Recent and Upcoming Regulatory Compliance Changes

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 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. 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. *In November 2021, the CFPB published FAQs related to coverage criteria. Reminder that an institution that originated ≥200 open-end lines of credit in both calendar years 2020 and 2021, and meets all other Reg. C institutional coverage criteria, will be required to collect, and report data about its open-end lines of credit for calendar year 2022 to be submitted by March 1, 2023.*
FRB and FDIC - Annual CRA Threshold	Minor (Excludes CUs)	86 FR 71813 12/20/21	1/1/22	Small banks are those with total assets <$1.384 billion (was $1.322 billion) as of 12/31/20 or 12/31/21; intermediate small banks had total assets ≥$346 million (was $330 million) as of 12/31/20 and 12/31/21, and less than $1.384 billion as of as of 12/31/20 or 12/31/21.
CFPB, Fed, and OCC- Annual Threshold Updates for 2022	Minor	1)86 FR 67851 2)86 FR 67843 3)86 FR 72818 4)86 FR 72820	1/1/22	REGULATORY THRESHOLDS: (1) TILA application is $61,000 (was $58,300); (2) exemption for appraisals on HPMLs is $28,500 (was $27,200); (3) HMDA asset size exemption threshold is $50 million (was $48 million); (4) "Small Creditor" threshold for purposes of the exemption under §1026.35(b)(2)(iii) to establish escrow accounts for HPMLs is $2.336 billion at 12/31/21 (was $2.230 billion), and the "Certain Insured Depository Institution" threshold for purposes of the exemption under §1026.35(b)(2)(vi) to establish escrow accounts for HPMLs is $10.473 billion at 12/31/21 (was 10 billion).
CFPB Annual Threshold Updates for CARD, HOEPA, and QM	Minor	86 FR 60357 11/2/21	1/1/22	CARD Act: 1) No change to the minimum interest charge threshold requiring disclosure of charge above $1.00. 2) For applicable open-end consumer credit plans, $1 increase to the amount in 2021 for the safe harbor for a first violation penalty fee to $30 and the amount for a subsequent violation penalty fee to $41. HOEPA: The CFPB increased the current total loan amount threshold from $22,052 to $22,969, and the current points and fees threshold from $1,103 to $1,148. ATR/QM: 1) For a loan: >= $114,847, total points and fees (TPF) may not exceed 3 percent of the total loan amount 2) greater than $68,908 but less than $114,847, TPF may not exceed $3,445 3) greater than $22,969 but less than $68,908, TPF may not exceed 5 percent of the total loan amount 4) greater than $14,356 but less than $22,969, TPF may not exceed $1,148; and, 5) For a loan <$14,356, TPF may not exceed 8 percent of the total loan amount.
OCC - Issues rule on fair access to financial services	Impact limited to Bank's >100 billion	Proposed 85 FR 75261 11/25/20 Final Pending Publication in the FR	Comments due 1/4/21 Effective ~~4/1/21~~ (paused)	Shortly following the proposal and comment period ending 1/4/21, the OCC issued this final rule as proposed, with the following changes: 1) clarification that bank can decline to provide a person with access to a financial service if doing so is necessary to comply with another provision of law, such as laws on credit, capital, liquidity, and interest rate risk, and 2) eliminates the proposed criterion that a bank could not deny any person a financial service offered when the denial's effect would be to prevent, limit, or otherwise disadvantage the person from entering or competing in a market or business segment, or in a way that benefitted another person or business activity in which the bank had a financial interest. The following remains unchanged from the proposal: *As finalized*, a covered bank (>$100 billion total assets)shall (1) make each financial service it offers available to all persons in the geographic market served on proportionally equal terms; (2) not deny any person except to the extent justified by such person's quantified and documented failure to meet quantitative, risk-based standards established in advance; and (3) not deny, in coordination with others, any person a financial service the covered bank offers. *On 1/28/21 the OCC announced it is pausing publication of the rule in the FR to "allow the next confirmed Comptroller of the Currency to review the final rule and the public comments the OCC received, as part of an orderly transition."*

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
CFPB - Regulations to Implement the Fair Debt Collection Practices Act (FDCPA)	Moderate	85 FR 76734 11/30/20 86 FR 20334 4/19/21 Withdrawal of extension of effective date 86 FR 48918 9/1/21	Effective 11/30/21 Proposal to extend effective date to 1/29/22 Comments due 5/19/21 Effective date WILL REMAIN as 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; (2) Clarifies that a consumer may restrict the type of 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 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. (4) Clarifies that 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; 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 issued a proposal in April 2021 that would have extended the effective date to January 29, 2022, but since published a formal notice in the Federal Register withdrawing the April 2021 proposal. The Bureau has released several FAQs and guidance documents to help industry participants comply with the Rule. In November 2021, the CFPB acknowledged that the FCC has released a database of reassigned numbers that is 'complete and accurate' and may be used for procedures related to text messages described in §1006.6(d)(5).
		86 FR 5766 1/19/21 86 FR 20334 4/19/21 Withdrawal of extension of effective date 86 FR 48918 9/1/21	Effective 11/30/21 Proposal to extend effective date to 1/29/22 Comments due 5/19/21 Effective date WILL REMAIN as 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. It 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. The CFPB issued a proposal in April 2021 that would have extended the effective date to January 29, 2022, but since published a formal notice in the Federal Register withdrawing the April 2021 proposal.

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FINAL RULES AND ASSOCIATED ACTIONS:				
Interagency Rule Revising and Expanding Q&As Regarding Flood Insurance	Minor	86 FR 32826 5/31/22	5/11/22 (Original issuance date)	The OCC, FRB, FDIC, FCA, and NCUA (collectively, the Agencies) are finalizing the reorganized, revised, and expanded Interagency Q&As consisting of 144 Q&As (including 24 private flood insurance questions and answers), to assist lenders in meeting responsibilities under Federal flood insurance law and increase public understanding of the Agencies' respective flood insurance regulations. Significant topics addressed by the revisions include the escrow of flood insurance premiums, the detached structure exemption, force placement procedures, and the acceptance of flood insurance policies issued by private insurers. With this issuance, the Agencies consolidate their July 2020 proposed Q&As (which are substantially unchanged from the proposal with the exception of three new Q&As: Applicability 13, Amount 10, and Condo and Co-op 9) and their March 2021 proposed Q&As (substantially unchanged) into one set of Interagency Q&As. This guidance supersedes the 2009 Interagency Q&As and the 2011 amendments thereof.
CFPB issues 2021 Mortgage Servicing COVID-19 Rule	Major for large servicers	Final 86 FR 34848 6/30/21	8/31/21	As proposed, the final Rule only applies to a mortgage loan secured by a borrower's principal residence and does not apply to reverse mortgages. Small servicers, as defined in the general mortgage servicing rules, are generally not subject to the new requirements. The Rule includes temporary provisions as simplified here: (1) from August 31, 2021 through December 31, 2021, unless an exception applies, before referring certain accounts (which became 120+-day delinquent on or after 3/1/20), for foreclosure the servicer must make sure at least one of the temporary procedural safeguards has been met (procedural safeguards include that the borrower was evaluated based on a complete loss mitigation application and existing foreclosure protection conditions are met, the property is abandoned, or the borrower is unresponsive to servicer outreach), (2) permits offering a streamlined loss mitigation option based on an evaluation of an incomplete loss mitigation application related to a COVID-19 hardship (to qualify the loan modification must not extend the loan term >40 years from the date of the modification, not increase the monthly P&I payment that was required prior to the modification, not accrue interest on deferred amounts, the program must be available to borrowers with COVID-19-related hardships, must end any preexisting delinquency, and must not include certain fees such as late fees, penalties, or stop payment fees), (3) requires if a short-term payment forbearance program was offered based on the evaluation of an incomplete application, then, ≥30 days before the end of the short-term payment forbearance program, the servicer must contact the borrower to determine if the borrower wants to complete their loss mitigation application and proceed with a full loss mitigation evaluation, and (4) adds a requirement for servicers to inform borrowers of forbearance or loss mitigation options during live contact calls (only applies until 10/1/22).
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	IFR issued 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's 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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
CFPB – extension of the qualified mortgage (QM) provision known as the GSE Patch and amendment to the General QM loan definition	Moderate	85 FR 86308 12/29/20	Effective 3/1/21 Mandatory ~~7/1/21~~ 10/1/22	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 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 do not alter the existing separate QMs for loans that are defined as a QM by FHA, VA, or USDA. *On 2/23/22, the CFPB released a factsheet on the interest rate used for calculating prepaid interest under the price-based General QM APR calculation rule for ARMs where the interest rate may or will change within the first five years, and step-rate loans.*
		86 FR 22844 4/30/21	Effective 6/30/21	The Bureau has issued a final rule to delay the mandatory compliance date of the General QM Final Rule. The rule amends 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." It also adds 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. Creditors have the option of complying with either the revised price-based General QM loan definition or the DTI-based General QM loan definition in effect prior to 3/1/21. Also, per the rule, the Temporary GSE QM loan definition will not expire until the earlier of 10/1/22 or the date the applicable GSE exits Federal conservatorship. In January, the GSE's Preferred Stock Purchase Agreements (PSPAs) with the Dept. of Treasury regarding Fannie Mae and Freddie Mac were amended. Pursuant to the amendments, as of 7/1/21 Fannie and Freddie could only purchase new general QM loans (under new general QM definition). On 4/8/21, Fannie issued LL 2021-09 and Freddie issued Bulletin 2021-13, to provide for the purchase of new general QM loans, and not the 43% DTI ratio QM or GSE Patch QM loans, for applications received on or after 7/1/21. As a practical matter, many lenders may no longer originate 43% DTI ratio QM loans or GSE Patch QM loans for applications received on or 7/1/21.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
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.
CFPB: LIBOR Transition Rule (Reg Z)	Moderate	86 FR 69716 12/8/21	Effective 4/1/22 Mandatory 10/1/22	Following its June 2020 proposal, the Bureau has issued a final rule that amends Regulation Z in order to address the discontinuation of LIBOR. The rule addresses several substantial issues for open-end credit: (1) to permit creditors for HELOCs and card issuers to transition existing accounts that use LIBOR to a replacement index on or after 4/1/22 (before LIBOR becomes unavailable), if certain conditions are met such as the LIBOR index and the replacement index value (w/ margin) in effect on 10/18/21 will produce an APR substantially similar to the rate calculated using LIBOR in effect on 10/18/21 that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan; (2) clarifies that Prime Rate and certain spread-adjusted indices based on SOFR as recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices (though creditors are not limited to these); (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 10/1/22, 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) adds an exception from the rate reevaluation provisions applicable to credit card accounts if the new index and margin results in a rate increase. – For closed end credit, the rule adds 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. In addition to this rule, the Bureau has issued FAQs to address other LIBOR transition topics and regulatory questions under the existing rule. **See information on the July 2022 FRB proposal in below section relating to implementing the Adjustable Interest Rate (LIBOR) Act and suggested replacement benchmark rates for covered loans, as defined.*

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
OCC rescinds its June 2020 CRA final rule	Major for OCC Banks Only	86 FR 71328 12/15/21 *OCC Bulletin 2021-67 12/30/21	1/1/22 (w/ public file and notice provisions delayed to 4/1/22)	The OCC has published a final rule to rescind its June 2020 final rule that was meant to effectively overhaul the OCC-regulated institutions' CRA ratings systems. Now, the June 2020 final rule is being replaced with rules based on the 1995 CRA rules, as adopted then jointly by OCC, FRB, and FDIC. This final rule is effective January 1, 2022, except for the provisions dealing with public notice requirements that have an April 1, 2022, compliance date. This action facilitates the OCC's planned future issuance of updated interagency CRA rules with the FRB and FDIC. *OCC Bulletin announces January 1, 2022, a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.384 billion is a "small bank or savings association" under the CRA regulations. A "small bank or savings association" with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years is an "intermediate small bank or savings association" under the CRA regulations. The bank asset-size thresholds in the bulletin reflect the adjusted thresholds issued by the FRB and FDIC on December 17, 2020, and effective January 1, 2021.
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* 6/13/22*	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 compliance date was 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)." On 8/31/21, the court ruled in support of the CFPB, however it granted the industry 286 days to come into compliance with the rule (6/13/22). Two trade groups appealed to the Fifth Circuit; on 10/14/21 the court issued a stay to postpone the 6/13/22 compliance date until 286 days after the trade groups' appeal is resolved. Oral arguments were presented to the Fifth Circuit on 5/9/22.*
FDIC: Final Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo CFPB Circular: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance	Minor (Excludes CUs)	87 FR 33415 6/2/22	Effective 7/5/22	The final rule implements the FDIC's statutory authority to prohibit any person or organization from making misrepresentations about FDIC deposit insurance or misusing the FDIC's name or logo, and clarifies its procedures for taking actions against individuals or entities for violations. The final rule requires non-bank entities to identify the insured depository institution with which they have existing direct or indirect business relationships and into which consumers' deposits may be placed. As proposed, the rule establishes a FDIC point of contact for receiving complaints and inquiries about potential misrepresentations regarding deposit insurance (ask.fdic.gov site or at 1-877-ASK-FDIC). In practice, the rule primarily affects non-bank entities and private individuals. On 7/29/22, the FDIC published both an Advisory and Fact Sheet to address certain misrepresentations about FDIC deposit insurance by crypto companies through or in connection with insured banks. The Advisory reminds the industry that deposit insurance does not apply to non-deposit products, such as stocks, bonds, money market mutual funds, securities, commodities, or crypto assets. It includes a list of several risk management and governance considerations including that insured banks should confirm and monitor that crypto companies do not misrepresent the availability of deposit insurance in order to measure and control risks to the bank and should take appropriate action to address such misrepresentations.
		87 FR 35866 6/14/22	5/17/22 (As released on CFPB's website)	In connection with the FDIC's final rule, the CFPB issued a circular to emphasize that covered persons and service providers are required to comply with the Consumer Financial Protection Act (CFPA) with respect to representations involving the name or logo of the FDIC and deposit insurance. The circular is focused on misrepresentations to consumers about FDIC insurance and describes misrepresentations that could constitute deceptive acts or practices, regardless of whether they are made knowingly. The circular notes "[i]n particular, firms offering or providing digital assets, including crypto-assets, may be particularly prone to making such deceptive claims to consumers about FDIC deposit insurance coverage."

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
Proposed Interagency Guidance on Third-Party Relationships: Risk Management	Minor (Excludes CUs)	Proposed Guidance 86 FR 38182 7/19/21 Notice to extend comment period 86 FR 50789 9/10/21	Comments due ~~9/17/21~~ 10/18/21	The Board, FDIC, and OCC (together, the agencies) invite comment on proposed guidance on managing risks associated with third-party relationships. The proposed guidance would offer a framework based on sound risk management principles for banking organizations to consider in developing risk management practices for all stages in the life cycle of third-party relationships that considers the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship. The proposed guidance would replace each agency's existing guidance on this topic (the Board's 2013 guidance, the FDIC's 2008 guidance, and the OCC's 2013 guidance and its 2020 FAQs) and would be directed to all banking organizations supervised by the agencies. The proposed guidance is based on the OCC's existing third-party risk management guidance from 2013 and includes changes to reflect the extension of the scope of applicability to banking organizations supervised by all three federal banking agencies. The principals set forth in the guidance pertain to a lifecycle of: Planning for a relationship, Due diligence and third-party selection, Contract negotiation, Oversight and accountability, Ongoing monitoring, and Termination. The agencies invite comment on all aspects of the proposed guidance, and the OCC's 2020 FAQs which per the proposal may be revised and used as an exhibit or incorporated into the final guidance (to be based on comments received). In response to commenters' requests for additional time to analyze and respond to the proposal, the agencies are extending the comment period for 30 days until 10/18/21.
CFPB: Small Business Lending Data Collection under the ECOA	Major	Proposed Rule 86 FR 56356 10/8/21	Comments due 1/6/22	As mandated by congress in the DFA, the CFPB has proposed a rule in which, if finalized will require lenders to report the amount and type of small business credit applied for and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered. The proposed rule includes an activity-based exemption for all FIs that originate less than 25 "covered credit transactions" to "small businesses" in each of the two preceding calendar years. As proposed (1) a covered credit transaction is defined as one that meets the definition of business credit under Reg B, excluding trade credit, public utilities credit, securities credit, and incidental credit, as defined in Reg B; and (2) a small business if defined as one that had $5 million or less in gross annual revenue for its preceding fiscal year. Data points an FI is required to collect and/or report include a unique identifier, application date-method-recipient, credit type-purpose, amount applied for-approved-originated, action taken-&date, denial reasons, pricing, census tract, gross annual revenue, NAICS, number of workers/owners, time in business, minority or women owned business status, and ethnicity/race/sex. A data point chart is available here. Under the proposal, FIs would be required to collect data on a calendar-year basis and report data to the CFPB by June 1 of the following year. The CFPB proposes to provide technical instructions for the submission of data in a Filing Instructions Guide and related materials, and a final rule would become effective 90 days after publication in the Federal Register, but compliance would not be required until approx. 18 months after publication.
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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
Interagency - Proposal to amend regulations implementing the CRA	Major (Excludes CUs)	Proposed 87 FR 33884 6/3/22	Comment due 8/5/22	The FRB, FDIC, and OCC propose to amend regulations to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The 679-page proposal is summarized in the FRB's 30-page request for publication to the Federal Register that includes an Executive Summary of the rule. The proposal seeks comment on revising the regulations to: Evaluate engagement across geographies and activities, and implement enhanced data disclosures; maintain a focus on branch-based assessment areas (AAs) while adding a tailored approach; use standardized metrics in evaluations and clarify eligible CRA activities; tailor performance standards to differences in bank size, business model, and local conditions [the proposal tailors performance standards for small (less than $600 million in assets), intermediate ($600 million to $2 billion in assets), and large banks (more than $2 billion in assets)]; coordinate CRA and fair lending exams where feasible; and create a consistent approach by all three agencies. Specifically, the proposal seeks to: Revise and expand the community development (CD) definitions to clarify eligibility criteria for a broad range of CD activities and incorporate guidance currently provided through Interagency Q&As; establish a publicly-available illustrative and non-exhaustive list of examples of activities that qualify for CRA consideration and establish a process for eligibility consideration based on forecasts; establish standards for determining whether an activity has a "primary purpose" of CD (using one of the following approaches: (1) If a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the defined CD activities or (2) where the measurable portion of any benefit to the CD purpose is less than a majority of the entire activity's benefits or dollar value, then the entire activity may still receive CRA credit if the agencies determine that the activity has a bona fide intent, purpose, or likely outcome of accomplishing a CD purpose); and to allow certain exceptions for partial consideration of certain qualified affordable housing activities. As for AAs, the agencies propose to tailor the geographic requirements for delineating facility-based AAs by bank size such that for large banks facility-based AAs would be required to consist of: (1) one or more MSAs or metropolitan divisions; or (2) one or more contiguous counties within an MSA, metropolitan division, or the nonmetropolitan area of a state, as well as establishing retail lending AAs in any MSA or combined non-MSA areas of a state, in which it originated ≥100 home mortgage loans, or 250 small business loans, outside of its facility-based AAs. The proposal would continue to allow small and intermediate banks to delineate facility-based AAs that include a partial county and would not be required to delineate retail lending AAs. The proposal includes further discussion on consideration for retail loans made outside of facility based or retail lending AAs. To create additional flexibility for banks to conduct qualifying activities outside of facility-based AAs the agencies propose consideration for any qualified CD activity, regardless of location, in its overall rating, while separately assessing its performance in each of its facility-based AAs. The proposal would preserve the current lending test for small banks and the CD test for intermediate banks without significant changes though it includes the following structure for banks of varying sizes: (1) Large banks would be evaluated under the proposed Retail Lending Retail Services and Products, CD Financing *and* CD Services tests. Additionally, large banks with assets of >$10 billion would be required to collect and report additional data under the proposal for each; (2) Intermediate banks would be evaluated under the proposed Retail Lending test and under the current CD test or, at the bank's option, the proposed CD Financing test; (3) Small banks would be evaluated under the current small bank lending test or, at the bank's option, the proposed Retail Lending test; and (4) Banks of all sizes would retain the option to request approval to be evaluated under an approved strategic plan. The agencies would assign conclusions for each performance test, as applicable, with respect to a bank's facility-based assessment areas, states, multistate MSAs, and at the institution level. For large banks weights would be allocated as follows: Retail Lending Test (45%), Retail Services and Products Test (15%), CD Financing Test (30%), and the CD Service Test (10%). For intermediate banks, tests would be weighted equally between the Retail Lending Test and the status quo CD test (or CD Financing Test, when selected by the bank).

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
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."
CFPB – Notable items in the rule making agenda	TBD	Rule Making Agenda Spring 2022 Reginfo.gov Agency Rule List	Various	In its Spring 2022 agenda, the Bureau lists two items in the final rule stage, two in the proposed rule stage, and one in the pre-rule stage. For the final rule stage, the Bureau expects to (1) issue a final rule regarding the collection and reporting of data in connection with credit applications made by women- or minority-owned businesses and small businesses, in Q1 2023 (NPRM comment period ended 1/6/22); and (2) finalize the proposed rule to prohibit consumer reporting agencies from furnishing consumer reports containing adverse information about trafficking victims (no direct regulatory burden to FIs). For the proposed rule stage, the Bureau: (1) plans to issue an interagency NPRM to implement amendments regarding appraisals concerning quality control standards for automated valuation models or AVMs (expected Dec. 2022); and (2) issue a NPRM related to consumer access to financial information and property assessed clean energy funding (PACE loans) as required by changes made to TILA under Section 307 of EGRRCPA. In its pre-rule stage, the Bureau considers rule standards to promote the development and use of standardized formats for information made available to consumers (SBREFA outline expected in Nov 2022).
Interagency RFI on FIs' Use of Artificial Intelligence, Including Machine Learning	TBD	86 FR 16837 3/31/21 86 FR 27960 5/24/21	Comments due ~~6/1/21~~ Extended to 7/1/21	The FRB, CFPB, FDIC, NCUA, and OCC (agencies) are gathering information and comments to understand FIs' and respondents' views on the use of artificial intelligence (AI), including machine learning (ML) by FIs in their provision of services to customers and for other business or operational purposes; appropriate governance, risk management, and controls over AI; and any challenges in developing, adopting, and managing AI. The Appendix of this RFI includes a non-comprehensive list of laws and other agency issuances that may be relevant to the use of AI approaches by agency-supervised institutions including the GBLA, FCRA, ECOA, FHA and exam manuals. Questions posed address such topics as overfitting (i.e., when an algorithm "learns" from idiosyncratic patterns in the training data that are not representative of the population as a whole), explainability, and fair lending. *Comment period extended from 6/1/21 to 7/1/21 in concession to stakeholder requests.*
Interagency – rescinds policy statement issued in 2020	Min-Mod	Press Release 11/10/21	Effectively rescinded 11/10/21	In a press release the CFPB, jointly with other government agencies, announced a return to enforcement of critical protections for families and homeowners. The joint statement provides that a previous joint statement issued in April 2020, which stated that the agencies would relax supervisory and enforcement oversight with respect to certain requirements in Regulation X, will no longer apply. The agencies believe that the servicers have had adequate time to adjust their operations to comply with the timelines and other requirements of Regulation X and servicers will now be expected to fully comply with the rules.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
Interagency Statement on Special Purpose Credit Programs Under the ECOA and Regulation B	Minor	Guidance 2/22/22	2/22/22	The FRB, FDIC, NCUA, OCC, CFPB, HUD, DOJ, and FHFA jointly issued a statement reminding creditors that ECOA and Reg. B permit establishment of special purpose credit programs (SPCPs) to meet the credit needs of specified classes of persons, pursuant to: any credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons; any credit assistance program offered by a not-for-profit organization for the benefit of its members or an economically disadvantaged class of persons; or any SPCP offered by a for-profit organization, or in which such an organization participates to meet special social needs, if it meets certain standards prescribed in regulations by the CFPB. In December 2021, HUD released guidance concluding that SPCPs instituted in conformity with ECOA and Reg. B generally do not violate the FHA, thus creditors may consider the use of SPCPs across all types of credit covered by ECOA and Reg B.
CFPB Bulletin – UDAAPs that impede consumer reviews	Minor	Guidance 87 FR 17143 3/28/22	3/28/22	The CFPB new policy guidance regarding potentially illegal practices related to consumer reviews seeks to ensure that customers can write reviews, particularly online, about financial products and services that accurately reflect their opinions and experiences. The guidance highlights certain business practices related to reviews that are generally unlawful under the Consumer Financial Protection Act, including: Contractual 'Gag' Clauses (attempting to silence consumers from posting an online review); Fake Reviews (ones that appear completely independent from the company to improve ratings); and Review Suppression or Manipulation (limiting the posting of negative reviews or manipulating reviews).
CFPB Provides Spanish Translations for Prepaid Rule and Regulation B Model and Sample Forms	Minor	Press Release 5/11/22	NA	This release (by email notification) is part of the CFPB's ongoing emphasis on fair access to competitive and transparent markets for all consumers, including those with limited English proficiency (LEP). Certain model and sample forms under Reg E's Prepaid Rule, and certain adverse action model and sample notices under Reg. B are translated. The translations for the Reg E forms can be found here, and for the Reg. B forms here. As a reminder, on 1/13/21 the Bureau published a Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency. It was divided into two sections: one "guiding principles for serving LEP consumers" and the other "guidelines for developing compliance solutions when serving LEP consumers."
CFPB Issues Advisory Opinion on Coverage of Fair Lending Laws	Minor	Advisory Opinion 87 FR 30097 5/18/22	5/18/22	In this advisory opinion, the CFPB affirms that the ECOA and Regulation B protect not only those actively seeking credit but also those who sought and have received credit. The definition of "applicant" in the ECOA includes "any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit." As used in the advisory opinion, "existing account holder" refers to an applicant who has applied for and received an extension of credit. The advisory opinion reiterates the CFPB's strong stance that ECOA continues to protect borrowers after they have applied for and received credit and, reminds the industry of the requirement that lenders provide adverse action notices to borrowers with existing credit (as applicable).
NCUA – proposes rule to amend requirement that a FCU must adopt as a part of their written overdraft policy	Minor (CUs Only)	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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
Regulation Implementing the Adjustable Interest Rate (LIBOR) Act (Regulation ZZ)	Min-Mod	Proposal 87 FR 45268 7/28/22	Comments due 8/29/22	To enact the Adjustable Interest Rate (LIBOR) Act as legislated in March 2022 (Division U of the *Consolidated Appropriations Act of 2022*) the FRB has issued a proposal to establish default rules for benchmark replacements in certain contracts that use LIBOR as a reference rate. The proposal states that on and after the LIBOR replacement date (June 30, 2023), the applicable Board-selected benchmark replacement shall be the benchmark replacement for a covered contract. A covered contact is one that (1) contains no fallback provisions; or (2) contains fallback provisions that identify neither a specific benchmark replacement nor a determining person; or (3) contains fallback provisions that identify a determining person, but the determining person has failed to select a benchmark replacement. As expected, the proposed rate index for loans is SOFR. Corresponding (1, 3, 6, or 12-month) replacement rates would constitute a statutory safe harbor for covered loans. *Also of note, in July 2022, the ARRC published a playbook to assist market participants in ensuring that the transition from LIBOR is operationally successful.*
CFPB Issues Advisory Opinion on Pay-to-Pay Fees under Regulation F (FDCPA)	Minor	Advisory Opinion 87 FR 39733 7/5/22	7/5/22	Section 808(1) of the Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors from collecting any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless that amount is expressly authorized by the agreement creating the debt or permitted by law. The CFPB interprets section 808(1) to apply to "any amount," even if such amount is not "incidental to" the principal obligation. In this advisory opinion the CFPB affirms its opinion that this provision prohibits debt collectors from collecting pay-to-pay or "convenience" fees, such as fees imposed for making a payment online or by phone, when those fees are not *expressly* authorized by the agreement creating the debt or unless some law *expressly* permits the charge. This opinion also clarifies that a debt collector may also violate section 808(1) when the debt collector collects pay-to-pay fees through a third-party payment processor.
CFPB Issues Advisory to Protect Privacy When Companies Compile Personal Data under the FCRA	Minor	Advisory Opinion 87 FR 41243 7/12/22	7/12/22	The CFPB issued an advisory opinion to outline certain obligations of consumer reporting agencies (CRAs) and consumer report users ("users") under section 604 of the FCRA. The opinion explains that the permissible purposes listed in FCRA section 604(a)(3) (written request, or for credit, employment, or insurance) are consumer specific, and it affirms that a CRA may not provide a consumer report to a user unless it has reason to believe that all of the report information pertains only to the consumer who is the subject of the user's request. The CFPB highlights the issue that some CRAs use insufficient identifiers in matching procedures, such as name-only matching, which can result in the provision of consumer reports to persons without a permissible purpose to receive them. Disclaimers will not cure a failure to have a reason to believe that a user has a permissible purpose. The opinion also reminds users that FCRA section 604(f) strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose (this burden is on users too).