(f)(1) (Board). For safety and soundness reasons, lenders may require the purchase of private flood insurance on buildings located in an SFHA but not in a participating community. See Q&As Applicability 3. (See 87 *Federal Register* at 32867.) Further, depending on the risk factors of the building, a lender may elect to require flood insurance even if the building is not in an SFHA.

[25] The flood regulations require insurance of "at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act." FEMA, the agency under the National Flood Insurance Act charged with implementing the NFIP, states in its manual: "The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant occupancy category." See *NFIP Flood Insurance Manual* at 3-3.

[26] See Flood Q&A Amount 6 (87 *Federal Register* at 32879).

[27] See 12 C.F.R. §208.25(c)(1).

[28] See Flood Q&A Other Security Interests 7 (87 *Federal Register* at 32885).

[29] Flood Q&A Other Security Interests 9 specifies that the loan agreement or security instrument determine whether the contents are taken as security for the loan. See 87 *Federal Register* at 32885.

[30] See Flood Q&A Other Security Interests 9. For additional information on contents coverage for commercial loans, see "Vendor Management Considerations for Flood Insurance Requirements," *Consumer Compliance Outlook* (Second Issue 2019).

[31] See "FEMA Begins Risk Rating 2.0 Flood Insurance Initiative 2021," *Consumer Compliance Outlook* (Issue 4 2021).

[32] See 42 U.S.C. §4015(e)(4).

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

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Merger Lessons Learned

for all stakeholders to complete the acquisition. This makes it burdensome for compliance personnel to remain effective in their core work during this increased workload. 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.

- An acquiring bank does not have a strategy to maintain a Satisfactory CRA rating in the acquired bank's geographies. The acquisition occurs midcycle of a CRA performance evaluation of the acquiree, and the acquirer does not meaningfully prepare for this expansion of its geographic reach. The omission leads to poor performance in the acquiree's assessment areas postacquisition, and bank management regrets not devising a CRA strategy alongside other integration efforts.
- A bank's branching strategy is predominantly determined by merger and acquisition activity. The bank grows by acquiring another institution in the same geography and delineates its assessment area in part based on existing and acquired branch locations. This strategy introduces additional fair lending risk in the bank's branching pattern and assessment area delineation. The risk of redlining may be elevated when a bank acquires branch locations based on opportunities presented without sufficiently considering fair lending risk. In some situations, a bank may end up with a series of branch locations that exclude majority-minority census tracts or that form a donut hole around predominantly majority areas or another notable visual pattern.

COMPLIANCE CONSIDERATIONS

The disclosure of previously unknown regulatory issues by an acquiree on Legal Day One is not uncommon. By law, neither regulators nor acquiree banks can exchange confidential supervisory information with an acquirer until Legal Day One. The disclosure of nonpublic supervisory actions, such as Matters Requiring Immediate Attention (MRIAs), Matters Requiring Attention (MRAs), nonpublic consent orders, or other regulatory actions can strain acquirer resources. Additional compliance risk exists if an acquirer's due diligence did not uncover nonsupervisory weaknesses at an acquiree bank, such as internal compliance findings in the lines of business, second line of defense, or internal audit. Here are some examples of this risk:

- Nonpublic regulatory MRAs surprise bankers on Legal Day One in an acquisition; more legal and compliance work is required than planned at the acquiring bank to address these MRAs. A chief compliance officer fails to alert the board and other senior management prior to Legal Day One that there may be compliance surprises on Legal Day One that will require resources and time to perfect.
- After Legal Day One, regulators request materials from the acquirer bank about internally identified consumer affairs issues at the acquiree. The purpose of these requests is to assess the acquiree bank's compliance capabilities and determine if any issues continued postacquisition. Time passes without the regulators receiving these materials, despite multiple requests. This leads regulators to question the quality of compliance due diligence efforts performed by the acquirer. Regulators then consider a nonpublic supervisory action to compel the acquirer to produce these materials and conclude these issues were not adequately considered by the acquirer during due diligence or post Legal Day One.

> "Despite modeling and testing performed prior to conversion, it is not uncommon for consumer harm to still occur."

- The size of the combined consumer auto portfolio after an acquisition leads an acquirer to conclude that it does not have enough current staff devoted to fair lending monitoring. Federal regulators support the expansion of monitoring capability; self-identification of gaps is an important component of an effective CMS.
- A nonpublic consent order at an acquired bank, revealed to the acquirer on Legal Day One, requires expanded unfair or deceptive acts or practices coverage. The bank's internal audit, upon evaluating the second line's response to the consent order, concludes that the current program

is not insufficient for the bank's new size and complexity. Regulators concur but do not take additional supervisory action because the issue was self-identified and an adequate bank-developed action plan was presented.

- A bank is unprepared for a significant increase in call volume and complaints immediately after a conversion event. There is insufficient staffing, leading to extended hold times from customer call centers and a material increase in regulatory complaints. Acquiring banks may consider staffing levels prior to conversion to address potential increases in both customer and regulator feedback.

OPERATIONAL CONSIDERATIONS

Significant consumer compliance risk often arises from integrating differing core systems. Despite modeling and testing performed prior to conversion, it is not uncommon for consumer harm to still occur. Here are some examples of this risk:

- With one login, the acquired bank allows business owners to view both business and personal accounts, but logins are coded so the personal account viewed is individualized. However, upon system conversion, the acquiring bank's coding errantly allows broader access, allowing personal information to be viewed by unauthorized parties. Upon the discovery, only swift action by the bank's compliance staff would limit the number of actual breaches, and free credit monitoring for impacted consumers would be included in the restitution effort.
- Divestiture of some branches is required to consummate an acquisition. Information on the customers at these divested branches may not be delivered timely to the acquirer's marketing team. The marketing team prepares to send divested customers material as if they were customers, and reputational harm is only averted by timely intervention from the second line.

STAFFING CONSIDERATIONS

M&A activity often results in the risk of knowledge gaps resulting from the transfer of duties and personnel, often at the acquiree bank. Regulators are seeing elevated compliance talent turnover in the post-COVID-19 return-to-office, and this instability can harm the CMS. Here are some examples of this risk:

- Staff turnover at an acquired bank leads to a delay in ordering replacement debit cards; debit cards are unavailable to some customers of the acquired bank after Legal Day One, leading to elevated complaints.
- Retaining the chief compliance officer at an acquiree bank is very attractive to the acquirer, and the acquirer makes an above-market offer to stay if the officer accepts a slightly junior role. The offer is declined because of the reduction in title.

> "Postacquisition compliance talent is often a blend of acquirer and acquiree employees. It can be difficult to preserve a compliance culture, or worse, to create a compliance culture that previously did not exist."

Postacquisition compliance talent is often a blend of acquirer and acquiree employees. It can be difficult to preserve a compliance culture, or worse, to create a compliance culture that previously did not exist.

- Public comments regarding an acquisition or banks with a proposal subject to public comment are both situations that require additional application processing time for regulators. Heightened turnover is often seen, particularly at the acquiree bank, during this evaluation period.
- Insufficient bench strength after a major acquisition requires a senior compliance professional to serve as lead for a quasi-independent monitoring and testing function within her department for an extended time until a suitable candidate could be found.
- Despite retention bonuses put in place to reduce acquiree staff runoff after an acquisition, a key senior compliance professional at the acquirer announces early retirement, and a suitable replacement is not available. Senior management underestimated its ability to maintain continuity of consumer compliance talent.

CULTURE CONSIDERATIONS

Postacquisition compliance talent is often a blend of acquirer and acquiree employees. It can be difficult to preserve a compliance culture, or worse, to create a compliance culture that previously did not exist. Here are some examples of this risk:

- A bank acquires a fintech. Bank staff finds it difficult to acclimatize fintech staff to adopt a compliance culture suitable for a bank. Structural and pervasive CMS problems result, requiring regulatory intervention.
- Compliance risk management is housed across different departments with little coordination. This siloed approach to compliance risk is amplified after some key acquisitions, making it difficult for bankers to mitigate

significant compliance issues as they arise and leads to heightened regulator interest.

A final theme, although not solely confined to consumer compliance risk, is termination risk. Not all M&A activity ultimately results in a transaction. Shareholder votes may fail, due diligence may reveal material adverse information, share prices may materially change, or myriad other circumstances may abruptly terminate a proposed acquisition. Occasionally, bankers will request informal guidance from the Federal Reserve on consumer compliance monitoring, testing, and audit efforts during a potential acquisition.

For example, a banker might ask a Reserve Bank if a planned mortgage servicing review should be postponed because of a pending acquisition of a large mortgage servicer. In this case, the Reserve Bank's response may be to continue with all scheduled internal efforts until an acquisition clears all potential obstacles for approval.

Federal Reserve staff have shared this information to help bank compliance professionals avoid common M&A pitfalls that may impact consumers. ■

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Endnotes

1 These hypothetical scenarios are inspired by supervisory work.

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News from Washington: Regulatory Updates*

The U.S. Department of Housing and Urban Development (HUD) proposes extending the permissible amortization term from 30 to 40 years when modifying loans to help delinquent borrowers of insured Federal Housing Administration (FHA) mortgages. On April 1, 2022, HUD published a proposed rule in the *Federal Register* to provide up to a 40-year loan modification option to delinquent borrowers of FHA Title II forward mortgages. HUD currently allows lenders to modify loans for delinquent borrowers by recasting the unpaid loan balance with a maximum new term limit of 30 years. See 24 C.F.R. §203.616. This proposal would allow lenders to recast the total unpaid loan with a new term limit of up to 40 years to further reduce the borrower's monthly payment. To qualify for the 40-year option, borrowers must be unable to achieve a minimum targeted 25 percent reduction in the principal and interest of their mortgage payment through the 30-year mortgage modification option. This change is designed to align the FHA's loan mitigation options with the options offered by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which offer a 40-year loan modification option for the mortgages they purchase.

HUD provided further details about the proposed 40-year loan modification option in **Mortgagee Letter 2022-07** and the prior 30-year option in **Mortgagee Letter 2021-18**. If the borrower elects either option, a zero-interest subordinate lien would be recorded against the property for the mortgage arrearages. The arrearages would have to be repaid when the first of the following events occurs:

- the FHA-insured mortgage matures
- the property is sold
- the FHA mortgage is paid, or
- (if provided for under the partial claim note), FHA insurance is terminated, except that HUD will agree to subordinate the partial claim note to an FHA-Streamline Refinance.

The comment period closed on May 31, 2022. On April 18, 2022, HUD provided additional guidance about the 40-year modification option. HUD indicated that "mortgage servicers may begin implementing the new 40-year modification with partial claim option immediately ***but must begin offering this solution to eligible borrowers with FHA-insured Title II forward mortgages, except those funded through Mortgage Revenue Bonds under certain circumstances, within 90 calendar days.***" (Emphasis added.)

The Federal Reserve Board (Board) is accepting applications for its Community Advisory Council. On April 11, 2022, the Board announced it is accepting individual applications for membership on its Community Advisory Council (CAC), which advises the Board on issues affecting consumers and communities. The CAC includes experts and representatives of consumer and community development interests, including affordable housing, workforce development, small business, and asset and wealth building. The CAC meets semiannually with the Board to share the views of its members on the economic circumstances and financial services needs of consumers and communities, focusing on low- and moderate-income consumers and communities. The deadline for submitting an application was on June 10, 2022.

The Consumer Financial Protection Bureau (Bureau) issues a proposal under Regulation V (Fair Credit Reporting Act) that would prohibit consumer reporting agencies from furnishing consumer reports that include adverse information that resulted from documented human trafficking. On April 8, 2022, the Bureau published a notice of proposed rulemaking in the *Federal Register* to implement a recent amendment in the National Defense Authorization Act for Fiscal Year 2022 that added new §605C to the Fair Credit Reporting Act (FCRA). Section 605C, which is codified at 15 U.S.C. §1681C-3, prohibits a consumer reporting agency (CRA) from "furnish[ing] a consumer report containing any adverse item of information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if the consumer has provided trafficking documentation to the consumer reporting agency." See 15 U.S.C. §1681C-3(b).

The Bureau's proposal would implement this requirement and define the type of documentation a consumer must provide to the CRA. The proposal would also specify the circumstances in which the CRA can decline to block information or rescind a prior block. For example, under the proposal, a CRA could decline to block information if the consumer fails to satisfy the proof of identity requirements in §1022.123 of Regulation V. The proposal also would require a CRA to provide written notice to the consumer of actions taken in response to submission of trafficking documentation five calendar days after receiving the documentation or, if rescinding a prior block, five days after rescinding it. The comment period closed on May 9, 2022.

The 2021 public loan-level Loan Application Register (LAR) data under the Home Mortgage Disclosure Act (HMDA) are now available on the Federal Financial Institutions Examination Council (FFIEC) website. On March 24, 2022, the FFIEC made available the public loan-level LAR data for approximately 4,316 HMDA filers. To protect consumers' privacy, the public data are modified. For example, the public LAR discloses the credit scoring model used in the credit decision but not the applicant's actual score. Similarly, the HMDA field of the property location is not reported. The site allows a user to search for the public LAR of a HMDA filer and download the data in a text file. The Bureau will issue a report later this year analyzing the 2021 data.

The federal banking agencies issue a rulemaking proposal to amend their Uniform Rules of Practice and Procedure. On April 13, 2022, the Office of the Comptroller of the Currency, the Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration, published a rulemaking proposal in the *Federal Register* seeking comment on an interagency proposal to update their regulations governing administrative proceedings for the institutions they supervise. The proposal would update these rules to align them with current practices and to facilitate the use of electronic communications and technology in administrative proceedings. In addition, the Board invited comment on proposed changes to rules that only apply to its administrative proceedings. The comment period closed on June 13, 2022.

The Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) issues an action plan to address property appraisal bias. On June 1, 2021, President Joseph Biden created the PAVE Task Force composed of 13 federal agencies, including the Board, to address bias in real estate appraisals. On March 23, 2022, the task force issued its "Action Plan to Advance Property Appraisal and Valuation Equity." The plan recommends various actions to address potential bias in real estate appraisals, including:

- Clarifying that the Fair Housing Act and the Equal Credit Opportunity Act apply to the appraisal industry to ensure appraisers have clear guidance on antidiscrimination obligations under current federal laws.
- Strengthening coordination among supervisory and enforcement agencies to identify discrimination in appraisals and other valuation processes.
- Expanding regulatory agency examination procedures of mortgage lenders to include identification of patterns of appraisal bias.

The Bureau updates its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) examination manual to address discriminatory practices. On March 16, 2022, the Bureau announced a change to its UDAAP examination manual for the institutions it supervises to address discrimination across the board in consumer financial products and services. Federal law currently prohibits discrimination on certain prohibited bases in credit transactions (the Equal Credit Opportunity Act) and housing transactions (the Fair Housing Act). The Bureau's updated examination manual states that discrimination in credit and noncredit products can meet the standard for unfairness under the Consumer Financial Protection Act (CFPA):

> "In the course of examining banks' and other companies' compliance with consumer protection rules, the CFPB will scrutinize discriminatory conduct that violates the federal prohibition against unfair practices. The CFPB will closely examine financial institutions' decision-making in advertising, pricing, and other areas to ensure that companies are appropriately testing for and eliminating illegal discrimination."

Under the CFPA, a practice is unfair if: (1) it causes or is likely to cause substantial injury to consumers, (2) the injury is not reasonably avoidable by consumers, and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. See 12 U.S.C. §5531(c). The revised manual discusses how this test could apply to discriminatory conduct.

The Bureau's updated examination manual guides its examiners in how to oversee institutions under the Bureau's supervisory authority, which include banks, thrifts, and credit unions with assets (including affiliates) over $10 billion. The Bureau also supervises certain nonbank companies, including mortgage originators and servicers, payday lenders, private student lenders, and certain larger participants in nonbank financial markets, including automobile finance lenders, consumer reporting agencies, consumer debt collectors, foreign remittance transfer providers, and student loan servicers. See 12 C.F.R. Part 1090.

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

On the Docket: Recent Federal Court Opinions*

FAIR HOUSING ACT

The U.S. Department of Housing and Urban Development (HUD) enters into a Conciliation Agreement with Bank of America and one of its loan officers to resolve allegations of familial status and sex discrimination under the Fair Housing Act (FHA). In October 2021, a married couple filed a complaint with HUD, alleging the bank and a loan officer violated the FHA by refusing to approve a residential mortgage loan until after one of the applicants returned to work from maternity leave, even though her employer paid 80 percent of her salary during her leave. The FHA prohibits discrimination on certain prohibited bases in housing transactions, including discrimination based on an applicant's sex and familial status.

Under the agreement, Bank of America will pay the couple $15,000; establish a policy under which applicants on temporary leave, including parental leave, can be approved for a mortgage prior to returning to active work status; agree to maintain its existing policies and procedures of prohibiting employees in lending-related roles from discouraging an applicant from applying due to any prohibited basis, or suggesting applicants return to work from parental leave prior to applying for a home loan; and conduct fair lending training for employees in lending-related roles.

FAIR CREDIT REPORTING ACT

The Ninth Circuit rejects broad interpretation of the information a consumer reporting agency (CRA) must provide in response to a consumer request. *Tailford v. Experian Information Solutions, Inc.* 26 F.4th 1092 (9th Cir. 2022). Section 1681g of the Fair Credit Reporting Act (FCRA) requires CRAs to disclose certain information to the consumer upon request. The CRA must provide all the information in its file, including a record of inquiries for credit or insurance made within one year prior to the request.

After the plaintiffs learned of a data breach of a company with consumer reports purchased from Experian, they requested the information in their Experian file, which Experian provided. Their class-action lawsuit alleged that Experian violated §1681g by omitting certain information Experian collected but did not provide, including 1) aggregate consumer behavioral data (such as household income, purchase history, and other marketing attributes), 2) soft credit inquiries, 3) the identity of parties procuring their consumer reports, and 4) the dates on which their employment history was reported. The lower court held that the FCRA did not require disclosure of this information and dismissed the case.

On appeal, the Ninth Circuit affirmed. The court first addressed the threshold, procedural issue of whether the plaintiffs have legal standing to pursue their claims. The Supreme Court clarified in *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) that standing in federal court requires a showing that the plaintiff "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.' " Applying this standard, the court found the plaintiff's informational and privacy interests were sufficiently concrete to satisfy *Spokeo's* standing requirements.

Turning to the merits, the court noted that §1681g requires disclosure of all information in a consumer "file," which the court clarified is limited to "information that has been included in a consumer report in the past or is planned to be included in such a report in the future." Under this standard, Experian was not required to include the behavioral data because it contained aggregate data, which is not included in a consumer report. Moreover, the information was not used to establish eligibility for credit or employment but used to target consumers for invitation to apply for credit. Regarding soft inquiries, the court stated that they cannot be viewed by third parties requesting a consumer report and therefore are not part of a file that would have to be disclosed. Finally, the court concluded Experian was not required to indicate when employment dates were first reported because that information was not related to creditworthiness or other characteristics specified in the FCRA.

The Eighth Circuit dismisses FCRA class-action lawsuit for lack of standing. *Schumacher v. SC Data Center, Inc.*, 33 F.4th 504 (8th Cir. 2022). The plaintiff applied to SC Data for employment and completed an application that inquired whether she had been convicted of a felony. She indicated she had not. The employer offered her a position, conditioned on her successfully completing a background check. The background search revealed a prior felony conviction, and the employer rescinded the offer based on this information. Her class-action complaint alleged the employer violated the FCRA by taking adverse employment action based on a consumer report without first providing her the report, by providing a disclosure in a form that did not comply with FCRA, and by obtaining more information than she had authorized.

The court found that the results of the background search constituted a consumer report under the FCRA, and therefore the plaintiff was entitled to see it before the employer took adverse action. However, the court also noted the information in it was accurate and determined that the plaintiff had therefore not suffered an injury in fact and lacked standing. The court rejected the plaintiff's argument that the FCRA provided her with the right to discuss the contents of the report with the employer. The court also found that the technical errors in the employer's FCRA disclosure did not harm the plaintiff, and therefore, she lacked standing for this claim. Finally, the court rejected the claim that she had not authorized a background search; the plaintiff did not plead concrete harm and therefore lacked standing.

The Seventh Circuit finds that the investigation of disputed information in a credit report was reasonable. *Woods v. LVNV Funding, LLC*, 27 F.4th 544 (7th Cir. 2022). The plaintiff alleged he was the victim of identity theft because someone opened an American Airlines credit card in his name and made charges to the card. When the charges were not paid, the account was sold to a third party, which retained a debt collector to collect it. The plaintiff disputed the debt, but the debt collector verified it and then furnished negative information to the CRAs.

After the plaintiff again disputed the debt, the debt collector requested additional information to aid its investigation, but the plaintiff failed to respond. The plaintiff then filed disputes with the CRAs, which forwarded the disputes to the debt collector to verify. The debt collector again verified the debt. The plaintiff then filed a lawsuit alleging violations of the Fair Debt Collection Practices Act (FDCPA) and the FCRA. After the lawsuit was filed, American Airlines notified the plaintiff that the debt was not his, and the information was removed from his credit report.

The plaintiff claimed that Resurgent, as the furnisher of the credit information, violated the FCRA by failing to conduct a reasonable investigation into his fraud claims. The court noted that the investigation must be reasonable, not pro forma, but the reasonableness depends on the particular information the furnisher receives about the dispute. The CRA sent the furnisher a copy of a police report indicating American Airlines had sent the plaintiff two letters concluding that the plaintiff made the disputed purchase. The court found this information supported the determination that the debt collector made a reasonable investigation.

Moreover, the debt collector again asked the plaintiff to provide additional documentation, but the plaintiff failed to respond even though he had information that supported his dispute. Accordingly, the court concluded the furnisher's investigation was reasonable. But the court added a caveat: "[T]his opinion is no license for furnishers to offload their §1681s-2(b)(1)(A) investigation obligations to consumers by spamming them with requests for additional information. Instead, like all questions of reasonableness, our conclusions depend on the totality of the circumstances in the case before us."

NATIONAL BANK ACT

The Tenth Circuit concludes that extended overdraft fees do not constitute interest under the National Bank Act subject to usury laws. *Walker v. BOKF, N.A.*, 30 F.4th 994 (10th Cir. 2022). When the plaintiff overdrew his account by $25, the bank covered the overdraft and charged him an initial overdraft fee of $34.50. When his account remained overdrawn, the bank imposed an Extended Overdraft Fee of $6.50 per business day after a short grace period that resulted in a total of $234 after the account remained overdrawn for 36 days. His class-action lawsuit alleged the bank's initial payment of her overdraft constituted an extension of credit, and the Extended Overdraft Fees constituted interest subject to applicable usury laws and not a deposit account service, consistent with a Southern District of California court case decided in 2016. See *Farrell v. Bank of America, N.A.*, 224 F. Supp. 3d 1016 (S.D. Cal. 2016).

BOKF is a national bank subject to the National Bank Act (NBA) and its implementing regulations. Under §85 of the NBA, national banks are subject to the usury laws of the state where they are chartered. BOKF is incorporated in Oklahoma, which has a usury limit of 6 percent. The lawsuit alleged BOKF violated these usury limits by charging the plaintiff an annual rate of between 501 percent and 2,362 percent.

The court noted that the OCC has issued two regulations, 12 C.F.R. §7.4001 and §7.4002, that clarify the distinction between "interest charges" and "non-interest charges and fees," respectively. The court found it was ambiguous whether the Extended Overdraft Fees fall within the definition of interest charges under the regulations; however, the court noted that OCC Interpretive Letter 1082 (May 17, 2007) clarifies this issue. The interpretive letter stated that overdraft fees are "non-interest charges and fees" for "deposit account services" governed by §7.4002 of the OCC's regulations, which provides in relevant part: "A national bank may charge its customers non-interest charges and fees, including deposit account service charges."

The regulation also specifies the considerations that should inform the amount of the fee. Finally, the court noted that under Supreme Court precedent, deference is owed to an agency's interpretations of its own regulations when, as here, they are ambiguous. The court therefore concluded that deference was owed to the OCC's interpretative letter classifying extended overdraft charges as noninterest charges.

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

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
05/21/22	Reg. H	Agencies release revised interagency questions and answers regarding flood insurance
05/05/22	Reg. BB	Agencies issue rulemaking proposal to modernize their implementing regulations for the Community Reinvestment Act
04/13/22	n/a	Agencies propose changes to their Uniform Rules of Practice and Procedure
04/01/22	Reg. Z	Final rule amending Regulation Z to facilitate the transition from the LIBOR interest rate index
01/01/22	Regs. M and Z	Final rules establishing dollar thresholds for credit exempt from Regulations M and Z
01/01/22	Reg. Z	Final rule establishing loan exemption threshold for appraisals of higher-priced mortgages for 2022
01/01/22	Reg. C	Final rule establishing 200 loans as the permanent Home Mortgage Disclosure Act data reporting threshold for open-end lines of credit
11/30/21	FDCPA	Final rule creating implementing regulations for the Fair Debt Collection Practices Act

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

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
09/01/21	Reg. B	Rulemaking proposal under §1071 of the Dodd–Frank Act for data collection and reporting of small business credit applications, including women and minority-owned businesses
08/12/21	Reg. Z	Interpretive rule: Impact of the 2021 Juneteenth holiday on certain closed-end mortgage requirements
07/19/21	n/a	Proposed interagency guidance on third-party relationships and risk management
06/23/21	MLA	Consumer Financial Protection Bureau's (Bureau) interpretive rule for authority to conduct Military Lending Act examinations
05/10/21	n/a	Federal Reserve Board's statement on the role of supervisory guidance
03/16/21	Reg. B	Bureau issues interpretive rule that the scope of sex discrimination under the Equal Credit Opportunity Act includes sexual orientation and gender identity
03/01/21	Reg. Z	Final rule creating a new Qualified Mortgage category for Seasoned Loans
02/11/21	FHA	U.S. Department of Housing and Urban Development issues guidance that the scope of sex discrimination under the Fair Housing Act includes sexual orientation and gender identity

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

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