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 issues a technical amendment to the HMDA Rule	Moderate	87 FR 77980 12/21/22	12/21/22	In May 2020, the CFPB issued a final rule amending Reg C to increase the threshold for reporting data about closed-end mortgage loans, from 25 loans to 100 loans in each of the two preceding calendar years, effective 7/1/20. On 9/23/22, the US District Court for the District of Columbia vacated the 2020 HMDA Rule as to the increased threshold. As a result, the threshold for reporting data about closed-end mortgage loans is 25, the threshold established by the 2015 HMDA Rule. Accordingly, this technical amendment updates the CFR to reflect the lower threshold. Institutions that satisfy the 25-loan threshold for 2021 and 2022 will need to collect and report closed-end mortgage loan HMDA data for 2023. *In a blog post, dated 12/6/22, the CFPB states (in summary) that *'financial institutions (FIs) affected by this change may need time to implement or adjust policies, procedures, systems, and operations to come into compliance with their reporting obligations. In these limited circumstances, the CFPB does not view action regarding these FIs' HMDA data as a priority. Thus, the CFPB does not intend to initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data collected in 2022, 2021, or 2020 for FIs subject to the CFPB's jurisdiction that meet Reg C's other coverage requirements and originated >=25 closed-end mortgage loans in each of the two preceding calendar years but <100 closed-end mortgage loans in either or both of the two preceding calendar years.* **On 2/1/23 the OCC published Bulletin 2023-5 stating it does not intend to assess penalties for failures to report closed-end mortgage loan data on reportable transactions conducted in 2022, 2021, or 2020, and that examinations conducted for that time period will be diagnostic to help banks identify compliance weaknesses. ***On 2/3/23, the FDIC published FIL-06-2023 asserting it plans the same supervisory approach for its supervised institutions consistent with the CFPB's 12/6/22 blog post. The FDIC also confirmed it does not expect its institutions to collect and report data retroactively for closed-end mortgage loans covered by the Court's order vacating the CFPB 2020 HMDA Final Rule. ****The FRB, in CA Letter 23-1 and the NCUA, in 23-RA-01, have issued the substantially similar guidance for their respective supervised institutions. *****On 2/9/23 the CFPB published a Regulatory Reference Chart for HMDA Data Collected in 2023 here.
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 their responsibilities and to increase public understanding of the Agencies' respective flood insurance regulations. Significant topics addressed include escrow of flood insurance premiums, exemption for detached structures, force placement, and acceptance of private flood insurance policies. 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.
FRB, FDIC and OCC-Annual CRA Threshold Adjustment for 2023	Minor (Excludes CUs)	FDIC/FRB 87 FR 78829 12/23/22 OCC 2022-28	1/1/23	"Small banks" are those with total assets less than $1.503 billion (was $1.384 billion) as of 12/31/21 or 12/31/22; "intermediate small banks" are those with total assets ≥$376 million (was $346 million) and less than $1.503 billion as of as of 12/31/21 or 12/31/22.
Agency Annual Threshold Adjustments for 2023	Minor	1)87 FR 63671 2)87 FR 63663 3)87 FR 80433 4)87 FR 80435	1/1/23	REGULATORY THRESHOLDS: (1) TILA application is $66,400 (was $61,000); (2) exemption for appraisals on HPMLs is $31,000 (was $28,500); (3) HMDA asset size exemption threshold is $54 million (was $50 million); (4) "Small Creditor" threshold for purposes of the exemption under §1026.35(b)(2)(iii) to establish escrow accounts for HPMLs is $2.537 billion at 12/31/22 (was $2.336 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 $11.374 billion at 12/31/22 (was $10.473 billion).

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CFPB Annual Threshold Adjustment for CARD, HOEPA, and QM for 2023	Minor	87 FR 78831 12/23/22	1/1/23	CARD Act: 1) No change to the minimum interest charge threshold requiring disclosure of charge >$1.00 for applicable open-end consumer credit plans. 2) *The notice does not include adjustments to the credit card penalty fees which, for 2022, were $30 for a first violation and $41 for a subsequent violation, considered in effect until/unless changed.* HOEPA: For high-cost mortgages, increased total loan amount threshold from $22,969 to $24,866, and the points and fees trigger from $1,148 to $1,243. For General QM loans, the spread threshold between APR and APOR is increased to: 1) ≥2.25% for 1st lien loans ≥$124,331; 2) ≥3.5% for 1st lien loans >$74,599 but <$124,331; 3) ≥6.5% for 1st lien loans <$74,599; 4) ≥6.5% for 1st lien loan secured by manufactured home <$124,331; 5) ≥3.5% for subordinate-lien loan ≥$74,599 and 6) ≥6.5% for subordinate-lien loan <$74,599. For all categories of QMs, the total points and fees (TPF) thresholds are 1) 3% of total loan amount for loans ≥$124,331; 2) $3,730 for loans ≥$74,599 but <$124,331; 3) 5% of total loan amount for loans ≥$24,866 but <$74,599; 4) $1,243 for loans ≥$15,541 but <24,866; and 5) 8% of total loan amount for loans <$15,4541.
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.*
		Final Rule 88 FR 5204 1/26/23	Effective 2/27/23	The FRB's new Regulation ZZ, intended to facilitate the transition away from LIBOR as an index for variable rate loans due to LIBOR's scheduled sunset on June 30, 2023, was released on December 16, 2022. The final rule is largely similar to the proposed rule, however after reviewing comments, the FRB opted against using a definition for "covered contract" and instead applies the transition mechanism to all contracts that do not have effective fallback provisions and use LIBOR as the benchmark rate. As proposed, on and after the LIBOR replacement date of June 30, 2023, use of the corresponding SOFR benchmark as a replacement index for LIBOR constitutes a statutory safe harbor. *As expected, on 3/1/23, HUD issued its Final Rule replacing LIBOR with SOFR for existing and newly originated FHA-insured adjustable-rate forward mortgage loans and home equity conversion mortgages. HUD's rule is effective 3/31/23.

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CFPB Confirms that Certain Digital Marketing Providers Must Comply with CFPA	Minor	87 FR 50556 8/17/22	8/17/22	The Consumer Financial Protection Act of 2010 (CFPA) defines "service provider," to exclude a provider offering "time or space" for the advertisement of a consumer financial product or service through print, newspaper, or electronic media. This interpretive rule from CFPB addresses digital marketing providers who provide and comingle targeting advertisements to consumers, such as by using algorithmic models or other analytics, with the provision of "time or space" ads. As interpreted, digital marketing providers that are materially involved in the development of content strategy would not fall within the "time or space" exception. Accordingly, digital marketing providers that are involved in the identification or selection of prospective customers or the selection or placement of content to affect consumer engagement typically ARE service providers under the CFPA, and subject to its UDAAP prohibition. In its related press release the CFPB states, "Financial firms rely on the expertise and tools of digital marketing providers that offer sophisticated analytic techniques, aided by machine learning and advanced algorithms, to process large amounts of personal data and deliver highly targeted ads" and "depending on how these practices are designed and implemented, behavioral marketing and advertising could subject firms to legal liability."
FDIC: Final Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo	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 from making misrepresentations about FDIC deposit insurance or misusing the FDIC's name or logo, and clarifies its procedures for taking action 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 several risk management and governance considerations, for example, 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.
CFPB Circular: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance		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." *In a 1/3/2023 Joint Statement on Crypto-Asset Risks, the agencies state that inaccurate or misleading representations or disclosures about federal deposit insurance by crypto-asset companies (including those partnering with FIs to offer services), may be unfair, deceptive, or abusive; contributing to significant harm to retail and institutional investors, customers, and counterparties.

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GUIDANCE & PROPOSED RULES:				
CFPB – Notable items in the rule making agenda	TBD	Rule Making Agenda Fall 2022 Reginfo.gov Agency Rule List	Various	Fall 2022 agenda: One final rule stage, final rule expected on the collection and reporting of data in connection with credit applications made by women- or minority-owned businesses and small businesses, prior to 3/31/23. Five proposed rule stage (1) plans to issue an interagency NPRM to implement amendments regarding appraisals concerning quality control standards for automated valuation models or AVMs (expected Mar. 2023); (2) issue a NPRM related to property assessed clean energy funding (PACE loans) as required by changes made to TILA under Section 307 of EGRRCPA; (3) propose amendments to Reg. Z relating to penalty fees (including safe harbors) levied by card issuers (proposal has since been published in the Federal Register); (4) issue a NPRM related to registration of certain nonbanks to register and submit information to the CFPB when they become subject to enforcement actions involving violations of certain consumer protection laws, and; (5) issue a NPRM to require supervised nonbanks to register with the CFPB and provide information about their use of certain T&Cs in standard-form contracts (a proposal was subsequently issued on 2/1/23, with no direct regulatory burden to FIs).Four in the pre-rule stage: (1) considers rule standards to promote the development and use of standardized formats for information made available to consumers (SBREFA Outline was published on 10/27/22); (2) considers to propose amendments to the Reg. Z overdraft rules; (3) considers new rules regarding NSF fees; and, (4) considers whether to amend Reg. V (with no detail provided in the agenda).
CFPB Proposes Rule to amend Regulation Z to address excessive Credit Card Late Fees	Major (impact to $NII for Issuers)	Proposed Rule 88 FR 18906 3/29/23	Comments due 5/3/23	The CFPB is proposing to amend Regulation Z to "better ensure that the late fees charged on credit card accounts are 'reasonable and proportional' to the late payment as required under TILA." The proposal would (1) adjust the safe harbor dollar amount for late fees to $8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type (currently $30 for an initial late payment and $41 for subsequent late payments); (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25% of the required payment. The proposal also seeks comment on whether the proposed changes should apply to all credit card penalty fees, whether the immunity provision should be eliminated altogether, whether consumers should be granted a 15-day courtesy period, after the due date, before late fees can be assessed, and whether issuers should be required to offer autopay in order to make use of the immunity provision. An unofficial redline (to Reg Z) of the Credit Card Late Fees Proposed Rule is available here.
FDIC: Final Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo	Minor (Excludes CUs)	Proposal 87 FR 78017 12/21/22	Comments due ~~2/21/23~~ 4/7/23	The FDIC seeks comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising to reflect how depositors do business with IDIs today, including through digital and mobile channels. For IDIs, the proposal would: (1) modernize the rules governing the display of the FDIC official sign in branches and address the application of sign requirements to non-traditional branches; (2) require FDIC signs across all banking channels, including IDIs' digital and mobile channels (which functionally serve as digital teller windows); (3) require the use of signs that differentiate insured deposits from non-deposit products across banking channels; (4) provide IDIs additional flexibility for satisfying signage requirements, such as allowing IDIs that only offer deposit products on the premises to display the official sign in one or more locations in a branch and permitting use of electronic media to satisfy sign display requirements; and (5) require IDIs to maintain policies and procedures addressing compliance with Part 328 for the IDI and certain third party relationships. The proposal also would address specific scenarios where consumers may be misled on depository insurance coverage, and clarify that crypto-assets representations fall into the scope of Part 328 by amending the definitions of "non-deposit product" and "uninsured financial product" to include crypto-assets. Comment period extended to 4/7/23 on 1/30/23.).

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CFPB Issues Advisory Opinion to address the applicability of RESPA on Digital Mortgage Comparison-Shopping Platforms	Minor	Advisory Opinion 88 FR 9162 2/13/23	2/13/23	In its advisory opinion, the CFPB reminds the industry that RESPA section 8 applies broadly, to those who connect settlement service providers to consumers who are interested in purchasing a home, applying for a mortgage, or otherwise using a settlement service provider in a RESPA-covered transaction. The opinion focuses on digital platforms that include information or features that enable consumers to comparison shop options for mortgages and other settlement services, including those platforms that generate potential leads for the platform participants through consumers' interaction with the platform (Digital Mortgage Comparison-Shopping Platforms). Digital Mortgage Comparison-Shopping Platforms generally are covered by a 1996 policy statement issued by HUD on "computer loan origination systems," or CLOs (HUD CLO Policy Statement), which the CFPB has applied, as relevant, since 2011, when Congress transferred responsibility for RESPA to the CFPB from HUD. As stated in the opinion, an operator of a Digital Mortgage Comparison-Shopping Platform receives a prohibited referral fee in violation of RESPA section 8 when: (1) the Platform non-neutrally uses or presents information about one or more settlement service providers participating on the platform; (2) that non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, those settlement service providers, thus constituting referral activity; and (3) the Operator receives a payment or other thing of value that is, at least in part, for that referral activity. The opinion goes on to list five illustrative and non-exhaustive examples of activity that would violate RESPA section 8, including pay-to-play and steering to the highest lender bidder, of which in this example, the CFPB also points to potential UDAAP violations.
CFPB Issues Circular regarding Unlawful Negative Option Marketing Practices	Minor	Circular 88 FR 5727 1/30/23	1/19/23	In its Circular, the CFPB responds affirmatively to the question, "Can persons that engage in negative option marketing practices violate the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA)?" As used in the Circular, the phrase "negative option" refers to a term or condition under which a seller may interpret a consumer's silence, failure to take an affirmative action to reject a product or service, or failure to cancel an agreement as acceptance or continued acceptance of the offer. It states that harm is most likely to occur when sellers mislead consumers about terms and conditions, fail to obtain consumers' informed consent, or make it difficult for consumers to cancel. While not limited to, the Circular applies particular focus to negative option practices related to credit card add-on products (such as subscriptions for debt protection and identity protection products) and goes on to call out consumer reporting companies, debt relief companies, credit repair companies, payment processors, and service providers as recipients of recent enforcement actions related to unfair, deceptive, and abusive acts or practices in negative option practices.
CFPB Issues Updated HELOC Brochure	Minor	Notice 87 FR 77078 12/16/22	12/16/22	The CFPB has issued an update to the "What you should know about home equity lines of credit" brochure (HELOC Brochure). The new edition is updated to align with the educational efforts, to be more concise, and to improve readability and usability. It is available in both English and Spanish. On its public website, the CFPB states that creditors may, at their option, immediately begin using the revised HELOC brochure, or a suitable substitute, to comply with the requirements under 12 CFR 1026.40(e), and that it understands, however, that some may wish to use their existing stock of the HELOC brochure. Therefore, those who provide this publication may use earlier versions of the HELOC brochure until existing supplies are exhausted. When reprinting the HELOC brochure, the most recent version should be used.

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GUIDANCE & PROPOSED RULES:				
CFPB Issues Circular regarding Reasonable Investigation of Consumer Reporting Disputes	Minor	Circular 87 FR 71507 11/23/22	11/10/22	CFPB reminds stakeholders (including consumers) that Consumer Reporting Agencies (CRAs) and furnishers are liable under the FCRA if they fail to investigate any dispute that meets the FCRA statutory and regulatory requirements. This includes placing certain burdens upon consumers such as requiring disputes to be in a specific format or requiring any specific attachment such as a copy of a police report or consumer report beyond permitted by the statute/regulations. It also clarifies that a claim can be brought by enforcers if a CRA fails to promptly provide to furnishers "all relevant information" regarding disputes that the CRA receives from a consumer. The term, 'enforcers' includes the CFPB and other Federal agencies, States, and private actions by consumers.
CFPB Issues Bulletin and Circular regarding two deposit account fees that likely are 'unfair.'	Min-Mod	Circular 87 FR 66935 11/7/22 Bulletin 87 FR 66940 11/7/22	Circular 10/26/22 Bulletin 11/7/22	CFPB responds affirmatively to the question, "Can the assessment of overdraft fees constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA), even if the entity complies with the TILA/Regulation Z, and the EFTA/Regulation E?" The circular specifically addresses unanticipated (or unfair) overdraft fees related to authorize positive, settle negative, or APSN transactions. This puts industry participants on alert that "blanket policies of charging Returned Deposited Item (RDI) fees to consumers for all returned transactions irrespective of the circumstances of the transaction or patterns of behavior on the account are likely unfair." The Bulletin focuses on RDI policies that indiscriminately impose fees where the consumer *does not or could not* know the check would be returned. In other words, blanket RDI polices are not targeted to address patterns of behavior indicative of fraud or other circumstances where the consumer reasonably should have anticipated that the check would be returned.
CFPB Issues Advisory Opinion titled "Fair Credit Reporting; Facially False Data"	Minor	Advisory Opinion 87 FR 64689 10/26/22	10/26/22	The CFPB issued an advisory opinion to remind consumer reporting agencies (CRAs) that not implementing reasonable internal controls to prevent the inclusion of facially false data, including logically inconsistent information, in consumer reports is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of FCRA. The opinion lists several examples of logically inconsistent data: for example, an account whose status is paid in full, and thus has no balance due but nevertheless reflects a balance due; or a Date of First Delinquency that post-dates a charge-off date. Consumer complaints submitted to the CFPB continue to reflect significant concern about inaccuracies in consumer reports. **Although this opinion is directed at CRAs, data furnishers (or reporters) should review the examples of logically inconsistent data and consider such issues, as they could possibly reveal themselves during internal accuracy and integrity monitoring of reported data (as essential to comply with Subpart E of 12 CFR Part §1022).*
Supervisory Guidance on Multiple Re-Presentment NSF Fees	Min-Mod (FDIC-supervised institutions only)	Supervisory Guidance FIL-40-2022 8/18/22	8/18/22	The FDIC has issued guidance to supervised institutions to address UDAP, third-party vendor, and litigation risks associated with assessing NSF fees on re-presentments of the same unpaid transaction. Identified violations could occur because account disclosures did not fully or clearly describe the FI's re-presentment practice that allowed an item to incur multiple NSF fees (i.e., deceptive), or because the FI did not provide notice at the time of each NSF presentment that would allow the consumer to cure the insufficiency and prevent further fees (i.e., unfair). The FDIC's supervisory response focuses on the FI identifying issues and correcting deficiencies with remediation to harmed customers, recognizing an FI's proactive effort to self-identify and correct violations as consistent with the guidance. Generally, examiners will not cite UDAP violations that are identified and fully corrected before the start of an examination. The guidance acknowledges that FDIC has identified instances where FIs were not able to access accurate ACH data for re-presented transactions beyond two years, and in such cases, it accepted a two-year lookback period; however, failing to provide restitution for harmed customers when data on re-presentments is reasonably available will not be considered full corrective action. Applicable FIs are expected to promptly address this issue.

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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).
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 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).
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).

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CFPB: Small Business Lending Data Collection under the ECOA	Major	Proposed Rule 86 FR 56356 10/8/21	Comments due 1/6/22	As required by the Dodd Frank Act, this rule requires lenders to report small business loan applications and originations including applicant demographic information and pricing elements. The proposed rule exempts FIs who originate <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 Reg B's definition of "business credit", excluding trade, public utilities, securities, and incidental credit; and (2) a "small business" is defined as one that had <=$5 million in gross annual revenue for its preceding fiscal year. Required data points include a unique identifier; application date, method, and recipient; credit type and purpose; amount applied for-approved-originated; action taken and date; denial reasons; pricing; census tract; gross annual revenue; NAICS; number of workers and 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 collect data on a calendar-year basis and report to the CFPB by June 1 of the following year. The CFPB will provide technical instructions for data submission in a Filing Instructions Guide, and a final rule would become effective 90 days after publication in the Federal Register, but compliance would not be required until approximately 18 months after publication.
Notable CFBP Blog Post Regarding Expectation Lenders Provide Disclosure for Appraisal Reconsideration of Value	Minor	Blog 10/6/22	NA	In this *blog* (not a formal rulemaking or connected to a formal rulemaking) the CFPB states that "Responsible lenders focused on serving their customers typically will provide borrowers with clear, actionable information about how to raise concerns about the accuracy of an appraisal" and that "lenders must make sure that their reconsideration of value (ROV) process is nondiscriminatory and available and accessible to all." It appears, this blog is to serve as a notice to the industry that "Lenders that fail to have a clear and consistent method to ensure that borrowers can seek a reconsideration of value risk violating federal law."
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*~~ Vacated, *now pending SCOTUS*	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. On 10/19/22 the Fifth Circuit held that the CFPB's funding structure is unconstitutional and vacated the payday lending rule. On 2/27/23, the Supreme Court granted the CFPB's petition to review the Fifth Circuit's decision.*
CFPB Bulletin - Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts	Minor	Guidance 88 FR 17366 3/23/23	3/23/23	This CFPB policy guidance reminds servicers of their obligation with respect to private student loans (PSLs) that have been discharged by bankruptcy courts. Although many student loans are subject to an "undue hardship" standard and require a separate proceeding to be discharged in bankruptcy, those that are not "qualified education loans" can be discharged in a standard bankruptcy proceeding. For this subset of PSLs, a bankruptcy discharge order eliminates the consumer's debt. The bulletin details recent findings by examiners that certain loan servicers were returning loans to collections after being discharged by bankruptcy courts.