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A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS

Inside

Top Federal Reserve System Compliance Violations in 2023 Under the Flood Disaster Protection Act of 1973

By Consumer Compliance Outlook Staff

Congress enacted the Flood Disaster Protection Act of 1973 (FDPA)[1] to identify flood-prone areas and to condition the eligibility of state and local communities to receive disaster assistance by requiring them to participate in the National Flood Insurance Program (NFIP) and adopt flood plain ordinances to reduce future flood losses. The FDPA also prohibits regulated lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home that is in, or that will be in, a special flood hazard area (SFHA) in a participating community, unless the property securing the loan is covered by flood insurance.[2] Loans for which flood insurance is required are defined as "designated loans" in the FDPA's implementing regulations.[3]

FLOOD INSURANCE COMPLIANCE VIOLATIONS

Although the FDPA was enacted more than 50 years ago, violations of its requirements regularly appear in the Federal Reserve's list of top-cited compliance violations. The other federal regulatory agencies that enforce the FDPA also frequently cite these violations.[4] A review of 2023 examination data of state member banks, for which the Federal Reserve is the primary federal regulator, reveals the following top-cited violations of Regulation H, the Federal Reserve's FDPA implementing regulation:[5]

- Originating designated loans without flood insurance or with an insufficient amount of insurance
- Failing to ensure designated loans maintain insurance for the life of the loan and in the proper amount
- Failing to provide the required notice to borrowers when they apply for a designated loan

The format for the common violations articles is to first list the regulatory requirements (either by quoting the verbatim text or by summarizing it) and then discuss the violations, root causes, and sound practices.

CONTINUED ON PAGE 13

Top Federal Reserve System Compliance Violations in 2023 Under the Real Estate Settlement Procedures Act and Regulation X

By Consumer Compliance Outlook Staff

The Real Estate Settlement Procedures Act (RESPA),[1] as implemented by Regulation X,[2] is the federal consumer protection law for federally related mortgage loans.[3] The protections include specifying detailed procedures for loan servicing and managing escrow accounts; requiring the disclosure of settlement costs; and prohibiting kickbacks, unearned fees, and referral fees for settlement services.[4]

COMMON REGULATION X VIOLATIONS

Violations of Regulation X were among the Federal Reserve's top-cited compliance violations in 2023, and all of them pertained to the escrow account requirements.[5] Although escrows are required only for certain loans,[6] the National Mortgage Database indicates more than 80 percent of residential mortgage loans have one.[7] Escrows benefit both the lender and the borrower by mitigating the risk of the borrower being unable to pay a large annual bill for real estate taxes, insurance premiums, and other loan obligations by having the servicer assume the responsibility for collecting the payments from the borrower and timely disbursing them to the payees. But administering escrows requires complying with the regulation's technical requirements, which has led to violations.

The format for the common violations articles is to first list the regulatory requirements (either by quoting the verbatim text or by summarizing it) and then discuss the violations, root causes, and sound practices.

Subsequent escrow account analyses: 12 C.F.R. §1024.17(c)(3)

For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year. … Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower.

Shortages, surpluses, and deficiencies requirements: 12 C.F.R. §1024.17(f)(1)(i)

For each escrow account, the servicer shall conduct an escrow account analysis upon establishing the escrow account and at the completion of the escrow account computation year to determine whether a surplus, shortage, or deficiency exists. Escrow account computation year is a 12-month period a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement in compliance with §1024.17(i)(4).

Annual Escrow Account Statement 12 C.F.R. §1024.17(i)(1)

For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. Several data points for the prior escrow year must be disclosed, including the total amount paid into the escrow account during the past computation year and the total amount paid out during the same period for taxes, insurance premiums, and other charges (as separately identified).

In several instances, examiners observed institutions using an "escrow account computation year" longer than the 12-month period the regulation requires.[8] This had a domino effect of triggering violations of other sections of the regulation that specify the 12-month period to take required actions for the escrow account:

- Providing the escrow annual statement more than 30 days after the end of the escrow account computation year, without issuing a short year statement.[9] For example, suppose the 12-month period for the escrow account computation year for a loan was from December 2023 to December 2024, but the servicer conducts escrow analyses once a year in March. Conducting the analysis in March 2025 for this loan exceeds the escrow account computation year by three months. In this situation, the servicer should provide a short year statement.

- Failing to conduct escrow surplus/deficiency analysis within 30 days of completing the escrow account computation year. Similarly, using the previous example, the servicer violated the surplus/deficiency timing rules by conducting the analysis in March 2025 when it should have been conducted within 30 days of December 2024 and by failing to refund any surplus in that same time frame.

- Errors in disclosing the amounts paid in and out of the escrow account for the prior year.[10] In some instances, these errors resulted from a software vendor that incorrectly interpreted a disclosure term; in other cases they occurred because staff did not understand the regulatory requirements.

"Examiners saw initial escrow account analyses that incorrectly included payments of taxes and insurance when those obligations had already been paid by the borrower at loan closing. The causes of these violations included insufficient oversight and monitoring, problems with recent system updates, and inadequate training."

Initial Escrow Account Analysis: 12 C.F.R. §1024.17(g)

The servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

Examiners saw initial escrow account analyses that incorrectly included payments of taxes and insurance when those obligations had already been paid by the borrower at loan closing. The causes of these violations included insufficient oversight and monitoring, problems with recent system updates, and inadequate training. Additionally, examiners found increased risk of violations when institutions relied on third-party software to perform the escrow analysis.

SOUND PRACTICES TO MITIGATE COMPLIANCE RISKS

The table lists sound compliance practices examiners have observed.

TABLE: Sound Compliance Practices	
Board and Senior Management Oversight	• Provide prompt responses to employee questions • Ensure that third-party service providers understand and effectively perform their compliance responsibilities • Periodically verify that vendors' calculations are correct and that vendors are implementing regulatory changes to escrow requirements
Internal Controls	• Conduct a secondary review of all vendor software that generates disclosures and analyzes accounts • Enhance preventative and detective controls
Consumer Complaints	• Review complaints received by the institution or by the Federal Reserve Consumer Help complaint system for possible internal control weaknesses for the issues noted in this article, adjusting and strengthening processes as needed to ensure compliance
Training	• Conduct regular staff training on escrow requirements and include training on the proper usage of the software platform used to generate escrow account disclosures • Include training when regulatory changes or procedural weaknesses are noted
Monitoring and Audit	• Conduct frequent audits of settlement statements and analyses to ensure all escrow account information is accurate • Validate policies and procedures are implemented and applied correctly
Policies and Procedures	• Implement detailed policies and procedures to ensure a consistent and repeatable process; considerations might include: ◦ Understanding required escrow account analyses and deadlines ◦ Ensuring disbursement of refunds or charges is timely and accurate

CONCLUDING REMARKS

Several of Regulation X's detailed requirements for establishing and administering escrow accounts were the subject of top-cited violations in the Federal Reserve System. In some instances, examiners issued Matters Requiring Immediate Attention or Matters Requiring Attention for systemic or repeat issues involving consumer harm, underscoring the importance of complying with these requirements. This article reviewed the violations and sound practices to help mitigate the risks. Specific issues and questions about RESPA requirements should be raised with your primary regulator. ■

Endnotes*

1 12 U.S.C. §2601 et seq.

2 12 C.F.R. Part 1024.

3 12 C.F.R. §1024.2(b). The regulation's broad definition applies to most residential closed-end mortgages and home equity lines of credit for one- to four-family occupancy.

4 See 12 C.F.R. §§1024.30–41 (servicing), § .17 (escrows), §§ .7-8 (disclosures) and § .14 (kickbacks and unearned fees).

5 "Recent Supervisory Data for Institutions the Federal Reserve Supervises" (*CCO*, First Issue 2024); 12 C.F.R. §1024.17.

6 Escrows are legally required for first-lien Regulation Z higher-priced mortgage loans unless an exception applies (12 C.F.R. §1026.35(b)(2)) and for certain government-backed loans, such as Federal Housing Administration loans (24 C.F.R. §203.550).

7 The Federal Housing Finance Agency, "Recent Changes in Mortgage-Related Housing Consumption Costs: Evidence from the National Mortgage Database" (July 16, 2024) at endnote 6.

8 12 C.F.R. §1024.17(b).

9 A short year statement allows the servicer "to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account" (§1024.17(i)(4)).

10 12 C.F.R. §1024.17(i)(1)(iii)–(iv).

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

Consumer Compliance Requirements for Purchasers of Residential Mortgage Loans

By Kenneth Benton, Principal Consumer Regulations Specialist, and Katarina Liviana and Hailey Kozuchowski, Former Legal Interns, Federal Reserve Bank of Philadelphia

Residential mortgages are the largest consumer credit product market, with over $14 trillion in outstanding residential loans at the end of the first quarter of 2024.[1] This market is attractive to financial institutions, which engage in a range of related activities depending on their business model: originating loans; purchasing loans; originating and purchasing loans; or employing an originate-to-distribute model. A financial institution may determine, for example, that the residential mortgage demand in the areas it serves is relatively low and would not justify the cost of maintaining a mortgage origination system, but it could increase revenues and enhance its Community Reinvestment Act (CRA) performance rating by purchasing loans.[2]

Although purchasing loans eliminates the complexities and expenses associated with residential mortgage origination, certain consumer compliance requirements still apply to loan purchasers. Federal consumer protection laws that can apply to purchased residential mortgage loans include the Truth in Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), the Home Mortgage Disclosure Act (HMDA), and the privacy provisions of the Gramm–Leach–Bliley Act (GLBA).

To facilitate loan purchaser compliance, this article provides an overview of these laws and discusses compliance requirements that apply to the purchasers of residential mortgage loans and third-party risk management considerations. A companion article in this issue of *Consumer Compliance Outlook (CCO)* summarizes the laws and regulations that apply to servicers of residential mortgage loans.

TRUTH IN LENDING ACT

Assignee Liability

Under TILA, the purchaser (i.e., the assignee) of most consumer credit agreements secured by real property has liability only for voluntary assignments in which the violations are "apparent on the face of the disclosure statement."[3] The term disclosure statement refers to the TILA disclosures that must be provided in connection with the extension of credit, which will vary based on the type of mortgage, i.e., closed-end, open-end, reverse, or chattel-dwelling loans (such as loans secured by a mobile home not attached to real property).[4] High-cost mortgages subject to the Home Ownership Equity Protection Act (HOEPA), however, are evaluated under a different standard of liability.[5]

For consumer credit transactions secured by real property, TILA clarifies that violations "apparent on the face of the disclosure statement" refer to:

- a disclosure that is incomplete or inaccurate when comparing the disclosure statement with any itemization of the amount financed, the note, or any other disclosure of disbursement; or
- a disclosure statement that does not use the required terms or format.[6]

For example, if the closing disclosure for a closed-end mortgage loan incorrectly understated the finance charge, in excess of the applicable tolerance, the assignee of the loan could be liable if it could have correctly calculated the finance charge *from the itemization of the finance charges on the closing disclosure*. But suppose instead the same borrower claims, after the loan was assigned, that the loan originator had orally promised to refund the loan origination fee but failed to do so, and the borrower now seeks a refund. *That issue is not apparent on the face of the disclosure statement, and therefore the assignee would not be liable*.

With respect to liability for not using the required term or format, model forms are available in the appendixes to Regulation Z for closed- and open-end mortgages, the use of which mitigates this risk under the safe harbor in TILA for using model forms.[7] A loan purchaser can proactively discuss with the loan seller whether the model forms were used.

More generally, purchase agreements for mortgage loans typically contain a "representations and warranty" clause to address responsibility for complying with applicable laws, the full discussion of which is beyond the scope of this article.

Right of Rescission

TILA provides borrowers with the right to rescind certain open- and closed-end loans secured by the borrower's principal dwelling.[8] This right generally expires within three business days of loan consummation; however, the right to rescind is extended to three years if the creditor fails to provide accurate, material disclosures or fails to provide two copies of the notice of the right of rescission.[9] Material disclosures include the annual percentage rate (APR), the finance charge, the amount financed, the total of payments,

> "When ownership of a residential mortgage loan changes through a purchase, assignment, or other transfer, the new owner must notify the borrower within 30 days of the assignment or transfer."

the payment schedule, and the disclosures and limitations in §§1026.32(c) and (d) and 1026.43(g).[10]

The right of rescission does not apply to certain principal dwelling-secured transactions, including most notably a "residential mortgage transaction," which is a loan to purchase or construct a principal dwelling. For additional exemptions, see 12 C.F.R. §1026.23(f) (closed-end loans) and §1026.15(f) (open-end loans).

If a mortgage loan subject to the right of rescission is sold, the borrower can exercise the right against the assignee — provided the loan is still eligible for rescission. As the right to rescind generally expires three business days after consummation, a loan purchased after this period would be subject to rescission only if the rescission right were extended to three years because the material disclosures were inaccurate or the borrower was not provided with two copies of the notice of the right to rescind. A determination of whether a disclosure is inaccurate includes considering any applicable Regulation Z tolerances, which provide a cushion for determining the accuracy of certain TILA disclosures. A full discussion of tolerances is beyond the scope of this article, but they are discussed in detail in the interagency examination procedures for Regulation Z.[11]

Notice of Change of Ownership: 12 C.F.R. §1026.39

In 2009, Congress amended TILA to require that, when ownership of a residential mortgage loan changes through a purchase, assignment, or other transfer, the new owner must notify the borrower within 30 days of the assignment or transfer.[12] The notice must include the following information:

- The identity, address, and telephone number of the new creditor
- The date of transfer
- The contact information of the new creditor or its agent
- The location where the transfer of the debt is recorded
- Any other relevant information regarding the new creditor

Thus, the purchaser must ensure it provides a timely notice to the borrower with the required information.

TILA Defenses

Correction of Errors: Restitution 15 U.S.C. §1640(b)

Section 1640(b) of TILA provides that, if within 60 days of discovering an error (and before receiving written notice from the borrower and before a lawsuit is filed), a creditor notifies the borrower of the error and the loan is adjusted so the borrower does not pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the APR actually disclosed, whichever is lower, the creditor or assignee does not have civil liability for the violation.

Correction of Errors: Joint Statement of Policy on the Administrative Enforcement of the Truth in Lending Act—Restitution

The joint statement provides that, if within 60 days after discovering a disclosure error either through a final written examination report or through the creditor's own procedures, the creditor notifies the borrower of the error and adjusts the account to ensure the borrower will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed (whichever is lower), the creditor is not subject to restitution.[13]

Bona Fide Errors

Under TILA's §130(c) (15 U.S.C. §1640(c)), a creditor or assignee is not liable for violating the requirements in Part B of TILA (15 U.S.C. §1631–1651) if the creditor or assignee can prove that the violation was unintentional and occurred because of a bona fide error despite taking reasonable steps to avoid such error. The Regulation Z examination procedures explain this defense:

> A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment. Showing that a violation occurred unintentionally could be difficult if the financial institution is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The financial institution's demonstrated commitment to compliance and its adoption of policies and procedures

> to detect errors before disclosures are furnished to consumers could strengthen its defense.[14]

The availability of this defense underscores the importance of maintaining appropriate policies, procedures, and controls.

FAIR LENDING

Equal Credit Opportunity Act

Assignee Liability

ECOA applies to a creditor, which Regulation B defines to include an assignee if it participates in the credit decision.[15] The official staff commentary clarifies this requirement:

> The term creditor includes all persons participating in the credit decision. This may include an *assignee* or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.[16]

For example, if the purchaser specified the underwriting criteria for the loan originator to use, which were later determined to have a disparate impact on a prohibited basis, the purchaser could be liable because it participated in the credit decision. The purchaser could also have liability if it specified discriminatory purchasing requirements such as purchasing all of the loans in the seller's assessment area, except for loans originated in majority-minority census tracts (MMCTs).

Fair Housing Act

The FHA implementing regulations specifically address the fair lending requirements for purchased loans. Under 24 C.F.R. §100.125, a person or entity involved in purchasing loans cannot refuse to purchase such loans or impose different conditions for purchases on the FHA prohibited bases of race, color, religion, sex, handicap, familial status, or national origin.[17] To provide greater clarity, the regulation includes these examples:

- Purchasing loans or other debts or securities related to or secured by dwellings in certain communities or neighborhoods but not in others on a prohibited basis of persons in such neighborhoods or communities
- Pooling or packaging loans or other debts or securities related to or secured by dwellings differently because of a prohibited basis
- Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities related to or secured by dwellings on a prohibited basis

For example, a purchaser could not tell the seller that it wished to purchase loans in the seller's assessment area, except for loans in MMCTs.

The regulation contains a business necessity exception to its requirements:

> This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.[18]

HOME MORTGAGE DISCLOSURE ACT

HMDA, as implemented by Regulation C, 12 C.F.R. part 1003, requires specified depository and nondepository financial institutions to collect, record, report, and disclose certain information on applications, originations, and **purchases** of *covered loans*.[19]

Institutional Coverage Tests

Depository Institutions

Depository institutions are subject to HMDA if they meet these five criteria:[20]

1. Asset-Size Threshold: On December 31 of the previous year, the depository institution had assets above the annual asset-size threshold, which is at $56 million as of December 31, 2023, and is annually adjusted for inflation.
2. Location Test: The institution had a home or branch office in a metropolitan statistical area on December 31 of the previous year.
3. Loan Activity Test: During the previous calendar year, the depository institution originated a home purchase loan or refinancing of a home purchase loan secured by a first lien on a one- to four-unit dwelling.
4. Federally Related Test: The depository institution meets one of the following criteria: (1) the institution is federally regulated or federally insured; or (2) in the preceding calendar year, the institution originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one- to four-unit dwelling that was insured, guaranteed, or supplemented by a federal agency, or was intended to be

sold to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

5. Loan-Volume Threshold: In each of the two previous calendar years, the depository institution originated at least 25 closed-end, dwelling-secured loans or at least 200 open-end, dwelling-secured lines of credit.

Nondepository Institutions

Nondepository institutions are subject to HMDA if they meet the Location Test and the Loan-Volume Threshold set forth above.

The Federal Financial Institutions Examination Council's annual publication *A Guide to HMDA Reporting: Getting It Right!* further elaborates on these requirements.[21]

Regulation C Exemption for Reporting Certain Fields of Purchased Loans

Regulation C provides that certain data points of purchased loans do not have to be reported:

- The date the application was received or date shown on the application form[22]
- The difference between the annual percentage rate and average prime offer rate for a comparable transaction as of the date the interest rate is set[23]
- The credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score[24]
- The total points and fees[25]
- The ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision[26]
- The ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision[27]
- The name of the automated underwriting system used by the financial institution to evaluate the application and the result generated by that automated underwriting system[28]
- The ethnicity, race, sex, age, and income data fields[29]

Depository Institution Partial Exemption for Certain Data Fields

In 2018, Congress amended HMDA to exempt insured depository institutions and insured credit unions from collecting certain data points set forth in 12 C.F.R. §1003.3(d)(1)(iii) if they originate fewer than 500 closed-end covered loans or fewer than 500 open-end covered loans in each of the two preceding calendar years and their CRA rating is not "needs to improve" or "substantial noncompliance."[30] If the purchaser of a covered loan meets the partial exemption requirements, it would not have to report the partially exempt data points.[31]

A full discussion of HMDA requirements is beyond the scope of this article. *CCO* has published several articles on HMDA compliance requirements that loan purchasers subject to HMDA may find helpful:

- Top Federal Reserve Compliance Violations in 2022: Data Collection and Reporting Requirements of the Home Mortgage Disclosure Act (Second–Third Issue 2023)
- HMDA Data Collection and Reporting: Keys to an Effective Program (Fourth Issue 2020)
- Government Monitoring Information Requirements Under the HMDA and the ECOA (Fourth Quarter 2013)

GRAMM–LEACH–BLILEY ACT

The privacy provisions of the GLBA, as implemented by Regulation P, 12 C.F.R. Part 1016, require financial institutions to provide consumers with a privacy notice disclosing that a consumer's nonpublic personal information (NPI) is shared with nonaffiliated third parties, describing the consumer's ability to opt out of sharing practices in certain circumstances, and explaining how to exercise the right to opt out. NPI is defined as "personally identifiable financial information and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available."[32]

Unless an exception applies,[33] Regulation P prohibits a financial institution from disclosing a consumer's nonpublic personal information to a nonaffiliated third party unless the institution satisfies various notice requirements and the consumer does not elect to prevent, or opt out of, the disclosure. After the initial disclosure is provided, the institution must provide an annual notice unless:

- it provides NPI only in accordance with applicable GLBA privacy provisions, and
- it has not changed its policies and practices.

See 12 C.F.R. §1016.5(e). For additional information, see Kenneth Benton, "Overview of Federal Consumer Privacy and Security Laws for Financial Services" (*CCO*, Third Issue 2021).

THIRD-PARTY RISK MANAGEMENT (TPRM)

When purchasing residential mortgage loans from a third party, financial institutions should apply TPRM principles, practices, controls, and tools to mitigate compliance, operational, reputational, and other risks. This is particularly important if the institution expects to have an ongoing relationship with the seller of the loans. A full discussion of TPRM is beyond the scope of this article. For additional information, see the 2024 interagency guidance "Third-Party Risk Management: A Guide for Community Banks."

CONCLUSION

Purchasing residential mortgage loans may allow a financial institution to generate additional revenue and income while avoiding the complexities and costs associated with mortgage loan origination. However, as discussed in this article, the purchaser has corresponding compliance obligations as the new owner of the loan. Financial institutions should raise specific issues and questions with their primary regulators. ■

Endnotes*

1 Financial Accounts of the United States, Quarterly Total Mortgages, Q1 2024, available at Federal Reserve Bank of St. Louis, FRED Economica Data.

2 Purchased loans may qualify for CRA credit under the CRA lending test. See 12 C.F.R. §228.22(a)(1).

3 15 U.S.C. §1641(e)(1).

4 "What Is a Truth-in-Lending Disclosure for Certain Mortgage Loans?" Consumer Financial Protection Bureau, accessed October 4, 2024. https://www.consumerfinance.gov/ask-cfpb/what-is-a-truth-in-lending-disclosure-for-certain-mortgage-loans-en-180/.

5 Purchasers of HOEPA loans are "subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this subchapter, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in section 1602(aa) of this title." 15 U.S.C. §1641(d)(1).

6 15 U.S.C. §1641(e)(2).

7 15 U.S.C. §1640(f).

8 15 U.S.C. §1635; 12 C.F.R. §§1026.15 (open-end) and 1026.23 (closed-end).

9 12 C.F.R. §§1026.15(b)(1) and 1026.23(b)(1).

10 The material disclosures are defined in 12 C.F.R. §1026.23(a)(3)(ii) and Comment 23(a)(3)-2 for closed-end loans secured by the consumer's principal dwelling and in 12 C.F.R. §1026.23(a)(3)(i) for open-end loans secured by the consumer's principal dwelling.

11 See Revised Interagency Examination Procedures for Regulation Z at pp. 19–21, 41–42, and 70–74.

12 15 U.S.C §1641(g)(1) and 12 C.F.R. §1026.39(b).

13 63 FR 47495 (September 8, 1998). The policy statement also states that the creditor is not subject to administrative enforcement if it follows this procedure to make the consumer whole. 63 FR 47498.

14 See Revised Interagency Examination Procedures for Regulation Z at p. 165.

15 12 C.F.R. §1002.2(l).

16 Comment 2(l)-1 (emphasis added).

17 24 C.F.R. §100.125.

18 24 C.F.R. §100.125(c).

19 "Covered loan" is "a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction under §1003.3(c)" 12 C.F.R. §1003.2(e).

20 12 C.F.R. §1003.2(g)(1) and (2).

21 *A Guide to HMDA Reporting: Getting It Right!* (2024) at pp. 2–3.

22 12 C.F.R. §1003.4(a)(1)(ii).

23 12 C.F.R. §1003.4(a)(12)(i), Comment 4(a)(12)-7.

24 12 C.F.R. §1003.4(a)(15)(i).

25 Comment 4(a)(17)(ii)-1.

26 12 C.F.R. §1003.4(a)(23).

27 12 C.F.R. §1003.4(a)(24).

28 12 C.F.R. §1003.4(a)(35)(i).

29 12 C.F.R. §1003.4(b). Although an institution is not required to report these data points, it is allowed to report them if it so chooses.

30 12 C.F.R. §1003.3(d)(6).

31 Comment 3(d)(2)-1 and 3(d)(3)-1 clarify that the partial exemption applies to purchased closed-end loans and open-end loans, respectively, if the purchaser meets the requirements for the partial exemption.

32 12 C.F.R. §1016.3(p)(1).

33 See 12 C.F.R. §§1016.13, 14, and 15.

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

Consumer Compliance Requirements for Servicers of Purchased Mortgage Loans

By Kenneth Benton, Principal Consumer Regulations Specialist, and Katarina Liviana and Hailey Kozuchowski, Former Legal Interns, Federal Reserve Bank of Philadelphia

This issue of *Consumer Compliance Outlook (CCO)* discusses the laws and regulations that apply to purchasers of residential mortgage loans in an article on page 5. As considerations of mortgage servicing arise with purchasing a mortgage loan (depending on whether the servicing rights are also purchased and, if so, whether they are retained or sold), we are publishing this companion article on the applicable duties of the servicer under the following laws and regulations: the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), the Flood Disaster Protection Act (FDPA), the Fair Credit Reporting Act (FCRA), the Servicemembers Civil Relief Act (SCRA), and the Federal Trade Commission Act.

REAL ESTATE SETTLEMENT PROCEDURES ACT

RESPA and Regulation X, its implementing regulation, govern different aspects of loan origination and servicing of federally related mortgage loans, as defined in 12 C.F.R. §1024.2. If the purchaser of a mortgage loan acquires the servicing rights for such a loan, RESPA and Regulation X would apply. See 12 C.F.R. Part 1024.

For further reading, see Richele S. Brady, "Escrow Accounting Rules: Are You in Compliance?" (*CCO,* Second Issue 2018), and Alinda Murphy, "Mortgage Servicers' Duties Under Regulation X to Respond to Notices of Error and Requests for Information" (*CCO,* Third Issue 2021). This issue of *CCO* also includes an article on the Federal Reserve's top-cited Regulation X violations and ways to mitigate this risk.

TRUTH IN LENDING ACT

TILA addresses the potential liability of an assignee when a consumer credit agreement is transferred or sold at 15 U.S.C. §1641(f). The companion article in this issue on obligations of loan purchasers discusses this provision for purchasers. Specifically, §1641(f) clarifies that a servicer is not subject to liability unless it also owns the loan.[1] For example, if a financial institution purchases a mortgage loan and retains a servicer to service it, the servicer is not subject to assignee liability because it does not own the loan.

FAIR LENDING

Equal Credit Opportunity Act

Servicers' ECOA Obligations

In May 2022, the Consumer Financial Protection Bureau released an advisory opinion to clarify that ECOA continues to apply after loan origination. Thus, servicers must ensure they are not discriminating in the servicing of a loan on a prohibited basis.[2]

Furnishers' Obligations Under ECOA

Section 1002.10(c) of Regulation B imposes the following furnishing requirements on creditors, including their assignees, if they choose to furnish loan information to consumer reporting agencies:[3]

- To reflect on *new* accounts the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party)
- To reflect on *existing* accounts the participation of both spouses within 90 days of receiving a written request from one of the spouses
- To report spousal participation on an account to the consumer reporting agencies in a manner that will enable the agencies to provide access to the information in the name of each spouse
- To furnish information in the name of the spouse about whom the information is requested when responding to an inquiry for an account designated to reflect both spouses' participation[4]

For additional information, see Maureen Yap, "Furnishers' Obligations for Consumer Credit Information Under the CARES Act, FCRA, and ECOA" (*CCO,* Second Issue 2020).

Fair Housing Act

Section 805 of the FHA, 42 U.S.C. §3605, prohibits discrimination in the availability or terms and conditions of residential real estate-related transactions on the prohibited bases of race, color, religion, national origin, sex, handicap, or familial status. This requirement extends to servicers. "The application of different standards or procedures *in administering foreclosures, late charges, penalties, reinstatements, or other collection procedures* is unlawful."[5]

FLOOD DISASTER PROTECTION ACT OF 1973

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 National Flood Insurance Program (NFIP) to provide a notice to the borrower and 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. The implementing regulations for the FDPA refer to a loan for which flood insurance is required as a *designated loan*. Loans sold to certain government-sponsored enterprises[6] are also subject to the flood insurance purchase requirements.

A loan assignee that is a regulated lending institution assumes responsibility for FDPA compliance. This includes the duty to force place flood insurance in a timely manner when a policy lapses or when the amount of insurance is insufficient, and to monitor flood map changes to stay apprised of Federal Emergency Management Agency (FEMA) changes to the map. If the real property securing a loan is not in an SFHA when purchased, but FEMA subsequently remaps the property into an SFHA, the map change triggers flood insurance compliance requirements. In addition, if the servicer for a designated loan changes, the assignee must notify FEMA or its designee of the change of servicer within 60 days after the effective date of the change for a loan covered by an NFIP policy.[7] This notice may be provided electronically.[8] This issue of *CCO* also includes an article on the Federal Reserve's top-cited FDPA violations and ways to mitigate this risk.

FAIR CREDIT REPORTING ACT

Furnishers' Obligations Under the FCRA

The FCRA, as implemented by Regulation V, regulates persons furnishing information to a consumer reporting agency. Furnishers generally have multiple duties under §623 of the FCRA (15 U.S.C. §1681s–2), and Subpart E of Regulation V, (12 C.F.R. §§1022.40–42) that may apply to an assignee of a loan that furnishes information about the loan to the consumer reporting agencies:

- The duty to provide accurate information
- The duty to correct and update information
- The duty to notify the consumer reporting agencies that the consumer disputes furnished information
- The duty to provide notice when a consumer voluntarily closes an account
- The duty to provide notice of delinquency of accounts
- The duty to take certain actions after receiving notice of identity theft
- The duty to notify a consumer regarding reporting negative information to consumer reporting agencies (Model forms are available in Appendix B to Regulation V)
- The duty to investigate a consumer's dispute filed directly with the furnisher about furnished information
- The duty to investigate a consumer's dispute filed with the consumer reporting agencies about furnished information
- The duty to establish reasonable policies and procedures for the accuracy and integrity of furnished information

For further information, refer to the *CCO* article "Furnishers' Obligations for Consumer Credit Information Under the CARES Act, FCRA, and ECOA."

FCRA Rules for Sharing Information with Affiliates

Section 624 of the FCRA restricts a person's ability to share certain consumer data the person obtained with its affiliates. As the FCRA broadly defines "person" in §603(b),[9] this restriction applies to the servicer. When a servicer receives consumer information about mortgage loans it will be servicing, affiliates of the servicer may not use the information to advertise to or solicit the consumer unless it has been clearly and conspicuously disclosed to the consumer that the information may be communicated for purposes of making solicitations and the consumer is provided an opportunity to prohibit such solicitations. If the consumer opts out, that election will be effective for five years unless the consumer revokes it. Upon expiration, the restriction applies unless the consumer is provided the opportunity to opt out for another period of at least five years. These rules do not apply when the institution already had a preexisting relationship with the consumer, among other exceptions.

For example, suppose a consumer obtains a mortgage loan from a bank, which sells it to a third party, and the third party sells the servicing rights to a servicer. The servicer has an affiliated insurance company, which is interested in solicitating the consumer for insurance products. Unless an exception applies, the affiliate cannot use the information from the loan to solicit the consumer. However, if the consumer is given an opportunity to opt out and chooses not to, the affiliate may move forward with solicitation. For additional information, see Dean A. Pankonien and Diane van Gelder, "Affiliate Marketing Rules" (*CCO,* Fourth Quarter 2008).

SERVICEMEMBERS CIVIL RELIEF ACT

The SCRA[10] is a federal law that protects servicemembers, with some of the benefits accorded to servicemembers also extended to servicemembers' spouses, dependents, and other persons subject to the obligations of servicemembers. The SCRA covers issues such as mortgage foreclosure, mortgage interest rates, credit card interest rates, rental agreements and evictions, automobile repossessions, automobile leases, and installment loans.[11]

Among other protections, the SCRA limits the amount of interest a creditor can charge a servicemember for a credit obligation or liability incurred prior to entry into active-duty service. Specifically, creditors, including purchasers of loans, may not charge higher than a 6 percent interest rate for the duration of a servicemember's period of active duty plus one year thereafter.[12] The SCRA's interest rate limitations are triggered if a borrower of a purchased loan enters into active duty service and provides written notice and proof of military service to the creditor.[13] Additionally, a creditor (including an assignee) cannot sell, seize, or foreclose on a servicemember's real property secured by a mortgage during, or within one year after, a servicemember's period of active duty without a court order.[14] The SCRA also ensures protections against repossession of a servicemember's property and against default judgments in civil cases.[15]

The Department of Defense maintains a database of persons in active duty, which creditors can check to determine if the SCRA applies.[16]

UNFAIR OR DECEPTIVE ACTS OR PRACTICES (UDAP)

Section 5(a) of the Federal Trade Commission Act, codified at 15 U.S.C. §45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."[17] This prohibition applies to any aspect of an institution's products and services, including the servicing of purchased mortgage loans. The Federal Reserve has published joint guidance with the Federal Deposit Insurance Corporation (FDIC) on the legal standards for determining if a practice is unfair or deceptive.[18]

In the context of purchased mortgages, one area where UDAP issues may arise is through communications with the borrower. For example, a purchaser that encouraged borrowers to make payments by phone but failed to disclose a $25 fee for telephone payments could potentially be cited for an unfair or deceptive act or practice.

CONCLUSION

Purchasing residential mortgage loans may allow a financial institution to generate additional revenue and income while avoiding the complexities and costs associated with mortgage loan origination. However, as discussed in this article, the servicer has corresponding compliance obligations as the servicer of the loan. Financial institutions should raise specific issues and questions with their primary regulators. ■

Endnotes*

1 TILA relies on the definition of servicer in §2605(i)(2) of RESPA. Note also that under 12 C.F.R. §1026.39(a), a servicer is not required to provide a mortgage loan transfer notice unless it owns the loan.

2 "Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements," 87 FR 30097 (May 18, 2022).

3 12 C.F.R. §1002.10.

4 12 C.F.R. §1002.10(c).

5 Federal Reserve Board, *Consumer Compliance Manual, Federal Fair Lending Regulations and Statutes, Fair Housing Act*, p. 2 (emphasis added).

6 The mandatory flood insurance purchase requirement under the FDPA applies to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

7 Flood Q&A Servicing 2, 87 FR at 32893. See also Servicing 7, 87 FR at 32894. ("If a lender is acquired by or merges with another lender, the duty in connection with NFIP policies to provide notice for the loans being serviced by the acquired lender will fall to the successor lender in the event that notification is not provided by the acquired lender prior to the effective date of the acquisition or merger.")

8 See, e.g., 12 C.F.R. §208.25(j)(2); Flood Q&A Servicing 4, 87 FR at 32894.

9 15 U.S.C. §1681a(b).

10 50 U.S.C. §3901 et seq.

11 50 U.S.C. §3901 et seq.

12 50 U.S.C. §3937(a)(1); see also Margo A. Anderson, "Compliance Requirements for the Servicemembers Civil Relief Act" (*CCO* Second Quarter 2011).

13 50 U.S.C. §3937(b)(1)(A).

14 50 U.S.C. §3953.

15 50 U.S.C. §§3931, 3952(a).

16 For further information, see Lanette Meister, Lorna Neill, Amal Patel, and Vivian Wong, "Servicemember Financial Protection: An Overview of Key Federal Laws and Regulations" (*CCO* Second Issue 2017).

17 15 U.S.C. §45(a).

18 Federal Reserve Board and the FDIC, "Unfair or Deceptive Acts or Practices by State-Chartered Banks" (March 11, 2004).

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

CONTINUED FROM PAGE 1

Top Federal Reserve Compliance Violations in 2023 Under the Flood Disaster Protection Act of 1973

- **In general: 12 C.F.R. §208.25(c)(1)**
  "A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself."

- **Force placement of flood insurance: 12 C.F.R. §208.25(g)**
  A member bank, upon learning a designated loan is uninsured or underinsured, must direct the borrower to purchase insurance or increase the amount within 45 days. If the borrower fails to purchase insurance, the bank must purchase the insurance on the borrower's behalf.

- **Notice of special flood hazards and availability of federal disaster relief assistance: 12 C.F.R. §208.25(i)**
  During origination of a designated loan, a bank must mail or deliver a written notice to the borrower or servicer explaining that, if the property securing the loan is in an SFHA, flood insurance must be purchased. The notice also notifies the borrower that the premiums may be required to be escrowed and that private flood insurance may be available. A model form is available in Appendix A to Regulation H.

  Notices must be provided to the borrower "within a reasonable time before the completion of the transaction," and to the servicer "as promptly as practicable" after notice to the borrower.

Failing to Require Flood Insurance at Origination

For the Property Securing the Loan

Examiners observed several banks making designated loans to borrowers without requiring flood insurance coverage. Root causes included:

- staff failing to understand the requirement of the FDPA and its implementing regulations that designated loans must be covered by flood insurance;
- inadequate internal controls, audit, monitoring, and oversight; and
- relying on vendors to determine if insurance is required.

Flood insurance compliance, like other areas of consumer compliance, involves multiple lines of defense. The first line is ensuring lending staff understand the FDPA's requirements for designated loans so they are able to comply. The second line is utilizing controls, tracking, monitoring, testing, and other oversight procedures to ensure insurance is obtained when required. The third line is implementing a strong compliance management system that ensures its components are working as intended to identify and mitigate compliance risk.

For the Property Contents

Examiners observed lenders failing to include contents coverage when it was required. A bright-line rule applies for contents coverage, as explained in the 2022 Interagency Questions and Answers Regarding Flood Insurance (Flood Q&As):[6]

> OTHER SECURITY INTERESTS 9. Does the Regulation apply when the lender takes a security interest in improved real estate and contents located in an SFHA only as an "abundance of caution"?
>
> Yes. The Act and Regulation look to the collateral securing the loan. **If the lender takes a security interest in improved real estate and contents located in an SFHA, then flood insurance is required.** The language in the loan agreement or security instrument determines whether the improved real estate and contents are taken as security for the loan. (emphasis added) ...
>
> OTHER SECURITY INTERESTS 10. Is flood insurance required if the lender takes a security interest in contents located in a building in an SFHA securing the loan but does not perfect the security interest?

Yes, flood insurance is required. **The language in the loan agreement or security instrument determines whether the contents are taken as security for the loan. If the lender takes a security interest in contents located in a building in an SFHA securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected** (emphasis added).

Incorrect Amount of Insurance

Under the FDPA, flood insurance must be purchased for the *lesser* of the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP. The maximum amount of flood insurance under the NFIP is $250,000 for residential buildings and $500,000 for nonresidential buildings. Contents coverage is available for up to $100,000 for residential structures and $500,000 for nonresidential structures. The maximum amount of coverage available under the NFIP is based on the property's insurable value.

Insurable Value

Examiners observed banks failing to understand how to properly calculate insurable value, a factor in determining the amount of required insurance. *Insurable value* is defined as the overall value of the property securing the designated loan minus the value of the land on which the property is located.[7] It is important to calculate this properly; "otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance."[8] For example, assume the replacement cost value for a property securing a nonresidential loan is $475,000, and the loan amount is $550,000. The lender incorrectly requires $500,000 in insurance, believing this amount is the lesser of the maximum amount available under the NFIP for a nonresidential property or the loan amount. But because the insurable value is $475,000, and the NFIP will not pay a claim in excess of the insurable value, the lender should have required $475,000 (the lesser of the loan amount or the maximum amount available under the NFIP).

According to the 2022 Flood Q&As, the insurable value of a building may generally be the same as 100 percent of its replacement cost value, defined as the cost of replacing the building with similar material and construction without deducting depreciation. To calculate the amount of required insurance, the lender and borrower (by themselves or in consultation with the flood insurance provider or another appropriate professional) may choose from a variety of ways to establish the insurable value, including:

- an appraisal based on the cost value, not the market value;
- a construction-cost calculation;
- the insurable value used in a hazard insurance policy (recognizing that adjustments may be necessary, as this value does not include the value of the foundation); or
- any other reasonable approach that is supportable.[9]

Multiple Properties

Examiners observed lenders choosing the incorrect amount of insurance for commercial loans when multiple properties secured the loan. *Consumer Compliance Outlook (CCO)* published an article in 2022 that included examples of how to calculate the proper amount of insurance when a designated loan is secured by multiple properties. See Danielle Martinage, "Commercial Flood Insurance Compliance — Washing Away Common Pitfalls" (*CCO,* Second Issue 2022).

Notice to Borrowers

Failing to Provide the Notice

Banks were cited for failing to provide the required flood insurance notice under 12 C.F.R. §208.25(i) to the borrower when loans were made, increased, renewed, or extended for real property or a mobile home in an SFHA.

Failing to Provide the Notice in a Timely Manner

Lenders were cited for failing to provide the required notice in a reasonable time. The interagency flood insurance examination procedures clarify the timing requirement:[10]

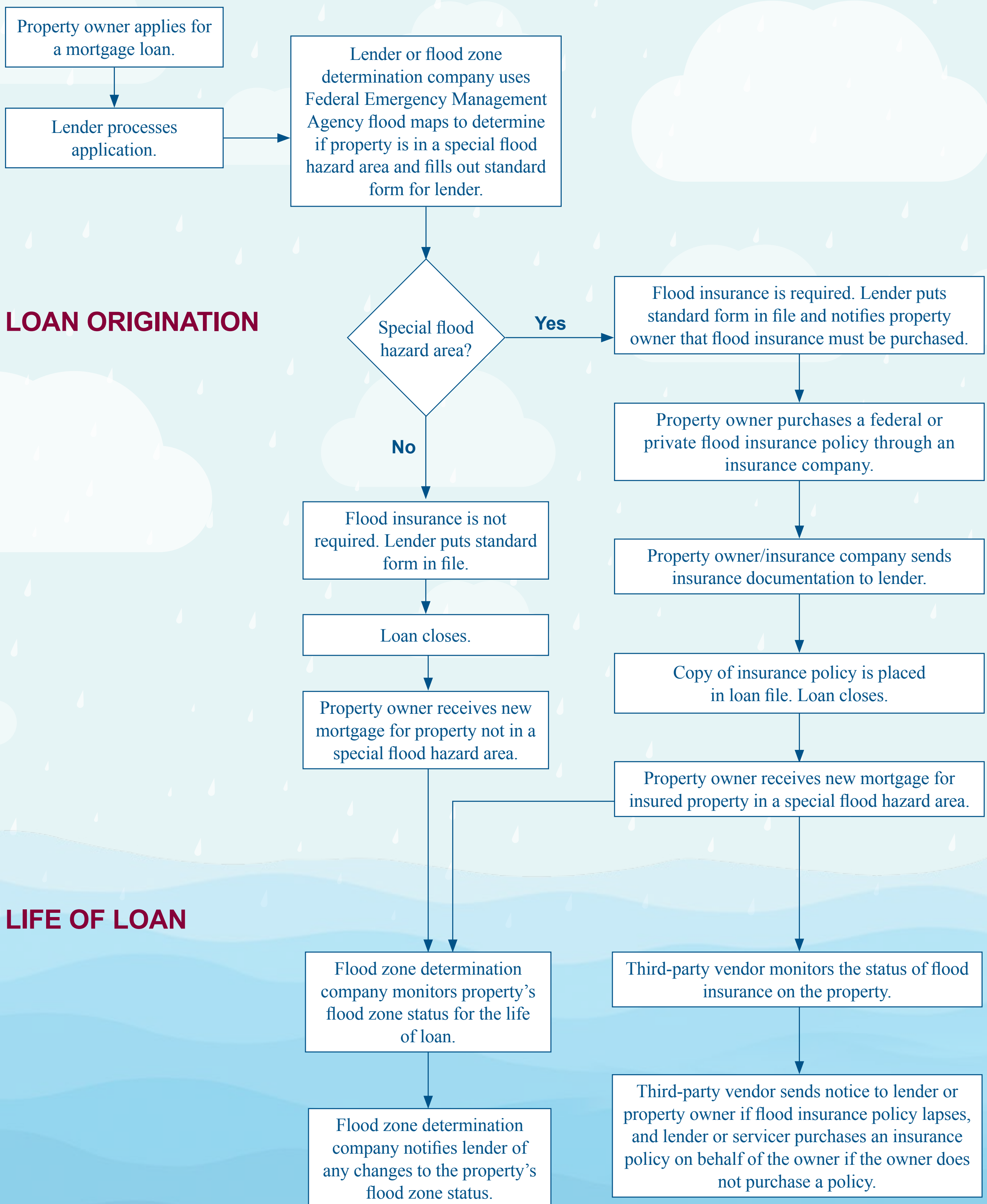
> "[A] borrower should receive notice timely enough to ensure that:
>
> - The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and
> - Where applicable, the borrower can purchase flood insurance before completion of the loan transaction."

The adequate time interval for delivery of the notice can vary based on the circumstances of the transaction, but 10 days is generally considered reasonable.

The root causes for notice violations included:

- staff having an inadequate understanding of flood insurance requirements;
- staff failing to adhere to the institutions' written flood procedures;
- a lack of strong internal controls;
- insufficient sample sizes in insurance monitoring and audits;
- improper documentation; and
- lack of compliance oversight.

FIGURE: Flood Insurance Flowchart



Source: Government Accountability Office Report 21-578 at p. 15.

TABLE: Sound Compliance Practices

Board and Senior Management Oversight	• Provide prompt responses to employee questions • Ensure that any third-party service providers understand and effectively perform their compliance responsibilities
Internal Controls	• Conduct a secondary review of all loan approvals in SFHAs • Enhance preventative and detective controlss
Training	• Conduct regular training on the FDPA, including notice and insurance requirements • Include training when regulatory changes occur or when procedural weaknesses are noted • Provide flowcharts and worksheets for staff
Monitoring and Audit	• Conduct frequent audits of loans in high-risk areas to ensure loans are neither uninsured nor underinsured • Validate that all policies and procedures implemented are applied correctly • Utilize weekly system reports to identify expiring policies and verify renewal
Policies and Procedures	• Implement detailed policies and procedures to ensure a consistent and repeatable process • Ensure that policies and procedures are updated when regulatory requirements change • Develop comprehensive flood checklists to provide guidance for bank staff

SOUND PRACTICES TO MITIGATE COMPLIANCE RISKS

Most of the violations discussed occurred because of inadequate training of employees and poor oversight by management. Additionally, examiners found weaknesses in internal controls and a lack of audits. The table above lists compliance practices that examiners have observed and recommend, and the figure (page 15) provides a flood insurance flowchart with an overview of the compliance process.

CONCLUDING REMARKS

It is important for financial institutions that originate or purchase loans subject to the FDPA to have a strong flood insurance compliance management system in place. This article discusses common violations among Federal Reserve–regulated institutions and sound practices to mitigate the compliance risks. Lenders should raise specific issues and questions about FDPA requirements with their primary regulator. ■

Endnotes*

1 Public Law 93–234, 87 Stat. 975 (December 31, 1973). Codified, as amended, at 42 U.S.C. 4002 et seq.

2 42 U.S.C. §§4002(b); 4012a(b).

3 12 C.F.R. §208.25(b)(5) The FDPA implementing regulations are issued on an interagency basis but are separately codified in each agency's regulations: Federal Reserve: Regulation H, 12 C.F.R. §208.25; Farm Credit Administration: 12 C.F.R. Part 614, sub-part S; Federal Deposit Insurance Corporation: 12 C.F.R. Part 339; National Credit Union Administration: 12 C.F.R. Part 760; and Office of the Comptroller of the Currency: 12 C.F.R. Part 22. For convenience, this article cites the Board's regulations, but the other agencies' regulations are substantially similar.

4 Government Accountability Office Report 21-578, "National Flood Insurance Program: Congress Should Consider Updating the Mandatory Purchase Requirement" (July 2021) at p. 24.

5 "Recent Supervisory Data for Institutions the Federal Reserve Supervises" (*CCO*, First Issue 2024).

6 Interagency Questions and Answers Regarding Flood Insurance, 87 FR 32826 (May 31, 2022).

7 Flood Q&As, Amount 1.

8 Flood Q&As, Amount 1.

9 Flood Q&As, Amount 2.

10 "Revised Interagency Examination Procedures for the Flood Disaster Protection Act" (July 2019) at p. 18.

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

Agencies Announce Dollar Thresholds for Regulation CC Funds Availability

Under 607(f) of the Expedited Funds Availability Act[1] (EFAA), the Federal Reserve Board and the Consumer Financial Protection Bureau (agencies) must make inflation adjustments every five years to certain dollar thresholds in Regulation CC, the EFAA's implementing regulation. On May 20, 2024, the agencies published a final rule in the *Federal Register* to make these adjustments effective July 1, 2025.

The table lists the current thresholds and the inflation-adjusted thresholds that become effective next year.

TABLE: Inflation-Adjusted Dollar Thresholds for Regulation CC

Threshold	Citation	Current	7/21/25
Minimum Amount from Deposit	12 C.F.R. §229.10(c)(1)(vii)	$225	$275
Cash Withdrawal Amount	12 C.F.R. §229.12(d)	$450	$550
New-Account Amount	12 C.F.R. §229.13(a)(1)(ii)	$5,525	$6,725
Large-Deposit Threshold	12 C.F.R. §229.13(b)	$5,525	$6,725
Repeatedly Overdrawn Threshold	12 C.F.R. §229.13(d)(2)	$5,525	$6,725
Civil Liability Minimum/Maximum for Individual Action	12 C.F.R. §229.21(a)(2)(i)	$100/$1,100	$125/$1,350
Civil Liability Maximum for Class Action	12 C.F.R. §229.21(a)(2)(ii)(B)	$552,500	$672,950

The inflation adjustments are based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The inflation measurement period for this adjustment began in July 2018 and ended in July 2023.

Because the rule will require banks to adjust their systems, and then conduct testing to validate the changes, the agencies issued the rule in May 2024 to provide sufficient time to implement it.

[1] Codified at 12 U.S.C. §4006(a).

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
10/01/25	Reg. Z	Agencies issue final rule on quality control standards for automated valuation models
07/01/25	Reg. CC	Agencies announce inflation-adjusted dollar thresholds for Regulation CC funds availability
07/30/24	Reg. Z	Consumer Financial Protection Bureau (CFPB) issues interpretive rule applying certain provisions of Regulation Z to Buy Now, Pay Later loans
07/11/24	12 C.F.R. Part 1033	CFPB issues partial final rule for §1033 rulemaking for personal financial data rights
06/18/24	Reg. V	CFPB issues proposed rule to limit the use of medical debt in underwriting consumer credit
05/14/24*	Reg. Z	CFPB issues final rule for credit card penalty fees
04/29/24	24 C.F.R. §100.500	Guidance on Application of the Fair Housing Act to the Advertising of Housing, Credit, and Other Real Estate-Related Transactions Through Digital Platforms
02/01/24**	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 proposed rule to regulate credit overdrafts at very large financial institutions
01/31/24	12 C.F.R. §1042.2	CFPB issues proposed rule 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

REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
11/17/23	12 C.F.R. §1090.10	CFPB issues proposed larger-participants rulemaking for the market for general-use digital consumer payment applications
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. Part 1033	CFPB issues proposed rule to implement §1033 of the Dodd–Frank Act
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
09/19/23	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
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
05/31/23***	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. On August 26, 2024, the court issued an opinion finding the rulemaking did not violate the Administrative Procedure Act, but it did not enter a final judgment dismissing the lawsuit because of a pending motion by three parties to intervene.

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