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Inside

Overview of Private Flood Insurance Compliance Requirements

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The great Mississippi River flood of 1927 caused more destruction than any flood in American history, covering over 27,000 square miles across several states and producing $427 million dollars in damage (in 1927 dollars).[1] In response to this flood, many private flood insurers retreated from the market out of concern that "insurance against the peril of flood cannot successfully be written."[2] Eighty-five years later, Congress tried to revive the private flood insurance market by enacting the Biggert-Waters Flood Insurance Reform Act of 2012 (BWA),[3] with the goal of improving the financial stability of the National Flood Insurance Program (NFIP) by increasing the role of private insurers in managing the nation's flood risks.[4]

Among other changes, the BWA directed the Federal Emergency Management Agency (FEMA) to implement risk-based pricing of premiums[5] and amended the Flood Disaster Protection Act of 1973 (FDPA) to require regulated lending institutions, federal agency lenders, and the government-sponsored enterprises (GSEs) to accept a private flood insurance policy meeting the BWA's definition of "private flood insurance" to satisfy the FDPA's mandatory flood insurance purchase requirements.[6] This provision was designed to decrease the cost to the federal government of providing flood insurance through the NFIP by encouraging private flood insurance carriers to enter the market. Previously, lenders had the discretion to accept private policies under certain conditions pursuant to questions and answers (Q&As) 63 and 64 of the 2009 notice "Interagency Questions and Answers Regarding Flood Insurance" but were not required to accept them.[7]

In 2019, the Board of Governors of the Federal Reserve System (Board), the Farm Credit Administration, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (agencies) jointly issued a final rule to implement the BWA's private flood insurance provision.[8] The agencies had previously implemented the other provisions of the BWA in a final rule published in 2015.[9] This article provides an overview of the private flood insurance final rule, which includes 1) mandatory acceptance of private flood insurance, 2) discretionary acceptance of private flood insurance, and 3) flood insurance coverage provided by mutual aid societies. The agencies also conducted an Outlook Live webinar on the final rule on June 18, 2019.[10] The first part of the article reviews the regulation's requirements for these three sections of the final rule, while the second part summarizes the agencies' clarifications of these requirements in the 2022 updates to the flood insurance Q&As.[11]

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Consumer Compliance Requirements for Commercial Products and Services

By Kathleen Benson, Lead Examiner, Federal Reserve Bank of Chicago, Kenneth Benton, Principal Consumer Regulations Specialist, Federal Reserve Bank of Philadelphia, and Laura L. Gleason, Senior Specialist, Federal Reserve Bank of Philadelphia

The term "federal consumer protection laws" suggests their scope is limited to consumer products and services. However, some of these laws — such as the Equal Credit Opportunity Act, the Flood Disaster Protection Act, and the Servicemembers Civil Relief Act — also apply to commercial products and services. In addition, other federal consumer protection laws, although generally limited in scope to consumer products and services, include certain provisions that also apply to commercial products and services. For example, Regulation Z (the implementing regulation for the Truth in Lending Act) includes certain requirements for business-purpose credit cards.

Lenders may be overlooking commercial and agricultural lending compliance issues if the primary focus of their loan compliance program is on the consumer side. To facilitate commercial loan compliance, *Consumer Compliance Outlook* (*CCO*) reviewed the various laws and regulations that apply to commercial lending in a 2015 article.[1] Because several changes have occurred in this space since 2015, we are publishing this updated article.

EQUAL CREDIT OPPORTUNITY ACT/REGULATION B

The Equal Credit Opportunity Act (ECOA), as implemented by Regulation B, prohibits discrimination on a prohibited basis in any aspect of a credit transaction. Prohibited bases under the ECOA are: race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the applicant's income being derived from public assistance; or the applicant's exercise in good faith of any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Consumer Financial Protection Bureau (CFPB).[2] The ECOA and Regulation B apply to both consumer and commercial credit transactions, with limited exceptions.[3]

Prohibited Basis of Sex Includes Sexual Orientation and Gender Identity

The Supreme Court ruled in *Bostock v. Clayton County*, 590 U.S. 644 (2020), that the federal law prohibiting discrimination in employment based on a person's sex includes gender identity and sexual orientation. Following this decision, the President issued Executive Order 13998 in January 2021, directing certain federal agencies with regulatory authority for sex discrimination to review their agency procedures and determine whether actions should be taken to align them with the *Bostock* decision. Subsequently, the CFPB issued an interpretive rule clarifying that the ECOA and Regulation B apply to discrimination in credit transactions based on a person's sexual orientation and/or gender identity.[4] The rule also provided guidance to clarify the requirements.[5]

In light of this change, lenders can help to mitigate this risk by updating their policies and procedures to align with the change. For example, many lenders include a statement of nondiscrimination in their loan policy, loan advertisements, and applicant disclosures, and on their websites to reflect the ECOA's requirements. Lenders can update these documents to indicate they do not discriminate on the basis of sex, including sexual orientation or gender identity. Lenders can also conduct staff training on this issue.

Adverse Action Notification Requirements to Business Credit Applicants

Although the ECOA and Regulation B apply to both consumer and business credit applicants, the notice requirements vary when credit is extended to a business.[6] For business credit applicants that had $1 million or less in gross revenues during the prior fiscal year, the timing requirements and the contents of the notices are the same as for consumer applicants, although financial institutions may notify the applicants of the adverse action either orally or in writing.[7] Additionally, a creditor has the option of disclosing at application (instead of after adverse action is taken) the right to request the reasons for the action taken, provided that this disclosure includes the ECOA notice and the applicants' right to a statement of specific reasons for the action taken.[8]

For business credit applicants that had more than $1 million in gross revenues, creditors must notify applicants of adverse actions orally or in writing within a reasonable time, as opposed to the 30-day requirement for consumer credit applicants and business credit applicants with $1 million or less in gross revenues. Creditors must provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request within 60 days of the creditor's notification.[9] For the general requirements of adverse action, please refer to the *CCO* article "Adverse Action Notice Requirements Under the ECOA and the FCRA," by Sarah Ammermann (Second Quarter 2013).

Adverse Action Notification When Alternative Credit Data Are Used

Providing an adverse action notice (AAN) when a credit decision is based on alternative data can present challenges because in some cases it is not always clear which factor(s) prompted the lender to take adverse action. In 2021, *CCO* discussed this issue in "Advanced Topics in Adverse Action Notices Under the Equal Credit Opportunity Act."[10] We reprint pertinent parts of the article here.

In December 2019, the banking agencies issued the Interagency Statement on the Use of Alternative Data in Credit Underwriting.[11] The interagency statement noted that some creditors are using alternative data (defined as information not typically found in a consumer's credit report file or that consumers do not customarily provide during applications for credit)[12] to evaluate borrowers' repayment ability, including bank account cash flows. The interagency statement noted the creditors' use of cash flow data can generally be explained and disclosed to the applicant consistent with the AAN requirements in the ECOA and the FCRA.[13]

Appendix C of Regulation B includes sample AAN forms that list some of the factors creditors commonly consider in taking adverse action. However, when a creditor uses alternative data in the credit decision and the application is denied based on that data, the factors listed in the Appendix C forms may not be suitable. Appendix C states that if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons.[14] This flexibility may be useful when applying the AAN requirements to denied applications based on alternative data.

Adverse Action Notification When AI/ML Models Are Used

Underwriting models that use artificial intelligence or machine learning (AI/ML) technologies to automate credit decisioning may allow lenders to evaluate other information about credit applicants beyond traditional credit bureau report data. However, the use of AI/ML technologies in credit decisions can pose similar challenges as alternative data in determining and disclosing in the AAN the specific reason(s) for taking adverse action. In a blog post titled "Innovation Spotlight: Providing Adverse Action Notices When Using AI/ML Models," the CFPB provided informal guidance on this emerging issue.[15] The CFPB noted that Regulation B provides flexibility that can be compatible with AI algorithms. For example, although a creditor must provide the specific reasons for an adverse action, the commentary clarifies that a creditor is not required to describe how or why a disclosed factor adversely affected an applicant or, for credit scoring systems, how the factor relates to creditworthiness.[16] Thus, a creditor may disclose a reason for taking adverse action, even if the relationship between the factor and the credit decision may not be clear to the applicant. This flexibility may help creditors when issuing AANs based on AI models in which the variables and key reasons are known but may not be clear to the consumer.

The CFPB also noted that Regulation B does not mandate the use of any particular list of reasons. Instead, creditors must accurately describe the factors actually considered and scored by a creditor, even if those reasons are not reflected on the current sample forms.

In 2022 and 2023, the CFPB issued further guidance on this topic. In Consumer Financial Protection Circular 2022-03, the

CFPB discussed the issue of complex algorithms in which it is difficult to accurately identify the specific reasons for denying credit or taking other adverse actions. The circular clarifies that "*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 CFPB explained that ECOA AAN requirements apply equally to all credit decisions, regardless of the technology used to make them, and the ECOA AAN must include a *statement of reasons* that specifically indicates the principal reason(s) adverse action was taken.

In 2023, the CFPB further discussed this issue in Consumer Financial Protection Circular 2023-03, which added these additional points:

- If a creditor uses a Regulation B model form with a checklist that does not accurately reflect the reasons adverse action was taken, the creditor must modify it or check "other" and include the appropriate explanation.
- Creditors selecting the closest, but still inaccurate, factors from the checklist are not complying.
- Creditors must avoid disclosing reasons that are overly broad or vague or otherwise fail to inform the applicant of the specific and principal reason(s) for taking adverse action.
- Specificity is particularly important when creditors utilize complex algorithms — even if the connection between the factor that prompted the creditor to take adverse action to predicting creditworthiness may not be clear to the applicant.
- Specificity may also be an issue when creditors take adverse action on an existing credit line. For example, if a creditor lowers the consumer's limit on a line of credit based on alternative data, such as the type of retailer where a purchase was made, stating "purchasing history" or "disfavored business patronage" as the principal reason for adverse action would likely be insufficient.

Spousal Signature Rule

Before discussing spousal requirements in connection with commercial credit, it is helpful to first note the core requirement: When an applicant applies for credit individually and meets the creditor's lending standards for the amount and credit terms requested, the creditor cannot require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument, subject to certain exceptions.[17] To implement this requirement, the regulation requires that when spouses apply for credit jointly, their intent to do so must be evidenced at the time of application. Joint signatures on a promissory note are insufficient for this purpose. However, the staff commentary further states that "signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit."[18] For additional information on the spousal signature rules, see the *CCO* article "Regulation B and Marital Status Discrimination: Are You in Compliance?" by Carol Evans and Surya Sen (Fourth Quarter 2008).

For commercial credit, a creditor may require the personal guarantee of the partners, directors, or officers of a business, as well as the shareholders of closely held corporations, even though the business independently meets the creditor's lending standards for the amount and terms requested. Creditors must base this decision on the guarantor's relationship to the business and not on a prohibited basis, such as requiring guarantees only for women-owned or minority-owned businesses or requiring guarantees only of the married officers of a business or the married shareholders of a closely held corporation.[19]

The joint intent and signature provision requirements of Regulation B are unchanged since the prior article. However, because they are often identified as regulatory violations, it is important to ensure that the requirements and practices to mitigate the risk of such violations are clearly established in banks' policies, procedures, and documentation processes.

Section 1071 Final Rule for Small Business Loans Under the ECOA

Section 1071 of the Dodd–Frank Act amended the ECOA to direct the CFPB to issue a rule to require covered financial institutions to collect and report certain data points for their small, women-owned, and minority-owned business applications of covered credit transactions. On May 31, 2023, the CFPB published a final rule in the *Federal Register* to amend Regulation B to implement §1071.[20] The rule generally requires financial institutions making 100 or more covered credit transactions in the last two calendar years to small businesses with gross annual revenue of $5 million or less to collect and report certain data points on the loans.

The CFPB has a number of helpful resources on its website to facilitate §1071 compliance:

- Small Entity Compliance Guide
- Executive summary
- Fact sheet
- Data points chart
- Filing instructions

In response to a lawsuit challenging the §1071 final rule, a federal court stayed its implementation on October 26, 2023, pending the outcome of the lawsuit.[21]

Record Retention Requirements

Regulation B generally requires creditors to retain written or recorded information in connection with a commercial credit application for 12 months after the date that the applicant learned of the action taken on the application (compared with 25 months for consumer credit applications).[22]

Statute of Limitations for ECOA Lawsuits

The Dodd–Frank Act extended the statute of limitations for ECOA claims from two to five years.[23] As a result, creditors have longer exposure to civil legal liability for consumer and commercial credit transactions.

FAIR HOUSING ACT

The Fair Housing Act (FHA) prohibits, among other things, discrimination in *residential real estate transactions* on the basis of race, color, national origin, religion, sex, familial status, or disability.[24] While the FHA most frequently involves consumer housing issues, it can apply to certain commercial real estate transactions. The FHA defines *residential real estate transaction* as:

1) making or purchasing of loans or providing other financial assistance —

   (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
   (B) secured by residential real estate; or

2) selling, brokering, or appraising of residential real property.[25]

In the commercial lending context, the FHA's lending requirements apply to a loan to acquire real estate that will be used for residential housing. This would include, for example, a landlord's loan to acquire a residential apartment building or a developer's loan to construct a residential condominium.

Prohibited Basis of Sex Includes Sexual Orientation and Gender Identity

The Department of Housing and Urban Development (HUD) is the agency charged with implementing the FHA. On February 11, 2021, HUD issued a memo to implement the previously noted Executive Order 13998. The memo clarifies that the prohibition on discrimination on the basis of sex in the FHA[26] includes sexual orientation and gender identity. As discussed earlier for the ECOA, training on this issue for commercial loan staff, along with updated policies and procedures, can help mitigate this fair lending risk.

Because the FHA includes two prohibited bases that are not included in the ECOA — namely, disability and familial status — lenders must ensure their lending decisions and processes are not discriminating against borrowers for commercial loans subject to the FHA.

FLOOD DISASTER PROTECTION ACT/ REGULATION H

The Flood Disaster Protection Act of 1973 (FDPA) mandates, with limited exemptions,[27] that federally regulated lending institutions and federal agency lenders cannot make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.[28] The type and location of the collateral are the primary factors for this determination; the loan purpose (i.e., consumer or commercial) is generally not relevant. For an overview of flood insurance requirements, refer to the *CCO* article "Flood Insurance Compliance Requirements" by Kenneth Benton and Michael Schiraldi (Third–Fourth Quarter 2015).

If a borrower disputes aspects of the flood determination process, the Federal Emergency Management Agency (FEMA), which administers the National Flood Insurance Program, has established procedures to challenge a determination.[29]

Escrow Requirement for Flood Insurance Premiums

The Biggert–Waters Flood Insurance Reform Act of 2012 (BWA) expanded the circumstances in which lenders subject to the FDPA must escrow flood insurance premiums. *CCO* reviewed these requirements in detail in 2015. See Blessing Chimwanda and Danielle Martinage, "Agencies Issue Final Rule for New Flood Insurance Requirements" (Third–Fourth Quarter 2015). The federal agencies with FDPA rulemaking authority also conducted an Outlook Live webinar on their final rule implementing parts of the BWA. The audio, presentation slides, and transcript from the event are available on the Outlook Live website. After the webinar, the agencies addressed additional participant questions in a Q&A article in *CCO* (First Issue 2016).

Private Flood Insurance

The BWA also amended the FDPA to require regulated lenders to accept private flood insurance policies, as defined in the statute, to satisfy the mandatory flood insurance purchase requirements. In 2019, the agencies issued a final rule to implement this requirement. The rule also provides regulated lenders with the discretion to accept policies not satisfying the statutory definition of a private policy if the policies satisfy the discretionary standards established in the final rule and permits regulated lenders to accept a

plan provided by a mutual aid society, as defined in the regulation, if the plan meets certain circumstances and the lender's primary federal regulator determines the plan qualifies as flood insurance under the FDPA. Finally, the rule implemented a requirement in the 2014 Homeowner Flood Insurance Affordability Act (HFIAA) that exempted certain detached structures from the purchase requirements.

The agencies conducted an Outlook Live webinar on these changes in 2019. The audio, presentation slides, and transcript from the event are available on the Outlook Live website. In addition, this issue of *CCO* contains a detailed article on the private flood insurance requirements.

> "The SCRA's protections apply to obligations contracted prior to entering military service."

Risk Rating 2.0

Under FEMA's Risk Rating 2.0 initiative, FEMA prices flood insurance premiums based on a property's individual risk characteristics, such as distance to a waterway, elevation, and claims history. The National Flood Insurance Act generally limits annual rate increases to no more than 18 percent for most policies, and 25 percent for policies covering:

- properties with severe repetitive loss,
- nonprimary residences,
- properties with substantial damage or substantial improvement after July 6, 2012,
- business properties, and
- properties with substantial cumulative damage.[30]

FEMA will continue to increase annual premiums, subject to the statutory limits, until full risk-based pricing is implemented for all policies. For more information on Risk Rating 2.0, see the *CCO* Compliance Alert "FEMA Begins Risk Rating 2.0 Flood Insurance Initiative" (Fourth Issue 2021).

Revised Interagency Flood Insurance Questions and Answers

In May 2022, the Interagency Questions and Answers Regarding Flood Insurance were updated to consolidate the proposed revisions from July 2020 and March 2021 into one set of 144 questions and answers; this is a comprehensive update, replacing the previous questions and answers provided in 2009 (and the 2011 amendments to the 2009 Interagency Questions and Answers). The updated questions and answers also incorporate amendments to the agencies' regulations to implement the BWA and the HFIAA. Finally, the organization of the questions was revised to provide a more logical, topical flow and facilitate future revisions to the questions and answers. In July 2022, the banking agencies conducted an interagency Outlook Live webinar to highlight the changes in the Q&As.[31]

Finally, *CCO* published an article on commercial flood insurance compliance in 2022. See Danielle Martinage, "Commercial Flood Insurance Compliance — Washing Away Common Pitfalls" (Second Issue 2022).

SERVICEMEMBERS CIVIL RELIEF ACT

The Servicemembers Civil Relief Act (SCRA)[32] provides certain financial protections to servicemembers and, in some cases, their spouses, dependents, and other persons subject to the obligations of servicemembers. The SCRA covers issues such as rental agreements, eviction, installment loans, credit card interest rates, mortgage interest rates, mortgage foreclosure, automobile repossessions, and automobile leases.

The SCRA's protections apply to obligations contracted prior to entering military service. The SCRA's protections apply to servicemembers and joint obligations of servicemembers and their spouses. No distinction is made between consumer and commercial credit. For more information, refer to the *CCO* articles "Servicemember Financial Protection: An Overview of Key Federal Laws and Regulations," by Lanette Meister, Lorna Neill, Amal Patel, and Vivian Wong (Second Issue 2017), and "Servicemember Financial Protection Webinar: Questions and Answers," by Lanette Meister, Laurie Maggiano, and Laura Arce (First Quarter 2013), and the 2012 Outlook Live webinar Servicemember Financial Protection.

HOME MORTGAGE DISCLOSURE ACT/ REGULATION C

The Home Mortgage Disclosure Act (HMDA) and its implementing Regulation C have undergone many changes in recent years, including amendments to provisions that affect dwelling-secured loans originated on the commercial side of the bank. The CFPB issued a final rule in 2015 to implement the 2010 Dodd–Frank Act amendments to HMDA, which expanded the data that must be collected and reported under HMDA. This final rule generally became effective on January 1, 2018, and has been amended several times. The rule generally requires reporting of data on most consumer-purpose loans secured by a dwelling. A loan made primarily

for business or commercial purposes is generally excluded from HMDA's coverage, unless it is a home improvement loan, home purchase loan, or refinancing and no other exclusions apply. Properties used for mixed-use purposes, such as apartment and retail units, are considered dwellings if the primary use is residential. The rule's commentary,[33] which discusses mixed-use properties, allows institutions to use reasonable standards to determine the property's primary use, and to select the standard to apply on a case-by-case basis.

A specific exemption also applies to a closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes.[34] The final rule cross-references the guidance in Regulation Z to define an agricultural purpose,[35] which provides that an institution may use reasonable standards to determine the primary use of the property and select the standard to apply on a case-by-case basis.

Finally, the HMDA reporting threshold for closed-end mortgages had been raised from 25 to 100 covered loans in each of the prior two years,[36] but a court vacated this portion of the rule. As a result, the CFPB published a technical amendment in December 2022 to restore the original 25 closed-end mortgage loan threshold in response to the court order.[37] *CCO* discussed this change in a Compliance Alert in its First Issue 2023.

The CFPB has a number of helpful resources on its website[38] that address HMDA, including a Small Entity Compliance Guide, a HMDA Transactional Coverage Chart that addresses the commercial and agricultural exemptions, and HMDA FAQs. To ensure that HMDA reporters appropriately capture dwelling-secured closed-end mortgage loans and open-end lines of credit that may have been originated primarily for business or commercial purposes but are home improvement loans, home purchase loans, or refinancings, it is important that commercial lending management is aware of the transactional reporting requirements applicable to their area, with appropriate coordination with the HMDA-reporting coordinator in their institution.

COMMUNITY REINVESTMENT ACT (CRA)/ REGULATION BB

The CRA requires that the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (Board), and the Office of the Comptroller of the Currency (OCC) assess the record of each covered depository institution in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. For large banks, the CRA requires certain data collection for small business, small farm, and community development lending activity. Large banks collect small business and small farm loans as they are defined in the instructions to prepare the Consolidated Report of Condition and Income.[39]

For community development loans, lending officers should be familiar with the definitions of community development to ensure that a bank's full universe of community development loans is captured for consideration in the bank's CRA performance evaluation. In addition, commercial lending processes should be in place to identify such loans at the time of origination, in cooperation with the institution's CRA officer.

On February 1, 2024, the FDIC, the Board, and the OCC jointly published a final rule in the *Federal Register* to strengthen and modernize the regulations implementing the CRA.[40] On March 21, 2024, the agencies issued an interim final rule to change the effective date for the facility-based assessment areas provision and the content and availability of public file provision from April 1, 2024, to January 1, 2026. Several trade groups filed a lawsuit challenging the final rule, and on March 29, 2024, the district court granted a preliminary injunction to stay enforcement of the rule pending the outcome of the lawsuit.[41]

EXPEDITED FUNDS AVAILABILITY ACT/ REGULATION CC

The Expedited Funds Availability Act, as implemented by Regulation CC, sets forth the requirements that depository institutions make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. It also establishes rules designed to speed the collection and return of unpaid checks and describes requirements that affect banks that create or receive substitute checks, including requirements related to consumer disclosures and expedited recredit procedures. The statute and the regulation apply to both consumer and commercial accounts.[42]

TRUTH IN LENDING ACT/REGULATION Z

The Truth in Lending Act (TILA), as implemented by Regulation Z, seeks to provide "meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."[43] TILA and Regulation Z primarily focus on consumer credit, as defined in 12 C.F.R. §1026.2(a)(12) and elaborated upon in the staff commentary.[44] However, two provisions may apply to credit cards issued for business purposes. First, credit cards can be issued, regardless of their purpose, only in response to an application or oral or written request or as a substitute for or renewal of an existing card.[45]

Second, the regulation also has provisions specifically applicable to unauthorized use of a credit card where a

card issuer provides 10 or more credit cards for use by the employees of an organization.[46]

CONCLUSION

Although many federal consumer protection laws and regulations apply solely to consumer transactions, some commercial products and services are also subject to some of these requirements. Financial institutions should review these requirements to ensure that effective policies and procedures are in place for complying with these laws and regulations. Specific issues and questions should be raised with your primary regulator. ■

Endnotes*

1 Laura Gleason and Elizabeth Galvin "Consumer Compliance Requirements for Commercial Products and Services" (*CCO*, First Quarter 2015). Topics included the Equal Credit Opportunity Act/Regulation B, the Flood Disaster Protection Act/Regulation H, the Fair Credit Reporting Act, the Servicemembers Civil Relief Act, Home Mortgage Disclosure Act/Regulation C, the Community Reinvestment Act/Regulation BB, the Expedited Funds Availability Act/Regulation CC, and the Truth in Lending Act/Regulation Z.

2 12 C.F.R. §1002.2(z).

3 Some provisions in Regulation B do not apply to public utilities credit, government credit, securities credit, and incidental credit. See 12 C.F.R. §1002.3. In addition, the furnisher requirements in 12 C.F.R. §1002.10 apply only to consumer credit transactions. See Comment 10-1 of the Regulation B staff commentary. ("The requirements of §1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.")

4 86 FR 14363 (March 16, 2021).

5 86 FR 14365.

6 12 C.F.R. §1002.9(a)(3).

7 12 C.F.R. §1002.9(a)(3)(i)(A).

8 12 C.F.R. §1002.9(a)(3)(i)(B).

9 12 C.F.R. §1002.9(a)(3)(ii).

10 Dolores Collazo, "Advanced Topics in Adverse Action Notices Under the Equal Credit Opportunity Act" (*CCO*, First Quarter 2015).

11 See Consumer Affairs letter 19-11 for the Interagency Statement.

12 Interagency Statement, footnote 1.

13 Interagency Statement at p. 2.

14 See Appendix C to Part 1002 — Sample Notification Forms, Instruction 3.

15 "Innovation Spotlight: Providing Adverse Action Notices When Using AI/ML Models," Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins (CFPB, July 7, 2020).

16 See Comments 9(b)(2)-3 and -4, respectively, of Regulation B.

17 12 C.F.R. §1002.7(d)(1).

18 See Comment 7(d)(1)-3 of Regulation B.

19 See Comment 7(d)(6)-1 of Regulation B.

20 88 FR 35150 (May 31, 2023).

21 *Texas Bankers Association v. Consumer Financial Protection Bureau*, 2023 U.S. Dist. LEXIS 222243 (N.D. Tex Oct 27, 2023).

22 12 C.F.R. §1002.12(b).

23 15 U.S.C. §1691e(f).

24 42 U.S.C. §§3604, 3605; 24 C.F.R. Part 100.

25 42 U.S.C. §3605(b); 24 C.F.R. §110.115.

26 42 U.S.C. §§3604, 3605(a), 3606; 24 C.F.R. Part 100.

27 The exemptions apply to state-owned property covered under a policy of self-insurance satisfactory to FEMA and to loans with an original principal balance of $5,000 or less and a repayment term of one year or less. See 12 C.F.R. §208.25(d).

28 42 U.S.C. §4012a(b); 12 C.F.R. §208.25(c). Loans sold to the government-sponsored enterprises are also subject to the flood insurance purchase requirements. 42 U.S.C. §4012a(b)(3).

29 "Change Your Flood Zone Designation" (FEMA).

30 23 42 U.S.C. §4015(e)(4).

31 Outlook Live Interagency Flood Insurance Q&As Webinar.

32 50 U.S.C. App. 501 et seq. The SCRA is a standalone statute with no implementing rule, regulation, or commentary.

33 Comment 2(f)4 of Regulation C.

34 12 C.F.R. §1003.3(c)(9).

35 Comment 3(a)-8 of Regulation Z.

36 85 FR 28364 (May 12, 2020).

37 87 FR 77980 (December 21, 2022).

38 Home Mortgage Disclosure Reporting Requirements (CFPB).

39 Instructions for Preparation of Consolidated Reports of Condition and Income, page RC-C-37.

40 89 FR 6574 (February 1, 2024).

41 *Texas Bankers Association v. Office of the Comptroller of the Currency*, (N.D. Tex March 29, 2024).

42 12 U.S.C. §4001(1); 12 C.F.R. §229.2(a).

43 15 U.S.C. §1601(a).

44 12 C.F.R. §1026.1(c).

45 12 C.F.R. §1026.12(a).

46 12 C.F.R. §1026.12(b)(5).

* 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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FDPA'S FLOOD INSURANCE PURCHASE REQUIREMENTS

The National Flood Insurance Act, as amended by the FDPA, requires a regulated lending institution or federal agency lender that makes, increases, extends, or renews a loan secured by improved real estate or mobile homes located, or to be located, in a special flood hazard area (SFHA) where flood insurance is available under the NFIP to ensure the loan is covered by flood insurance for the term of the loan for the lesser of the loan balance or the maximum amount of insurance available under the NFIP.[12] The agencies' implementing regulations refer to a loan for which flood insurance is required as a *designated loan*.[13] Loans sold to the GSEs are also subject to the flood insurance purchase requirements.[14]

BWA'S REQUIREMENTS

Mandatory Acceptance of Private Flood Insurance

The final rule requires regulated lenders to accept a flood insurance policy meeting the regulation's definition of *private flood insurance* to satisfy the purchase requirements for designated loans.[15] The rule defines *private flood insurance* as an insurance policy that:

- is issued by an insurance company that is licensed, admitted, or otherwise approved by the state insurance regulator where the insured property is located or that is recognized (or not disapproved) as a surplus lines insurer for a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property.
- provides flood insurance coverage at least as broad as a standard flood insurance policy (SFIP) issued under the NFIP for the same type of property, including with respect to deductibles, exclusions, and other conditions. To be at least as broad as the coverage provided under an SFIP, the policy must satisfy these requirements:
    - define *flood* to include the flood events defined in an SFIP;
    - contain coverage as broad as the SFIP's, including building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;
    - contain deductibles no higher than the specified maximum and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;
    - cover direct physical loss that a flood causes and not include exclusions other than those in SFIPs unless they are for coverage in addition to the amount and type of coverage that could be provided by an SFIP or provide broader coverage to the policyholder; and
    - does not narrow the coverage provided in an SFIP.
- includes all of the following:
    - a requirement that the insurer provide a written notice 45 days before cancellation or nonrenewal of flood insurance coverage to the insured and the lender or loan servicer,
    - information about the availability of flood insurance coverage under the NFIP,
    - a mortgage interest clause similar to the clause in an SFIP, and
    - a provision requiring the insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy.
- contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

To facilitate lenders' compliance, the agencies included a compliance aid statement in the private flood insurance final rule, which provides that a lender may determine whether a policy qualifies as private flood insurance, *without further review of the policy*, if the policy or endorsement contains this verbatim language: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."[16]

> The private flood insurance final rule permits a lender to accept a policy that does not meet the regulation's definition of a private flood insurance policy if it meets the regulation's discretionary acceptance standard.

Discretionary Acceptance of Private Flood Insurance

The private flood insurance final rule permits a lender to accept a policy that does not meet the regulation's definition of a private flood insurance policy if it meets the regulation's discretionary acceptance standard. To qualify, a policy must:

- provide coverage in the required amount;
- be issued by an insurer licensed, admitted, or otherwise approved by the state insurance regulator to provide insurance in the jurisdiction in which the property to be insured is located; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, be issued by a surplus lines insurer recognized (or not disapproved) by the insurance regulator of the state or jurisdiction where the property to be insured is located;
- cover both the lender(s) and borrower(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and
- provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender must document its conclusion regarding sufficiency of the protection of the loan in writing.

Mutual Aid Societies

Under the private flood insurance final rule, a regulated lender may accept a plan offered by a mutual aid society to cover flood damages to a member's property to satisfy the mandatory purchase requirements if the plan meets the regulation's requirements. The regulation defines *mutual aid society* as an organization:

- whose members share a common religious, charitable, educational, or fraternal bond;
- that covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and
- that has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

The regulation requires that the mutual aid society's plan must:

- qualify as flood insurance by the lender's federal regulator;
- provide coverage in the amount required by the regulation;
- cover both the mortgagor(s) and the mortgagee(s) as loss payees; and
- provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender must document its conclusion of the plan's protection of the loan in writing.

Since the regulation requires a lender's primary regulator to approve a mutual aid society plan, a lender should contact its regulator if it is considering allowing a borrower to use a mutual aid society plan.

Q&A CLARIFICATIONS OF THE PRIVATE FLOOD INSURANCE REQUIREMENTS

When the agencies updated the 2022 revised flood insurance Q&As, they added several clarifying Q&As on the requirements for private flood insurance policies and mutual aid society plans, which we highlight here.

Q&As on Mandatory Acceptance

- Mandatory 1: A lender may decide to accept only flood insurance policies issued by a private insurer under the mandatory provision that meet the definition of *private flood insurance* and provide the proper amount of insurance.
- Mandatory 2: A lender whose policy is to not originate loans in nonparticipating communities or other regions where the NFIP is not available is not required to change this policy because of the private flood insurance requirements.

Q&As on Compliance Aid Statement

- Mandatory 3: The compliance aid statement is not

a conformity clause. Such a clause would have the legal effect of making the private policy conform to the regulation's definition of private flood insurance. Instead, the statement "is intended to leverage the expertise of insurers to assist lenders in satisfying the 'private flood insurance' definition of the regulation."

- Mandatory 4: A lender is *not* required to rely on a compliance aid statement. A lender "may choose to make its own determination about whether the policy meets the definition of 'private flood insurance' or whether the policy is acceptable under the discretionary acceptance or mutual aid criteria."
- Mandatory 5: A lender may rely on a compliance aid statement without reviewing the policy to determine that it meets the definition of "private flood insurance" if the statement contains the verbatim language in the regulation. But a statement does not have to be rejected because it contains stylistic differences such as formatting, font, or punctuation that do not change the substantive meaning of the clause.
- Mandatory 6: A lender relying on a compliance statement must still ensure the loan has the proper amount of insurance. The FDPA requires that "the amount of insurance is at least equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the [FDPA]."
- Mandatory 7: A lender may review a policy with no compliance aid statement under the discretionary acceptance standard without first checking if it meets the mandatory acceptance requirements. But if the policy does not meet the discretionary acceptance standard, the lender has to determine if it *must* accept the policy because it meets the definition of a private flood insurance policy.
- Mandatory 8: If the compliance aid statement appears on the declaration page using the verbatim language in the regulation, further review is not required. But as noted in Q&A Mandatory 6, the lender must still confirm the borrower obtained the required amount of insurance.
- Mandatory 9: A lender may rely on a compliance aid statement containing the regulation's verbatim language even if the policy contains the disclaimer "insurer is not licensed in the State or jurisdiction in which the property is located" (suggesting a surplus lines insurer), provided the policy complies with the regulation and applicable state law.

Q&As on Discretionary Acceptance and Mutual Aid Societies

- Discretionary 1: A lender is not required to accept a policy or mutual aid society plan that meets the discretionary acceptance standard.
- Discretionary 2: A lender may include any information reasonably supporting its conclusion that a discretionary policy provides sufficient protection of the loan to fulfill the requirement that the lender document its conclusion in writing. Specific documentation is not required.
- Discretionary 3: A lender may obtain information from the insurance regulator of the state in which the property securing the loan is located to evaluate the insurer's financial strength. A lender can rely on the licensing or

other processes used by the state insurance regulator for such an evaluation.

- Discretionary 4: Both the discretionary acceptance standard and the mutual aid society standard require coverage that sufficiently protects the loan, which the lender must document. This Q&A discusses the factors a lender may consider to support its conclusion:
  - whether the policy's deductibles are reasonable based on the borrower's financial condition;
  - whether the insurer provides adequate cancellation notice to the borrower and lender to ensure the borrower has time to obtain replacement insurance or the lender can provide timely force placement of flood insurance, if necessary;
  - whether the terms and conditions of the policy for payment per occurrence or per loss and aggregate limits adequately protect the lender's interest in the collateral;
  - whether the policy complies with applicable state insurance laws; and
  - whether the private insurance company has the financial solvency, strength, and ability to satisfy claims. See also Q&A Discretionary 3 (lender may look to information from the state regulator to evaluate a flood insurer's financial condition).
- Private Flood Compliance 1: A lender may accept a discretionary policy with a deductible greater than the maximum one under the NFIP. However, the lender must still determine whether the policy sufficiently protects the loan, consistent with safety and soundness principles, and cannot select a deductible that equals or exceeds the insurable value of the property.

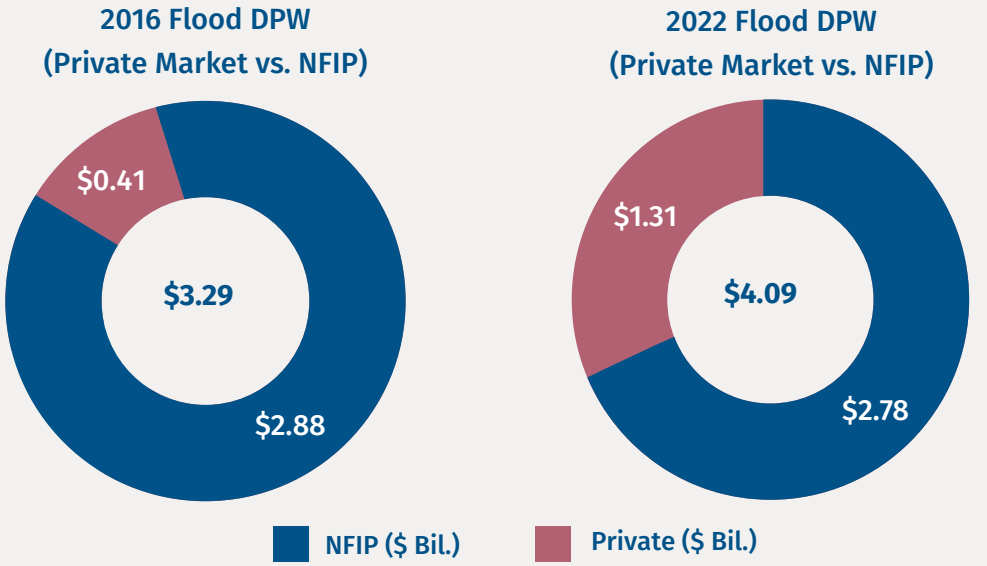
Q&As on Requirements for All Private Policies and Plans

- Private Flood Compliance 7: Lenders selling designated loans in the secondary markets to the GSEs must ensure they comply with the agencies' requirements and should ensure the GSEs' requirements for private flood insurance policies are also met. After the agencies issued their regulations, Fannie Mae discussed this issue in a June 5, 2019, selling notice, and Freddie Mac discussed it in a June 12, 2019, bulletin.
- Private Flood Compliance 11: At renewal, a lender may rely on its previous review *provided* changes were not made to the policy or plan that would affect its acceptance. For example, if a policy were unchanged, a lender would not be required to conduct another review to determine whether the policy complies with private flood insurance requirements. But a lender is still required to verify the policy or plan provides the required amount of coverage.

STATE OF THE PRIVATE FLOOD INSURANCE MARKET

Recent data suggest the BWA and other changes in the flood insurance market are increasing the use of private flood insurance policies. According to the Insurance Information Institute (III), an industry trade group, "between 2016 and 2022, the total flood market grew 24 percent — from $3.29 billion in direct premiums written [DPW] to $4.09 billion

FIGURE 1: Growth in Private Flood Insurance Market 2016-2022



Source: Insurance Information Institute

— with 77 private companies writing 32.1 percent of the business" (see Figure 1). FEMA's introduction of Risk Rating 2.0 (RR2), which changed FEMA's pricing methodology to more accurately reflect a property's actuarial flood risk by analyzing multiple data points,[17] contributed to this large increase, according to the III. As RR2 increased premiums for many policyholders, the pricing of private policies became more competitive.[18] The III report also noted that communities participating in FEMA's Community Rating System (CRS), which encourages floodplain standards that exceed FEMA's minimum standard, can reduce premiums. For example, premiums in Folly Beach, SC, dropped 30 percent after it became a CRS Class-4 community.[19]

CONCLUSION

Floods are the most common and expensive natural disaster in the United States.[20] Congress enacted the BWA to help mitigate this risk. The agencies' private flood insurance final rule and the updated flood insurance Q&As have clarified the BWA's requirements to help lenders comply. Specific issues and questions by lenders should be raised with the lender's primary regulator. ■

Endnotes*

1 "Flood History of Mississippi," National Weather Service.

2 Phyllis Cuttino, "How 20th-Century Events Shaped the National Flood Insurance Program," Pew Charitable Trusts (June 7, 2016). See also *Affordability of National Flood Insurance Program Premiums: Report 1* (The National Academies of Science, 2015), p. 23, and Scott Gabriel Knowles and Howard Kunreuther, "Troubled Waters: The National Flood Insurance Program in Historical Perspective," *Journal of Policy History* 26(3): 327.

3 Pub. L. 112–141; 126 Stat. 957, Div. F, Tit. II, Subtit. A (July 6, 2012), codified as amended at 42 U.S.C. §4014(a)(2) and (g), 42 U.S.C. §4017a.

4 H. Rep. No. 112–102 (Committee on Financial Services, June 9, 2011) at 1.

5 Section 100207 of the BWA (codified at 42 U.S.C. §4015). Congress later enacted the Homeowner Flood Insurance Affordability Act (HFIAA), which amended the BWA to impose limits on rate increases so risk-based pricing could be phased in over time to avoid price shocks to insureds. *CCO* reviewed the HFIAA in a Compliance Spotlight (Second Quarter 2014).

6 Section 100239 of the BWA (codified at 42 U.S.C. §4012a(b)).

7 74 FR 35914, 35944 (July 21, 2009).

8 84 FR 4953 (Feb. 20, 2019). Each agency codified the regulatory text of the final rule into its implementing regulations. Board: 12 C.F.R. §205.25; Farm Credit: 12 C.F.R. Part 614, sub-part S; FDIC 12 C.F.R. Part 339; NCUA: 12 C.F.R. Part 760; and OCC: 12 C.F.R. Part 22. For convenience, this article uses the Board's citations. The BWA also requires the federal agency lenders and the GSEs to accept private flood insurance meeting the BWA's definition. See §4012a(b)(2) and (b)(3). In response, the Department of Housing and Urban Development issued a rule allowing acceptance of private flood insurance for Federal Housing Administration–insured loans, using the BWA's definition. 87 FR 70733 (Nov. 21, 2022). The GSEs updated their selling guides to address private flood insurance requirements.

9 80 FR 43126 (July 21, 2015).

10 The webinar and the presentation slides are available in the Outlook Live archives. Free registration is required in order to view the webinar.

11 87 FR 32826 (May 31, 2022).

12 42 U.S.C. §4012a(b)(1).

13 12 C.F.R. §208.25(b)(5).

14 42 U.S.C. §4012a(b)(3).

15 12 C.F.R. §208.25(c)(3).

16 12 C.F.R. §208.25(c)(3)(ii).

17 *CCO* summarized RR2 in the Fourth Issue 2021.

18 *Flood: State of the Risk* (III, August 16, 2023).

19 *Flood: State of the Risk* at p. 2.

20 Flood Insurance and the NFIP (FEMA, June 14, 2021).

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

Resources to Combat Increased Check Fraud

The Federal Reserve System (Federal Reserve) recognizes that check fraud is a top concern of bankers. In 2023, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) noted that financial institutions reported 680,000 suspicious activity reports for possible check fraud in 2022, a significant increase from 2021. While the Federal Reserve actively monitors trends in check fraud, it generally does not intervene in fraud disputes between banks, including banks over which it may not be the primary federal banking regulator. The Federal Reserve is sharing these resources and sound practices to help financial institutions respond to check fraud.

• The Federal Reserve

- ***Consumer Compliance Outlook* (*CCO*).** In 2018, *CCO* published an article titled "Responding to Counterfeit Instrument Scams." This article identifies common schemes involving counterfeit instruments and sound practices to mitigate risk.

- ***Contact Us* link.** Financial institutions can communicate their concerns about check fraud and other issues to the Federal Reserve at this link. If a bank chooses to report a fraud incident, the notice should provide full details in the comment section at the bottom, without including any personally identifiable information. Board staff will review the information received, which may include sharing it within the Federal Reserve System and with other banking supervisory agencies.

• FinCEN

On February 27, 2023, FinCEN issued an alert about the surge in check fraud. This alert provides red flag indicators to assist financial institutions in meeting their Bank Secrecy Act obligation to identify and report suspicious activity. It emphasizes that information sharing among financial institutions is critical to identifying, reporting, and preventing mail-theft related check fraud. The alert strongly encourages financial institutions to share information under the safe harbor authorized by Section 314(b) of the USA PATRIOT Act; refer to FinCEN's Section 314(b) page for additional information.

• U.S. Postal Inspection Service (USPIS)

The USPIS has published Tips & Prevention on scams in general, an information page on check fraud, and a brochure financial institutions can send to their customers, titled "Don't Be a Victim of a Check Scam." It also provides forms to report fraud.

• The American Bankers Association (ABA)

The ABA's Check Fraud Claim Directory provides a searchable database of contact information for banks needing to file a check warranty breach claim with another financial institution. To access the directory, a bank must participate by providing its fraud contacts but does not need to be an ABA member.

• Check Service Providers

Check service providers may offer products and services designed to mitigate check fraud, such as duplicate detect and positive pay products that can help spot duplicate check presentment or accelerated presentment options that may help institutions detect problems earlier in the check collection process. Institutions can contact their provider about whether these sorts of potential features are offered.

CCO occasionally issues individual Compliance Spotlights or Compliance Alerts to our electronic subscribers to share timely regulatory information. To receive Spotlights and Alerts electronically, go to the *CCO* home page and select the email notification link to subscribe. ■

Thank You, Allison Burns and Danielle Martinage

In 2017, *CCO* created a writers' cohort of supervisory staff at the Reserve Banks to contribute articles to *CCO*. Allison Burns and Danielle Martinage, two original members of the cohort, are leaving this year. We want to thank them and acknowledge their contributions.

Allison is a supervisory examiner at the Federal Reserve Bank of Minneapolis. She joined the cohort in 2017 and has published the following articles:

- "Understanding Regulation Z's Advertising Requirements" (First Issue 2021)
- "HMDA Data Collection and Reporting: Keys to an Effective Program" (Fourth Issue 2020)
- "Promoting Effective Change Management" (Second Issue 2019)

Danielle is a senior examiner at the Federal Reserve Bank of Boston. She joined the cohort in 2017 and has focused on flood insurance compliance requirements in the following articles:

- "Commercial Flood Insurance Compliance — Washing Away Common Pitfalls" (Second Issue 2022).
- "Vendor Management Considerations for Flood Insurance Requirements" (Second Issue 2019)
- "Agencies Issue Final Rule for New Flood Insurance Requirements" (Third–Fourth Quarter 2015)

Allison and Danielle: Your articles are some of *CCO*'s most popular, for which we received several reprint requests. Thank you for participating in the cohort and writing articles for the publication!

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Please contact us at outlook@phil.frb.org. We generally grant requests to reprint articles free of charge provided you agree to certain conditions, including using our disclaimer, crediting *Consumer Compliance Outlook* and the author, and not altering the original text.

Recent Supervisory Data for Institutions the Federal Reserve Supervises

As announced in the First Issue 2023, *Consumer Compliance Outlook* (*CCO*) is regularly publishing data-driven articles that leverage the Federal Reserve System's supervisory information from consumer compliance examinations of state member banks and from complaints consumers filed against state member banks. This approach enhances the transparency of the Federal Reserve's consumer compliance supervisory activities and provides practical steps that institutions may consider when addressing certain consumer compliance risks.

To that end, *CCO* is annually publishing three buckets of supervisory data for the institutions the Federal Reserve supervises: 1) the top consumer law violations identified by our examiners; 2) the top consumer complaints; and 3) the top Matters Requiring Immediate Attention (MRIAs) and Matters Requiring Attention (MRAs). These data appear below in three separate tables. In subsequent issues, *CCO* will discuss these supervisory data, including the common issues, root causes, risk mitigants and sound practices.

During 2023, Federal Reserve System examiners conducted 223 examinations.[1] Table 1 lists the most frequently cited violations in 2023.[2]

TABLE 1: Top Consumer Violations in 2023 for State Member Banks

	Provision	Number of Violations	Percentage of All Violations
1	Regulation C (Home Mortgage Disclosure Act), 12 C.F.R. 1003.4(a): requires a financial institution to collect for reporting specific and accurate data on applications for covered loans it receives, originates, and purchases for each calendar year.	276	48.3
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.	28	4.9
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.	23	4.0
4	FTC Act Section 5(a), 15 USC 45: prohibits unfair or deceptive acts or practices in or affecting commerce.	15	2.6
5	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.	10	1.8
6	(Tie) 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.	8	1.4
	Regulation Z (Truth in Lending Act), 12 C.F.R. 1026.38(f): requires a creditor to disclose all loan costs associated with a mortgage transaction on the Closing Disclosure.	8	1.4
8	(Tie) Regulation H (Flood Disaster Protection Act), 12 C.F.R. 208.25(i): requires a bank that makes a loan secured by a property in a special flood hazard area to deliver a notice to the borrower indicating whether flood insurance is available under the Flood Disaster Protection Act.	7	1.2
	Regulation X (Real Estate Settlement Procedures Act), 12 C.F.R. 1024.17(i): requires a mortgage loan servicer to submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year.	7	1.2
	Regulation Z (Truth in Lending Act), 12 C.F.R. 1026.9(c): requires the creditor for a home equity loan to deliver written notice of any change in loan terms within 15 days of the change.	7	1.2
	Subtotal of Top Violations	389	68.1
	Total	571	100

During 2023, the Federal Reserve monitored consumer complaints by topic. Table 2 lists the most frequent topics of consumer complaints in 2023.[3]

TABLE 2: Top Consumer Complaints in 2023 for State Member Banks

	Complaint Topic	Number of Complaints	Percentage of All Complaints
1	Funds Availability/Withdrawals/Unable to Access Funds	1,381	23.0
2	Fraud/Forgery	1,143	19.0
3	Error Resolution	737	12.3
4	Restricted/Blocked Account	735	12.2
5	Credit Reporting	340	5.7
6	Fees/Terms/Rates	305	5.1
7	Account Closure	278	4.6
8	Application/Account Opening	134	2.2
9	Deposits	103	1.7
10	Disbursement	94	1.6
	Subtotal of Top Complaints	5,250	87.4
	Total	6,012	100

Table 3 lists the top nine MRIAs and MRAs in 2022 in alphabetical order.

TABLE 3: Top MRIAs/MRAs in 2022 for State Member Banks

Issue
Compliance Risk Assessment
Compliance Testing
Compliance Training
Data Reporting Risk Management
Fair Lending Pricing/Underwriting Risk Management
Fair Lending Redlining Risk Management
Fair Lending Risk Assessment
Fair Lending Training
Mortgage Servicing Risk Management

Endnotes*

1 The Federal Reserve System examines state member banks using an examination calendar that factors in institution size and risk profile. Therefore, not all state member banks were examined in 2023.

2 For purposes of this table, 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.

3 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.

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
05/14/24*	Reg. Z	Consumer Financial Protection Bureau (CFPB) issues final rule for credit card penalty fees
**	Reg. BB	Agencies issue final rule to modernize their implementing regulations for the Community Reinvestment Act
02/23/24	Regs. E and Z	CFPB issues proposal to regulate credit overdrafts at very large financial institutions
01/31/24	12 C.F.R. Pt 1042.2	CFPB issues proposal to prohibit fees for instantaneously declined transactions
01/01/24	Reg. Z	Agencies announce dollar thresholds for smaller loan exemption from appraisal requirements for higher-priced mortgage loans
01/01/24	Regs. M and Z	Agencies update annual dollar amount thresholds for Regulations M and Z
01/01/24	Regs. C and Z	CFPB adjusts annual dollar amount thresholds under the Home Mortgage Disclosure Act and the Truth in Lending Act
11/17/23	12 C.F.R. 1090	CFPB issues proposed larger-participants rulemaking for the market for general-use digital consumer payment application
11/14/23	Reg. II	Federal Reserve issues proposal to lower the maximum interchange fee a large debit card issuer may charge
10/31/23	12 C.F.R. 1033	CFPB issues proposal to implement §1033 of the Dodd–Frank Act

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
10/30/23	n/a	Agencies issue principles for climate-related financial risk management for large financial institutions
10/12/23	Reg. B	CFPB and Department of Justice issue Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act
09/21/23	Reg. V	CFPB begins rulemaking process to regulate consumer reporting of medical debts
09/19/23	Reg. B	CFPB issues Advisory Opinion on adverse action notice requirements for creditors using artificial intelligence
08/29/23	Reg. B	CFPB's Statement on Enforcement and Supervisory Practices Relating to the Small Business Lending Rule Under the Equal Credit Opportunity Act and Regulation B
07/21/23	FHA, Regs. Z and B	Proposed Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations
07/06/23	Reg. B	CFPB issues annual fair lending report for 2022
06/21/23	Reg. Z	Agencies issue proposed rulemaking on quality control standards for automated valuation models
05/11/23	Reg. Z	CFPB issues proposed rule for residential property assessed clean energy financing
04/03/23	UDAAP	CFPB issues policy statement on prohibition of abusive acts or practices
***	Reg. B	CFPB's final rule under §1071 of the Dodd–Frank Act requiring lenders to collect small business loan data

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

* A lawsuit challenging the final rule is pending.

** On March 29, 2024, a federal district court in Texas temporarily suspended enforcement of the rule nationwide.

*** On October 26, 2023, a federal district court in Texas temporarily suspended enforcement of the rule nationwide.

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2024 Calendar of Events

May 2–3, 2024	**2024 CFPB Research Conference** CFPB Headquarters Washington, D.C.
May 15–16, 2024	**The Mortgage Market Research Conference** Federal Reserve Bank of Philadelphia Philadelphia, PA
June 11–14, 2024	**American Bankers Association Annual Risk and Compliance Conference** Seattle Convention Center Seattle, WA

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