Recent and Upcoming Regulatory Compliance Changes

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LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
CFPB – HMDA	Moderate	Final Rule 85 FR 28364 5/12/20	7/1/20, for increase in closed end threshold 1/1/22, for permanent open-end threshold	Finalizes aspects of the May 2019 proposed rule. It permanently raises the closed-end coverage threshold from 25 to 100 closed-end mortgage loans in each of the two preceding calendar years (exempting an additional 1,700 FIs from reporting compared to 2019). The final rule also clarifies that institutions have the option to report closed-end data collected in 2020 if they: (1) meet the definition of financial institution as of January 1, 2020 but are newly excluded on July 1, 2020 by the increase in the closed-end threshold, and (2) report closed-end data for the full calendar year. The final rule sets the permanent open-end threshold at 200 open-end lines of credit effective January 1, 2022, upon expiration of the temporary threshold of 500 open-end lines of credit. *As an aside, the regulatory thresholds for partial exemptions from reporting certain data fields under 1003.3(d) remain unchanged.*
GSEs - Regulation B/ECOA	Moderate	Updates 8/13/19 10/23/19 12/18/19 and 4/14/20	Optional Use 1/1/21 Mandatory Use 3/1/21	The GSEs have published the updated and redesigned the Uniform Residential Loan Application (URLA), which reflects revisions announced in August 2019 at the direction of the FHFA. The redesign includes the removal of the language preference question. On January 29, 2020 the GSEs published their updated and interactive version of the redesigned URLA, here. The GSEs have published the revised implementation timeline for the redesigned URLA and updated automated underwriting systems (AUS). Due to the coronavirus pandemic, on 4/14/2020, Fannie Mae and Freddie Mac extended the implementation timeline: the mandatory date is now March 1, 2021.
FCC – Proposes amendments to TCPA regulations	TBD	Proposed 85 FR 64091 10/9/20	Comments due 10/26/20	As it could affect financial institutions (FIs): Previously the FCC exempted calls made by FIs (related to time sensitive fraud/emergency) subject to certain conditions (Declaratory Ruling and Order, October 9, 2015). The exemption's conditions include limitations on the class of calling parties (financial institutions), the class of called parties (customers of the financial institution), and the number of calls (no more than three calls per event over a three-day period for each affected account). The Commission seeks comment on these views and whether the exemption remains in the public interest.
CFPB and FRB - Regulation CC, Availability of Funds and Collection of Checks	Moderate Moderate	Final Rule 84 FR 31687 7/3/19 Correction 84 FR 45403 8/29/19	New territories effective 9/3/19, all other changes effective 7/1/20	As proposed, based on CPI-W measured inflation, the CFPB and the FRB will adjust the amounts stated in the EFA and Reg CC in 2020, and every fifth year thereafter. As per Reg CC's change in terms provision, FIs must send a written notice to consumer account holders at least 30 days after implementation. The first set of adjustments is: 1) next day availability amount of $225; 2) the amount that must be available for withdrawals by cash or other means (second business day) of $450; and, 3) new account and exception hold amounts on amounts over $5,525. EGRRCPA amendments extend coverage to FIs within American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam (effective 9/3/19).
CFPB, Fed, and OCC-Annual Threshold Updates for 2021	Minor	1)85 FR 79394 2)85FR 79385 3)85 FR 83409	1/1/21	REGULATORY THRESHOLD: (1) TILA application is $58,300 (stayed the same); (2) exemption for appraisals on HPMLs is $27,200 (stayed the same) (3) new HMDA asset size exemption threshold is $48 million (up from $47 million in 2020).
NCUA - Payday Alternative Loans	Moderate, Positive Change	84 FR 51942 10/1/19	12/2/19	Adopts the proposed rule, with the exception of the limit on the number of PAL loans in a rolling 6-month period. Allows a FCU to offer a PALs II loan in the amount of $.01-$2,000; loans term must be from 1 to 12 months. FCUs may make such a loan immediately upon the borrower establishing membership in the FCU, however, FCU may only offer one type of PAL loan to a member at any given time. All other requirements of the PALs I rule will apply to PALs II loans including the prohibition against rollovers (the 6-month rolling limitation applies to PAL II loans) and the requirement of full amortization. Prohibits FCU from charging overdraft or non-sufficient funds (NSF) fees in connection with any PALs II loan payment drawn against a borrower's account (includes fees an FCU could assess for paying items presented for payment after the PALs II loan payment creates a negative balance in the borrower's account). NCUA will take comments regarding a PALs III loan under advisement and will determine whether future action is necessary. *The NCUA recognizes that PALs II loans will not qualify for the safe harbor from the CFPB's Payday Loan Rule in the same way that PALs I will*

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CFPB Annual Threshold Updates for CARD, HOEPA, and ATR/QM	Minor	85 FR 50944 8/19/20	1/1/21	**CARD Act:** 1) No change to the minimum interest charge threshold requiring disclosure of charge above $1.00. 2) For open-end consumer credit plans subject to the CARD Act, no change to the amount in 2021 for the safe harbor for a first violation penalty fee currently $29 and not change to the amount for the safe harbor for a subsequent violation penalty fee currently $40. **HOEPA:** The CFPB increased the current total loan amount threshold from $21,980 to $22,052, and the current points and fees threshold from $1,099 to $1,103. **ATR/QM:** 1) For a loan: >= $110,260 , total points and fees (TPF) may not exceed 3 percent of the total loan amount 2) greater than $65,156 but less than $110,260, TPF may not exceed $3,308 3) greater than $22,052 but less than $66,156, TPF may not exceed 5 percent of the total loan amount 4) greater than $13,783 but less than $22,052, TPF may not exceed $1,103; and, 5) For a loan <$13,783, TPF may not exceed 8 percent of the total loan amount.
CFPB - Regulations to Implement the Fair Debt Collection Practices Act (FDCPA)	Moderate	85 FR 76734 11/30/20	Effective 11/30/21	The final rule is significantly revised from the May 2019 proposal, overhauling, and expanding Reg F (12 CFR 1006). Importantly, the rule is not expanded to apply to first-party debt collectors who are not FDCPA debt collectors and does not clarify whether certain actions taken by a first-party debt collector would constitute an unfair, deceptive, or abusive practice. The rule: (1) Clarifies restrictions on the times and places a debt collector may communicate with a consumer. For purposes of determining the timing of an electronic communication, the communication occurs when the debt collector sends it, not when the consumer receives or views it. Clarifies a consumer need not use specific words to assert a time or place is inconvenient (must stop communications to at place/time); (2) Clarifies that a consumer may restrict the media a debt collector communicates by, designating a particular medium, such as email, as one that cannot be used for debt collection communications; (3) Clarifies that a debt collector is presumed to violate the FDCPA's prohibition on repeated or continuous telephone calls if the debt collector places a call to a person >7 times within a seven-day period or within 7 days after engaging in a telephone conversation with the person. A debt collector is presumed to comply with that prohibition if the debt collector places a telephone call not in excess of either of those telephone call frequencies. The rule also provides non-exhaustive lists of factors that may be used to rebut the presumption of compliance or of a violation; (4) Clarifies that newer technologies, such as emails and text messages, may be used in debt collection, with certain limitations (all emails and text messages must include a reasonable and simple method of opt out, and E-SIGN applies to disclosures required to be in writing). The rule provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure if procedures detailed in §1006.6(d)(3-5) are followed; and (5) Clarifies that an attempt to communicate even if not successful is counted as an attempt, and defines a new term, 'limited-content message' (a voicemail that includes at a minimum: (i) A business name that does not indicate that the debt collector is in the debt collection business; (ii) A request that the consumer reply to the message; (iii) The name of persons whom the consumer can contact to reply; and (iv) A telephone number that the consumer can use to reply). Finally, the rule addresses other topics not limited to but for example: The definition and acquisition of location information; prohibited conduct (collecting unauthorized amounts, mandates covering postdated payment instruments, concealment of purpose, empty threats of judicial action, and restricted media such as postcards); false, deceptive, or misleading representation or means in connection with collection activities; disclosures required in initial and subsequent communications with a consumer (not including limited-content messages); and, ceasing collection efforts on disputed amounts (with certain caveats). The CFPB states it intends to issue a disclosure-focused final rule regarding certain provisions of the February (March) 2020 and May 2019 proposals related to consumer disclosures and to the collection of time-barred debt.

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		86 FR 5766 1/19/21	Effective 11/30/21	Following the March 2020 supplemental proposed rule, this final rule clarifies the information that a debt collector must provide to a consumer at the outset of debt collection communications and provides an optional safe harbor model validation notice containing such information. The final rule also addresses passive collections (i.e., the practice of furnishing information about a debt to a consumer reporting agency before communicating with the consumer about the debt) and the collection of debt that is beyond the statute of limitations (i.e., time-barred debt). For passive collections, (except for furnishing information about check writing history), the debt collector must either: (1) Speak to the consumer about the debt in person or by telephone, or (2) mail or send an electronic message to the consumer about the debt and wait a reasonable period of time (14 consecutive days is the established safe harbor) to receive a notice of undeliverability. The final rule provides a safe harbor for compliance with these disclosure requirements for debt collectors who use the model validation notice or certain variations of the notice. Additionally, the final rule interprets the definition of consumer under the FDCPA to include deceased natural persons and, relatedly, provides that, if a debt collector knows or should know that the consumer is deceased, the debt collector must provide that information to a person who is authorized to act on behalf of the deceased consumer's estate. Regarding time barred debt, the final rule prohibits a debt collector from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt. This is different from the proposal which had originally included a clause "only if the debt collector knew or should have known the debt was time barred" and instead finalizes a strict liability standard (although prohibitions do not apply to proofs of claim filed in connection with a bankruptcy proceeding). However, the Bureau is not finalizing the proposed time-barred debt disclosure requirements although clarifies that any related information to time-barred debt that are specifically required by 'applicable law' (not defined in rule) may be included on the model validation notice.
CFPB - Higher-Priced Mortgage Loan Escrow (Reg Z)/Small Creditor Exemption	Minor	85 FR 83411	1/1/21	"Small Creditor" threshold for purposes of the exemption to establish escrow accounts for HPMLs is \$2.230 billion at 12/31/20 (increase from \$2.202 billion). In effect since 3/31/16, this exemption applies to small creditors if: (1) the institution and its affiliates originated ≤2,000 loans secured by a first lien on a principal dwelling during the preceding calendar year (excluding those held in portfolio); (2) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, secured by a first lien on a property that is located in a rural or underserved area; and, (3) Neither the creditor nor its affiliate maintains an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than those established for first-lien HPMLs for which applications were received on or after 4/1/10, and before 5/1/2016, or those established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.
CFPB - Higher-Priced Mortgage Loan Escrow (Reg Z)/Insured Institution Exemption	Minor	Final FR 86 9840 2/17/21	2/17/21	Following the July 2020 proposed rule, this final rule amends Reg Z, substantially as proposed to exempt certain insured institutions and CUs from the requirement to establish escrow accounts for certain higher-priced mortgage loans (HPMLs). New §1026.35(b)(2)(vi) exempts from the current HPML escrow requirement any loan made and secured by a first lien on the principal dwelling of a consumer if (1) the institution has assets of ≤\$10 billion in assets (adjusted annually); (2) the institution and its affiliates originated ≤1,000 loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing HPML escrow exemption criteria are met which are: (a) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, secured by a first lien on a property that is located in a rural or underserved area; and, (b) Neither the creditor nor its affiliate maintains an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than those established for first-lien HPMLs for which applications were received on or after 4/1/10, and before 120 days (was 90 days in proposal) after final rule publication in the federal register, or those established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

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Remittance Transfers Under the EFTA	Moderate	85 FR 34870 6/5/20	Effective 07/21/20	As proposed in its December 2019 Proposed Rule, this Final Rule (Regulation E, Subpart B): (1) Adopts a permanent exception to permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if, among other things, the designated recipient will receive funds in the country's local currency and the insured institution made 1,000 or fewer such remittance transfers in the prior calendar year to that country; (2) Adopts a permanent exception permitting insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated recipient's institution if, among other things, the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year, and; (3) Increases the safe harbor threshold of a remittance transfer provider to ≤ 500 (from ≤ 100) transfers in the previous and current calendar year. With respect to all exceptions (#1-#3), the Bureau is adopting a transition period of six months for insured institutions that exceed, as applicable, the thresholds in a certain year. If a person who previously provided remittance transfers in the normal course of its business in excess of the previous safe harbor threshold of ≤ 100 determines that, as of a particular date, it will qualify for the safe harbor, it may cease complying with the requirements of Subpart B with respect to any remittance transfers for which payment is made after that date. Additionally, the Bureau released a statement on April 10, 2020 announcing that in light of the COVID-19 pandemic, for remittance transfers that occur on or after July 21, 2020, and before January 1, 2021, the Bureau does not intend to cite in an examination or initiate an enforcement action in connection with the disclosure of exact third-party fees and exchange rates against any insured institution that will be newly required to disclose exact third-party fees and exchange rates after the temporary exception expires.
CFPB - Application of Certain Provisions in the TRID Rule and TILA's Right of Rescission Rules in Light of the COVID-19 Pandemic	Minor	Interpretive Rule 85 FR 26319 5/4/20	Effective 5/4/20	The CFPB issued this interpretive rule clarifying the application of certain provisions in the TILA-RESPA Integrated Disclosure (TRID) Rule and Regulation Z's right of rescission rules in light of the COVID-19 pandemic. The CFPB concluded that if a consumer determines that their need to obtain funds due to the COVID-19 pandemic necessitates consummating the transaction before the end of the TRID Rule waiting periods or must be met before the end of the Rescission Rules waiting period, then the consumer has a bona fide personal financial emergency. The CFBP also concluded that the COVID-19 pandemic is a "changed circumstance" for purposes of certain TRID Rule provisions (including revised estimates in good faith). Interpretive rules do not impose new or change existing substantive requirements; rather, it interprets the law and regulations already set forth.
CFPB - A new category of seasoned qualified mortgages	Moderate	85 FR 86402 12/29/20	Effective 3/1/21	Following the August 2020 proposal, this final rule is issued largely as proposed; however, the final rule differs from the proposal by adding a new exception to the portfolio requirement that allows loans to be transferred once during the seasoning period, excluding high-cost mortgages as defined in 12 CFR 1026.32(a), and applying the same consider and verify requirements that will apply to General QM loans. The rule defines Seasoned QMs as first-lien, fixed-rate transactions (regular, substantially equal periodic payments that are fully amortizing, no balloon payments, and ≤30 years) that have met certain performance requirements over a seasoning period of at least 36 months, are held in portfolio until the end of the seasoning period by the originating creditor or first purchaser, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. To be considered seasoned, the covered transaction must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period, with some exceptions. Creditors can, however, generally accept deficient payments, within a payment tolerance of $50, on up to three occasions during the seasoning period without triggering a delinquency for purposes of this final rule. Failure to make full contractual payments does not disqualify a loan from eligibility to become a Seasoned QM if the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, if certain conditions are met. However, time spent in such a temporary accommodation does not count towards the 36-month seasoning period, and the seasoning period can only resume after the temporary accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change as defined in this final rule. The final rule defines a qualifying change as an agreement entered into during or after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency that ends any preexisting delinquency and meets certain other conditions to ensure the loan remains affordable (such as a restriction on increasing the amount of interest charged over the full term of the loan as a result of the agreement). Only loans resulting from applications received by creditors on or after the effective date will be eligible to become seasoned QM loans.

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CFPB – extension of the qualified mortgage (QM) provision known as the GSE Patch and amendment to the General QM loan definition	Moderate	85 FR 67938 10/26/20	Effective 12/28/20	This final rule (as proposed) amends Reg Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z. This final rule does not amend the provision stating that the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship (the conservatorship clause).
		85 FR 86308 12/29/20	Effective 3/1/21 Mandatory 7/1/21 (possibly extended, see below)	Final Rule replaces the current requirement for General QM loans that the consumer's debt-to-income ratio (DTI) not exceed 43% with a limit based on the loan's pricing. Another current category of mortgage loan afforded QM status are loans that meet the standards of the Government Sponsored Enterprises (GSEs). Most mortgage loans are QMs pursuant to this provision, also known as "the Patch." However, the Patch (as well as existing General QM) will expire on 7/1/21. Under this Rule, a loan will continue to receive a conclusive presumption of ability to repay (ATR) if the APR is less than average prime offer rate (APOR) for a comparable transaction by 1.5 (first lien) or 3.5 (junior lien) percentage points as of the date the interest rate is set. A loan receives a rebuttable presumption for ATR if the APR exceeds the APOR for a comparable transaction by 1.5 percentage points but by less than 2.25 percentage points. Safe harbor or rebuttable presumption aside, the new General QM requires that the APR on the loan may not exceed APOR for a comparable transaction by: for a first lien transaction of $110,260 or more, 2.25 or more % points; for a first lien transaction of $66,156 or more and less than $110,260, 3.5 or more % points; for a first lien transaction of less than $66,156, 6.5 or more % points; for a first lien transaction secured by a manufactured home of less than $110,260, 6.5 or more % points; for a junior lien transaction of $66,156 or more, 3.5 or more % points; for a junior lien transaction of less than $66,156, 6.5 or more % points. All of the dollar amounts are indexed for inflation. In addition, this rule: 1) Provides higher pricing thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions; 2) Retains the General QM loan definition's existing product-feature and underwriting requirements and limits on points and fees; and 3) Requires lenders to consider a consumer's DTI ratio or residual income (in accordance with calculations under 1026.43(c)(7) of the ATR rule), income or assets other than the value of the dwelling and debts, and removes appendix Q. It provides more flexible options for creditors to verify income or assets other than the value of the dwelling and the consumer's debts for QM loans including a safe harbor for using specific manuals cited in the final rule (incl. Freddie/Fannie/FHA/VA/USDA). If a manual used by a creditor is revised, the safe harbor still applies as long as the revised manual is substantially similar. For ARM loans, the creditor will be required to calculate the APR based on the highest interest rate that can apply during the five-year period from the due date of the first scheduled payment on the loan. As proposed, the final rule adds a Commentary provision to address unidentified funds such as that a creditor would not meet the verification requirements when it observes an unidentified $5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income. The final rule does not change the points and fees limits, or the items that are included in points and fees. The final rules does not alter the existing separate QMs for loans that are defined as a QM by FHA, VA or USDA.
		Proposed 86 FR 12839	Comments due 4/5/21	The Bureau proposes to delay the mandatory compliance date of the General QM Final Rule until 10/21/22. Specifically, the proposal would amend comments 43-2 and 43(e)(4)-2 and -3 to reflect an extension of the mandatory compliance date of the General QM Final Rule by changing the date "July 1, 2021" where it appears in those comments to "October 1, 2022." The proposal would also add new comment 43(e)(2)-1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021 but prior to October 1, 2022. If finalized, for applications received on or after 3/1/21 and before 10/1/22, creditors would have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to 3/1/21. Also, under the proposal, the Temporary GSE QM loan definition would not expire until the earlier of 10/1/22 or the date the applicable GSE exits Federal conservatorship.

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CFPB – Payday Loans, Vehicle Title and Certain High Cost Installment Loans (Deposit Advance Products and longer-term loans with balloon payments)	Moderate	82 FR 54472 11/17/17	Eff 1/16/18 Mandatory compliance for payment provisions is 8/19/19* Eff Mandatory compliance for underwriting (ATR) Rescinded	Finalizes the proposed rule which governs banks, credit unions, nonbanks, and their service providers. Open-end and closed-end covered loans are (1) short-term loans (≤45-days) and (2) longer-term balloon-payment loans (defined as payment that is twice as large as any other payment). Certain provisions apply to a third type of loan, with terms >45-days where the cost of credit exceeds 36% APR *and* have a leveraged payments mechanism where the lender can initiate transfers from the consumer's account on its own. Prohibits lenders from attempting to withdraw payment from a consumer's account after its second consecutive attempt has failed for insufficient funds. Also imposes new disclosure requirements. **The CFPB notes in its Compliance Guide that: "The compliance date is currently stayed pursuant to a court order issued in Community Financial Services Association v. CFPB, No. 1:18-cv-00295 (W.D. Tex. Nov. 6, 2018). As a result, lenders have no obligation to comply with the Rule until the court-ordered stay is lifted."* On 5/15/20, the stay was continued through at least 9/11/20. *On 8/11/20 the Bureau issued and updated several FAQs about the Small Dollar Lending Rule. As of 12/18/20 the briefing on the parties' cross-motions for summary judgment has now closed. The court has not indicated whether it will hold oral argument on the motions. A ruling is still forthcoming.*
		Final Rule 85 FR 44382 7/22/20	Effective 10/20/20	Following its 2/14/19 proposal to rescind/revisit underwriting requirements and its 6/17/2019 final rule to extend the compliance date for the mandatory underwriting (ATR) provisions to November 19, 2020 the Bureau has issued a final rule revoking the ATR provisions of those regulations that: Provide that it is an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon-payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; prescribe mandatory underwriting requirements for making the ability-to-repay determination, and; exempt certain loans from the mandatory underwriting requirements. ***NOTE:*** *This Rule does change the requirements and limitations on attempts to withdraw payments from a consumer's account (Payment Provisions).*
HUD - Implementation of the Fair Housing Act's Disparate Impact Standard	Moderate	85 FR 60288 9/24/20	Effective 10/26/20	This rule amends HUD's interpretation of the FHA's disparate impact standard to reflect the Supreme Court's 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc*. This rule largely follows an August 2019, Proposal, which solicited comments on the disparate impact standard set forth in HUD's 2013 final rule. HUD's current rule basically requires the defendant to prove that a practice is necessary to meet a legitimate and legal objective. The proposed rule would replace HUD's current discriminatory effects standard and would establish five key limitations, placing the burden onto the plaintiff in discriminatory impact claims to establish all of the following: (1) the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a legitimate objective; (2) the alleged disparity has a *disproportionally* (this word added in final rule) adverse effect on members of a protected class; (3) there is a robust direct 'causal link' (clarified in final rule to mean the policy or practice is the direct cause of the discriminatory effect) between the challenged policy or practice and the adverse effect on members of a protected class; (4) the alleged disparity caused by the policy or practice is significant; and, (5) there is a direct link between the injury asserted and the injurious conduct alleged. The final rule removes direct language from the proposal that discussed approaches of defense when claim is made based on the use of a "model… such as a risk assessment algorithm" including relief from liability if using a model that is an "industry standard," instead adding reference allowing defendants to demonstrate the challenged practice or policy was intended to predict the occurrence of an outcome among other details and there was not a less discriminatory option (without materially greater costs or burdens).

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CFPB - Mortgage Loan Loss Mitigation Under RESPA, based on COVID-19	Moderate	Interim Final Rule 85 FR 39055 6/30/20	Effective 7/1/20 Comments due 8/14/20	The CFPB issued this IFR to amend RESPA's Reg X to temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. Eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the property is sold, the loan ends, or, for a mortgage insured by the FHA, the mortgage insurance terminates. These amounts include, without limitation, all P&I payments forborne through payment forbearance programs made available to borrowers experiencing financial hardships due, directly or indirectly, to the COVID-19 emergency, including a payment forbearance program offered pursuant to section 4022 of the CARES Act. These amounts also include P&I payments that are due and unpaid by borrowers experiencing financial hardships due, directly, or indirectly, to the COVID-19 emergency. Additionally, for eligibility, any amounts that the borrower may delay paying through the loss mitigation option may not accrue interest; the servicer may not charge any fee in connection with the loss mitigation option; and the servicer will waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option; and, the borrower's acceptance of the loss mitigation offer must resolve any prior delinquency. The IFR also excludes servicers from certain regulatory requirements if a borrower accepts an option offered pursuant to the new exception; specifically, the servicer is not to comply with the Reg X section 1024.41(b)(1) or (2) requirements regarding the completion of a loss mitigation application and sending acknowledgment letters. However, per the Bureau analysis commentary to the IFR, if a borrower who accepts a loss mitigation option offered pursuant to the temporary exception later submits a new loss mitigation application, the servicer must comply with the Reg X section 1024.41(b)(1) and (2) requirements.
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
DOD - amends its interpretive rule for the Military Lending Act	Moderate but isolated	Interpretive Rule 85 FR 11842 2/28/20	Effective 2/28/20	DOD reverts back to the original Q&A #2 published in August/2016 with respect to when credit is extended for the purchase of a motor vehicle or personal property where the creditor extends credit in an amount greater than the purchase price. DOD received concerns that its December/2017 interpretation prohibits creditors from taking a security interest in the property, which would limit credit. Confirms that Individual Taxpayer Identification Numbers (ITIN) to identify covered borrowers in the DOD database is the same as using a SSN in qualifying for the MLA safe harbor provision.
CFPB - RFI on the ECOA and Reg. B	TBD	RFI 85 FR 46600 8/3/20	Comments due ~~10/2/20~~ Extended to 12/1/20	Seeks comments to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to compliance challenges under the ECOA and Reg B. In particular the Bureau seeks comment on Reg B's interpretation of disparate impact, use of limited language proficiency (LEP) products or services, use of special purpose credit programs, affirmative advertising to disadvantaged groups, artificial intelligence/machine learning, and other topics. On 12/21/20 the Bureau issued an advisory opinion to address regulatory uncertainty in Reg B as it applies to certain aspects of special purpose credit programs (SPCPs). Through stakeholder feedback received in response to the Bureau's RFI, the Bureau learned that stakeholders sought such additional guidance to help them develop compliant SPCPs. On 1/13/21 the Bureau published a Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (LEP). The Statement is divided into two sections: one contains "guiding principles for serving LEP consumers" and the second contains "guidelines for developing compliance solutions when serving LEP consumers." Key considerations relate to language, product, and service selection, language preference collection and tracking, and translated documents.
CFPB Issues ANPR to solicit information relating to PACE financing	Moderate, but isolated	Proposed 84 FR 8479 3/8/19	Comment due 5/7/19	Solicits information pursuant to EGRRCPA §307 on residential Property Assessed Clean Energy (PACE) financing, which must fulfill the purposes of TILA's ability-to-repay (ATR) requirements for residential mortgage loans, and apply TILA's civil liability provision for ATR violations for PACE financing. Solicits information to better understand the PACE financing market and the unique nature of PACE financing as it relates to the following categories: (1) Written materials (current samples) associated with PACE transactions; (2) current standards and practices in the PACE origination process; (3) civil liability under TILA for ATR violations in connection with PACE financing, as well as rescission, borrower delinquency and default; (4) PACE financing features that are unique and how they can be addressed; and (5) potential implications of regulating PACE financing under TILA. PACE financing is defined as "financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer."

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
CFPB Issues LIBOR Transition Proposed Rule (Reg Z)	Moderate	Proposed FR 85 36938 6/18/20	Comment due 8/4/20	LIBOR is expected to be discontinued after 2021. The Bureau proposes changes to open and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Reg Z standards. The proposal addresses four substantial issues for open-end credit: (1) proposing to permit creditors for HELOCs and card issuers to transition existing accounts that use LIBOR to a replacement index on or after 3/15/21 (before LIBOR becomes unavailable), if certain conditions are met such as the LIBOR index and the replacement index value (w/ margin) in effect on 12/31/20 will produce an APR substantially similar to the rate calculated using LIBOR in effect on 12/31/20 that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan; (2) proposes to determine that Prime Rate and certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices; (3) for HELOCs and credit cards a creditor must provide a change-in-terms notice disclosing the replacement index for LIBOR and any adjusted margin that is permitted under *even if the margin is reduced*. Prior to 10/1/21, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for LIBOR as permitted; and (4) proposes to add an exception from the rate reevaluation provisions applicable to credit card accounts, if the new index and margin results in a rate increase. -- The proposal addresses one substantial issue for closed end credit which is to add an illustrative example to identify the SOFR-based spread-adjusted replacement indices recommended by the ARRC as an example of a "comparable index" for the LIBOR indices that they are intended to replace. The CFPB proposes that the final rule take effect on 3/15/21, except for the updated change-in-term disclosure requirements for HELOCs and credit cards that would apply as of 10/1/21. In addition to this proposed rule, the Bureau issued a set of FAQs to address other LIBOR transition topics and regulatory questions under the existing rule. **NOTE 1: the Bureau has revised the CHARM Booklet to provide updates based on consumer testing and remove LIBOR-based rate examples. *NOTE 2: On 7/1/20 the FFIEC issued a Joint Statement on Managing the LIBOR Transition, highlighting the financial, legal, operational, and consumer protection risks that will result from the expected discontinuation LIBOR. *NOTE 3: On 11/6/20 an Interagency Statement was published encouraging prompt transition from LIBOR and reiterating banks may use any reference rate that banks determine to be appropriate, however bank should include fallback language in its new lending contracts that provides for use of a robust fallback rate if the initial reference rate is discontinued. On 11/30/20 an Interagency Statement was released encouraging banks to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by 12/31/21.*
Interagency Proposal to Revise and Expand Q&As Regarding Flood Insurance	Minor	ANPR 85 FR 40442 7/6/20 85 FR 54946 9/3/20	Comments due 9/4/20 Extended to 11/3/20	The OCC, Board, FDIC, FCA, and NCUA propose to reorganize, revise, and expand the Interagency Q&As regarding flood insurance and solicits comments. The Agencies have prepared proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. Significant topics addressed by the proposed revisions include the effect of major amendments to flood insurance laws with regard to the escrow of flood insurance premiums, the detached structure exemption, and force-placement procedures. The agencies announced they will issue separately another set of proposed Q&As relating to the private flood insurance rule adopted by the agencies in 2019, however the current proposed Q&As address some areas related to private flood insurance.
		Proposed 86 FR 14696 3/18/21	Comments due 5/17/21	As noted in the July 2020 Proposed Q&As, the OCC, Board, FDIC, FCA, and NCUA (Agencies) committed to separately issuing proposed Q&As relating to the private flood insurance rule. Accordingly, the Agencies have carefully considered, categorized, and consolidated private flood insurance Q&As to be broadly applicable to FIs and request comment on 24 proposed questions and answers, categorized in the three following sections: Mandatory Acceptance, Discretionary Acceptance, and General Compliance. The Agencies plan to publish a final document in the FR that consolidates these proposed private flood insurance Q&As and the July 2020 Proposed Q&As into one set of Interagency Q&As.

Recent and Upcoming Regulatory Compliance Changes

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
CFPB - rescinded "Statement of Policy Regarding Prohibition on Abusive Acts or Practices"	Min-Mod	86 FR 14808 3/19/21	Effectively rescinded 3/19/21	The Bureau rescinds the "Statement of Policy Regarding Prohibition on Abusive Acts or Practices" published at 85 FR 6733 on 2/6/20. Upon recent review of the statement, the CFPB (under new administration) found it was inconsistent with the Bureau's duty to enforce Congress's abusiveness standard. For reference, the 2020 statement applied the following principles: focus on citing or challenging conduct only when the harm to consumers outweighs the benefit (cost/benefit analysis); generally avoid "dual pleading" of abusiveness and unfairness or deception violations arising from all or nearly all the same facts; and, seek monetary relief such as civil penalties for abusiveness only upon lack of a good-faith effort to comply with the law (except the Bureau will continue to seek restitution for injured consumers regardless of whether a company acted in good faith or bad faith). The Bureau has concluded that the principles set forth in the statement have the opposite effect on preventing consumer harm, and thus is being rescinded immediately.
CFPB – Interpretive rule against discrimination based on sexual orientation and gender identity	Minor	Interpretive rule 86 FR 14363 3/16/21	Effective 3/16/21	The interpretive rule clarifies that, with respect to a credit transaction, the prohibition against sex discrimination in the ECOA and Regulation B, encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations.
CFPB - ECOA Business Lending Data, Reg B	Major	RFI 82 FR 22318, 5/5/17 RIN: 3170-AA09	Comment period ended 7/14/17 Extended to 9/14/17	DFA §1071 requires financial institutions to compile, maintain, and report information on credit applications made by women-owned, minority-owned, and small businesses, such as the race, sex, and ethnicity of the principal business owners. RFI sought comment on the types of credit products offered, the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection. *The CFPB took another step towards issuing regulations to implement Section 1071 by releasing the 12/14/20 final report of the small business review panel (Panel) on the proposals the Bureau is considering for developing such regulations.*
CFPB – Notable items in the rule making agenda	TBD	Rule Making Agenda Fall 2020 Reginfo.gov Agency Rule List	Various	Most notably in the preamble and agenda, the Bureau indicates : (1) it took a major step towards implementing section 1071 of the DFA on 9/15/20, releasing an outline of regulatory proposals under consideration and alternatives considered in advance of convening a SBREFA panel.); (2) it anticipates publishing two NPRMs in early 2021 regarding proposed rules to govern the collection of HMDA data points and the disclosure of those data, so that the two issues can be considered concurrently; (3) it is participating in the interagency rulemaking processes to develop regulations to implement the amendments made by the DFA that require implementing regulations for quality control standards for automated valuation models (AVMs); and (4) it anticipates issuing an NPRM in spring 2021 to consider possible amendments to its mortgage servicing rules to address actions required of servicers working with borrowers affected by natural disasters or other emergencies.
NCUA – proposes rule to amend requirement that a FCU must adopt as a part of their written overdraft policy	Minor	Proposed 86 FR 3876 1/15/21	Comments due 2/16/21	The proposed rule would modify the requirement that an FCU's written overdraft policy establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the FCU to cover each overdraft. The proposed rule would remove the 45-day limit and replace it with a requirement that the written policy must establish a specific time limit that is both reasonable and applicable to all members, for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft. Consistent with U.S. generally accepted accounting principles, overdraft balances should generally be charged off when considered uncollectible. This change would also remedy a discrepancy between the current 45-day limit imposed on FCUs for curing an overdraft and 2005 interagency guidance on overdraft protection programs that suggests a maximum of 60 days before charge-off.