

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
<b>FINAL RULES AND ASSOCIATED ACTIONS:</b>				
CFPB issues a technical amendment to the HMDA Rule	Moderate	<a href="#">87 FR 77980</a> <a href="#">12/21/22</a>	12/21/22	In May 2020, the CFPB issued a <a href="#">final rule</a> 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. 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. <i>*Each of the prudential regulators have issued guidance indicating (in summary) that they do 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 that meet Reg C's other coverage requirements, and originated &gt;=25 closed-end mortgage loans in each of the two preceding calendar years but &lt;100 closed-end mortgage loans in either or both of the two preceding calendar years: CFPB <a href="#">blog</a>, dated 12/6/22; OCC <a href="#">Bulletin 2023-5</a> dated 2/1/23; FDIC <a href="#">FIL-06-2023</a> dated 2/3/23, FRB <a href="#">CA Letter 23-1</a> dated 1/31/23; and NCUA <a href="#">23-RA-01</a>, dated 2/2/23. **On 2/9/23 the CFPB published a Regulatory Reference Chart for HMDA Data Collected in 2023 <a href="#">here</a>.</i>
CFPB makes non-substantive changes and updates to agency contact information found in Regulations B, E, F, J, V, X, Z, and DD.	Minor	<a href="#">88 FR 16531</a> <a href="#">4/19/23</a>	4/19/23*	The CFPB final rule makes non-substantive corrections and updates to its and other Federal agency contact information found at certain locations in Regulations B, E, F, J, V, X, Z, and DD. This includes the Federal agency contact information in Reg B's Appendix A that must be provided with ECOA adverse action notices, and Reg V's Appendix K that must be provided with FCRA Summary of Consumer Rights notices. This final rule also changes the header of 12 CFR chapter X from "Bureau of Consumer Financial Protection" to "Consumer Financial Protection Bureau," and provides a website address where the public may access certain APR tables referenced in Regulation Z. <i>*CFPB is allowing optional compliance with changes in Appendix A to Reg B, and Appendix K to FCRA, until 3/20/24.</i>
FRB, FDIC and OCC- Annual CRA Threshold Adjustment for 2023	Minor (Excludes CUs)	FDIC/FRB <a href="#">87 FR 78829</a> <a href="#">12/23/22</a> OCC <a href="#">2022-28</a>	1/1/23	"Small banks" are those with total assets less than \$1.503 billion (was \$1.384 billion) as of 12/31/21 <u>or</u> 12/31/22; "intermediate small banks" are those with total assets ≥\$376 million (was \$346 million) <u>and</u> less than \$1.503 billion as of as of 12/31/21 <u>or</u> 12/31/22.
Agency Annual Threshold Adjustments for 2023	Minor	<a href="#">1)87 FR 63671</a> <a href="#">2)87 FR 63663</a> <a href="#">3)87 FR 80433</a> <a href="#">4)87 FR 80435</a>	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).
CFPB Annual Threshold Adjustment for CARD, HOEPA, and QM for 2023	Minor	<a href="#">87 FR 78831</a> <a href="#">12/23/22</a>	1/1/23	<u>CARD Act</u> : 1) No change to the minimum interest charge threshold requiring disclosure of charge >\$1.00 for applicable open-end consumer credit plans. 2) <i>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.</i> <u>HOEPA</u> : For <u>high-cost mortgages</u> , increased total loan amount threshold from \$22,969 to \$24,866, and the points and fees trigger from \$1,148 to \$1,243. For <u>General QM</u> loans, the spread threshold between APR and APOR is increased to: 1) ≥2.25% for 1 <sup>st</sup> lien loans ≥\$124,331; 2) ≥3.5% for 1 <sup>st</sup> lien loans >\$74,599 but <\$124,331; 3) ≥6.5% for 1 <sup>st</sup> lien loans <\$74,599; 4) ≥6.5% for 1 <sup>st</sup> 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. <u>For all categories of QMs</u> , 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.

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<b>FINAL RULES AND ASSOCIATED ACTIONS:</b>				
HUD Restores its “Discriminatory Effects” Rule	Minor	<a href="#">88 FR 19450 3/31/23</a>	5/1/23	In 2013, HUD published a rule which formalized a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect. In 2020, HUD published a <a href="#">rule</a> that would have altered the standards set forth in the 2013 rule by placing the burden of proof onto the plaintiff in discriminatory impact claims. However, a preliminary injunction prevented the 2020 rule from ever going into effect. On 6/5/21, HUD published a <a href="#">proposed rule</a> to recodify the 2013 rule. After considering public comments, HUD in this final rule <i>reinstates and maintains the 2013 rule and rescinds the 2020 rule.</i>
Regulation Implementing the Adjustable Interest Rate (LIBOR) Act (Regulation ZZ)	Min-Mod	<a href="#">88 FR 5204 1/26/23</a>	2/27/23	The FRB’s new Regulation ZZ is 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. 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. <i>*On 3/1/23, HUD issued its <a href="#">Final Rule</a> 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. **An <a href="#">Interagency Statement</a> was published on 4/26/23, reiterating agencies’ expectations that FIs with USD LIBOR exposure complete their transition of remaining LIBOR contracts ahead of the approaching discontinuation of USD LIBOR on 6/30/23.</i>
CFPB Interim Final Rule Amending Reg Z for LIBOR Transition	Minor	<a href="#">88 FR 30598 5/15/23</a>	5/15/23	The 2023 LIBOR Transition Interim Final Rule updates the CFPB’s previous <a href="#">2021 LIBOR Transition Rule</a> to make changes consistent with the Adjustable Interest Rate Act of 2021 (LIBOR Act). The changes include 1) conforming the terminology used to identify the FRB selected SOFR-based replacement indices for consumer loans and 2) adding an example of a 12-month LIBOR tenor replacement index (with the comparable SOFR index) that meets certain standards in Regulation Z. The CFPB has also provided a <a href="#">Fast Facts summary of this Interim Final Rule</a> and updated the <a href="#">LIBOR Transition FAQs</a> to reflect these changes.
CFPB – Payday Loans, Vehicle Title and Certain High-Cost Installment Loans (Deposit Advance Products and longer-term loans with balloon payments)	Moderate	<a href="#">82 FR 54472 11/17/17</a>	Eff 1/16/18 Mandatory compliance for payment provisions is <del>8/19/19*</del> <del>6/13/22*</del>  Vacated, now pending SCOTUS	Finalizes the <a href="#">proposed rule</a> 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. <i>*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 <a href="#">ruled</a> 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. On 10/19/22 the Fifth Circuit <a href="#">held</a> that the CFPB’s funding structure is unconstitutional and vacated the payday lending rule. On 2/27/23, the Supreme Court <a href="#">granted</a> the CFPB’s petition to review the Fifth Circuit’s decision. The CFPB filed its defense <a href="#">brief</a> with the Supreme Court on 5/8/23 and CFSA filed its <a href="#">brief</a> in support of the Fifth Circuit decision on 7/3/23.</i>

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FDIC: Final Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo	Minor (Excludes CUs)	<a href="#">87 FR 33415</a> <a href="#">6/2/22</a>	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/logo. It requires non-bank entities to identify the insured depository institution with which they have existing direct/indirect business relationships and into which consumers' deposits may be placed. The rule establishes a point of contact for receiving complaints about potential misrepresentations ( <a href="http://ask.fdic.gov">ask.fdic.gov site</a> or at 1-877-ASK-FDIC). In practice, the rule primarily affects non-bank entities and private individuals. *In its 7/29/22, <a href="#">Advisory</a> and <a href="#">Fact Sheet</a> , the FDIC addresses certain misrepresentations about FDIC deposit insurance by crypto companies through or in connection with insured banks. It reminds the industry that deposit insurance does not apply to non-deposit products and includes several risk management and governance examples for stakeholder considerations.
CFPB Circular: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance		<a href="#">87 FR 35866</a> <a href="#">6/14/22</a>	5/17/22 (As released on CFPB's website)	The CFPB's circular emphasizes 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 describes misrepresentations that could constitute deceptive acts or practices, regardless of whether they are made knowingly. *In a 1/3/2023 <a href="#">Joint Statement</a> 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.
CFPB: Small Business Lending Data Collection under the ECOA	Major	<a href="#">88 FR 35150</a> <a href="#">5/31/23</a>	Effective 8/29/23  Compliance dates: 10/1/24, 4/1/25, or 1/1/26	Following its <a href="#">2021 Proposed Rule</a> , the CFPB issued an 888-page final rule requiring lenders to report small business loan applications and originations, including applicant demographic information and loan pricing data. The final rule includes two substantive changes from the proposal. First, it increases the reporting threshold exemption for FIs who originate "covered credit transactions" to "small businesses" in each of the two preceding calendar years from 25 to 100. Second, it adds an exclusion for HMDA reportable loans to the definition of covered transaction. Largely unchanged from the proposal, (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 (final rule clarifies that participation purchases are also excluded); and (2) a "small business" is defined as one that had ≤\$5 million in gross annual revenue for its preceding fiscal year. A covered application is defined as an oral/written request for a covered credit transaction that is made in accordance with procedures used by an FI, however, it does not include inquiries or prequalification requests, or extension or renewal requests unless the request seeks additional credit amounts. Required data points are also unchanged from the proposal, and include: 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; # of workers and principal owners; time in business; whether the business is a minority-owned, women-owned, or LGBTQI+ owned business; and ethnicity, race, and sex. The final rule reflects 20 data points although each may have multiple fields. For implementation, the rule contains "compliance date tiers" (1) An FI must begin collecting data and otherwise complying with the final rule on 10/1/24 if it originated at least 2,500 covered originations in both 2022 and 2023; (2) an FI must begin collecting data and otherwise complying with the final rule on 4/1/25 if it: a) originated ≤2,500 but ≥500 covered originations in both 2022 and 2023, and b) originated at ≥100 covered originations in 2024; or (3) an FI must begin collecting data and otherwise complying with the final rule on 1/1/26 if it originated at ≥100 covered originations in both 2024 and 2025. The rule provides a method of estimating the originations of "covered credit transactions" for institutions that did not collect income data in 2022 or 2023. Once subject to the reporting, FIs would collect data on a calendar-year basis and report to the CFPB by June 1, of the following year. Regulatory implementation resources, including a Small Entity Compliance and Filing Instructions Guide are available <a href="#">here</a> .

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CFPB – Notable items in the rule making agenda	TBD	Rule Making Agenda Spring 2023 <a href="http://Reginfo.gov">Reginfo.gov</a> <a href="#">Agency Rule List</a>	Various	Per the CFPB’s Spring 2023 agenda: <b>Four in the final rule stage:</b> (1) Registry of nonbanks subject to certain agency and court orders; (2) Registry of supervised nonbanks that use form contracts to impose T&Cs that seek to limit consumer legal protections ( <a href="#">proposal</a> was issued on 2/1/23, with no direct regulatory burden to FIs); (3) Credit card penalty fees, rule expected in November 2023 (see <a href="#">proposal</a> ), and; (4) Facilitation of the LIBOR transition (since <a href="#">finalized</a> ). <b>Four in the proposed rule stage:</b> (1) interagency NPRM to implement amendments regarding appraisals concerning quality control standards for automated valuation models or AVMs (since <a href="#">proposed</a> , see below); (2) NPRM related to property assessed clean energy funding (PACE loans) (since <a href="#">proposed</a> , see below); (3) standards to promote the development and use of standardized formats for information made available to consumers (SBREFA Report was published on 4/3/23), and; (4) NPRM to define larger participants in markets for consumer payments (expected July 2023). <b>Three in the pre-rule stage:</b> (1) potentially amending the Reg. Z overdraft rules; (2) potentially issuing new NSF fee rules; and (3) potentially amending Reg. V (with no detail provided other than to expect pre-rule activity in November 2023).
CFPB Proposed Rule to amend Regulation Z to address excessive Credit Card Late Fees	Major (impact to \$NII for Issuers)	Proposed Rule <a href="#">88 FR 18906</a> <a href="#">3/29/23</a>	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 <a href="#">here</a> .
CFPB - Updated HELOC Brochure	Minor	Notice <a href="#">87 FR 77078</a> <a href="#">12/16/22</a>	12/16/22	The CFPB has issued an update to the “What you should know about home equity lines of credit” brochure (HELOC Brochure). On its public <a href="#">website</a> , 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.
FDIC: Proposed Rule Regarding Official Sign, False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC’s Name or Logo	Minor (Excludes CUs)	Proposal <a href="#">87 FR 78017</a> <a href="#">12/21/22</a>	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. <i>Comment period extended to 4/7/23.</i>

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<b>GUIDANCE &amp; PROPOSED RULES:</b>				
CFPB Advisory Opinion to address the applicability of RESPA on Digital Mortgage Comparison-Shopping Platforms	Minor	Advisory Opinion <a href="#">88 FR 9162</a> <a href="#">2/13/23</a>	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 Circular regarding Unlawful Negative Option Marketing Practices	Minor	Circular <a href="#">88 FR 5727</a> <a href="#">1/30/23</a>	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 UDAAPs in the Consumer Financial Protection Act?" 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. <b>*Of note: On 4/24/23 (<a href="#">88 FR 24716</a>) the FTC issued a NPRM seeking comment on proposed amendments to its Negative Option Rule to combat UDAP's under Section 5 of the FTC Act (as still enforced by the banking agencies) and to improve existing regulations for negative option programs (stating such programs generally fall into one of four categories: prenotification plans, continuity plans, automatic renewals, and free trial such as free-to-pay or nominal-fee-to-pay conversion offers). Comments due 6/23/23.</b>
CFPB Circular regarding Reasonable Investigation of Consumer Reporting Disputes	Minor	Circular <a href="#">87 FR 71507</a> <a href="#">11/23/22</a>	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.

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CFPB Bulletin and Circular regarding two deposit account fees that likely are 'unfair.'	Min-Mod	Circular <a href="#">87 FR 66935</a> <a href="#">11/7/22</a>  Bulletin <a href="#">87 FR 66940</a> <a href="#">11/7/22</a>	Circular 10/26/22  Bulletin 11/7/22	In it's Circular, 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. The Bulletin 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 <i>does not or could not</i> know the check would be returned. <i>*On 4/26/23, the FDIC issued <a href="#">FIL-19-2023</a> to further ensure that its supervised institutions are aware of the compliance risks associated with assessing overdraft fees on APSN transactions. Also on 4/26/23, the OCC issued <a href="#">Bulletin 2023-12</a> to address to address UDAP risks related to overdraft protection programs/fees including but not limited to those stemming from APSN transactions.</i>
CFPB Advisory Opinion titled "Fair Credit Reporting; Facially False Data"	Minor	Advisory Opinion <a href="#">87 FR 64689</a> <a href="#">10/26/22</a>	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. <i>*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).</i>
CFPB Bulletin - Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts	Minor	Guidance <a href="#">88 FR 17366</a> <a href="#">3/23/23</a>	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.
CFPB Advisory Opinion - Reaffirming Coverage of FDCPA Over Time Barred Debt	Minor	Advisory Opinion <a href="#">88 FR 26475</a> <a href="#">5/1/23</a>	5/1/23	The opinion addresses the CFPB's concerns about homeowners who are facing foreclosure threats and other collection activity because of "long-dormant second mortgages," for example, those in which high-interest second mortgages were issued simultaneously with the first mortgage origination, which the CFPB states were common leading up to the 2008 financial crisis. Having not received any notices or periodic statements for years, borrowers concluded that their second mortgages had been modified along with the first mortgage, discharged in bankruptcy, or forgiven. According to the CFPB, after years of silence, some borrowers are hearing from companies that claim to own or have the right to collect on these second mortgages (including interest and fees). The advisory opinion serves as a reminder that (1) the Fair Debt Collection Practices Act (FDCPA) and Reg F prohibit a FDCPA debt collector from suing or threatening to sue to collect a time-barred debt; and (2) this prohibition applies even if the debt collector neither knows nor should know that the debt is time barred. Time-barred debts are debts for which the applicable statute of limitations has expired.

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Supervisory Guidance on Multiple Re-Presentation NSF Fees - FDIC	Min-Mod (FDIC-supervised banks only)	Supervisory Guidance <a href="#">FIL-40-2022</a> <b>8/18/22</b> <b>(updated, below)</b>	8/18/22	The FDIC's guidance addresses risks associated with assessing NSF fees on re-presentments of the same unpaid transaction. Identified violations could occur because disclosures did not fully or clearly describe the FI's re-presentation 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 presentation that would allow a curing of the insufficiency to prevent further fees (i.e., unfair). The supervisory response focuses FI's identifying issues and correcting deficiencies with remediation to harmed customers, recognizing proactive efforts to self-identify and correct violations. Generally, examiners won't cite violations that are identified and fully corrected before the start of an exam. The guidance acknowledges the FDIC has identified instances where FIs weren't able to access accurate ACH data for re-presented transactions >2 years, and in such cases, it accepted a two-year lookback period; however, failing to provide restitution for harmed customers when data is reasonably available won't be considered full corrective action.
		Supervisory Guidance <a href="#">FIL-32-2023</a> <b>6/16/23</b>	6/16/23	This updated guidance clarifies the FDIC's supervisory approach for corrective action when a violation of law is identified. The FDIC now has additional data about the amount of consumer harm associated with the issue at particular institutions, and with on-going and extensive challenges in accurately identifying harmed parties. The revised guidance reflects the FDIC's more current supervisory approach to not request an FI to conduct a lookback review absent a likelihood of substantial consumer harm.
CFPB Policy Statement and Request for Comment: Prohibition on Abusive Acts or Practices	Minor	Policy Statement and Request for Comment <a href="#">88 FR 21883</a> <b>4/12/23</b>	Applicable 4/12/23 Comments due 7/3/23	The statement explains how the CFPB analyzes the elements of an "abusive act or practice" (as prohibited per the Consumer Financial protection Act), to providing an analytical framework to the market and to fellow government enforcers and supervisory agencies, for how to identify violative acts or practices. It sets forth how abusive conduct generally includes obscuring important features of a product or service, or leveraging certain circumstances, such as gaps in consumer understanding, unequal bargaining power, or consumer reliance, to take unreasonable advantage. It also highlights and provides detail to specific problematic acts or practices such as: buried disclosures; physical or digital interference (including the use of "dark patterns"); overshadowing, such as by manipulation through the placement of disclosures; and set-up-to-fail business models like those observed before the mortgage crisis (i.e., making loans that consumers can't afford to pay).
CFPB Circular "Reopening Deposit Accounts That Were Previously Closed"	Minor	Circular 2023-02 <a href="#">88 FR 33545</a> <b>5/24/23</b>	5/24/23	The CFPB responds affirmatively to the question, "After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (i.e., withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act?" The Circular explains that, even when an FI processes a <i>credit</i> through an account that has been unilaterally reopened, those funds may become available to third parties, including third parties that do not have permission to access the funds, thus outweighing "uncertain benefits."

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
<b>GUIDANCE &amp; PROPOSED RULES:</b>				
CFPB proposal to establish consumer protections in Reg Z for PACE loans	Minor	Proposed Rule <a href="#">88 FR 30388</a> <a href="#">5/11/23</a>	Comments due 7/26/23	This proposed rule would implement EGRRCPA section 307 and amend Reg Z to address how TILA applies to Property Assessed Clean Energy (PACE) transactions. The proposed rule would clarify that Reg Z's commentary to exclusion to "credit," as defined in § 1026.2(a)(14), applies only to <i>involuntary</i> tax liens and tax assessments. The rule would also adjust content requirements for Loan Estimates and Closing Disclosures (proposed Model Forms H-24(H) and H-25(K)) applicable to PACE transactions. Although the proposal would exempt PACE transactions from HPML escrow requirements and periodic statements, it would extend ATR requirements and the liability provisions of TILA to any "PACE company," which, as proposed, means a non-natural person or a non-government unit that administers the program through which a consumer applies for or obtains a PACE transaction. A "PACE transaction," as proposed, means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. The CFPB also published a <a href="#">report</a> highlighting several impacts that PACE loans have on borrowers, with a focus on activity in California and Florida.
Interagency Guidance on Third-Party Relationships Risk Management – OCC, FRB, FDIC	Minor (excludes CUs)	Final Interagency Guidance <a href="#">88 FR 37920</a> <a href="#">6/9/2023</a>	6/6/23	Following their 7/19/21 <a href="#">Proposed Guidance</a> the agencies finalized guidance for risk management practices of third-party relationships (TPR) that considers the level of risk, complexity, and size of the organization and the nature of the TPRs (by contract or otherwise). The guidance is to promote consistency in supervisory approaches and replace each agency's existing (now rescinded) guidance (the Board's 2013 guidance, the FDIC's 2008 guidance, and the OCC's 2013 guidance and its 2020 FAQs). As was proposed, the final guidance is based in part on the OCC's third-party risk management guidance from 2013 and incorporates elements of the OCC's 2020 FAQs. The principals set forth pertain to a lifecycle of, planning; due diligence and third-party selection; contract negotiation; ongoing monitoring; and termination. Under the section titled 'Governance,' the agencies discuss the general expectations regarding oversight and accountability, independent reviews, and documentation and reporting.
Interagency Proposed Rule to Implement Quality Control Standards for the use of AVMs – OCC, FRB, FDIC, NCUA, CFPB, FHFA	Moderate	Proposed Rule <a href="#">88 FR 40638</a> <a href="#">6/21/23</a>	Comments due 8/21/23	The agencies request comment on a proposed rule to implement quality control (QC) standards for use of automated valuation models (AVMs) in determining the value of principal dwelling collateral in certain residential mortgage loans. The rule would create a new paragraph (i) to Regulation Z, 1026.42, to revise the definition of "consumer" for this purpose only, to include a natural person to whom credit is offered or extended, even if the credit is primarily for business or commercial purposes. The rule would require mortgage originators and secondary market issuers to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in covered transactions adhere to QC standards designed to: (1) Ensure a high level of confidence in the estimates produced; (2) Protect against the manipulation of data; (3) Avoid conflicts of interest; (4) Require random sample testing and reviews; and (5) Comply with applicable nondiscrimination laws.
Proposed Interagency Guidance on Reconsiderations of Value for Residential Real Estate Valuations – OCC, FRB, FDIC, NCUA, and CFPB	Minor	Proposed Interagency Guidance <a href="#">88 FR 47071</a> <a href="#">7/21/23</a>	Comments due 9/19/23	The agencies request comment on proposed guidance to highlight risks associated with deficient residential real estate valuations and describe how FIs may incorporate reconsiderations of value (ROV) processes and controls into established risk management functions. Deficiencies may be identified through an FI's valuation review or through consumer provided information about potential deficiencies or other information that may affect the estimated value. The proposed guidance provides examples to consider in developing risk-based ROV-related P&Ps, control systems, and complaint processes to identify, address, and mitigate the risk of deficient valuations as well as the risk of discrimination. See the related Blog published by the CFPB in October 2022 <a href="#">here</a> .