

CONSUMER COMPLIANCE OUTLOOK®

A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS

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INTRODUCING OUR NEW FORMAT

BY GOVERNOR MICHELLE W. BOWMAN, CHAIR, COMMITTEE ON CONSUMER & COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

The Federal Reserve is responsible for promoting consumer protection and community development to help ensure a fair and transparent financial services marketplace that benefits all Americans.¹ Fairness and transparency — along with consistency — are guiding principles that inform my perspective on bank supervision and regulation.² Together, these three elements help to ensure that our supervisory expectations are clear and, in doing so, encourage open communication between banks and supervisors. *Consumer Compliance Outlook (CCO)* furthers these goals by providing financial institutions, compliance professionals, and the general public with information about compliance with the laws and regulations that protect consumers and support investments in communities.

Fifteen years ago, in the midst of the financial crisis, we published the inaugural issue of *CCO*.³ That issue included content covering the emerging risks of the day (foreclosure prevention activities) as well as compliance topics that remain relevant today (the Community Reinvestment Act and flood insurance). Over the years following, *CCO* has sought to provide transparency through sharing information gleaned from the Federal Reserve's supervisory work so that financial institutions can better manage compliance risk and ensure consumers are afforded the protections provided by law.

Today, I am pleased to announce enhancements that will further increase the value of *CCO*. Beginning with this issue, *CCO* will integrate more supervisory data-driven content and share more information about our examiners' observations. The revamped *CCO* will enhance transparency regarding the Federal Reserve's consumer compliance supervisory activities and provide practical steps that institutions may consider when addressing certain consumer compliance risks.

In particular, beginning with this issue, *CCO* will annually publish data on the top consumer law violations identified by our examiners along with the chief complaint themes. (See pages 6 and 7.) We believe that these data may be helpful to compliance professionals as they focus on their institutions' compliance management systems.

In addition, *CCO* articles will highlight recent supervisory observations and include special topics that emphasize data-driven information. In coming issues, we also plan to publish data on Matters Requiring Attention (MRAs) and Matters Requiring Immediate Attention (MRIAs) issued across the System in the past year, as well as articles providing insights into those MRAs and MRIAs.⁴

While we are excited about this additional direction for *CCO*, we will continue to consider what will be most helpful and informative to our readers. We value your feedback and encourage you to contact us at outlook@phil.frb.org to share your perspectives.

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Outlook Advisory Board

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Outlook Contributors

Kathleen Benson
Federal Reserve Bank of Chicago

Allison Burns
Federal Reserve Bank of Minneapolis

Dolores Collazo
Federal Reserve Bank of Atlanta

Kate Loftus
Federal Reserve Bank of Minneapolis

Danielle Martinage
Federal Reserve Bank of Boston

Alinda Murphy
Federal Reserve Bank of Kansas City

Scott Sonbuchner
Federal Reserve Bank of Minneapolis

Outlook Staff

Editors..... Kenneth Benton
Barbara Brynko

Designer..... Monica Conrad

Project Manager..... Marilyn Rivera

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COMMON CHALLENGES OF COMMUNITY BANK COMPLIANCE OFFICERS

BY ALINDA MURPHY, LEAD EXAMINER AND SUPERVISORY SPECIALIST,
FEDERAL RESERVE BANK OF KANSAS CITY

The job of a bank compliance officer can be challenging. The officer will not only face the daily tasks of managing and implementing an effective compliance management system (CMS) but will also face challenges outside of the regulatory role, such as confronting the board and senior management about bank culture or feeling isolated within the organization. These challenges vary, based on bank size, environment, and culture.

This article focuses on six common challenges facing community bank compliance officers and, based on observations of Federal Reserve System (FRS) consumer compliance examiners, discusses ways compliance officers have successfully navigated these challenges. We also discuss how the bank board and senior management can support the compliance officer in creating and maintaining an effective CMS.

Challenge 1: Transitioning to the consumer compliance role

- Confirm board and senior management support
- Provide authority and time to perform duties
- Provide sufficient training

Professionals newly transitioning into a compliance officer position have often found this move to be transformative. The role entails important responsibilities that include understanding and implementing a substantial amount of detailed, technical requirements. It also involves considerable soft skills. While the board and senior management are responsible for providing the compliance officer with the necessary authority, environment, resources, and training, it is the compliance officer's responsibility to implement an effective CMS.

Ensuring board and senior management support for consumer compliance is important when transitioning to the role of a compliance officer. That support should be clearly communicated throughout the organization and confer sufficient authority to perform consumer compliance-related activities wherever they may lead within the organization. An organization's culture starts at the top. When the board and senior management firmly communicate the organization's responsibility to support the compliance officer in performing her duties, it greatly facilitates the compliance function. It may therefore be beneficial for the compliance officer to remind senior management of the importance of an independent and well-supported compliance function.

In community banks, the compliance officer may also have other management or officer roles. A compliance officer wearing multiple hats should consider whether sufficient time is allocated to compliance and whether having multiple positions potentially creates conflicts, especially if the compliance officer role includes performing internal reviews. These issues should be discussed and vetted with the board and senior management during the transition.

It may be difficult for the compliance officer to quickly develop the depth of consumer compliance knowledge needed to maintain an effective CMS. For example, if the compliance officer's prior role at a bank was limited to one function, such as operations, moving to a role requiring some knowledge of all bank functions can be overwhelming. It is therefore important for the board and senior management to provide adequate training and resources, which we discuss in Challenge 3.

Challenge 2: Obtaining and maintaining regular, direct access to board and management committees and teams

- Understand the bank's governance structure
- Develop and obtain approval of a communications plan
- Develop an appropriate agenda

An effective compliance officer understands the bank's governance structure, knows the individuals with consumer compliance responsibilities, and has a communication plan for regular contact with the board, relevant management, and staff. Board and senior management contact should be ongoing and designed to facilitate the compliance officer's understanding of the strategic decisions that set the bank's risk appetite. The compliance officer should have access to the board and/or board management committees that discuss any part of bank and third-party product life cycles.

Here are compliance officer tips for board and senior management meetings and presentations:

- Address the person(s) directly responsible for consumer compliance
- Carefully consider the appropriate frequency of presentations
- Work with the board and senior management to establish triggers for unscheduled presentations, such as a significant new legal requirement or a new product
- Make presentations high level, including a discussion of the following:
 - overall consumer compliance risk profile
 - controls used to mitigate risks
 - activity monitoring
 - actions needed to resolve existing compliance issues
 - board and management compliance training
 - compliance and business line risk management collaborations

Challenge 3: Keeping track of regulatory changes

- Subscribe to regulatory agency's notifications

- Subscribe to consumer compliance services and obtain regtech tools
- Join support networks

Finding time to monitor and consider the changing legislative, regulatory, and supervision landscapes is a challenging but critical part of the compliance officer's responsibilities. Many resources and tools are available, including subscribing to trade publications and regtech services, attending webinars and continuing education courses, and signing up for email updates from federal regulators, including the Federal Reserve Board,¹ the Consumer Financial Protection Bureau,² the Office of the Comptroller of the Currency,³ the Federal Deposit Insurance Corporation,⁴ the National Credit Union Administration,⁵ and the Department of Housing and Urban Development.⁶

CCO provides articles with a supervisory perspective as well as a regulatory calendar of pending and final rulemakings, while our Outlook Live platform hosts compliance webinars. In addition, trade organizations (such as state banking associations) often have compliance-related forums where bank employees can discuss compliance issues. Similarly, local compliance networks, where staff of local banks create an informal network to meet regularly to discuss common challenges they face, are fairly common.

Challenge 4: Based on risk findings, convincing the board and senior management of the need to implement cultural changes

- Leverage the lines of communication developed with the board and senior management
- Discuss risks resulting from regulatory and environmental changes
- Communicate to staff members their shared consumer compliance responsibilities

Having direct lines of communication with the board and senior management is important, especially if a risk assessment identifies an unmitigated, high-risk area or substantive violation of consumer protection laws. To adequately correct the issue, the board and senior management must fully support and communicate the required changes throughout the organization. The change may require a simple process revision.

Conversely, the change may require a deeper cultural adjustment. In that case, the compliance officer should be able to explain to the board, management, and staff why the change is required. For example, process revisions and cultural adjustments may be necessary when a community

bank providing manually completed deposit account disclosures is consistently unable to provide disclosures accurately reflecting bank policy changes or regulatory requirements. Or an internal compliance review may find a high risk of discrimination on a prohibited basis, with risk mitigation requiring procedural and cultural changes that would affect several lending functions. The *CCO* article “Understanding How Culture Drives a Bank’s Mission”⁷ may help the compliance officer in communicating to the board and senior management the importance of developing and communicating culture, especially if consumer compliance risk is high.

Although changes begin with the board and senior management, it is important they filter throughout the bank to be effective. The compliance officer should not rely solely on board or senior management messaging to make staff understand the issues at hand. Successful compliance officers proactively provide the board and staff with “the skinny” about consumer compliance issues and clearly communicate the nature of the problem and the necessary changes to address it. They also find ways to proactively communicate with staff so they understand the compliance issues at hand.

For example, suppose the compliance officer learns from reviewing the bank’s loan policy that, for commercial loans secured by a warehouse and its contents in a Special Flood Hazard Area (SFHA), the bank requires flood insurance on the warehouse but not the contents because the security interest in the contents is done only in “an abundance of caution.” According to interagency flood insurance guidance, when a lender takes a security interest in improved real estate and contents located in an SFHA only as an “abundance of caution,” flood insurance is required.⁸ As a result, the compliance officer should update the loan policy to be consistent with the guidance and explain the change to the lending staff, perhaps providing examples. Using such a ground-level approach to compliance builds staff understanding and accountability and reinforces the messages communicated by the board and senior management.

Challenge 5: Championing change when the CMS does not have systemic issues

- Celebrate what went well
- Focus on being proactive
- Determine areas of unaddressed or increasing inherent risk

A well-managed compliance program should be celebrated. A satisfactory internal review or consumer compliance examination rating, with few or no issues, is the time for a

compliance officer to discuss what went well and encourage vigilance. Compliance officers should be aware that it may be more difficult to obtain board and senior management attention and support during periods of success than it would be if the bank were facing serious deficiencies and legal and supervisory actions. It may be logical to divert consumer compliance resources from training and monitoring to address concerns in other areas after receiving satisfactory or outstanding consumer compliance ratings. However, the compliance officer’s job is to ensure that a proper balance is maintained in all areas to appropriately monitor and mitigate risk.

When the CMS is performing well, keeping board and senior management’s attention may require a proactive approach. The compliance officer should remind the board and senior management that conducting risk assessments is an ongoing activity to monitor and control inherent environmental, legal and regulatory, and institutional risks as they evolve and increase. If risks are not identified, they cannot be properly mitigated. The *CCO* article “The Benefits of a Proactive Compliance Program”⁹ may help the compliance officer frame the benefits of a proactive mindset for the board and senior management. For example, the compliance officer may consider discussing that, while the bank’s compliance program is currently satisfactory, it may not be keeping pace with evolving regulatory or environmental changes or will be tested by the bank’s growth strategies. The *CCO* article “Promoting Effective Change Management”¹⁰ provides helpful suggestions.

Challenge 6: Expanding your support system

- Expand internal networks
- Explore external professional and social networks
 - Similarly situated local and area banks
 - State and national banking organizations
- Use regulators as resources

A compliance officer needs support systems to help overcome the challenges of feeling overwhelmed and isolated within the organization. While board and senior management support is important in this area, Federal Reserve consumer compliance examiners have also found that developing other strong internal and external support networks is helpful. Such networks can prevent isolation, create a space for brainstorming ideas for enhancing a compliance program, and provide sounding boards when deciding how to handle compliance issues.

One way to forge an internal support group in even the smallest bank is to build a compliance committee

represented by each bank function or area (e.g., lending, operations, marketing/development). A well-structured, involved compliance committee can help the new compliance officer understand department functions, products and services offered, available management reporting, and key terminology. Committee members may also serve as consumer compliance ambassadors taking compliance information, training, and recommendations back to their areas, and they may serve as sounding boards for new ideas. During compliance internal reviews, committee members may act to allay staff unease, which includes facilitating information requests.

External support groups provide a forum for discussing consumer compliance laws and regulations, regulatory guidance, and supervision experiences, in addition to providing more social support. The best external support may be banks similarly situated in asset size, area, and strategy, and some compliance officers begin the search for support networks by asking board members or senior management for consumer compliance contacts with similarly situated area banks. In addition, several financial technology vendors host user groups that a compliance officer may use to build relationships with similarly situated banks and gain knowledge of the functionality and limitations of bank technology and reporting. Participating in state banking organizations and attending state and national banking conferences may also introduce the compliance officer to supportive contacts.

Harnessing the long-standing relationships between community banks and their state and federal consumer compliance regulators can provide a mutually beneficial support system. Periodically contacting the federal examiner(s) assigned to the bank may be helpful in discussing the regulatory landscape and existing guidance and better understand supervisory expectations and the supervisory process. Although the examiner would be unable to provide recommendations, examiner contacts may be used to help the bank circumvent blind spots related to its compliance risk assessments, onboarding of products and services, or implementing strategic change. From these contacts, examiners gain a better understanding of the bank's consumer compliance risk management process and emerging issues that may affect inherent consumer compliance risk.

CONCLUSION

Managing and implementing an effective CMS presents challenges, especially for compliance officers at smaller banks that lack the resources of their larger counterparts. It is important for board and senior management to support compliance officers and their staff in addressing these challenges. Compliance may be viewed as a cost center at some institutions and does not always receive the full support needed. But both the bank and its stakeholders benefit from an effective CMS, which can save the bank and its brand from legal and reputational risks that could result in enforcement actions and monetary penalties. Moreover, protecting bank customers makes good business sense. Specific questions and issues should be addressed to your primary regulator. ■

ENDNOTES*

- ¹ See Federal Reserve subscription for email notifications.
- ² See Consumer Financial Protection Bureau subscription for press releases.
- ³ See Office of the Comptroller of the Currency subscription for email updates.
- ⁴ See Federal Deposit Insurance Corporation subscription for email updates.
- ⁵ See National Credit Union Administration subscription service.
- ⁶ See Department of Housing and Urban Development subscription.

- ⁷ Robert L. Triplett III, "Understanding How Culture Drives a Bank's Mission," *Consumer Compliance Outlook* (First Issue 2018).
- ⁸ See Q&A *Other Security Interests 9*, "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 87 *Federal Register* 32826 at 32885 (May 31, 2022).
- ⁹ Kathleen Benson, "The Benefits of a Proactive Compliance Proactive Program," *Consumer Compliance Outlook* (Issue 3 2020).
- ¹⁰ Allison Burns, "Promoting Effective Change Management" *Consumer Compliance Outlook* (Second Issue 2019).

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

TOP CONSUMER VIOLATIONS IN 2022 FOR STATE MEMBER BANKS

During 2022, Federal Reserve System examiners conducted 211 examinations.⁵ The following list describes the most frequently cited violations in 2022.⁶

	Provision	Violations	% of all Violations
1	Regulation C (Home Mortgage Disclosure Act), 12 C.F.R. §1003.4(a): requires a financial institution to collect specific data on applications for covered loans it receives, originates, and purchases for each calendar year.	239	59.4
2	Regulation BB (Community Reinvestment Act), 12 C.F.R. §228.42(a): requires a bank to collect and maintain specific data for each small business or small farm loan originated or purchased by the bank.	29	7.2
3	Regulation E (Electronic Fund Transfers Act), 12 C.F.R. §1005.11(c): requires a financial institution to perform an investigation and determine whether an error occurred within 10 business days of receiving a notice of error.	9	2.2
4	Regulation E (Electronic Fund Transfers Act), 12 C.F.R. §1005.11(d): requires a financial institution to respond to a consumer's notice of error in writing if it determines no error occurred or an error occurred in a manner or amount different from the one the consumer described.	6	1.5
5	(tie) Fair Credit Reporting Act, 15 U.S.C. §1681m: requires a financial institution taking adverse action against a consumer based in whole or in part on information in a consumer report to provide an adverse action notice.	5	1.2
6	Regulation B (Equal Credit Opportunity Act), 12 C.F.R. §1002.7(d): prohibits a creditor from requiring the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.	5	1.2
7	Regulation B (Equal Credit Opportunity Act), 12 C.F.R. §1002.9(a): requires a creditor to notify an applicant within 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application.	5	1.2
8	Regulation B (Equal Credit Opportunity Act), 12 C.F.R. §1002.14(a): requires a creditor to provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling.	5	1.2
9	Regulation X (Real Estate Settlement Procedures Act), 12 C.F.R. §1024.17(c): sets limits on the amount a servicer can require a borrower to deposit into any escrow account created in connection with a federally related mortgage loan.	5	1.2
Subtotal of top violations		308	76.3
Total of all violations cited in 2022		402	76.6

TOP CONSUMER COMPLAINTS IN 2022 FOR STATE MEMBER BANKS

During 2022, the Federal Reserve monitored consumer complaints by topic. The following list describes the most frequent topics of consumer complaints in 2022.⁷

Complaint Topic	Number of Complaints	% of all Complaints
Fraud/Forgery	898	20.9
Funds Availability/Withdrawals/Unable to Access Funds	647	15.0
Error Resolution	625	14.5
Restricted/Blocked Account	479	11.1
Credit Reporting	226	5.3
Fees/Terms/Rates	201	4.7
Account Closure	189	4.4
Application/Account Opening	139	3.2
Deposits	76	1.8
Debt Validation	70	1.6
Subtotal of all consumer complaints	3550	82.5
Total of all consumer complaints	4304	82.5

ENDNOTES*

- ¹ See “The Fed Explained,” p. 113.
- ² See “Large Bank Supervision and Regulation” (September 2022); “My Perspective on Bank Regulation and Supervision” (February 2021).
- ³ See *Consumer Compliance Outlook* (2Q 2008).
- ⁴ We are sunsetting the *Consumer Compliance Outlook* sections “News from Washington,” which summarized recent developments in the consumer compliance industry, and “On the Docket,” which summarized recent court decisions on consumer laws and regulations applicable to Federal Reserve-supervised institutions. While useful, this information is available elsewhere. In addition, to prevent duplication, we are discontinuing the *Consumer Compliance Supervision Bulletin*, which was published in 2018 and 2019 to share information about examiner observations and other noteworthy developments related to consumer protection.
- ⁵ The Federal Reserve System examines state member banks (state-chartered banks that are members of the Federal Reserve System) using an examination calendar that factors in institution size and risk profile. Therefore, not all state member banks were examined in 2022.
- ⁶ For the purposes of this chart, a violation is a citation of a bank in an examination report by the Federal Reserve for violating the listed provision; the listed numbers do not refer to the number of consumers the violation affected.
- ⁷ The Federal Reserve investigates complaints against state member banks and selected nonbank subsidiaries of bank holding companies (Federal Reserve regulated entities). For more information on the Federal Reserve’s complaint handling process, see the *Annual Report of the Board of Governors of the Federal Reserve System* and *The Fed Explained: What the Central Bank Does*.

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

DIGITAL BANKING COMPLIANCE CONSIDERATIONS

BY DOLORES COLLAZO, SENIOR EXAMINER, FEDERAL RESERVE BANK OF ATLANTA

A recent survey found that 78 percent of Americans prefer to bank digitally, including the use of mobile banking applications and bank websites, a trend that accelerated because of the COVID-19 pandemic.¹ To accommodate their customers' evolving banking preferences, some banks have been exploring partnerships with third-party vendors, particularly fintech companies.²

Since banks may lack expertise in this area, partnering with third parties can help banks better serve their customers. But using third parties also increases risks. Because of this increased activity in digital banking, this article reviews recent interagency guide on due diligence considerations when banks are vetting fintech companies, discusses the Electronic Signatures in Global and National Commerce Act³ (E-Sign Act) requirements for electronic consumer banking, and lists top consumer complaints related to digital banking.

COMPLIANCE CONSIDERATIONS FOR FINTECH PARTNERSHIPS

Interagency Guide for Community Banks

To assist banks that are considering partnerships with fintech firms, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (agencies) published a guide in August 2021 titled *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks*⁴ (guide). The guide provides helpful suggestions but is not intended to address all types of third-party relationships and risks.

Due Diligence

Performing due diligence is a critical aspect of the process of vetting a potential vendor. The guide discusses six due diligence topics: business experience and qualifications; financial condition; legal and regulatory compliance; risk management and controls; information security; and operational resilience. From a consumer compliance perspective, the legal and regulatory topic is most relevant to this article. The guide provides a nonexhaustive list of factors a bank can consider in conducting legal/regulatory due diligence:

- Reviewing the fintech company's risk and compliance processes

- Determining if the fintech company has experience with other community banks in complying with consumer laws and regulations
- Reviewing the fintech company's information for consumer applications, delivery channels, disclosures, and marketing materials to anticipate and address potential consumer compliance issues
- Considering the industry ratings of the fintech company and any complaints for insights into its level of customer service and potential compliance issues

The guide identifies potential sources of information that banks can use in performing this due diligence:

- Proposed marketing materials and regulatory disclosures with product details such as fees, interest rates, or other terms
- The methods used to monitor, remediate, and respond to customer complaints
- Customer complaint records involving the fintech firm

Contract Provisions

When banks retain a vendor, their mutual obligations are memorialized in their contract. Because the contract is the governing document for the third-party relationship, it should be carefully drafted by experienced counsel to help mitigate compliance risk. To assist banks in the process of vetting vendors and mitigating risks, the guide discusses some provisions that community banks may want to consider including in their contracts:

- Requiring the vendor to comply with applicable legal and regulatory requirements, including federal consumer protection laws and regulations
- Allowing a community bank and its primary regulator to access the fintech company's records
- Authorizing a community bank to monitor and periodically review or audit a fintech company for compliance with the agreed-upon terms
- Instituting approval mechanisms (for example, community bank signs off on any changes to marketing materials related to the activity)
- Periodically reviewing customer complaints, if available, of the activity

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E-Sign Act Requirements

In 2000, Congress enacted the E-Sign Act (**Figure 1**) to facilitate the rise in electronic transactions. It is important banks that ensure they are complying with the E-Sign Act as digital banking continues to grow. Under the E-Sign Act, electronic signatures, documents, and records for transactions have the same validity as written signatures and printed documents, providing certain requirements are met. The E-Sign Act also preempts state laws to the contrary. Before information related to a consumer transaction required to be in writing can be provided electronically, the E-Sign Act requires that a six-step consumer consent process be completed:

FIGURE 1: FUNDAMENTALS OF ELECTRONIC DISCLOSURES

Step 1: Availability of Paper Delivery or Paper Copies

Before seeking a consumer’s consent to use electronic records, institutions must inform the consumer in a clear and conspicuous statement of any right or option to have the record provided in nonelectronic form, the right to withdraw that consent, the consequences of withdrawing consent (including terminating the relationship), and any fees imposed in the event of withdrawal. Institutions must also inform consumers of their right to request a paper copy of an electronic record and whether any fees apply.

Step 2: Consent Choices

Before seeking a consumer’s consent to the use of electronic records, a financial institution must inform the consumer in a clear and conspicuous statement whether consent relates to a particular transaction only or to broader categories of information. Most financial institutions choose a product-by-product consent process.

Step 3: Consumer Actions

Financial institutions must disclose to consumers the procedures to withdraw consent at a later date and to update the consumer’s contact information, such as notifying the financial institution when the consumer’s email address changes.

Step 4: Hardware/Software Requirements

Financial institutions must provide consumers with a statement detailing the hardware and software requirements to access and retain electronic records.

Step 5: Affirmatively Consent

To ensure a consumer can communicate electronically with the financial institution to which consent has been provided, the E-Sign Act requires that the consumer provide consent electronically “in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.”⁴

Step 6: “After Consent” Disclosure

To ensure continued electronic access, financial institutions must provide consumers with a statement detailing any revised hardware and software requirements for access to and retention of electronic records as well as the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed. After providing this statement, institutions must again obtain consumers’ affirmative consent as in Step 5. The procedures in Step 6 must be followed when the changes in hardware and software requirements create a material risk that consumers will not be able to access or retain electronic records.

For a more comprehensive discussion of vendor risk management for banks supervised by the Federal Reserve, refer to Supervision Regulation letter 13-19/Consumer Affairs letter 13-21 (“Guidance on Managing Outsourcing Risk”).⁵

Additional Compliance Considerations

When a bank partners with a third party, examiners review a bank’s management of third-party relationships as though the bank were conducting the activities itself.⁶ “The use of service providers does not relieve a financial institution of the responsibility to ensure that outsourced activities are conducted in a safe-and-sound manner and in compliance with applicable laws and regulations.”⁷ This includes reviewing a bank’s management of third-party relationships and servicers as part of its overall compliance program. For example, for purposes of complying with the privacy requirements of Regulation P, a financial institution may have a policy of not sharing nonpublic personal information (NPPI) outside of the exceptions in the regulation and discloses this policy to its customers in accordance with the regulation.⁸ Conversely, a fintech partner with access to bank customer information may have a policy of sharing NPPI with outside parties. This difference in policies could violate Regulation P if the actual practice of sharing NPPI does not align with the financial institution’s Regulation P disclosures.

Outlook reviewed this six-step process in a 2009 article,⁹ and we encourage financial institutions to review the article and test their systems for compliance.¹⁰

Institutions should also note that the E-Sign Act does not apply to certain notices, including, but not limited to

- court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings; and
- notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure for a mortgage or lease of an individual’s primary residence.¹¹

E-Sign Act Risk Mitigants

A sound practice to manage risks for the E-Sign Act is to conduct compliance reviews, tailored to the size and complexity of the bank’s operations, using a checklist such as the one included in Module IV of CA letter 03-10 *Consumer Affairs Electronic Banking Examination Checklist*.¹² Furthermore, when reviewing a bank’s compliance with the E-Sign Act, examiners may look at the following areas consistent with community bank consumer compliance risk-focused supervision guidelines:¹³

- Determine if the bank delivers notices and/or disclosures

subject to the consumer consent provisions of the E-Sign Act

- Review the bank’s procedures to ensure that the consumer has affirmatively consented to electronic disclosures and has not withdrawn consent prior to the bank providing electronic disclosures
- Determine if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent

Compliance Considerations

A sound practice for financial institutions is to implement policies and procedures to comply with the technical requirements regarding electronic disclosures. Examples of compliance considerations may include the following:

- Identify the bank’s products, services, and advertisements that use electronic communications, including those offered through fintech partnerships
- Compare the bank’s practices for delivering electronic communications to the requirements in the specific regulation to ensure regulatory requirements are satisfied
- Test a sample of disclosures for compliance on the devices where they can be displayed (e.g., mobile phone, tablet, laptop)
- Address any deficiencies noted in compliance reviews with management and implement corrective action, as needed
- Include reviews of electronic disclosures in change management processes such as for new products or changes to existing products

DIGITAL BANKING COMPLAINT DATA

Banks can review consumer complaints for digital banking to help identify potential compliance risks in this area. This includes complaints from a bank’s customers as well as complaints filed with banking regulators.

Federal Reserve Consumer Help Center Complaint Data

Federal Reserve Consumer Help (FRCH) is the Federal Reserve System’s centralized consumer complaint function. It receives consumer complaints by phone and its website and routes them to the appropriate federal regulator. If the institution is one for which the Federal Reserve is the primary federal regulator for consumer compliance for the law or regulation at issue, the complaint is sent to the appropriate Reserve Bank to investigate. FRCH received approximately 2,620 digital banking related complaints in 2021, 56 percent of which were complaints related to mobile banking, and 44

percent of which were complaints associated with fintech products and services.¹⁴

The top three themes associated with the complaints related to mobile banking were:

- Error Resolution (approximately 490 complaints)
- Funds Availability/Unable to Access Account (approximately 367 complaints)
- Restricted/Blocked Account (approximately 343 complaints)

The top three types of complaints for fintech products and services were:

- Restricted/Blocked Account (approximately 409 complaints)
- Funds Availability/Unable to Access Funds (approximately 127 complaints)
- Fraud/Forgery (approximately 111 complaints)

Consumer Financial Protection Bureau (Bureau) Complaint Data

In March 2022, the Bureau published its Consumer Response Annual Report January 1 – December 31, 2021.¹⁵ The Bureau received approximately 20,900 money transfer, money service, and virtual currency (collectively, money services) complaints in 2021. Of these money services complaints, the report stated: “In 2021, mobile or digital wallet was the most complained about type of product.”¹⁶ The report indicated that: “Consumers also identify the issue that best describes the problem they experienced. The most common issue was managing, opening, or closing your mobile wallet account.” Additionally, the report notes that: “Among the types of products in this category, mobile or digital wallets had the greatest change, increasing 164% from the prior two years’ monthly average.”

The Bureau Determined a Mobile Deposit Hold Practice Was Unfair

The Spring 2022 issue of the Bureau’s *Supervisory Highlights*¹⁷ discussed an unfair act or practice where institutions failed to lift initial automatic holds on mobile check deposits after a suspicious deposit hold was placed on the account. This practice harmed consumers:

Through transaction testing, examiners identified accounts where the institutions had charged a consumer overdraft fees because the institutions failed to lift the initial automatic holds on the amounts of mobile check deposits after an additional suspicious deposit hold was placed on the account. This practice



caused, or was likely to cause, substantial injury due to consumers incurring fees and losing access to funds that were unrelated to the suspicious mobile check deposit. Consumers could not reasonably avoid the injury, given that they could not have prevented the institutions from failing to comply with their own internal procedures. And the injury was not outweighed by countervailing benefits to consumers or to competition.

The institutions’ failures to implement policies and procedures that address these technical limitations led to the unfair practices. The institutions revised their policies and procedures governing holds and developed controls to monitor for and detect instances of duplicate holds. The institutions refunded the fees caused by these duplicate holds.¹⁷

Reviewing complaint data is the first step to using these data to mitigate risk. *CCO* previously published an article titled “Enhancing the Compliance Management Program with Complaint Data,” that discussed how banks can use these data to enhance their compliance management programs that may be of interest.¹⁸

CONCLUSION

Consumers are increasingly migrating to digital banking platforms, and some banks have been expanding their platforms in response, including partnering with fintech companies. While these changes can benefit consumers, they also increase compliance risks. This article discussed some of the ways in which banks can proactively mitigate risks in this area. Specific issues and questions should be raised with the financial institution’s primary regulator. ■

ENDNOTES*

- ¹ See “PYMNTS Data: More Than Three-Quarters of Consumers Prefer Digital Banking,” *PYMNTS* (April 2, 2022).
- ² See Melanie Wheeler, “5 Key Factors for Fintech Partnerships,” *Bank Director* (March 4, 2022).
- ³ See 15 U.S.C. §7001 et seq.
- ⁴ See SR letter 21-15/CA letter 21-11 *Conducting Due Diligence on Financial Technology Firms: A Guide for Community Banks* (August 27, 2021).
- ⁵ In 2021, the agencies issued “Proposed Interagency Guidance on Third-Party Relationships: Risk Management,” 86 *Federal Register* 38182 (July 19, 2021). The final rule has not yet been issued.
- ⁶ See CA letter 16-8 *FFIEC Guidance on the Uniform Interagency Consumer Compliance Rating System*.
- ⁷ *Guidance on Managing Outsourcing Risk*, p. 2.
- ⁸ CCO previously reviewed these requirements. See Kenneth Benton, “Overview of Federal Consumer Privacy and Security Laws for Financial Services,” *Consumer Compliance Outlook* (Third Issue 2021).
- ⁹ Jeffrey T. Paul and Gary Louis, “Moving from Paper to Electronics: Consumer Compliance Under the E-Sign Act,” *Consumer Compliance Outlook* (Fourth Quarter 2009)
- ¹⁰ Jeffrey T. Paul and Gary Louis, “Moving from Paper to Electronics: Consumer Compliance Under the E-Sign Act,” *Consumer Compliance Outlook* (Issue 4 2009).
- ¹¹ See 15 U.S.C. §7003(b).
- ¹² See CA letter 03-10 *Consumer Affairs Electronic Banking Examination Checklist*.
- ¹³ See CA letter 13-19 *Community Bank Risk-Focused Consumer Compliance Supervision Program*.
- ¹⁴ See FRCH Center Federal Reserve Consumer Help complaints data. Fintech products and services are considered products offered to consumers through the fintech’s technology (e.g., application, mobile devices, software). The state member bank holds the account and processes the transactions, but the account is accessed by the consumer through the fintech’s technology.
- ¹⁵ See the Bureau’s *2021 Consumer Response Annual Report*.
- ¹⁶ The Bureau’s mobile or digital wallet complaints comprised 6,300 or 47 percent of total money services complaints closed with explanation or relief in 2021. See the Bureau’s *Supervisory Highlights* (Issue 26, Spring 2022), p. 43.
- ¹⁷ See Endnote 16.
- ¹⁸ 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.

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RATE RESET NOTICES FOR ADJUSTABLE-RATE MORTGAGES USING LIBOR AS AN INDEX

The London Interbank Offered Rate (LIBOR) ended after December 31, 2021, for the one-week and two-month U.S. dollar (USD) tenors and will end after June 30, 2023, for the remaining overnight, one-month, three-month, six-month, and 12-month USD tenors. To facilitate the transition from LIBOR for consumer credit products, the Consumer Financial Protection Bureau (Bureau) published a final rule¹ in December 2021 establishing the compliance requirements for 1) replacement indexes for variable-rate products, 2) change-in-terms notices, and 3) reevaluations of credit card rate increases. CCO reviewed these requirements in Issue 1 2022.² In this related compliance alert, we address the effect of LIBOR's sunset on the required rate reset notices sent to borrowers with adjustable-rate mortgages (ARMs) in advance of the reset.

NOTICE OF CHANGE TO PAYMENT WHEN RATE ADJUSTS: §1026.20(C)

An ARM, which is defined as a closed-end consumer credit transaction secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation, has specific disclosure requirements under Regulation Z.³ With some exceptions,⁴ when a rate is scheduled to reset under the loan agreement that will cause the payment to change, the borrower must be notified in advance and provided detailed information about the change.

Under 12 C.F.R. §1026.20(c)(2), the required disclosures in a reset notice include the index used to calculate the interest rate adjustments and a source of information about the index or formula. Accordingly, the reset notices for ARMs using LIBOR as an index will have to be updated to reflect the replacement index and source of information about it, as discussed next.

Disclosure Requirements

Section 1026.20 specifies the rate-change disclosure requirements for the initial reset and subsequent resets in 12 C.F.R. §1026(d) and (c), respectively.

Timing

Initial Reset

The first reset notice must be sent between 210 and 240 days

before the first payment — at the adjusted level — is due; see 12 C.F.R. §1026.20(d).

Subsequent Resets

- If the rate resets less frequently than every 60 days, the notice must be provided between 60 and 120 days before the payment is due at the adjusted level; see 12 C.F.R. §1026.20(c)(2).
- If the rate resets every 60 days or more frequently, or for certain ARMs originated before January 1, 2015, the notice must be provided between 25 and 120 days before the payment is due at the adjusted level; see 12 C.F.R. §1026.20(c)(2).

Format and Model Forms

Initial Reset Notice

The rate change information for the initial reset must be disclosed in a tabular format substantially similar to the model form in H-4(D)(3) in Appendix H of Regulation Z using the same order, headings, and format.⁵ To facilitate compliance, two sample forms are provided in sample form H-4(D)(4): one for LIBOR that can be used until **September 30, 2023**, and another that can be used on or after **April 1, 2022**, which uses the Secured Overnight Financing Rate as the illustrative replacement index. We reproduced these two sample forms as **Figures 1 and 2** at the end of this alert.

Subsequent Rate Reset Notices

Subsequent reset notices must be provided in the form of a table and in the same order as — and with headings and format substantially similar to — Model Form H-4(D)(1) in Appendix H.⁶ Two sample forms (one for LIBOR, which may be used until **September 30, 2023**, and one for the replacement index which can be used on or after **April 1, 2022**) are provided in H-4(D)(2). We reproduced these two sample forms as **Figures 3 and 4** at the end of this alert.

As LIBOR's final sunset date approaches, creditors for ARMs using LIBOR as an index must update their rate reset notices in their systems to reflect the replacement index. Additional information is available in the Bureau's LIBOR transition FAQs.

FIGURE 1: LEGACY LIBOR INITIAL RATE RESET FORM⁷

Can Only Be Used Through September 30, 2023

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate may change. After that, your interest rate may change annually for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2012, your mortgage payment will include principal as well as interest

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- none -	\$237.70
Interest	\$708.33	\$1,041.66
Escrow (Taxes and Insurance)	\$450.00	\$450.00
Total Monthly Payment	\$1,158.33	\$1,729.36 (due October 1, 2012)

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the *Wall Street Journal*.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change each year by no more than 2.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on September 1, 2013.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the LIBOR index as of now, your margin, your loan balance of \$200,000, and your remaining loan term of 324 months. **However, if the LIBOR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
 - Refinance your loan with us or another lender;
 - Sell your home and use the proceeds to pay off your current loan;
 - Modify your loan terms with us;
 - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a state housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at <http://www.consumerfinance.gov>.

FIGURE 2: REVISED FORM FOR INITIAL RATE RESET⁸

Can Be Used on or After April 1, 2022

April 15, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on November 1, 2022, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of November 1, 2022, your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- none -	\$237.70
Interest	\$708.33	\$1,041.66
Escrow (Taxes and Insurance)	\$450.00	\$450.00
Total Monthly Payment	\$1,158.33	\$1,729.36 (due December 1, 2022)

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on May 1, 2023.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of \$200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
 - Refinance your loan with us or another lender;
 - Sell your home and use the proceeds to pay off your current loan;
 - Modify your loan terms with us;
 - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a state housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at <http://www.consumerfinance.gov>.

FIGURE 3: LEGACY FORM FOR SUBSEQUENT RATE RESETS⁹

Can Only Be Used Through September 30, 2023

July 20, 2012

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate and mortgage payment change. After that, your interest rate may change annually for the rest of your loan term.

	Current Rate and Monthly Payment	New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	\$983.88	\$1,211.81 (due October 1, 2012)

➔ **Interest Rate:** We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 1-year LIBOR and your margin is 2.25%. The LIBOR index is published daily in the *Wall Street Journal*.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 2.00%.

➔ **New Interest Rate and Monthly Payment:** The table above shows your new interest rate and new monthly payment. Your new payment is based on the LIBOR index, your margin, your loan balance of \$189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance, or sell your home before September 1, 2012, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

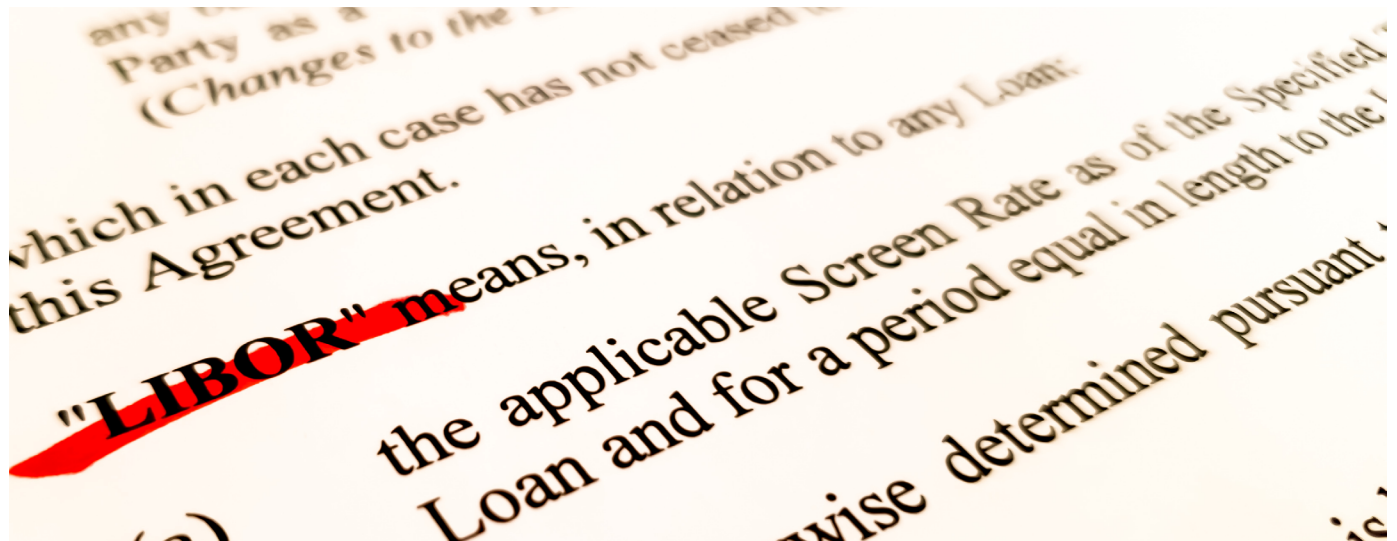


FIGURE 4: REVISED FORM FOR SUBSEQUENT RATE RESETS¹⁰

Can Be Used on or After April 1, 2022

July 20, 2022

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2022

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2022, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	\$983.88	\$1,211.81 (due October 1, 2022)

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of \$189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance, or sell your home before September 1, 2022, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

ENDNOTES*

¹ See 86 *Federal Register* 69716 (December 8, 2021).

² Kenneth Benton, "The Bureau's Final Rule Under Regulation Z to Address LIBOR's Sunset," *Consumer Compliance Outlook* (First Issue 2022).

³ See 12 C.F.R. §1026.20(c)(1).

⁴ See 12 C.F.R. §1026.20(c)(1)(ii).

⁵ See 12 C.F.R. §1026.20(d)(3). But creditors and servicers are permitted to modify the disclosures to accommodate particular consumer circumstances or transactions not addressed by the

forms. For example, in the case of a consumer bankruptcy or under certain state laws, the creditor, assignee, or servicer may modify the forms to remove language regarding personal liability. See Comment 20(d)(3)(i)-1.

⁶ See 12 C.F.R. §1026.20(c)(3).

⁷ See Sample Form H-4(D)(4).

⁸ See Sample Form H-4(D)(4).

⁹ See Sample Form H-4(D)(2).

¹⁰ See Sample Form H-4(D)(2).

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

CA LETTER 23-1 REVISED HMDA REPORTING THRESHOLD FOR CLOSED-END LOANS

On January 31, 2023, the Division of Consumer and Community Affairs of the Board of Governors of the Federal Reserve System (Board) issued CA letter 23-1 (*Changes to Home Mortgage Disclosure Act (HMDA) Loan Volume Reporting Threshold for Closed-end Mortgage Loans*). This letter addresses the impact on Federal Reserve-supervised financial institutions of recent changes resulting from a court decision concerning the HMDA reporting threshold for closed-end mortgage loans.

Here is the original CA letter 23-1 text:

“**Background:** In May 2020, the Consumer Financial Protection Bureau (Bureau) published a final rule amending Regulation C (Home Mortgage Disclosure) to, among other things, increase the threshold from 25 to 100 for reporting data about closed-end mortgage loans so that institutions originating fewer than 100 closed-end mortgage loans in either of the two preceding calendar years would not have to report such data effective July 1, 2020.¹ In September 2022, the U.S. District Court for the District of Columbia vacated that portion of the rule.²

As a result of the court’s order, the Bureau published a technical amendment in December 2022 updating the Code of Federal Regulations to reflect a reporting threshold of 25 closed-end mortgage loans in each of the two preceding calendar years.³ Separately, the Bureau stated:

The CFPB recognizes that financial institutions affected by this change may need time to implement or adjust policies, procedures, systems, and operations to come into compliance with their reporting obligations. In these limited circumstances, in allocating the

CFPB’s enforcement and supervisory resources, the CFPB does not view action regarding these institutions’ HMDA data as a priority. Thus, the CFPB does not intend to initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data collected in 2022, 2021, or 2020 for institutions subject to the CFPB’s enforcement or supervisory jurisdiction that meet Regulation C’s other coverage requirements and originated at least 25 closed-end mortgage loans in each of the two preceding calendar years but fewer than 100 closed-end mortgage loans in either or both of the two preceding calendar years.⁴

Guidance for Financial Institutions Supervised by the Federal Reserve: Like the Bureau, the Board recognizes that financial institutions affected by the change to the HMDA reporting threshold for closed-end mortgage loans may need time to implement or adjust policies and procedures, systems, and operations to come into compliance with their reporting obligations. This letter serves as a notice that, consistent with the Bureau, the Board does not intend to cite HMDA violations or take enforcement action for not collecting or reporting closed-end mortgage loan data originated in 2022, 2021, or 2020 by Federal Reserve-supervised financial institutions that meet Regulation C’s other coverage requirements and originated at least 25 closed-end mortgage loans in each of the two preceding calendar years but fewer than 100 closed-end mortgage loans in either or both of the two preceding calendar years.

If supervised financial institutions have questions about the guidance set forth in this letter, they are encouraged to contact the responsible Federal Reserve Bank. In addition, questions may be sent via the Board’s public website.⁵ ■

ENDNOTES*

¹ See 85 *Federal Register* 28364 (May 12, 2020); see also 12 C.F.R. §1003.2(g)(1)(v)(A) and (g)(2)(ii)(A). Under the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, the Bureau is responsible for rulemaking under HMDA. See 12 U.S.C. §§5481(12)(K) and (14) and 5512.

² See *Memorandum Opinion, National Community Reinvestment Coalition, et al. v. CFPB* (D.D.C. 2022). The court upheld the

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

Bureau’s May 2020 changes to the threshold for reporting open-end lines of credit.

³ See 87 *Federal Register* 77980 (December 21, 2022).

⁴ See “Changes to HMDA’s Closed-End Reporting Threshold” (December 6, 2022).

⁵ See Board of Governors: Contact Us.

REGULATORY CALENDAR*

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
Date varies with loan volume	Reg. B	Final rule under §1071 of the Dodd–Frank Act requiring lenders to collect small business loan data
03/29/23	Regs. Z	Rulemaking proposal to revise safe-harbor credit card late fees
01/01/23	Reg. Z	Final rule establishing loan exemption threshold for appraisals of higher-priced mortgages for 2022
01/01/23	Regs. M and Z	Final rules establishing dollar thresholds for credit exempt from Regulations M and Z
07/25/22	Reg. V.	Final rule prohibiting furnishing consumer reports containing adverse information in cases of human trafficking
06/03/22	Reg. BB	Agencies issue rulemaking proposal to modernize their implementing regulations for the Community Reinvestment Act
05/31/22	Reg. H	Agencies release revised interagency questions and answers regarding flood insurance
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	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

*Please visit the *Consumer Compliance Outlook* website for the most update version of the regulatory calendar: www.consumercomplianceoutlook.org/regulatory-calendar.

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Kenneth Benton, Editor
Consumer Compliance Outlook
Federal Reserve Bank of Philadelphia
SRC 7th Floor NE
Ten Independence Mall
Philadelphia, PA 19106

2023 CALENDAR OF EVENTS

- | | |
|------------|---|
| June 13–16 | ABA Risk and Compliance Conference
American Bankers Association
Henry B. González Convention Center
San Antonio, TX |
| July 12–13 | The Fifth Biennial Conference on Auto Lending
Federal Reserve Bank of Philadelphia
Philadelphia, PA |

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