LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
Interagency Final Rule to Amend Regulations Implementing the CRA - FRB, FDIC, OCC	Major (Excludes CUs)	Pending Publication in the FR	Effective 4/1/24 Compliance date for majority of provisions 1/1/26	The 1,466 page final rule strengthens and modernizes the Community Reinvestment Act (CRA) regulations, and is summarized in the Interagency Fact Sheet and Interagency Overview, and the FRB's Board Memo, all available HERE. The rule updates asset size thresholds for Small banks (<$600M, up from <$376M), Intermediate banks ($600M–<$2B, up from $376M–$1.503B), and Large banks (≥$2B, up from ≥$1.503B), which will adjust annually. The rule acknowledges differences in bank size and business models. With respect to whether an activity has community development (CD) as its "primary purpose", the final rule adds 11 categories in § __.13 of CD loans, investments, and/or services to receive full or partial credit. The agencies will provide 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 forecast. The rule replaces term "assessment area" with three new terms: "retail lending assessment area," "facility-based assessment area," and "outside retail lending area." Retail lending AAs are any MSA or combined non-MSA areas of a state in which the bank originated ≥150 (originally proposed as 100) closed end home mortgage loans, or 400 (originally proposed as 250) small business loans, outside of its facility-based AAs. Small and intermediate banks can delineate facility-based AAs to include a partial county and are not required to delineate retail lending AAs. A Large bank's facility based AA must consist of single MSA, one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State. For all banks, any qualified CD activity is considered in the overall rating, regardless of location, although performance will be assessed in each of the bank's facility-based AAs. The rule preserves the current lending test for Small banks and the CD test for Intermediate banks without significant changes, though it includes the following structure for banks of varying sizes: (1) Large banks would be evaluated under the new Retail Lending, Retail Services and Products, CD Financing and CD Services tests. Large banks with assets of >$10 billion are additionally subject to certain data collection and reporting requirements; (2) Intermediate banks will be evaluated under the new Retail Lending test and under the current CD test or, at the bank's option, the new CD Financing test; (3) Small banks will be evaluated under the current small bank lending test or, at the bank's option, the new Retail Lending test; and (4) any size bank has the option to request to be evaluated under an approved strategic plan. The agencies will assign conclusions for each applicable performance test with respect to a bank's facility-based assessment areas, states, multistate MSAs, and at the institution level. For Large banks, weights will be allocated as follows: 40% Retail Lending Test (proposed at 45%), 40% CD Financing Test (proposed at 30%), 10% Retail Services and Products Test (proposed at 15%), and 10% CD Service Test (as proposed). For Intermediate banks, tests will be weighted equally between the Retail Lending Test and the status quo CD test (or CD Financing Test, when selected by the bank).
Annual Threshold Adjustment for CARD, HOEPA, and QM for 2024 - CFPB	Minor	88 FR 65113 9/21/23	1/1/24	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 2022/23, 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 $24,866 to $26,092, and the points and fees trigger from $1,243 to $1,305. For General QM loans, the spread threshold between APR and APOR is increased to: 1) ≥2.25% for 1st lien loans ≥$130,461; 2) ≥3.5% for 1st lien loans >$78,277 but <$130,461; 3) ≥6.5% for 1st lien loans <$78,277; 4) ≥6.5% for 1st lien loan secured by manufactured home <$130,461; 5) ≥3.5% for subordinate-lien loan ≥$78,277 and 6) ≥6.5% for subordinate-lien loan <$78,277. For all categories of QMs, the total points and fees (TPF) thresholds are 1) 3% of total loan amount for loans ≥$130,461; 2) $3,914 for loans ≥$78,277 but <$130,461; 3) 5% of total loan amount for loans ≥$26,092 but <$78,277; 4) $1,305 for loans ≥$16,308 but <26,092; and 5) 8% of total loan amount for loans <$16,308.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
Small Business Lending Data Collection under the ECOA - CFPB	Major	88 FR 35150 5/31/23	Effective 8/29/23 Compliance dates: 10/1/24, 4/1/25, or 1/1/26	Following its 2021 Proposed Rule, 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, Filing Instructions Guide, and FAQs are available here. On 7/31/23, a Texas federal district court ordered the CFPB not to implement or enforce the small business lending rule against plaintiffs in Texas Bankers Ass'n, et al. v. CFPB, et al., No. 7:23-cv-00144, and their members thus staying for compliance deadlines with the small business lending rule only *for plaintiffs in that case and their members*. On 10/26/23, the Texas federal district court issued a preliminary injunction enjoining the CFPB from implementing and enforcing the rule on nationwide basis against *all covered entities*. The CFPB's resources webpage refers to the stay for all FIs.
Interim Final Rule Amending Reg Z for LIBOR Transition - CFPB	Minor	88 FR 30598 5/15/23	5/15/23	The 2023 LIBOR Transition Interim Final Rule updates the CFPB's previous 2021 LIBOR Transition Rule 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 Fast Facts summary of this Interim Final Rule and updated the LIBOR Transition FAQs to reflect these changes.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
Regulation Implementing the Adjustable Interest Rate (LIBOR) Act (Regulation ZZ) - FRB	Min-Mod	88 FR 5204 1/26/23	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. **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. **An Interagency Statement 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.*
HUD Restores its "Discriminatory Effects" Rule	Minor	88 FR 19450 3/31/23	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 rule 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 proposed rule to recodify the 2013 rule. After considering public comments, HUD in this final rule *reinstates and maintains the 2013 rule and rescinds the 2020 rule*.
Non-substantive changes and updates to agency contact information found in Regulations B, E, F, J, V, X, Z, and DD - CFPB	Minor	88 FR 16531 3/20/23	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. *CFPB is allowing optional compliance with changes in Appendix A to Reg B, and Appendix K to FCRA, until 3/20/24. On 8/25/23, the CFPB corrected minor clerical errors to the final rule, including the NCUA address in Appendix A of Reg. B that Federal Credit Unions must provide on adverse action notices (effective 9/25/23).
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).
Annual CRA Threshold Adjustment for 2023 - FRB, FDIC and OCC	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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
FINAL RULES AND ASSOCIATED ACTIONS:				
Technical amendment to the HMDA Rule – CFPB	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. 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. **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 >=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: CFPB blog, dated 12/6/22; OCC Bulletin 2023-5 dated 2/1/23; FDIC FIL-06-2023 dated 2/3/23, FRB CA Letter 23-1 dated 1/31/23; and NCUA 23-RA-01, dated 2/2/23. **On 2/9/23 the CFPB published a Regulatory Reference Chart for HMDA Data Collected in 2023 here.*
Payday Loans, Vehicle Title and Certain High-Cost Installment Loans (Deposit Advance Products and longer-term loans with balloon payments) - CFPB	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 has been stayed several times pursuant to court orders issued in Community Financial Services Association v. CFPB, No. 1:18-cv-00295 (W.D. Tex. Nov. 6, 2018)." 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 SCOTUS Court granted the CFPB's petition to review the Fifth Circuit's decision. The CFPB filed its defense brief with the Supreme Court on 5/8/23 and CFSA filed its brief in support of the Fifth Circuit decision on 7/3/23. The SCOTUS held oral argument on 10/3/23; decision expected before the end of term in June 2024.*

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
GUIDANCE & PROPOSED RULES:				
Proposed Rule on Personal Financial Data Rights - CFPB	Moderate	Proposed Rule 88 FR 74796 10/31/23	Comments due 12/29/23	This proposed rule (PR) and request for comment is to implement personal financial data rights under CFPA of 2010. It would require data providers (includes depository and non-depository entities) to make available to consumers and authorized third parties' certain data relating to consumers' transactions and accounts in a machine-readable format; establish obligations for third parties accessing a consumer's data, including important privacy protections for that data; and provide basic standards for data access. Covered data would include historical transaction information, balances, information to initiate payment to/from a Reg E account, T&Cs, and upcoming bill information. The PR generally prohibits fees related to consumer requests or for establishing or maintaining a consumer interface. A final rule is expected in 2024 and would activate the currently dormant 12 CFR Part 1033. Compliance dates as proposed would be staggered after the final rule is published with implementation periods of 6m for Depository Institutions (DIs) ≥$500B, 1y for DIs ≥$50B but less than $500B, 30m for DIs ≥$850M but less than $10B, and 4y for DIs ≤$850M. DIs that do not have a consumer interface would not be subject to the rule.
Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the ECOA - CFPB and DOJ	Minor	Statement 88 FR 71845 10/18/23	10/12/23	The CFPB and DOJ joint statement assists stakeholders in understanding the potential civil rights implications of a creditor's consideration of an individual's immigration status under the ECOA. The ECOA and Reg B do not expressly prohibit consideration of immigration status. Reg B provides that a creditor may consider immigration status or status as a permanent resident of the U.S. and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment, but it does not provide a safe harbor. Immigration status may broadly overlap with or, in certain circumstances, serve as a proxy for protected characteristics (such as national origin or race). Creditors should be aware that if blanket or overly broad policy(s) regarding consideration of immigration status is not "necessary to ascertain the creditor's rights and remedies regarding repayment" and results in discrimination on a prohibited basis, it violates the ECOA and Reg B.
Advisory Opinion to Address Large FIs Compliance with Consumer Requests for Account Information - CFPB	Minor	Advisory Opinion 88 FR 71279 10/16/23	10/16/23	This Advisory Opinion (AO) is the CFPB's first guidance regarding §1034(c) of the CFCA. Section 1034(c) applies to banks and credit unions >$10 billion, as well as their affiliates. With limited exceptions, §1034(c) requires that such FIs or affiliates, shall, in a timely manner provide account information and supporting documentation to the extent it is in their control or possession. The AO reminds covered FIs that imposing conditions or requirements on requests that unreasonably impedes consumers' ability to request and receive account information would be a violation. The AO reads that there is much subjectivity to what the CFPB may deem as unreasonable requirements or what is considered timely, although from a timing aspect does suggest that responses in accordance with Reg X's timing requirements for information requests would be considered "timely."
Circular regarding Adverse Action Notifications and the Proper Use of Sample Forms provided in Regulation B - CFPB	Minor	Circular 2023-03 9/19/23	9/19/23	The Bureau reminds creditors that they may not rely on the checklist of reasons provided in Reg B's sample forms to satisfy obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. An underlying concern appears to be the intersection of fair lending/practices and technology, such as when complex algorithms involving artificial intelligence are used. Thus, if the principal reason(s) a creditor actually relies on is not accurately reflected in the checklist of reasons in the sample forms, it is the duty of the creditor, if it chooses to use the sample forms, to either modify the form or check "other" and include the appropriate explanation, so that the statement of reasons are not overly broad, vague, or otherwise fail to inform the applicant of the specific and principal reason(s) for an adverse action.
Equal Housing Lender Posters - FDIC	Minor	Notice FIL-47-2023 8/31/23	6/23/23	This FIL serves as a reminder that on 4/24/23, the FDIC issued a notice updating the language for EHL posters for FDIC-supervised institutions to include the new web portal (https://ask.fdic.gov/fdicinformationandsupportcenter) and to acknowledge the name change (the Consumer Response Center is now the National Center for Consumer Depositor Assistance, Federal Deposit Insurance Corporation, 1100 Walnut Street, Box #11, Kansas City, MO 64106).

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
GUIDANCE & PROPOSED RULES:				
Proposed Interagency Guidance on Reconsiderations of Value for Residential Real Estate Valuations – OCC, FRB, FDIC, NCUA, and CFPB	Minor	Proposed Interagency Guidance 88 FR 47071 7/21/23	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 here.
Interagency Proposal to Implement Quality Control Standards for the use of AVMs – OCC, FRB, FDIC, NCUA, CFPB, FHFA	Moderate	Proposed Rule 88 FR 40638 6/21/23	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.
Supervisory Guidance on Multiple Re-Presentment NSF Fees - FDIC	Min-Mod (FDIC-supervised banks only)	Supervisory Guidance FIL-40-2022 8/18/22 (updated, below)	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-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 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 FIL-32-2023 6/16/23	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. *Note: In a Compliance Spotlight dated 9/22/23, the FRB shares its own supervisory observations on representment fees.*
Interagency Guidance on Third-Party Relationships Risk Management – OCC, FRB, FDIC	Minor (excludes CUs)	Final Interagency Guidance 88 FR 37920 6/9/2023	6/6/23	Following their 7/19/21 Proposed Guidance 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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
GUIDANCE & PROPOSED RULES:				
Circular regarding Reopening Deposit Accounts That Were Previously Closed - CFPB	Minor	Circular 2023-02 88 FR 33545 5/24/23	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 *credit* 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."
Proposal to establish consumer protections in Reg Z for PACE loans - CFPB	Minor	Proposed Rule 88 FR 30388 5/11/23	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 *involuntary* 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 report highlighting several impacts that PACE loans have on borrowers, with a focus on activity in California and Florida.
Advisory Opinion - Reaffirming Coverage of FDCPA Over Time Barred Debt - CFPB	Minor	Advisory Opinion 88 FR 26475 5/1/23	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.
Policy Statement and Request for Comment: Prohibition on Abusive Acts or Practices - CFPB	Minor	Policy Statement and Request for Comment 88 FR 21883 4/12/23	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).

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
GUIDANCE & PROPOSED RULES:				
Notable items in the rule making agenda - CFPB	TBD	Rule Making Agenda Spring 2023 Reginfo.gov Agency Rule List	Various	Per the CFPB's Spring 2023 agenda: **Four in the final rule stage:** (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 (proposal was issued on 2/1/23, with no direct regulatory burden to FIs); (3) Credit card penalty fees, rule expected in November 2023 (see proposal), and; (4) Facilitation of the LIBOR transition (since finalized). **Four in the proposed rule stage:** (1) interagency NPRM to implement amendments regarding appraisals concerning quality control standards for automated valuation models or AVMs (since proposed, see below); (2) NPRM related to property assessed clean energy funding (PACE loans) (since proposed, 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). **Three in the pre-rule stage:** (1) amendment to Reg. Z overdraft rules; (2) NSF fee rules; and (3) amendments to Reg. V *(On 9/21/23, the CFPB began the SBREFA process by issuing an outline of proposals under consideration for FCRA Rulemaking; including ones to address the practices of and to clarify coverage of the FCRA to certain data brokers, what information constitutes a credit report under the FCRA, prohibition of including medical debts and related collection information on consumer reports, and more).*
Proposed Rule to amend Regulation Z to address excessive Credit Card Late Fees - CFPB	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.
Advisory Opinion to address the applicability of RESPA on Digital Mortgage Comparison Shopping Platforms - CFPB	Minor	Advisory Opinion 88 FR 9162 2/13/23	2/13/23	The CFPB reminds the industry that RESPA section 8 applies broadly, to those who connect settlement service providers to consumers 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. 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.

LAW/REGULATION	Impact	Rules Citation	Effective Date	Comment/Summary
GUIDANCE & PROPOSED RULES:				
Circular regarding Unlawful Negative Option Marketing Practices - CFPB	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 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. ***Of note:** On 4/24/23 (88 FR 24716) 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.*
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 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.*