Recent and Upcoming Regulatory Compliance Changes

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, in allocating the CFPB's enforcement and supervisory resources, 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.* The other prudential regulators have not opined on this change.
FRB, FDIC and OCC- Annual CRA Threshold Adjustment for 2023	Minor (Excludes CUs)	FDIC/FRB 87 FR 78829 12/23/22 OCC Bulletin 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).
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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
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."
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.
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 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.
		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
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:				
FCC – Codifies TCPA regulations for existing exemption of certain calls by financial institutions to wireless number	NA	86 FR 11443 2/25/21	3/29/21	As it affects 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 that calls/texts: must be sent only to wireless number provided by customer; name and contact info for FI is included; are limited to events that suggest risk of fraud or ID theft or possible breaches of the security of customers' personal information, or actions needed to arrange for receipt of pending money transfers; contain no commercial purpose or debt collection content; are concise (1 minute or less or 160 characters or less); and, no more than three per event over a three-day period for each affected account. This rule codifies the existing exemption without change.
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.*
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.

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.*

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 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.
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 of Proposals and Alternatives was published on October 27, 2022).

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
Interagency – Notice of proposed rulemaking and request for comments	Major for Banks	Proposed 87 FR 33884 6/3/22	Comment due 8/5/22	The FRB, FDIC, and OCC propose amendments to modernize qualifying CRA activities. 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: evaluating engagement across geographies and activities, and implementing enhanced data disclosures; maintaining a focus on branch-based assessment areas (AAs) while adding a tailored approach; using standardized metrics in evaluations and clarifying eligible CRA activities; tailoring 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)]; coordinating CRA and fair lending exams where feasible; and creating a consistent approach by all three agencies. The proposal would: 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 two approaches; and allow matric. 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 with specific requirements for large banks; small and intermediate banks would continue to be allowed 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 and would make revisions to the lending test evaluation structure. *This summary is streamlined to make space for current updates; a more detailed summary is within our Regulatory Changes report as of 7/31/2022.
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).

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
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.
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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
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).
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.
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 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).*

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
PROPOSED RULES & GUIDANCE (not associated with a Final Rule):				
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	In its Circular, the 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. In its Bulletin, the CFPB 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 is focused on RDI policies that indiscriminately impose fees in circumstances 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 Circular regarding Reasonable Investigation of Consumer Reporting Disputes	Minor	Circular 87 FR 71507 11/23/22	11/10/22	In its circular, the Bureau 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 statutory and regulatory requirements of FCRA. 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 what the statute and regulations permit. It additionally 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. In the circular, the term, 'enforcers' includes the CFPB and other Federal agencies, States, and private actions by consumers.
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.
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	The FDIC is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements 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 would also clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled. Lastly, to clarify that representations about crypto-assets would fall into the scope of Part 328, the proposal would amend the definitions of "non-deposit product" and "uninsured financial product" to include crypto-assets.