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Inside

Elements of a Strong Compliance Management System Under the FFIEC Compliance Rating System

By Kate Loftus, Examiner, Federal Reserve Bank of Minneapolis

Carl Jung, the noted psychiatrist, once said that the "shoe that fits one person pinches another; there is no recipe for living that suits all cases." This insight applies to an institution's compliance management system (CMS): All institutions, regardless of size, should maintain an effective CMS, the scale and details of which will vary with the size, complexity, and risk profile of their operations.[1] This article discusses the components of an effective CMS, as outlined in the 2016 revised Uniform Interagency Consumer Compliance Rating System (CC Rating System), with a specific focus on examples of strong performance factors illustrative of institutions with a CMS rating of 1.

THE CC RATING SYSTEM

Background

The CC Rating System provides a general framework for assessing risks during the supervisory process and assigning an overall consumer compliance rating to regulated institutions. The system is organized under three broad categories:

- board and management oversight
- the compliance program, and
- violations of law and consumer harm

Regulators assign a consumer compliance rating after evaluating an institution's performance under these three categories. The FFIEC Consumer Compliance Rating System (**Table 1 at the end of this article**) is based upon a scale of 1 through 5, with a 1 representing the highest rating and lowest level of supervisory concern and a 5 representing the lowest level of performance and highest degree of supervisory concern. The rating system recognizes proactive compliance programs as attributes tied to 1-rated institutions:

> Strong compliance programs are proactive. They promote consumer protection by preventing, self-identifying, and addressing compliance issues in a proactive manner. Accordingly, the CC Rating System provides incentives for such practices through the definitions associated with a 1 rating.[2]

Board and Management Oversight

Examiners consider four factors, commensurate with an institution's size, complexity, and risk profile, when evaluating board and management oversight:

- oversight and commitment

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The Effects of Communications and Organizational Structure on Compliance Management

By Katie Ringwald, Supervisory Examiner, Federal Reserve Bank of St. Louis

How does your organization structure compliance? Who is tasked with overseeing compliance, and how are the responsibilities delineated? Are appropriate staff members receiving the information they need in a timely fashion? How does the board and senior management stay apprised of compliance issues?

As these questions suggest, an organization's structure, including its assignment of compliance responsibilities among specific personnel, can significantly impact its compliance management system (CMS). While the appropriate structure will vary among institutions (based on their risk profile, products, asset size, and other factors), all institutions benefit from clear communications and appropriate reporting lines to mitigate risk and avoid compliance management deficiencies. It is therefore important for banks to ensure that board and senior management are appropriately informed to make decisions in their role overseeing the CMS.

This article reviews three case studies to illustrate how deficiencies in an institution's compliance structure and communications process can adversely affect CMS. After each scenario, we explore the root cause of the identified issues and examples of proactive actions the institutions could have undertaken to prevent them from occurring. Each discussion concludes with key takeaways and sound practices to consider to facilitate compliance management.

CASE 1: MANAGING FAIR LENDING RISK

During a compliance examination of a $600 million bank, examiners noted compliance weaknesses in the rapidly growing mortgage division, including management turnover; unclear staff roles, responsibilities, and expectations; and inadequate communication among the board, bank management, and mortgage division management. Examiners raised the following concerns with management:

- Since the previous examination, the board hired a new compliance officer (CO) with oversight of the bank's overall compliance and fair lending programs.
- The CO reported directly to the bank's chief risk officer (CRO), who was responsible for communicating fair lending issues with the board but was not involved in day-to-day compliance management. Additionally, the CO's communication to the CRO was limited and high level.
- Additional fair lending training was not provided to the CO because of prior loan compliance experience.
- Mortgage division staff indicated to examiners that the CO performed fair lending reviews.
- Discussions with the CO revealed that although the CO performed fair lending reviews for the bank, neither those reviews nor the broader fair lending program, which included fair lending policies and other internal controls, encompassed the mortgage division in their scope.

- Examiners noted disparities in the bank's mortgage lending patterns in majority–minority census tracts when compared with a group of comparable lenders. Without the CO conducting fair lending analyses of mortgage lending patterns, bank management was unaware of these deficiencies.

Given the substantial gap in the bank's CMS, examiners issued supervisory guidance directing the bank to develop a fair lending risk management program commensurate with its risk profile, including the increased risk from growth in its mortgage division. Sound practices that could have prevented these compliance weaknesses include accountability, training, and communication, which are discussed next.

Accountability: The board and senior management could have prevented the fair lending weaknesses by clearly identifying and communicating the individuals responsible and accountable for each component of the CMS. One effective approach is to assign an "owner" for each compliance regulation and product line specific to the scope of the bank's activities. For example, a staff member(s) could be assigned ownership of Regulation B/Equal Credit Opportunity Act and the Fair Housing Act. The scope of ownership could be defined to include all loan products, and the owner could then assign specific duties to ensure compliance. Clarity is key in establishing roles and responsibilities, which are often outlined in a written policy. (The institution in this example had a formal compliance policy in place, but it had not been updated since the previous CO departed or since the recent growth of the mortgage division.) To ensure consistency and accountability, an effective control would be to schedule regular reviews of policies and procedures to ensure they clearly outline staff roles and responsibilities, including upon significant personnel or business-related changes.

Training: Given the CO's limited fair lending background, the training provided for the new CO was inadequate to effectively manage and oversee the compliance and fair lending programs for the entire bank and mortgage division. It is the responsibility of the board and senior management to ensure designated compliance personnel receive the appropriate training to be able to manage their responsibilities. Specifically, compliance staff need resources, including regular, designated training time and access to reputable training sources, to capably fulfill their assigned duties and stay abreast of regulatory changes.

Communication: This institution filtered compliance information to the board through the CRO, who only provided high-level summaries to the directors. While this approach may be appropriate for some institutions, it requires the front-line compliance managers to keep the CRO apprised of compliance issues. The head of the mortgage division also reported to the board but did not focus on consumer compliance. As a result, the board was not informed of the compliance risks for its mortgage operations. Had the board and management been more involved in managing compliance risk and the changes that occurred during the review period, they may have recognized that growth in the mortgage division increased fair lending risk and taken appropriate action.

> "One specific challenge examiners have observed is business lines operating in silos."

One specific challenge examiners have observed is business lines operating in silos. As seen in this example, the mortgage division operated largely on its own, and the CO did not request or receive the information necessary to provide appropriate fair lending risk management. This type of breakdown can occur when compliance departments are isolated from specific business lines (such as a separate commercial division, mortgage division, or marketing department). An attentive and informed CRO can help prevent these breakdowns. Communications across different business lines are important to ensure compliance issues affecting multiple areas are being identified and addressed.

CASE 2: AN ABSENCE OF AUTHORITY

Examiners recently reviewed a $1 billion institution experiencing steady, organic growth. While this institution had a capable and experienced CO, the bank's reporting lines limited the CO's ability to enact change. As the review continued, examiners found:

- The CO was responsible for overseeing periodic compliance reviews, including transaction testing of loan and deposit accounts. The compliance reviews effectively identified issues, and findings were assigned to business line managers and tracked on a log. Despite this system, examiners identified multiple repeat findings, indicating that management was aware of consumer compliance issues but did not consistently correct them.
- The board expected business line managers to work with and support compliance management; however, resolution of issues depended on individual business line managers to work with compliance staff. Business line managers were responsible for reporting department

summaries to the board. As a result, the board was often unaware of the severity of compliance issues or the status of corrective actions.

Examiners determined the bank's reporting structure was ineffective. They subsequently downgraded the institution's compliance rating and issued supervisory guidance to ensure compliance resources were appropriate to provide effective oversight of the CMS. Sound practices that could have prevented these oversights from occurring include establishing authority and improvements in communication.

Authority: Sound compliance programs ensure those tasked with overseeing compliance management have the authority to effect change. This can be accomplished through reporting systems that inform the board and senior leadership of compliance issues as they arise. Effective reporting systems are detailed enough to apprise the board of severe, systemic, or repeat compliance issues in a timely manner. Creating incentives for department managers to maintain compliance in their respective business lines can also help ensure issues are corrected. Even when a single employee (such as the CO) is formally delegated to oversee a bank's compliance system, sound compliance management programs include board and management teams that value compliance throughout the organization and set the "tone at the top."[1]

Communication: Communication is critical for achieving desired compliance outcomes. In this example, more detailed reporting to the board may have resulted in quicker responses from business line leads and prompted corrective action. Sound practices that examiners have observed at strong institutions include regularly evaluating membership on compliance and audit committees to ensure a consistent flow of information across all involved departments and product lines, and regular compliance discussions and training at the board level. Compliance information provided to the board should be detailed enough to convey the bank's risks. The method of communication may vary, depending on the complexity of the institution's operations. For example, smaller, less complex institutions may use committee minutes as a reporting mechanism, while larger institutions may display compliance reports on sophisticated dashboards.

CASE 3: UNDERSTANDING YOUR OPERATIONS

A $350 million community bank offering a standard mix of consumer and commercial loan and deposit products had implemented a new overdraft program with minimal input from compliance staff regarding the specifics of the software setup. During the following exam, regulators made these observations:

- Compliance personnel believed and informed regulators that the bank's software assessed overdraft fees on the "available balance."

> "Effective communication may require different departments and business lines to collaborate and to focus on breaking down silos. No one type of organizational structure is right for all institutions ..."

- By reviewing account histories, examiners found that for all types of transactions, the deposit platform's software settings actually imposed overdraft fees based on the "actual/ledger balance."

Examiners observed a weakness in the CMS related to oversight of the overdraft program given compliance management's lack of understanding of the bank's overdraft operations. A sound practice that could have prevented this oversight is collaboration.

Collaboration: Knowledgeable compliance personnel fully understand their institution's systems and operations to identify potential consumer compliance risks. In this scenario, compliance staff were not properly informed or consulted in the setup of the new program. If compliance had been involved in reviewing the software settings, researching available options, and making intentional decisions about the program setup, the misunderstanding of how the bank's overdraft program worked could have been avoided. As it sounds, collaboration requires the institution's various business lines and departments to work together. In this instance, effective collaboration may have looked like having the IT department explain how the software operates to the compliance staff and seeking input. Compliance and IT may have also collaborated with the software provider for more information on their options to make informed decisions.

CONCLUSION

The structure and lines of communication in a bank's compliance operations can help prevent compliance concerns and address them when they occur. Sound practices include setting up an organizational structure that ensures accountability for all compliance regulations as they relate to the institution's business activities. Strong compliance programs provide training to compliance staff to ensure they understand their duties and make sure they have the authority to enact change. Once the structure is established, sound programs ensure appropriately detailed communication among the various internal and external parties involved, with a focus on communicating compliance information to the board and senior management. Effective communication may require different departments and business lines to collaborate and to focus on breaking down silos. No one type of organizational structure is right for all institutions, but the sound practices discussed in this article are generally applicable. Specific questions should be raised with your primary regulator. ■

Thank You, Katie Ringwald

Consumer Compliance Outlook (CCO) thanks Katie Ringwald, a supervisory examiner at the Federal Reserve Bank of St. Louis and a member of the *CCO* writers' cohort, for her service on the cohort. The cohort is a group of supervisory staff at the Reserve Banks who frequently contribute articles to *CCO*. Katie is rotating off the cohort after her five-year tenure. In addition to this article in the current issue, she has written "Mortgage Servicing: Managing Change" (Fourth Issue 2020) and "Early Observations on the TILA-RESPA Integrated Disclosure Rule" (Fourth Issue 2019).

Endnotes*

1 See Robert L. Triplett II, "Understanding How Culture Drives a Bank's Mission," *Consumer Compliance Outlook* (First Issue 2018).

2 For a more complete overview of the elements of effective board and management oversight, see Consumer Affairs Letter 13-21: Guidance on Managing and Outsourcing Risk (Revised February 26, 2021). Note: In 2021, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency issued for comment "Proposed Interagency Guidance on Third-Party Relationships: Risk Management." See 86 *Federal Register* 38182 (July 19, 2021). The comment period closed, and the agencies are working on the final guidance.

3 This topic was discussed in more detail in the 2018 issue of the Federal Reserve Board's *Consumer Compliance Supervisory Bulletin*.

* 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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Elements of a Strong Compliance Management System Under the FFIEC Compliance Rating System

- change management
- comprehending, identifying, and managing risk, and
- corrective action and self-identification

Oversight and Commitment

Boards of directors and management of 1-rated institutions demonstrate a strong commitment to and oversight of their CMS by implementing forward-looking strategic initiatives and actively participating in managing risk. As an example, an institution may actively participate in the compliance management program by directly involving executive management in compliance activities. Such activities place the importance of compliance at the top, effectively promoting a culture of compliance throughout the institution.

Additionally, 1-rated institutions dedicate substantial compliance resources to the compliance function, including systems and human capital. Staff at these institutions, for example, have extensive experience, expertise, and depth to manage risks. Finally, 1-rated institutions conduct comprehensive and ongoing due diligence of third parties to effectuate strong third-party oversight. While many institutions rely on third-party vendors to provide products, services, and systems, a 1-rated institution may extend board and management oversight beyond its own compliance risk management program to that of its third-party vendors to ensure they meet contractual obligations and comply with legal and regulatory requirements specific to consumer protection consistent with agency standards.

Change Management
Management at institutions with a strong CMS anticipates and responds promptly to changes in applicable laws and regulations, market conditions, and products and services offered. Management at 1-rated institutions may prepare for such changes by defining and providing examples of what constitutes a change, examples of which include new and changed vendor relationships, as well as regulatory updates. Management may also demonstrate a strong management of change through proactive measures in advance of upcoming changes; for example, management may require the compliance department and impacted business lines to review and approve changes before they take effect to ensure compliance with applicable consumer protection laws and regulations.

Management at 1-rated institutions conducts due diligence in advance of product changes, considers the entire life cycle of a product or service, and conducts a postimplementation review to determine whether the actions taken have achieved the expected results. For example, as a part of its due diligence of a new product, management may develop and follow approval processes associated with implementing the new product and require a post-implementation review.[3]

Comprehending, Identifying, and Managing Risk
Management at 1-rated institutions has a solid comprehension of and effectively identifies compliance risks and actively engages in managing those risks. Management at these institutions completes comprehensive risk assessments at established frequencies. The risk identification and assessment processes generally become increasingly formal and extensive as an institution's size, complexity, and risk profile increase; for example, an annual risk assessment may be appropriate for a small, noncomplex bank, while completing a risk assessment at a large, complex institution may be an ongoing, collaborative effort among senior management, the compliance department, and internal audit. Institutions with a strong CMS maintain comprehensive risk assessments that include, as examples, business lines and relevant rules and regulations, as well as a breakdown of associated inherent risk, risk controls, and residual risk.

Corrective Action and Self-Identification
Banks with a strong CMS proactively identify issues and promptly respond to compliance risk management deficiencies and violations. One-rated institutions may complete a root cause analysis of deficiencies and violations to ensure that remediation is timely, appropriate, and comprehensive. For example, an institution that completes a root cause analysis of a self-identified joint intent violation may find that written policies and procedures do not include sufficient joint intent information to ensure that staff complies with relevant regulatory requirements. Here, the root cause analysis helps to inform appropriate and comprehensive remediation. A 1-rated institution may also contact its primary regulator to determine whether its remediation efforts are sufficient. The CC Rating System assigns a 1-rating to institutions that proactively identify issues and promptly respond to deficiencies and violations, including remediation.

Overall Compliance Program

Examiners consider four factors when evaluating an institution's CMS, commensurate with its size, complexity, and risk profile:

- policies and procedures
- training
- monitoring and/or audit, and
- consumer complaint response

Policies and Procedures
One-rated institutions have policies and procedures and third-party relationship management programs that are comprehensive and provide standards to effectively manage compliance risks. Institutions with a strong CMS have compliance policies and procedures that are strong, comprehensive, and provide standards to effectively manage compliance risks. Policies and procedures should address all applicable regulatory requirements, be updated to remain current, and serve as a resource tool for staff.

One-rated institutions have third-party relationship management programs that are comprehensive and provide standards to effectively manage compliance risks. Institutions often rely on third parties for products and services, including but not limited to processing systems, marketing, and Internet banking. Institutions with a strong CMS maintain a third-party management program that may include written, formalized initial and ongoing due diligence requirements and contingency plans, as examples.

Training
Compliance training for 1-rated institutions is comprehensive, timely, and tailored to the responsibilities of the staff receiving it. One-rated institutions have training programs that include all applicable regulatory requirements, compliance risks, and risk mitigation methods. These training programs may have varied delivery methods, including but not limited to face-to-face training and computer-based training modules. Additionally, 1-rated institutions provide regular and timely training to staff, including at the outset of employment and upon changes in staff responsibilities and regulatory requirements.

Monitoring and/or Audit
One-rated institutions have strong compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems that are comprehensive, timely, and successful at identifying and measuring compliance risk. Monitoring and audit activities at 1-rated institutions are comprehensive, informed by the bank's risk assessments, and generally include all of the bank's products, services, and activities. Additionally, a 1-rated institution's monitoring and audit activities are timely and aim to proactively identify violations and deficiencies, thereby limiting any potential consumer harm. Finally, monitoring and audit activities at 1-rated institutions are successful at identifying and measuring compliance risk; these activities occur at established frequencies and are clearly documented.

Consumer Complaint Response
Institutions with a strong CMS maintain processes and procedures for addressing consumer complaints, including completing prompt and thorough investigations and responses, and monitoring complaints to identify risks. For example, a 1-rated institution may have a complaint policy outlining an individual or department responsible for investigating and responding to complaints. Additionally, management may delegate responsibility for compiling and monitoring complaint information to the compliance officer or relevant department. *Outlook* previously published an article on this topic that institutions may find helpful when reviewing their complaint operations.[5]

Violations of Law and Consumer Harm

Examiners consider four factors when evaluating violations and any resulting consumer harm:

- root cause
- severity
- duration, and
- pervasiveness

Root Cause
The root cause assessment factor analyzes the degree to which weaknesses in the CMS gave rise to the violations. For a strong CMS, violations are generally the result of minor weaknesses, if any, in the compliance risk management system. Often, however, the root cause of a violation is tied to a weakness in one or more elements of the CMS. An example of this would be a violation related to a disclosure that lacks required information. The root cause of the violation may include a weakness in board and management oversight if the institution outsources the maintenance of the disclosure to a third-party vendor and management did not identify that the vendor did not comply with regulatory requirements. The root case may also include a weakness in monitoring and audit if the group responsible for reviewing the disclosure did not identify that the disclosure lacked required information.

Severity
The severity assessment factor weighs the type of consumer harm, if any, that resulted from violations. More severe harm results in a higher level of supervisory concern under this factor. If violations are identified for a 1-rated institution, the violations are generally the result of minor weaknesses, if any, in the compliance risk management system.

Duration
The duration assessment factor considers the length of time over which violations occurred. Violations that persist over an extended period of time will raise greater supervisory concerns than violations that occur for only a brief period of time. If violations are identified for an institution with a strong CMS, the violations and resulting consumer harm, if any, generally occurred over a brief period of time. An example of this may occur within an institution that increased a deposit account fee in January 2022 but unintentionally neglected to update its disclosure to reflect the increase until March 2022; this violation and any resulting consumer harm occurred over a brief period of time and would not be likely to raise supervisory concern.

Pervasiveness
Finally, the pervasiveness assessment factor evaluates the extent of the violations and resulting consumer harm, if any. Violations that affect a large number of consumers raises greater supervisory concern than violations that impact a limited number of consumers. If violations are identified for a 1-rated institution, the violations and any resulting consumer harm are typically isolated in number.

It is important to note that institutions may receive a less-than-satisfactory rating when no violations were identified *based on deficiencies or weaknesses in the CMS*. Similarly, institutions may receive a satisfactory (2) or strong (1) rating even when violations are present *if the CMS is commensurate with the institution's risk profile and complexity.*

CONCLUSION

The CC Rating System provides a general framework for assessing risks during the supervisory process and assigning an overall consumer compliance rating to regulated institutions. The CC Rating System assigns higher ratings for CMSs that prevent, self-identify, and address compliance issues proactively, while recognizing that the appropriate CMS varies based on the size, complexity, and risk profile of each institution. Specific issues and questions about consumer compliance matters should be raised with your primary regulator. ■

TABLE 1: FFIEC Ratings Matrix					
Assessment Factors to Be Considered	**1**	**2**	**3**	**4**	**5**
Board and Management Oversight Board and management oversight factors should be evaluated commensurate with the institution's size, complexity, and risk profile. The compliance expectations below extend to third-party relationships.					
Oversight and Commitment	Board and management demonstrate strong commitment and oversight to the financial institution's compliance management system.	Board and management provide satisfactory oversightof the financial institution's compliance management system.	Board and management oversight of the financial institution's compliance management system is deficient.	Board and management oversight, resources, and attention to the compliance management system are seriously deficient.	Board and management oversight, resources, and attention to the compliance management system are critically deficient.
	Substantial compliance resources are provided, including systems, capital, and human resources commensurate with the financial institution's size, complexity, and risk profile. Staff is knowledgeable, empowered, and held accountable for compliance with consumer laws and regulation	Compliance resources are adequate, and staff is generally able to ensure the financial institution complies with consumer laws and regulations.	Compliance resources and staff are inadequate to ensure the financial institution complies with consumer laws and regulations.	Compliance resources and staff are seriously deficient and are ineffective at ensuring the financial institution's compliance with consumer laws and regulations.	Compliance resources are critically deficient in supporting the financial institution's compliance with consumer laws and regulations, and management, and staff are unwilling or incapable of operating within the scope of consumer protection laws and regulations.
	Management conducts comprehensive and ongoing due diligence and oversight of third parties consistent with agency expectations to ensure that the financial institution complies with consumer protection laws and exercises strong oversight of third parties' policies, procedures, internal controls, and training to ensure consistent oversight of compliance responsibilities.	Management conducts adequate and ongoing due diligence and oversight of third parties to ensure that the financial institution complies with consumer protection laws, and adequately oversees third parties' policies, procedures, internal controls, and training to ensure appropriate oversight of compliance responsibilities.	Management does not adequately conduct due diligence and oversight of third parties to ensure that the financial institution complies with consumer protection laws nor does it adequately oversee third parties' policies, procedures, internal controls, and training to ensure appropriate oversight of compliance responsibilities.	Management oversight and due diligence over third-party performance, as well as management's ability to adequately identify, measure, monitor, or manage compliance risks, is seriously deficient.	Management oversight and due diligence of third-party performance is critically deficient.

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TABLE 1: FFIEC Ratings Matrix

Assessment Factors to Be Considered	1	2	3	4	5
			Board and Management Oversight		
Change Management	Management anticipates and responds promptly to changes in applicable laws and regulations, market conditions, and products and services offered by evaluating the change and implementing responses across impacted lines of business. Management conducts due diligence in advance of product changes, considers the entire life cycle of a product or service in implementing change, and reviews the change after implementation to determine that actions taken have achieved planned results.	Management responds timely and adequately to changes in applicable laws and regulations, market conditions, and products and services offered by evaluating the change and implementing responses across impacted lines of business. Management evaluates product changes before and after implementing the change.	Management does not respond adequately and/or timely in adjusting to changes in applicable laws and regulations, market conditions, and products and services offered.	Management's response to changes in applicable laws and regulations, market conditions, or products and services offered is seriously deficient.	Management fails to monitor and respond to changes in applicable laws and regulations, market conditions, or products and services offered.
Comprehension, Identification, and Management of Risk	Management has a solid comprehension of and effectively identifies compliance risks, including emerging risks, in the financial institution's products, services, and other activities. Management actively engages in managing those risks, including through comprehensive self-assessments.	Management comprehends and adequately identifies compliance risks, including emerging risks, in the financial institution's products, services, and other activities. Management adequately manages those risks, including through self-assessments.	Management has an inadequate comprehension of and ability to identify compliance risks, including emerging risks, in the financial institution's products, services, and other activities.	Management exhibits a seriously deficient comprehension of and ability to identify compliance risks, including emerging risks, in the financial institution.	Management does not comprehend or identify compliance risks, including emerging risks, in the financial institution.

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TABLE 1: FFIEC Ratings Matrix					
Assessment Factors to Be Considered	**1**	**2**	**3**	**4**	**5**
Board and Management Oversight					
Corrective Action and Self-Identification	Management proactively identifies issues and promptly responds to compliance risk management deficiencies and any violations of laws or regulations, including remediation.	Management adequately responds to and corrects deficiencies and/or violations, including adequate remediation, in the normal course of business.	Management does not adequately respond to compliance deficiencies and violations, including those related to remediation.	Management response to deficiencies, violations, and examination findings is seriously deficient.	Management is incapable, unwilling and/or fails to respond to deficiencies, violations or examination findings.
Compliance Program These factors should be evaluated commensurate with the institution's size, complexity, and risk profile. The compliance expectations below extend to third-party relationships.					
Policies and Procedures	Compliance policies and procedures and third-party relationship management programs are strong, comprehensive, and provide standards to effectively manage compliance risk in the products, services, and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are adequate to manage the compliance risk in the products, services, and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are inadequate at managing the compliance risk in the products, services, and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are seriously deficient at managing compliance risk in the products, services, and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are critically absent.
Training	Compliance training is comprehensive, timely, and specifically tailored to the particular responsibilities of the staff receiving it, including those responsible for product development, marketing, and customer service. The compliance training program is updated proactively in advance of the introduction of new products or new consumer protection laws and regulations to ensure that all staff are aware of compliance responsibilities before rolled out.	Compliance training outlining staff responsibilities is adequate and provided timely to appropriate staff. The compliance training program is updated to encompass new products and to comply with changes to consumer protection laws and regulations.	Compliance training is not adequately comprehensive, timely, updated, or appropriately tailored to the particular responsibilities of the staff.	Compliance training is seriously deficient in its comprehensiveness, timeliness, or relevance to staff with compliance responsibilities, or has numerous major inaccuracies.	Compliance training is critically absent.

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TABLE 1: FFIEC Ratings Matrix					
Assessment Factors to Be Considered	**1**	**2**	**3**	**4**	**5**
Compliance Program					
Monitoring and/or Audit	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems are comprehensive, timely, and successful at identifying and measuring material compliance risk management throughout the financial institution. Programs are monitored proactively to identify procedural or training weaknesses to preclude regulatory violations. Program modifications are made expeditiously to minimize compliance risk.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems adequately address compliance risks throughout the financial institution.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems do not adequately address risks involving products, services, or other activities including timing and scope.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal controls are seriously deficient in addressing risks involving products, services, or other activities.	Compliance monitoring practices, management information systems, reporting, compliance audit, or internal controls are critically absent.
Consumer Complaint Response	Processes and procedures for addressing consumer complaints are strong. Consumer complaint investigations and responses are prompt and thorough. Management monitors consumer complaints to identify risks of potential consumer harm, program deficiencies, and customer service issues and takes appropriate action.	Processes and procedures for addressing consumer complaints are adequate. Consumer complaint investigations and responses are generally prompt and thorough. Management adequately monitors consumer complaints and responds to issues identified.	Processes and procedures for addressing consumer complaints are inadequate. Consumer complaint investigations and responses are not thorough or timely. Management does not adequately monitor consumer complaints.	Processes and procedures for addressing consumer complaints and consumer complaint investigations are seriously deficient. Management monitoring of consumer complaints is seriously deficient.	Processes and procedures for addressing consumer complaints are critically absent. Meaningful investigations and responses are absent. Management exhibits a disregard for complaints or preventing consumer harm.

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TABLE 1: FFIEC Ratings Matrix

Assessment Factors to Be Considered	1	2	3	4	5
Violations of Law and Consumer Harm					
Root Cause	The violations are the result of minor weaknesses, if any, in the compliance risk management system.	The violations are the result of modest weaknesses in the compliance risk management system.	The violations are the result of material weaknesses in the compliance risk management system.	The violations are the result of serious deficiencies in the compliance risk management system.	The violations are the result of critical deficiencies in the compliance risk management system.
Severity	The type of consumer harm, if any, resulting from the violations would have a minimal impact on consumers.	The type of consumer harm resulting from the violations would have a limited impact on consumers.	The type of consumer harm resulting from the violations would have a considerable impact on consumers.	The type of consumer harm resulting from the violations would have a serious impact on consumers.	
Duration	The violations and resulting consumer harm, if any, occurred over a brief period of time.	The violations and resulting consumer harm, if any, occurred over a limited period of time.	The violations and resulting consumer harm, if any, occurred over an extended period of time.	The violations and resulting consumer harm, if any, have been long-standing or repeated.	
Pervasiveness	The violations and resulting consumer harm, if any, are isolated in number.	The violations and resulting consumer harm, if any, are limited in number.	The violations and resulting consumer harm, if any, are numerous.	The violations and resulting consumer harm, if any, are widespread or in multiple products or services.	

Endnotes*

[1] See 2016 Uniform Interagency Consumer Compliance Rating System, p. 2.

[2] See 2016 Uniform Interagency Consumer Compliance Rating System, p. 23; see also Kathleen Benson, "The Benefits of a Proactive Compliance Program," *Consumer Compliance Outlook* (Issue 3 2020).

[3] For additional resources, see Allison Burns, "Promoting Effective Change Management," *Consumer Compliance Outlook* (Second Issue 2019) and Mark Serlo, "Managing Risk Throughout the Product Life Cycle," (Second Quarter 2015).

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

[5] See Andrea Sovich, "Enhancing the Compliance Management Program with Complaint Data," *Consumer Compliance Outlook* (Second Quarter 2012).

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

The Consumer Financial Protection Bureau (Bureau) will issue the final implementing regulations for §1071 of the Dodd–Frank Act (DFA) by March 31, 2023. Section 1071 of the DFA directed the Bureau to issue implementing regulations under the Equal Credit Opportunity Act (ECOA) for financial institutions to collect and report data on applications for credit for women-owned, minority-owned, and small businesses. In 2019, when the rulemaking had not yet been initiated, community groups filed a lawsuit to compel the Bureau to issue the regulations. *California Reinvestment Coalition v. CFPB* (N.D. Cal. 2019). In response to the lawsuit, the Bureau published a proposed rule in the *Federal Register* in October 2021 to implement §1071. On July 11, 2022, the Bureau entered into a court-approved stipulation with the community group plaintiffs to issue a final rule by March 31, 2023. In the October 2021 rulemaking, the Bureau proposed a mandatory compliance date of 18 months after the date the final rule is published in the *Federal Register.*

The Bureau issues Advisory Opinion on permissible purposes for furnishing, using, and obtaining consumer reports under the Fair Credit Reporting Act (FCRA). On July 12, 2022, the Bureau published an Advisory Opinion in the *Federal Register* to clarify the legal requirements under the FCRA for using and providing a consumer report.[1] Under §604 of the FCRA (15 U.S.C. §1681b), a consumer reporting agency (CRA) may only provide a consumer report to someone with a permissible purpose, as defined in the FCRA. The Advisory Opinion discusses several circumstances of concern:

- A CRA's use of insufficient procedures to match information about a consumer to the actual consumer, which can result in a CRA providing a report to entities without a permissible purpose.
- The use of "possible matches," where the name of someone in a record is listed in a consumer report as a possible match for the person for whom the consumer report was requested, does not provide a CRA "reason to believe" the information it provides pertains to the consumer and can result in CRAs providing consumer information to users who lack a permissible purpose. This includes providing consumer reports of multiple people as "possible matches" without taking steps to identify the individual subject to the request.

The Advisory Opinion clarifies that the "permissible purposes" for obtaining a consumer report in the FCRA only apply to the consumer for whom the CRA received a request and that a CRA's use of disclaimers about insufficient matching procedures does not cure a permissible purpose violation. A CRA must have reason to believe that the user requesting a consumer report has a permissible purpose and that all of the information it provided in the consumer report relates to the consumer for whom it received the request. In addition, users of credit reports must ensure that they do not violate the FCRA by using a credit report when they lack a permissible purpose for doing so. The Advisory Opinion also discusses potential criminal liability under §619 of the FCRA (15 U.S.C. §1681q) for knowingly or willfully obtaining information on a consumer from a CRA under false pretenses and under §620 of the FCRA (15 U.S.C. §1681r) for any officer or employee of a CRA who knowingly and willfully provides a person's information to an unauthorized person.

The Bureau issues its spring 2022 regulatory agenda. On April 1, 2022, the Bureau released its spring 2022 regulatory agenda, as part of the spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau indicated the agenda covers the regulatory matters it reasonably anticipates having under consideration from June 1, 2022, to May 31, 2023. The agenda includes:

- **Consumer Access to Financial Records.** The Bureau is working on a rulemaking to implement §1033 of the Dodd–Frank Act, concerning consumers' rights to access their financial records. The Bureau has conducted preliminary work on this rulemaking for several years, including issuing a request for information (RFI) in 2016, publishing consumer protection principles and a summary of comments from the 2016 RFI that informed these principles in 2017, holding a symposium on the issues related to this rulemaking in February 2020, and publishing an advanced notice of proposed rulemaking in November 2020. The Bureau expects to release materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act in late 2022.
- **Automated Valuation Models (AVMs) under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).** The Bureau is working with the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency to develop regulations to implement the FIRREA amendments in the Dodd–Frank Act regarding AVMs. The agencies expect to issue a rulemaking proposal in late 2022.
- **Property Assessed Clean Energy (PACE) Financing.** The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 requires the Bureau to issue regulations under the Truth in Lending Act to apply ability-to-repay requirements to residential

PACE loans. Residential PACE loans are generally financing that results in a tax assessment on a consumer's real property and covers the costs of certain energy efficient and environmentally focused home improvements. The Bureau expects to issue a notice of proposed rulemaking by May 2023.

- **Small Business Lending Data Collection under the ECOA.** The Bureau indicated a final rule is the next stage in the rulemaking process. As discussed earlier, since the agenda was issued, the Bureau agreed to issue the final rule by March 31, 2023.
- **Adverse Information in Cases of Human Trafficking Under the Fair Credit Reporting Act (FCRA).** The Bureau issued a final rule on June 24, 2022, to amend Regulation V to implement a FCRA requirement that assists victims of human trafficking who have adverse information on their consumer reports as a result of the trafficking.

The Board, the FDIC, and the OCC issue host state loan-to-deposit ratios. On June 28, 2022, the Board, the FDIC, and the OCC issued the host state loan-to-deposit ratios that the agencies use in evaluating compliance with §109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Congress enacted §109 to ensure that an interstate branch would not take deposits from a community without the bank reasonably helping to meet the credit needs of that community. Accordingly, §109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the purpose of deposit production. Additionally, branches of banks controlled by out-of-state bank holding companies are prohibited from operating primarily for the purpose of deposit production.

The Bureau issues an advance notice of proposed rulemaking (ANPR) for information about credit card late fees. On June 29, 2022, the Bureau published an ANPR in the *Federal Register* to solicit information about credit card late fees and late payments. Under the Credit Card Accountability Responsibility and Disclosure Act of 2009, credit card late fees must be "reasonable and proportional" to the card issuer's costs for a late payment. Issuers must document their costs to show a fee is reasonable and proportionate or use the inflation-adjusted safe harbor in the regulation (currently $30 for the first late payment and $41 for other late payments made within six billing cycles of the initial late payment). The Bureau is soliciting information about late fees to determine whether it should revisit the safe harbor amounts, focusing on the following issues:

- the factors card issuers use to set late fees
- card issuers' costs and losses from late payments
- deterrent effects of late fees
- cardholders' late payment behavior methods card issuers use to facilitate or encourage timely payments
- card issuers' use of the late fee safe harbor provisions in Regulation Z, and
- card issuers' revenue and expenses related to their domestic consumer credit card operations

The comment period closed on August 1, 2022.

The Federal Financial Institutions Examination Council (FFIEC) releases 2021 data under the Home Mortgage Disclosure Act (HMDA). On June 16, 2022, the FFIEC released HMDA data for 2021 from 4,338 HMDA filers, including these summary statistics:

- The number of filers declined by about 3.1 percent from 4,475 in 2020 to 4,338 in 2021.
- There were 23.3 million home loan applications reported, of which 21.1 million were closed-end, and 1.8 million were open-end, with an additional 350,000 loans that did not indicate if they were closed-end or open-end.
- Nondepository, independent mortgage companies accounted for 63.9 percent of first-lien, one- to four-family, site-built, owner-occupied home-purchase loans, compared with 60.7 percent in 2020.
- The share of first-lien, one- to four-family, site-built, owner-occupied closed-end home purchase loans for Black or African American borrowers rose from 7.3 percent in 2020 to 7.9 percent in 2021, the share made to Hispanic borrowers increased slightly from 9.1 percent to 9.2 percent, and those made to Asian borrowers increased from 5.5 percent to 7.1 percent.
- In 2021, Black or African American and Hispanic applicants experienced denial rates for first-lien, one- to four-family, site-built, owner-occupied conventional, closed-end home purchase loans of 15.7 percent and 9.8 percent, respectively, while the denial rates for Asian and non-Hispanic applicants were 7.5 percent and 5.6 percent, respectively.

The Bureau issues its annual report on consumer complaints of servicemembers for 2021. Section 1013(d) of the Dodd–Frank Act requires the Bureau to monitor complaints of servicemembers and their families. In response, the Bureau annually publishes a report analyzing the complaints it has received from servicemembers and their families. On June 13, 2022, the Bureau issued its 2021 report. The report highlighted the following issues:

- **Credit reporting**: Servicemembers submitted more than 17,000 credit or consumer reporting complaints, the top topic for complaints.

- **Investigations of national consumer reporting agencies**: Credit reporting companies were not responsive to servicemembers' requests for investigations. Complaints indicated that investigations took too long and failed to correct errors on their credit reports. Servicemembers reported that they feared that inaccurate medical billing information on their credit reports could cause harm to their careers.
- **Medical billing errors and inaccuracies on credit reports**: Servicemembers experienced debt collection and credit reporting activity for unpaid medical bills. In 2021, more than half of medical debt collection complaints from servicemembers were about debts the individuals reported they did not owe. Many complaints involved communication issues between private health-care providers and TRICARE, the health insurance program for active-duty military.

To address these concerns, the report includes the following recommendations:

- **Medical providers and third-party billing companies should have adequate systems in place to serve servicemembers, veterans, and military families enrolled in TRICARE and the Veterans Choice Program**: Complaints suggest that billing issues often occur when providers or third-party billing companies fail to work with TRICARE or the Veterans Choice Program to get paid for servicemembers' care.
- **Medical providers, as well as nationwide credit reporting companies, should consider emulating recent changes by the Department of Veterans Affairs**: Veterans Affairs recently implemented a new rule that includes requirements to exhaust all other collection efforts and to review patients' ability to repay before reporting a medical debt as unpaid. Delayed reporting of servicemembers' allegedly unpaid medical bills to credit reporting companies for a period of time can afford servicemembers an opportunity to address inaccuracies.

Bureau issues guidance on adverse action notice (AAN) requirements for credit decisions based on complex algorithms. On May 26, 2022, the Bureau issued Circular 2022-03 to clarify the AAN requirements when a creditor uses a complex algorithm in its credit decision. Some creditors rely on complex algorithms in making credit decisions.[2] When adverse action is taken based on the algorithm, the specific reason for taking adverse action may not always be clear. Circular 2022-03 clarifies that the "adverse action notice requirements of ECOA and Regulation B, however, apply equally to all credit decisions, regardless of the technology used to make them. *Thus, ECOA and Regulation B do not permit creditors to use complex algorithms when doing so means they cannot provide the specific and accurate reasons for adverse actions."* (Emphasis added). The circular notes the Official Staff Commentary requires that "[t]he specific reasons disclosed … must relate to and accurately describe the factors actually considered or scored by a creditor." Comment 9(b)(1)-2. The Commentary also provides that when a credit scoring system is used, "no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant." See Comment 9(b)(2)-4. The circular concludes that "a creditor's lack of understanding of its own methods is therefore not a cognizable defense against liability for violating ECOA and Regulation B's requirements."

Endnotes*

1 The Bureau's Advisory Opinions are "interpretive rules under the Administrative Procedure Act that respond to a specific need for clarity on a statutory or regulatory interpretive quest."

2 The Bureau issues *Consumer Financial Protection Circulars* for parties with enforcement authority for federal consumer financial laws for which the Bureau has rulemaking authority "to promote consistency in approach across the various enforcement agencies."

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

On the Docket: Recent Federal Court Opinions*

REGULATION V — FAIR CREDIT REPORTING ACT (FCRA)

The Ninth Circuit holds that whether a furnisher conducted a reasonable investigation of disputed credit report information is a factual question for the jury. *Gross v. CitiMortgage, Inc.*, 33 F.4th 1246 (9th Cir. 2022). The consumer financed the purchase of a home in Arizona with two mortgage loans. After he later defaulted, the senior lender foreclosed on the property. The proceeds were insufficient to pay the balance owed on the junior loan, but under Arizona law, a creditor may not sue for a foreclosure deficiency, so the consumer liability on the debt was abolished. When the consumer later began shopping for a new home, CitiMortgage's junior loan appeared on his TransUnion credit report as past due and included interest and fees. The consumer filed a dispute with TransUnion and specifically cited the Arizona Anti-Deficiency Statute. CitiMortgage continued to report the loan as past due but noted the consumer disputed this and later reported the debt as charged off. The consumer sued CitiMortgage under the FCRA for failing to reasonably investigate the dispute and for furnishing inaccurate information. The district court held the information provided to the consumer reporting agencies was accurate and that CitiMortgage had reasonably investigated the consumer's disputes. The court granted summary judgment for CitiMortgage.

On appeal, the Ninth Circuit reversed. The court held the information CitiMortgage furnished was inaccurate as a matter of law because the Anti-Deficiency Statute, as interpreted by the Arizona Supreme Court, abolishes a debtor's personal liability for a mortgage loan after the property securing the loan is foreclosed. In this case, however, the consumer also needed to establish that CitiMortgage failed to conduct a reasonable investigation, which the court held is a factual issue for a jury to determine. Accordingly, the case was remanded back to the district court.

REGULATION Z — TRUTH IN LENDING ACT (TILA)

The Eleventh Circuit holds TILA monthly mortgage statements with debt collection language can be subject to the Fair Debt Collection Practices Act (FDCPA). *Daniels v. Select Portfolio Servicing, Inc.,* 34 F.4th 1260 (11th Cir. 2022). After the consumer defaulted on her residential mortgage loan, she entered into a mortgage modification agreement, under which she would make interest-only monthly payments and escrow amounts for 10 years, with the principal balance remaining at $189,911 during that period. The loan was later sold to Wells Fargo, which refused to accept the interest-only payments and filed a foreclosure action alleging borrower default. The borrower asked the foreclosure court to enforce the modification agreement, which the court granted. In addition to sanctioning Wells Fargo, the court ordered that $60,808.83 in payments not made or not accepted during the litigation be added to the loan balance when the modification agreement ended.

The mortgage servicer (Select Portfolio, Inc.) subsequently sent the borrower monthly mortgage statements required by the TILA and Regulation Z, several of which included an FDCPA disclaimer: "This is an attempt to collect a debt. All information obtained will be used for that purpose," along with other information about payments and the consequences of nonpayment. In June 2018, the borrower sued Select Portfolio for violations of the FDCPA, alleging that the statements were "harassing, false, and misleading" and that Select Portfolio's sending of the statements constituted "unfair practices in connection with the collection of a debt." Specifically, the borrower alleged that the statements misstated the amounts the borrower owed, among other errors — for example, one statement said the principal balance was $356,122 when it should have been $250,715. The lower court granted a motion to dismiss the case, finding the statements complied with the specifications for monthly mortgage statements under TILA and Regulation Z, and therefore were not communications in connection with the collection of a debt subject to the FDCPA.

On appeal, the Eleventh Circuit reversed, with one judge dissenting. The court held that the monthly mortgage statements at issue "can plausibly constitute communications in 'connection with the collection of a debt' under the FDCPA." The court pointed to four factors on which the holding was based: (1) the mortgage statements "contain 'this is an attempt to collect a debt' language" — which was not required by TILA or its implementing regulations; (2) "they request or demand payment of a certain amount by a certain date"; (3) "they provide for a late fee if the payment is not made on time"; and (4) "the history between the parties suggests that the statement is an attempt to collect on a disputed debt."

In light of these factors, the court rejected Select Portfolio's argument that the statements were required by the TILA and therefore not subject to the FDCPA. Having determined the FDCPA applied, the court remanded the case to determine whether the servicer violated the FDCPA.

The Eleventh Circuit holds that the TILA provision banning mandatory arbitration clauses for residential mortgage loans does not apply to a delegation clause specifying the arbitrator decides the scope of the arbitration. *Attix v. Carrington Mortgage Services, LLC,* 35 F.4th 1284 (11th Cir. 2022). The consumer made a mortgage payment to his loan servicer using SpeedPay, an automated third-party pay-by-phone service that charged a convenience fee for the payment. The terms and conditions for the service, to which the consumer agreed, required arbitration of disputes and also contained a "delegation clause" specifying that the arbitrator decides the scope of disputes subject to the arbitration. The consumer's class-action lawsuit alleged the convenience fee violated the FDCPA and Florida law because it was not expressly authorized by the term of mortgage agreement. The loan servicer filed a motion to compel arbitration, which the district denied because §1414(a) of the Dodd–Frank Act amended TILA to expressly prohibit residential mortgage agreements that "require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction."

On appeal, the Eleventh Circuit reversed. The court held that while TILA prohibits agreements requiring arbitration of the merits of a claim arising from a residential mortgage loan agreement, it does not apply to the threshold question of who determines if the dispute is arbitrable (a court or the arbitrator), including the issue of whether the arbitration agreement is enforceable. The court also noted the plaintiff agreed to the terms and conditions of the payment service, including its provision delegating the "threshold questions" of arbitrability to the arbitration.

The Fourth Circuit holds that the Dodd–Frank Act prohibits mandatory arbitration clauses in consumer agreements that relate to residential mortgage loans. *Lyons v. PNC Bank,* N.A., 26 F.4th 180 (4th Cir. 2022). The borrower opened a home equity line of credit (HELOC) in 2005 with PNC Bank and signed an agreement that did not contain an arbitration provision. The borrower later opened three separate deposit accounts at PNC on May 3, 2010. One of those deposit accounts included a provision permitting PNC to set off funds from the account to pay other indebtedness and further permitted PNC to amend the account agreement (2010 Account). PNC later amended the agreement for this 2010 Account on February 1, 2013, to add an arbitration provision from which the borrower could opt out until June 11, 2013. The borrower opened yet another deposit account on June 6, 2014, that similarly permitted PNC to set off funds from the deposit account to pay other indebtedness and also contained the same arbitration provision found in the amended 2010 Account agreement (2014 Account). The borrower's HELOC ended in February 2005, but the borrower did not pay all the owed HELOC payments until June 17, 2020. In September 2019, PNC set off some of the HELOC amount due from the borrower's 2010 Account and then again in February 2020 did the same from the borrower's 2014 Account. The consumer sued PNC alleging violations of the Truth in Lending Act (TILA) for the offsets. The district court granted PNC's motion to compel arbitration under the 2010 Account but denied PNC's motion to compel arbitration of the borrower's 2014 Account.

On appeal, the Fourth Circuit reversed the district court's ruling granting PNC's motion to compel arbitration under the 2010 Account and affirmed the district court's ruling denying PNC the ability to compel arbitration under the 2014 Account. The court held the Dodd–Frank Act amendment to TILA, which became effective on June 1, 2013, prohibits consumer agreements related to residential mortgage loans from requiring the arbitration of claims (15 U.S.C. §1639c(e)). Although the 2010 Account agreement was amended on February 1, 2013 — before the effective date of §1639c(e) — the consumer had the right to opt out of that amended agreement until June 11, 2013. The Fourth Circuit found that the amendment adding an arbitration clause to the 2010 Account agreement did not become effective until after the borrower's opt-out right expired on June 11, 2013. Consequently, the amended 2010 Account agreement was subject to the prohibition against mandatory arbitration provisions in residential mortgage loans in §1639c(e) of the Dodd–Frank Act, and PNC could not compel arbitration of the consumer's claim arising from the HELOC.

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

REGULATORY CALENDAR

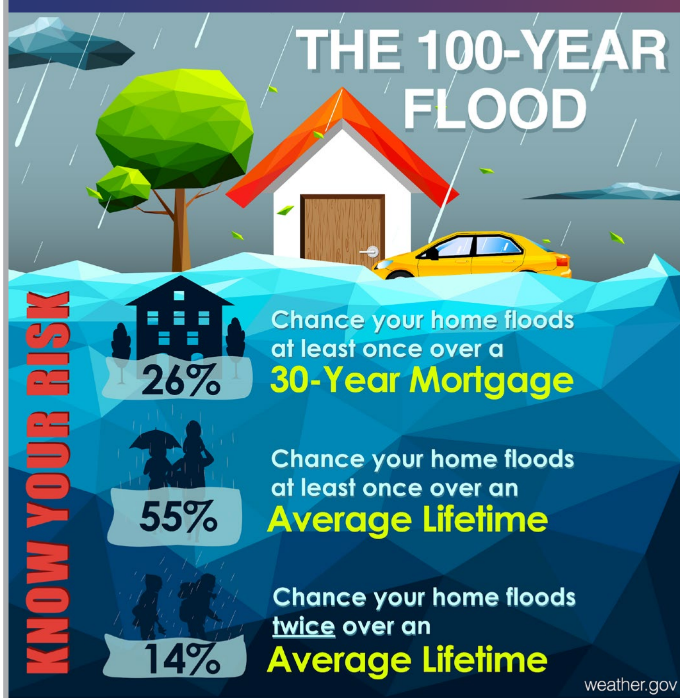
EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
07/25/22	Reg. V	Final rule prohibiting furnishing consumer reports containing adverse information in cases of human trafficking
05/31/22	Reg. H	Agencies release revised interagency questions and answers regarding flood insurance
06/03/22	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
09/01/21	Reg. B	Rulemaking proposal under §1071 of the Dodd–Frank Act for data collection and reporting of applications for credit for women-owned, minority-owned, and small 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

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
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.

OUTLOOK LIVE | **2022 Interagency Flood Insurance Q&As Webinar**



On July, 2, 2022, the federal financial regulatory agencies hosted an interagency webinar on the Interagency Questions and Answers Regarding Flood Insurance (Q&As), which were released on May 11, 2022.

Staff from the Board of Governors of the Federal Reserve System, Farm Credit Administration, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency provided an overview of the revisions to the Q&As, which were updated to reflect significant changes to the federal flood insurance requirements in recent years.

This webinar is part of the ongoing series of events focused specifically on consumer compliance topics. The Outlook Live webinar series is a Federal Reserve System outreach initiative.

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