Consumer Compliance Supervisory HIGHLIGHTS

Federal Deposit Insurance Corporation

FDIC FEDERAL DEPOSIT INSURANCE CORPORATION

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Introduction

The FDIC supervises approximately 3,000 state-chartered banks and thrifts that are not members of the Federal Reserve System (supervised institutions). Most of these institutions are community banks that provide credit and services locally. The FDIC is responsible for evaluating supervised institutions for compliance with federal consumer protection, anti-discrimination, and community reinvestment laws.

The FDIC conducts supervisory activities, including examinations, to review institutions' compliance management systems (CMS). The consumer compliance examination program focuses on identifying, addressing, and mitigating the greatest potential risks to consumers, based on the business model and products offered by a particular institution. This supervisory approach apportions resources to areas of higher risk for consumer harm, financial or otherwise, rather than focusing on evaluating technical compliance issues. Overall, the FDIC's consumer compliance supervision efforts in 2023 revealed that our supervised institutions continue to maintain effective compliance programs and take appropriate steps to identify and mitigate risks to consumers.

We continue to observe the banking industry leveraging technology and offering new products and services to their customers in a highly competitive environment. Many of the articles in this issue touch on the use of technology and banks' relationships with third parties. In addition, the FDIC continues to leverage technology in our consumer compliance examinations through virtual interactions, while we remain committed to having an onsite presence at every examination.

This issue of the FDIC Consumer Compliance Supervisory Highlights includes:

- A summary of the overall results of the FDIC's consumer compliance examinations of supervised institutions in 2023;
- A description of the most frequently cited violations and other consumer compliance examination observations;
- Information on examination observations and regulatory developments;
- A summary of consumer compliance resources and information available to financial institutions; and
- An overview of trends in consumer complaints that were processed by the FDIC in 2023.

Summary of Overall Consumer Compliance Performance in 2023

The FDIC conducts periodic risk-based examinations of supervised institutions for compliance with over 30 federal consumer protection laws and regulations. In 2023, the FDIC conducted close to 900 consumer compliance examinations. Overall, the majority of our supervised institutions continue to maintain an effective compliance management system (CMS) and adequately manage consumer compliance risk.

The FDIC uses the Federal Financial Institutions Examination Council's (FFIEC) Uniform Interagency Consumer Compliance Rating System to evaluate supervised institutions' adherence to consumer protection laws and regulations. As of December 31, 2023, 98 percent of all FDIC-supervised institutions were rated satisfactory or better for consumer compliance (i.e., ratings of "1" or "2"), and 99 percent were rated "Outstanding" or "Satisfactory" for the Community Reinvestment Act (CRA).

Institutions rated less than satisfactory for consumer compliance (i.e., ratings of "3," "4," or "5") had overall CMS weaknesses, which often resulted in violations of law and the risk of consumer harm. Institutions rated "Needs to Improve" or "Substantial Noncompliance" for CRA represented a weak performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

Most Frequently Cited Violations

As previously noted, the FDIC's consumer compliance examination program focuses on identifying, addressing, and mitigating the greatest potential risk of harm to consumers, based on the business model and products offered by or through a particular institution. During 2023, FDIC consumer compliance examiners identified regulatory violations that ranged in severity from highest to lowest level of concern (i.e., Levels 3, 2, and 1, with Level 1 representing the lowest level of concern).[1] This publication focuses on the five most frequently cited instances of Level 3 or Level 2 violations.

The most frequently cited violations (representing approximately 74 percent of the total violations cited in 2023) involved the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z; the Flood Disaster Protection Act (FDPA) and its implementing regulation, Part 339; the Electronic Fund Transfers Act (EFTA) and its implementing regulation, Regulation E; the Truth in Savings Act (TISA) and its implementing regulation, Regulation DD; and Section 5 of the Federal Trade Commission Act (Section 5 of the FTC Act). While this list contains the same laws and regulations from our 2022 publication, Section 5 of the FTC Act violations dropped from the second most frequently cited violation to the fifth most frequently cited violation.

Because the FDIC conducts consumer compliance examinations using a risk-focused methodology, the most frequently cited violations generally involve regulations that represent the greatest potential for consumer harm. For example, TILA requires disclosures about mortgage costs and calculation errors, and if institutions do not comply with TILA, consumers could be harmed and reimbursements may be required. Moreover, the flood insurance provisions included in the FDPA could result in civil money penalty (CMP) orders if the supervised institution does not take appropriate steps to ensure compliance.

Of the top regulatory areas cited for violations, the following list describes the most frequently cited violation in each area.

- **TILA/Regulation Z:** 15 U.S.C. § 1604 of TILA and 12 CFR §§ 1026.38(f) – (k) of Regulation Z, which implements TILA, requires the creditor to accurately disclose certain closing cost information on the Closing Disclosure. While TILA violations cited during 2023 were widely distributed among the various provisions of the regulation, this section represented 9 percent of the total TILA violations cited.
- **FDPA/12 CFR Part 339:** Section 102 of the FDPA, 42 U.S.C. § 4012(b), and section 339.3(a) of the FDIC Rules and Regulations, requires that adequate flood insurance be in place at the time a covered loan is made, increased, extended, or renewed. This section represented 47 percent of the total FDPA violations cited in 2023.
- **EFTA/Regulation E:** 15 U.S.C. § 1693f of the EFTA and 12 CFR § 1005.11(c) of Regulation E, which implements the EFTA, requires a financial institution to investigate allegations of electronic fund transfer errors, determine whether an error occurred, report the results to the consumer, and correct the error within certain timeframes. This section represented 46 percent of the total EFTA violations cited in 2023.
- **TISA/Regulation DD:** 12 U.S.C. § 4304 of TISA and 12 CFR §§ 1030.4(a) and (b) of Regulation DD set forth timing and content requirements for deposit account disclosures. While TISA violations cited during 2023 were widely distributed among the various provisions of the regulation, this section represented 9 percent of the total TISA violations cited.

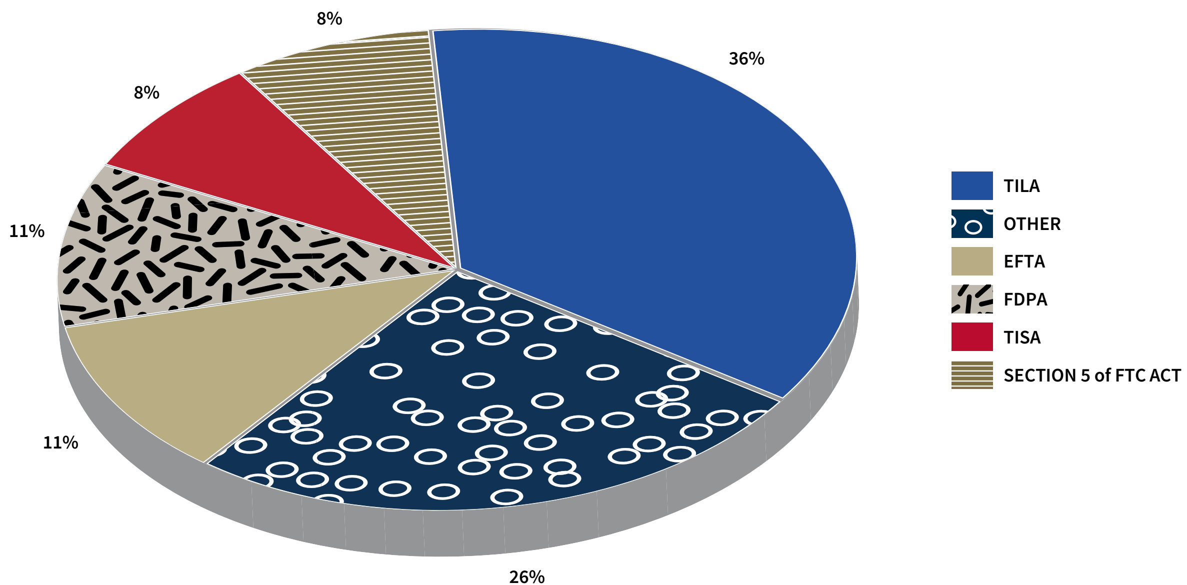
[1] See FDIC Consumer Compliance Examination Manual, Section II-6.1 (Communicating Findings).

- **Section 5 of FTC Act:** Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. The FDIC cited violations for instances when financial institutions charged multiple non-sufficient funds (NSF) fees for the re-presentment of the same transaction, but the disclosures did not fully or clearly describe the financial institution's re-presentment practice. This included instances where the institution did not explain that the same unpaid transaction might result in multiple NSF fees if an item was presented more than once. The FDIC frequently cited this issue, which represented 58 percent of all Section 5 of the FTC Act violations in 2023.

In 2023, the FDIC initiated 16 formal enforcement actions and 16 informal enforcement actions to address consumer compliance examination findings. During this period, the FDIC issued CMP orders totaling approximately $474,000 against institutions to address violations of the FDPA, Section 5 of the FTC Act, and the Home Mortgage Disclosure Act. Supervised institutions provided voluntary restitution payments totaling $10.6 million to more than 130,000 consumers for violations of various laws and regulations.

MOST FREQUENTLY CITED STATUTES AND REGULATIONS IN 2023

Statute/Regulation	Level 3 Violations		Level 2 Violations		Total Violations[2]	
	#	%	#	%	#	%
TILA	10	1%	431	35%	441	36%
FDPA	0	0%	136	11%	136	11%
EFTA	6	<1%	123	11%	129	11%
TISA	1	<1%	100	8%	101	8%
Section 5 of the FTC Act	34	3%	62	5%	96	8%
Total 5 Most Commonly Cited Statutes	51	4%	852	70%	903	74%
All Cited Statutes in 2023	69	6%	1158	94%	1227	100%



[2] Level 1 violations are isolated or sporadic in nature or systemic violations that are unlikely to impact consumers or the underlying purposes of the regulation or statute.

Consumer Compliance Examination Observations

The following describes some of the more significant consumer compliance issues identified by FDIC examiners in 2023. A number of the consumer compliance supervisory matters described in this year's issue involve deficiencies in bank oversight of its third-party relationships. In some cases, the third-party relationships described in this publication involve arrangements in which products and services are offered directly to customers by non-bank entities that have relationships with FDIC-supervised banks. This section also highlights supervisory matters involving the misuse of the FDIC's name or logo, credit builder products, error resolutions, broker relationships, and fair lending compliance.

Part 328: Third-Party's Misrepresentations of Insured Status and Misuse of FDIC's Name or Logo

Background

Section 18(a)(4) of the Federal Deposit Insurance Act[3] (FDI Act) and its implementing regulation, 12 CFR Part 328, Subpart B (Part 328), prohibits any representation that an uninsured financial product is insured. This includes knowingly misrepresenting the extent or manner in which a deposit liability or obligation is FDIC insured, whether by making affirmative statements or by omitting material information. As institutions continue to leverage third parties to offer products and services to customers, and avenues for advertising to and connecting with consumers continue to expand (e.g., online, mobile, and social media platforms), the FDIC has detected an increased number of instances of noncompliance with this law and regulation.

Findings

In 2023, the FDIC identified instances where a number of third parties represented or implied that uninsured financial products were insured by the FDIC. Certain instances involved false or misleading representations about FDIC deposit insurance, including the omission of material information that prevented consumers from understanding the extent or manner of deposit insurance provided, in violation of Part 328. In some cases, these third parties had relationships with FDIC-insured banks and in other cases they did not have a banking relationship.

Examiners cited violations of Part 328 and identified CMS weaknesses at supervised institutions that contributed to the violations. Due to the involvement of various third parties, and the large volume of activity, some banks relied significantly on the third-party providers to implement controls for compliance with applicable laws and regulations. In certain instances, the due diligence conducted by financial institutions was not timely or effective. Although contracts and agreements between financial institutions and various third parties typically outline expectations and obligations of both parties, some financial institutions did not effectively enforce or implement important controls established through these agreements.

In reviewing the activities of supervised institutions engaged in crypto-related asset activities,[4] the FDIC made case-specific, supervisory recommendations related to the use of appropriate disclosures to notify customers that products, such as crypto-assets, are not FDIC-insured deposits and that these products may lose value.

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[3] 12 U.S.C. § 1828(a)(4).

[4] See FIL-16-2022 Notification of Engaging in Crypto-Related Activities.

Mitigating Risk
The FDIC has observed certain risk-mitigating activities that may assist supervised institutions in adhering to the requirements of Section 18(a)(4) of the FDI Act and Part 328. Illustrative examples include:

- Verifying that representations about FDIC deposit insurance enable consumers to readily distinguish between uninsured products or activities and those that are eligible for deposit insurance.
- Providing automated pop-up disclosures to better alert customers to account limitations.
- Ensuring board and management involvement during the lifecycle of the third-party relationship.
    - Collecting and maintaining thorough documentation related to due diligence conducted prior to entering into a relationship, demonstrating that the board and management considered and accepted consumer compliance risks.
- Developing policies and procedures that adequately guide and support activities and the related risks, including consumer compliance risks related to Part 328.
- Ensuring that monitoring and audit programs are commensurate with the size and complexity of activities to allow for timely identification and correction of consumer compliance concerns, including any marketing efforts related to the product or service offered by the institution or third party. Comprehensive advertising reviews include promotions on websites, mobile applications, and social media sites and posts.
- Implementing a comprehensive complaint management program that provides for the identification of consumer complaints of consumer confusion regarding deposit insurance, timely corrective action, tracking, and trend analysis for all complaints, including those received by third parties.

Section 5 of the FTC Act: Substantiating Claims in the Advertising of Credit Builder Products

Background
Credit reporting and credit scores are important factors in determining the availability and accessibility of credit. Although most forms of credit influence a consumer's credit history and credit score, some institutions have developed or advertised products specifically focused on improving or "building" consumer credit reports and scores. Products offered to build credit are often marketed to sub-prime borrowers or borrowers with limited credit history. Credit builder products may include traditional forms such as secured credit cards, but also may include more innovative products, such as Credit Builder Loans (CBL).

CBLs are designed to help consumers with no or limited credit history establish a credit profile, and for those with lower scores, CBLs can help improve their score through positive repayment histories. A common CBL feature is a requirement that borrowers make payments before receiving loan funds. When a borrower opens a CBL, the lender moves the loan funds into a restricted savings account. The borrower then makes installment payments over a set period and the lender reports these payments to the credit reporting agencies.

Financial institutions often collaborate with third-party fintech companies to bring credit-building products to the market. While these products can help consumers build credit, financial institutions need to be aware of applicable laws and regulations, as well as how the products are advertised, and what the products offer and deliver.

Findings
The FDIC has reviewed credit-building products, including CBLs, and identified violations of Section 5 of the FTC Act in the advertising and structure of certain products. In some cases, institutions collaborated with fintech companies on credit building products, such as CBLs, and advertised that these products would improve the consumer's credit score by an average or a specific amount. Issues arose when the institution or third party did not conduct sufficient analysis to support the claims made. For example, one institution which relied heavily on a third party, claimed that consumers who used the CBL could increase their credit score by 60 points; however, the increase was based on a study of various credit builder products with various terms and restrictions that differed significantly and were not representative of the institution's product.

Examiners identified instances in which credit building was advertised as a benefit tied to other credit products, such as credit cards and consumer loans. In some cases, banks used these credit-building claims to sell products that had no features or functions to improve the consumer's credit. Examiners also identified products advertised as credit building that had no positive impact on the consumer's credit score or resulted in lowering a consumer's credit score. For example, one institution advertised a product to improve a consumer's credit score, but the institution did not furnish credit information to credit reporting agencies. In another example, an institution advertised a product as a way to build credit based on periodic increases to consumer credit limits; however, the credit limit would often revert back to the original credit limit, which contributed to lowering the consumer's credit score.

In addition to the implications on credit reports and credit scores, other issues have been identified with credit-building products, such as failing to include loan fees as finance charges under TILA and requiring consumers to make preauthorized electronic payments, which is prohibited by the EFTA.

Mitigating Risk
When advertising CBLs, other credit-building products, or credit building as a product feature, it is important that institutions and third parties support claims about improvements in credit reports and score increases, and are clear about the potential for negative credit reporting. Credit building should be tangible and meaningful, and not merely a marketing ploy. The FDIC has observed certain risk-mitigating activities that may assist supervised institutions in adhering to the requirements of Section 5 of FTC Act, TILA, EFTA, and other applicable laws. Illustrative examples include:

- Ensuring customer disclosures and agreements clearly, conspicuously, and accurately describe key terms, conditions, risks, and consumer rights associated with the activity in a manner that promotes transparency and informed choice.
- Reviewing the entire on-boarding process for new products from initial promotion through the application to ensure the product offering matches the promotion.
- Structuring contracts to allow for sufficient board and management involvement throughout the lifecycle of the third-party relationship, including provisions outlining:
  - bank and third-party requirements;
  - involvement of the bank when introducing new or revised relationships, products, services, and marketing;
  - prompt access to third-party data, training, policies and procedures, monitoring, audits, and complaints; and,
  - clear consequences related to noncompliance with contract provisions as well as consumer protection laws and regulations.

- Conducting initial and ongoing review of all relevant marketing and advertising, including but not limited to, websites, mobile applications, and social media sites and posts, to ensure compliance with applicable consumer protection laws and regulations.
- Having evidence to support any direct claims in advertisements, and periodically monitoring the evidence to ensure claims remain supported.
- Conducting a thorough risk assessment to identify and mitigate risks, including legal and compliance considerations.
- Reviewing complaints or inquiries from the third party as these can be the bank's first indicator of compliance issues.

Regulation E: Managing EFT Dispute Investigations Handled by Third Parties

Background
Regulation E provides consumers certain rights when engaging in electronic fund transfers (EFTs), which include transfers through automated teller machines, point of sale terminals, and automated clearinghouse systems. Regulation E outlines procedures financial institutions must follow for investigating and resolving timely EFT errors alleged by consumers within regulatory timeframes. Regulation E also limits consumer liability for unauthorized transfers.

Findings
In 2023, the FDIC identified an issue involving a security program used in validating customer transactions and a financial institution that outsourced its EFT dispute process to a third party. The security program was designed to provide an additional layer of protection for online credit and debit card transactions. When a consumer made an online purchase at a merchant enrolled in the security program, the consumer was directed to a webpage where a password or PIN was requested at the time of payment as a means of authenticating the consumer's identity. Using this security program was reportedly a way for merchants to reduce the potential for chargebacks.

The institution outsourced its EFT error resolution process to a third-party service provider who automatically denied consumers' EFT debit card disputes related to transactions that were processed using the security program. No dispute rights were provided to consumers, and no investigations were conducted by the financial institution or the third party, resulting in consumer's provisional credit being revoked and the error resolution disputes being denied.

Violations of Section 1005.11(c) of Regulation E were cited for failing to conduct investigations, failing to report the results of the investigation to consumers, and failing to correct the errors. The violations occurred because the third party processing the EFT error resolution disputes on behalf of the financial institution failed to distinguish between EFT dispute rights of the consumer and the institution's chargeback rights. The institution also violated Section 1005.6 of Regulation E for imposing liability on the consumer outside of the limitations/amounts permitted under Regulation E. Consumer rights provided under Regulation E cannot be restricted by private network rules or other agreements.

Mitigating Risk

Through our examination and supervisory experience, we have observed that financial institutions can take a number of steps to mitigate the risk of noncompliance with Regulation E when outsourcing the processing of EFT error resolutions. Illustrative examples include:

- Implementing an effective CMS to include a third-party oversight program.[5]
- Confirming that Regulation E-related actions taken and procedures implemented by the third party on the bank's behalf comply with all applicable laws and regulations.
- Conducting reasonable investigations of all EFT disputes, documenting investigation findings, and upon request providing consumers with the documents the institution relied upon in making its final determination on the consumer's EFT dispute.
- Verifying that the bank and third party provide adequate training to staff on Regulation E's requirements to ensure they have a solid understanding of Regulation E's error resolution requirements.

RESPA Section 8: Payments for Mortgage Brokerage Services

Background

Section 8 of the Real Estate Settlement Procedures Act (RESPA) and Section 1024.14 of Regulation X, which implements RESPA, prohibit giving or accepting a thing of value pursuant to an agreement for referrals of business incident to or part of a settlement service involving a federally related mortgage loan. The U.S. Department of Housing and Urban Development (HUD) issued Statement of Policy (SOP) 1999-1 and SOP 2001-1 to assist lenders in applying Section 8 in the specific context of payments from a lender to a mortgage broker. The Consumer Financial Protection Bureau (CFPB) has applied these SOPs since 2011, when Congress transferred responsibility for RESPA to the CFPB from HUD.

The SOPs state that when determining whether a payment from a lender to a mortgage broker is permissible under Section 8 of RESPA, the first part of the test is whether goods or facilities were actually furnished or services were actually performed for the compensation paid. However, the fact that goods or facilities have been actually furnished or services have actually been performed by the mortgage broker does not by itself make the payment legal. The second test is whether the payments are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

In addressing the two-part test, in the SOPs, HUD articulated that it generally would be satisfied that sufficient origination work was performed to justify compensation on a transaction if the mortgage broker took the application and performed at least five additional services listed in the SOP, with some caveats for services deemed to be "counseling services." HUD also noted that compensable services for the first part of the test do not include referrals or no, nominal, or duplicative work. HUD stated that the approach of looking at whether a mortgage broker took the application and provided five additional services was originally formulated, and is generally helpful, in analyzing situations in which "a relatively small fee was to be provided for limited services." HUD cautioned that this approach "is not dispositive in analyzing more costly mortgage broker transactions where more comprehensive services are provided." HUD stressed that "the determinative test under RESPA is the relationship of the services, goods or facilities furnished to the total compensation received by the broker." Regardless of the number of services provided, the payment for the services has to be reasonably related to their value.

[5] See FIL-29-2023 dated June 6, 2023 entitled, "Interagency Guidance on Third-Party Relationships: Risk Management."

Findings
The FDIC has identified RESPA Section 8 violations involving mortgage broker relationships, both in cases where financial institutions pay mortgage brokers and when institutions act as mortgage brokers. Many institutions have developed policies and procedures to address the first test, ensuring that sufficient compensable services are provided. Those policies and procedures often include using checklists to record that a minimum of five services are provided. However, some institutions have not developed processes to sufficiently address the second test in determining whether payments are reasonably related to the value of the services provided.

Examiners identified violations involving relationships where mortgage brokers provided fewer than five services, and relationships where mortgage brokers provided more than five services. In each case, examiners identified the specific services actually provided by the mortgage broker and evaluated whether the payments made were reasonably related to these services. Below are a few examples where the payments were not reasonably related to the services provided:

- An institution acting as a mortgage broker used a checklist to record that it provided at least five services but failed to consider the limited nature and value of the services it provided. For example, the institution noted that it "provided disclosures to the borrower," but the disclosures were created by the lender and the institution merely forwarded a link to the borrower to receive the disclosures. This institution also noted that it would "initiate or order appraisals," but this process was limited to inputting a name, address, and phone number into the lender's appraisal management software.
- An institution paid a mortgage broker and used a checklist to record provision of at least five services. However, some of the services noted as provided by the mortgage broker were conducted irregularly or not at all. For example, the mortgage broker noted that it would "participate in loan closing" and "assist the borrower in understanding and clearing credit problems." In actuality, the broker either did not attend closings or infrequently participated telephonically, and none of the applications included borrowers with credit problems.
- An institution used a checklist to record the five services provided and listed "educating the prospective borrower in the home buying and financial process," "advising the borrower about different types of loan products available," and "demonstrating how closing costs and monthly payments could vary under each product," as separate services. However, separating these counseling services into individual items on a checklist does not change the value of the counseling that was actually provided.

Mitigating Risk
In analyzing whether sufficient brokerage services have been performed to warrant the mortgage broker compensation paid, changes in technology should be considered. The use of technology in the mortgage origination process has changed substantially since HUD issued its SOPs in 1999 and 2001 with the automation and digitization of many mortgage-related services. Services that may have been intensive and time consuming in the past can now be completed quickly and easily using technology. On the other hand, technology often comes with a direct financial cost for the value provided, so the addition of technology does not necessarily mean that a service inherently has less value. As a result, while the mortgage origination activities listed in HUD's SOPs are generally relevant today, the time, effort, and cost associated with these activities may vary significantly.

It is important for institutions to recognize the risks associated with mortgage broker relationships and take steps to ensure that the institution's CMS adequately mitigates these risks. It is also important to recognize that managing risk in this context is not merely a service-counting exercise. The ultimate determination

under RESPA is whether the payments to the mortgage broker are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed by the mortgage broker.

FDIC has observed other risk-mitigating activities that may strengthen institutions' CMS to help comply with RESPA Section 8. Illustrative examples include:

- Developing policies and procedures regarding mortgage broker relationships that document the services the mortgage broker will provide, including sufficient detail to determine if services are actually provided and how the services will be valued.
- Instituting comprehensive monitoring for mortgage broker relationships, including the services provided and the payments made, and regular reviews to ensure compliance with the institution's policies and procedures.
- Providing training on the institution's policies and procedures to both the institution's employees and employees of third parties in a mortgage broker relationship with the institution.

Fair Lending: Building Strong Third-Party Oversight and Internal Controls

Background

As technology continues to evolve, financial institutions continue to partner with third parties to offer credit and expand product offerings. While such relationships offer benefits, an increasing reliance on third parties may expose institutions to heightened risks when oversight efforts prove ineffective in ensuring a third party's activities adhere to fair lending laws and regulations. For example, automated underwriting and pricing models offered by third parties may present fair lending risk if the financial institution does not monitor how these models operate or what criteria are used to make decisions.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards, including operational and managerial standards, which apply to all FDIC-supervised institutions. This includes the need for internal controls and information systems that are appropriate to the size of the institution and nature, scope, and risk of its activities, as well as prudent credit underwriting practices, among other things.

To manage fair lending risks, an institution's CMS should be commensurate with the scale and complexity of its third-party relationships. A strong CMS will incorporate comprehensive due diligence during the onboarding of new third parties as well as ongoing monitoring and oversight that is tailored to the specific nuances of each third-party relationship. Inadequate oversight of third-party activities, failure to establish robust internal controls and information systems, or a lack of prudent credit underwriting practices may increase the risk of consumer harm, potential discriminatory practices, and fair lending violations.

Findings

In 2023, the FDIC identified issues with an institution that partnered with third-party lenders to offer unsecured consumer loans and other credit products. The FDIC determined that the institution engaged in unsafe or unsound banking practices by failing to establish and maintain internal controls, information systems, and prudent credit underwriting practices in conformance with the FDIC's Safety and Soundness Standards contained in Appendix A of 12 CFR Part 364, which implements Section 39 of the FDI Act. Additionally, these weaknesses led to regulatory violations, including those relating to the Equal Credit Opportunity Act (ECOA), which is implemented by Regulation B.

Examiners determined that the institution's fair lending program did not include appropriate monitoring of fair lending risks, did not consider the institution's lending volume or the scale of its third-party relationships, nor did it provide for the institution to have full access to credit transaction records from third-party lenders. These weaknesses led to an inability to effectively identify and mitigate heightened fair lending risks. For example, the institution was unable to access or produce complete and accurate credit transaction records from third-party lenders, which demonstrated a critical internal control and information system deficiency. Since the institution did not have access to these records, it was unable to accurately assess fair lending risk, perform adequate monitoring, prudently underwrite credit transactions, or ensure compliance with fair lending laws and regulations. In addition, institution management did not provide adequate oversight of the pricing and underwriting systems used by its third-party lenders. Relevant compliance personnel were not provided access to all variables used in the pricing and underwriting models the institution utilized to originate loans through third-party lenders. In addition, material changes to pricing and underwriting model criteria were made without review or approval from institution management.

Mitigating Risk

The FDIC has observed certain risk-mitigating activities that may assist supervised institutions in complying with Appendix A to Part 364 and fair lending requirements. Illustrative examples include:

- Performing periodic risk assessments to identify fair lending risks associated with relevant activities performed by third-party service providers, including the development of automated underwriting and pricing models or systems.
- Instituting policies, procedures, and processes to address fair lending risks involving the use of third-party service providers. This includes processes for appropriately addressing and preventing any noncompliance with applicable laws or regulations.
- Instituting satisfactory processes to analyze lending data and information, including that which is maintained by third-party service providers, to determine compliance with the anti-discriminatory provisions of the federal fair lending laws.
- Performing appropriate fair lending training for all staff with roles and responsibilities related to any lending operations or process that have any fair lending risks.
- Ensuring agreements with third-party service providers include the bank's right to access data and information, including lending criteria, in a timely manner pertaining to tasks and actions performed on behalf of the bank.
- Ensuring contractual agreements include the bank's right to approve changes in processes and systems that affect work performed by the third-party service provider on the bank's behalf before implementation.

Fair Lending: Evaluating Compliance with Anti-Discrimination Laws and Regulations

Background

The FDIC conducts a fair lending review as part of every consumer compliance examination. The fair lending review evaluates a supervised institution's compliance with the anti-discrimination laws and regulations, including ECOA and the Fair Housing Act (FHA). While the vast majority of FDIC-supervised institutions maintain effective compliance programs, the FDIC occasionally identifies violations involving discrimination. When the FDIC has reason to believe a creditor is engaged in a pattern or practice of discrimination in violation of ECOA, the FDIC is required by law to refer the matter to the United States Department of Justice (DOJ). In 2023, the FDIC referred seven fair lending matters to the DOJ.

Findings
Most of the DOJ referral matters in 2023 involved discrimination findings relating to redlining, pricing for automobile financing, and overt policies for the underwriting of credit.

Four of the seven fair lending referral matters involved redlining issues in that the banks' lending did not serve the needs of geographies consisting of more than 50 percent minority populations (majority-minority census tracts) consistent with the loan demand, as indicated by lending activities of other similar lenders operating in the same markets. The term "redlining" is defined in the Interagency Fair Lending Examination Procedures as when "[a]n institution provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside, or in which the residential property to be mortgaged is located."[6] Redlining does not necessarily involve the complete avoidance of an area, but can exist if applicants are treated differently on a prohibited basis characteristic based on where they live.

The redlining issues that the FDIC identified in 2023 were generally the result of branching activity that did not include majority-minority areas and limited marketing and outreach in those areas. While the banks had delineated markets that included majority-minority census tracts, the banks were generally not serving those areas the same as non-minority areas. For example, in certain cases, the banks advertised credit products in the geographic areas surrounding the physical branches, but these limited marketing and outreach efforts did not reach the majority-minority areas located in the banks' markets, and the banks did not have branches located in the majority-minority areas. The FDIC conducted a statistical analysis of each bank's lending in comparison to similarly-situated lenders operating in the same markets and noted statistically significant differences in application and origination volume.

The automobile pricing matters generally involved banks allowing unmonitored discretion in the pricing of credit. This unmonitored discretion led to borrowers being charged differently on a prohibited basis. Another referral matter involved the bank's refusal to consider credit applications from companies that are owned by Native American tribes or that are located on Native American reservations, as well as differing underwriting criteria for applications from certain religious entities.

Mitigating Risk
An effective CMS helps ensure financial institutions treat consumers fairly by operating in compliance with fair lending laws. This includes evaluating written credit policies and procedures to ensure decision criteria and pricing methodologies do not reflect illegal credit discrimination, and conducting monitoring efforts or audits to ensure the bank is not pricing credit in a discriminatory manner. The FDIC's Banker Resource Center provides information to help support fair lending compliance. In addition, the FDIC has observed certain mitigating actions institutions may consider to address redlining risk. Illustrative examples include:

- Understanding the bank's reasonably expected market area and the demographics of the geographies within that area.
- Evaluating the methods by which the bank obtains loan applications, including through branches or any marketing or outreach efforts, to ensure those efforts penetrate the majority-minority geographies within the bank's market area.
- Monitoring lending activity to assess the bank's lending performance within the market area.[7]

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[6] See Interagency Fair Lending Examination Procedures; p. 29.

[7] For more information on this topic, see Identifying and Mitigating Potential Redlining Risk in the FDIC's Banker Resource Center.

Regulatory and Other Developments

Below is a summary of several consumer compliance developments in 2023, including those related to CRA modernization; the FDIC's efforts to address appraisal bias in property appraisals; amendments to rules governing the FDIC official signs, misrepresentation and misuse of the FDIC's name or logo; and supervisory guidance on third-party risk management and certain overdraft fees. This section is meant to highlight particularly important developments and is not intended to provide an exhaustive discussion of recent developments involving consumer compliance matters.

Supervisory Guidance on Charging Overdraft Fees for Authorize Positive, Settle Negative (APSN) Transactions

On April 26, 2023, the FDIC issued supervisory guidance to ensure its supervised institutions are aware of the consumer compliance risks associated with assessing overdraft fees on a transaction that was authorized against a positive balance, but settled against a negative balance (FIL-19-2023). This guidance expands on an FDIC 2019 Supervisory Highlights article titled "Overdraft Programs: Debit Card Holds and Transaction Processing" by discussing the FDIC's concerns with both the available and ledger balance methods used by institutions when assessing overdraft fees.[8] Failure to take steps to avoid assessing overdraft-related fees when transactions are authorized on positive balances but settle on negative balances can result in heightened risks of violations of Section 5 of the FTC Act.

Unanticipated and unavoidable overdraft fees can cause substantial injury to consumers. Due to the complicated nature of overdraft processing systems and payment system complexities that are outside the consumer's control, consumers may be unable to avoid injury due to bank APSN practices. The FDIC encourages institutions to review their practices regarding the charging of overdraft fees on APSN transactions to ensure customers are not charged overdraft fees for transactions consumers may not anticipate or avoid in violation of Section 5 of the FTC Act.

Agencies Request Comment on Automated Valuation Models (AVM) Proposed Rule

On June 1, 2023, the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), CFPB, the National Credit Union Administration (NCUA) and Federal Housing Finance Agency requested public comment on proposed rulemaking regarding the setting of quality control standards of AVMs (FIL-26-2023), as required by section 1473(q) of the Dodd-Frank Act. The proposed rule is designed to ensure the credibility and integrity of models used in real estate valuations. In particular, the proposed rule would implement quality control standards for AVMs used by mortgage originators and secondary market issuers in valuing real estate collateral securing mortgage loans. The agencies are currently considering the comments.

[8] An available balance method calculates the account balance based on authorized (but not settled) transactions the financial institution is obligated to pay under contractual or other obligations, as well as settled transactions and pending deposits. The available balance is generally the amount of money/funds the consumer can access because it accounts for any pending debit or credit transactions. This balance typically correlates to the balance accessible to consumers online, through a mobile application, at an ATM, or by phone.

Updates on FDIC Efforts to Address Appraisal Bias

The Property Appraisal and Valuation Equity (PAVE) Task Force is an interagency initiative to address inequities in home appraisals. On June 8, 2023, the FDIC, FRB, OCC, CFPB, and NCUA issued proposed Interagency Guidance on Reconsiderations of Value (ROV) of Residential Real Estate Valuations in the Federal Register for public comment. ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to re-assess the value of residential real estate. An ROV may be warranted if a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value.

The proposal highlights the risks associated with deficient residential real estate valuations, particularly those that can contain errors, omissions, or discrimination that affect the value conclusion. Additionally, the proposal describes how financial institutions may incorporate effective ROV processes into established appraisal and evaluation programs, consistent with safety and soundness standards and all applicable laws and regulations, including those designed to protect consumers. Comments were due September 19, 2023, and the agencies are considering the 45 unique comments submitted.

Additionally, on February 12, 2024, the FDIC joined other member agencies of the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) to host its fourth hearing in a series of hearings addressing appraisal bias. These public hearings are an effort to better understand the challenges and potential solutions related to appraisal bias. The ASC oversees the real estate appraisal regulatory framework for federally related transactions.

Also on February 12, 2024, the FFIEC issued a statement of principles related to valuation discrimination and bias for member agencies, including the FDIC, to consider in their consumer compliance and safety and soundness examinations. The principles aid member agencies in assessing whether their supervised institutions' compliance and risk management practices are appropriate to identify and mitigate discrimination or bias in their residential property valuation practices.

Furthermore, as part of the FDIC's commitment to address appraisal bias, the FDIC published the FDIC Consumer News article, "Understanding Appraisals and Why They Matter," and created the FDIC Tips on Appraisal Bias and Valuation to Address Consumers' Frequently Asked Questions webpage to serve as a resource for consumers and to provide educational and other information on appraisal bias and on the PAVE Action Plan.[9] The webpage includes information on ROVs and links to the ASC's Appraisal Complaint National Hotline, the FDIC Information and Support Center, and HUD, in the event consumers have concerns about their property valuation. Additionally, the FDIC Information and Support Center updated the FDIC's online complaint and inquiry forms so users can submit concerns or request help with an appraisal issue.

Interagency Guidance on Third-Party Risk Management

On June 9, 2023, the FDIC, FRB and OCC (collectively, the agencies) issued final guidance on managing risks associated with third-party relationships (FIL-29-2023). The guidance provides sound principles that support a risk-based approach to third-party risk management that banking organizations may consider when developing and implementing risk management practices for all stages in the life cycle of third-party relationships. This guidance replaces the agencies' existing guidance on this topic, providing a consistent

[9] See the FDIC Spring 2023 Consumer Compliance Supervisory Highlights on the PAVE Action Plan and key actions the FDIC and other federal agencies have taken to address appraisal bias.

approach to managing risks associated with all third-party relationships. Banks can use this guidance as a resource in overseeing its third-party relationships.

FDIC Clarifying Supervisory Approach Regarding Supervisory Guidance on Multiple Re-Presentment NSF Fees

On June 16, 2023, the FDIC issued revisions to the 2022 Supervisory Guidance on Multiple Re-Presentment NSF Fees (FIL-32-2023) to clarify its supervisory approach for corrective action when a violation of Section 5 of the FTC Act is identified. Based on additional data and challenges in identifying harmed consumers, the FDIC updated and reissued supervisory guidance on re-presentments. This update reflects the FDIC's current supervisory approach to not request an institution to conduct a lookback review for violations of Section 5 of the FTC Act regarding re-presented transactions absent a likelihood of substantial consumer harm.

FDIC Launches Banker Engagement Site

On September 5, 2023, FIL-49-2023 notified the industry that the FDIC launched the Banker Engagement Site, or BES, through FDICconnect. This site provides a secure and efficient portal for our supervised institutions and regulatory partners to exchange documents, information, and communications for consumer compliance and CRA examinations. It also facilitates a financial institution's ability to collaborate with the consumer compliance examination team, submit questions, respond to requests, and much more.

Community Reinvestment Act Rulemaking

On October 24, 2023, the FDIC, FRB and OCC jointly issued a final rule to strengthen and modernize the regulations implementing the CRA to better achieve the purposes of the law (FIL-61-2023). The CRA is a landmark statute enacted nearly 50 years ago to encourage banks to help meet the credit needs of their entire communities, especially in low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operations. Building on research and feedback from commenters on the 2022 proposed CRA rule, the final rule updates the CRA regulations to achieve the following key goals:

- Expand access to credit, investment, and banking services in LMI communities;
- Adapt to changes in the banking industry, including internet and mobile banking;
- Provide greater clarity and consistency in the application of the CRA regulations; and
- Tailor CRA evaluations and data collection to bank size, business models, and local conditions.

To assist banks in complying with the new rule, the FDIC, FRB, and OCC have published a CRA Final Rule Fact Sheet and an Interagency Overview of the CRA Final Rule, which summarize the objectives and key elements of the final rule.

FDIC Office of the Ombudsman Updates Post-Examination Surveys

On November 30, 2023, the FDIC issued FIL-59-2023, notifying FDIC-supervised financial institutions that the FDIC's Office of the Ombudsman, which is responsible for administering Post-Examination Surveys (Survey), is updating the Survey and the transmission process for Risk Management and Consumer

Compliance and/or CRA examinations. The updated Survey, which became effective January 1, 2024, solicits additional feedback on the virtual aspects of examinations. Upon completion of an examination, the Office of the Ombudsman will send updated Surveys to the Executive Officer(s) of banks, send notices and provide reminders about the Survey from FDICSurveys-noreply@fdic.gov, and will continue to serve as the point of contact for banks regarding the Survey and follow-up requests. The Office of the Ombudsman is independent of the supervisory process, and is a confidential resource to bankers.

Final Rule Relating to FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo

On December 20, 2023, the FDIC finalized a rule to amend Part 328 of its regulations (FIL-65-2023). The amendment modernizes the rules governing the use of the official FDIC signs and advertising statements, and clarifies the FDIC's regulation regarding false advertising, misrepresentations of deposit insurance, and misuse of the FDIC's name and logo.

For all insured depository institutions (IDIs), the rule:

- Modernizes the rules governing the display of the FDIC official sign in branches and extends the application of sign requirements to other physical premises where consumers have access to, or transact with, deposits;
- Establishes and requires the display of the FDIC official digital sign on bank websites, mobile applications, and certain automated teller machines and other like devices –

- Requires the use of signs that differentiate insured deposits from non–deposit products across banking channels and disclosures that certain financial products *are not insured by the FDIC, are not deposits, and may lose value;*
- Requires a one–time per web session notification when a logged-in bank customer leaves the IDI's digital deposit–taking channel to access non-deposit products on a nonbank third-party's website;
- Provides IDIs with additional flexibility for satisfying official sign and advertising statement requirements; and
- Requires IDIs to establish and maintain written policies and procedures addressing compliance with Part 328.

For any person, including IDIs or non-bank entities, the rule clarifies the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are conducting business with an IDI and whether their funds are protected by federal deposit insurance. For example, it clarifies that use of the FDIC's official advertising statement or FDIC associated terms or images in a manner that inaccurately states or implies that a person other than an IDI is insured by the FDIC is a misrepresentation unless the advertising statement is next to the name of one or more IDIs.

The amendments made by the final rule will take effect on April 1, 2024, with an extended compliance date of January 1, 2025.

Deposit Insurance Misrepresentation Advisory Letters

During 2023, the FDIC issued nine cease and desist letters to entities demanding that they remove or correct misrepresentations about deposit insurance. These actions were based on the May 2022 final rule, which implemented section 18(a)(4) of the FDI Act. This rule prohibits any person from:

- Making false or misleading representations about deposit insurance;
- Using the FDIC's name or logo in a manner that would imply that an uninsured financial product is insured or guaranteed by the FDIC; or
- Knowingly misrepresenting the extent or manner of deposit insurance.

As part of that 2022 rulemaking, the FDIC also created a publicly available complaint portal, through which it receives inquiries or complaints regarding potentially false or misleading statements about FDIC deposit insurance, or misuse of the FDIC's name or logo. In 2023, the FDIC received hundreds of submissions to this complaint portal, some of which resulted in further actions taken by the FDIC, including investigations of potential violations of section 18(a)(4) of the FDI Act, referrals to other law enforcement and regulatory agencies for appropriate action, and issuances of advisory letters.

Resources for Financial Institutions

The FDIC provides technical assistance and resources for financial institutions to support their efforts to serve and meet the needs of their communities. In addition, these resources may provide information that can help institutions stay current with regulatory developments and provide guidance on consumer compliance topics.

Banker Resource Center

The FDIC's Banker Resource Center provides supervisory resources for banking professionals. The site includes links to supervisory topics such as CRA, Consumer Compliance, Fair Lending, and Third-Party Relationships. The site also provides general information on educational programs, publications, forms, financial data, and other information to support general operations of FDIC-insured financial institutions. Bankers can also refer to this site for the FDIC calendar that details FDIC hosted webinars and Director College events.

As mentioned earlier, the FDIC launched the Banker Engagement Site in September 2023. The site provides supervised financial institutions the ability to collaborate with the examination team, submit questions, and respond to requests. Bankers can reference the following links to assist them in using the site:

- BES Introduction Video
- BES User Guide
- BES Access Management Job Aid
- BES FAQs

In 2023, the FDIC also worked with other agencies to provide up-to-date important information affecting the banking industry. The FDIC, along with the FRB and the OCC, issued a video titled CRA Final Rule Overview. The video provides an overview of the new CRA rule and its objectives. Additional topics in the recording include assessment areas, community development, evaluation framework, performance tests, ratings, data collection and reporting, and applicability dates.

An Overview of Consumer Complaint Trends

The FDIC's Consumer Response Unit (CRU) of the National Center for Consumer and Depositor Assistance (NCDA) investigates consumer complaints involving FDIC-supervised banks to ensure consumers receive the protections provided by federal consumer protection laws, including rules addressing unfair and deceptive practices. The NCDA closed 23,287 written complaints and telephone calls in 2023 compared to 22,195 closed in 2022, a 5 percent increase. The CRU closed and responded to 20,174 written consumer complaints in 2023 by investigating the complaint or referring the complaint to the appropriate federal banking regulator. The CRU acknowledged all written complaints within 14 days, and closed 98.2 percent of investigated complaints within established timeframes.

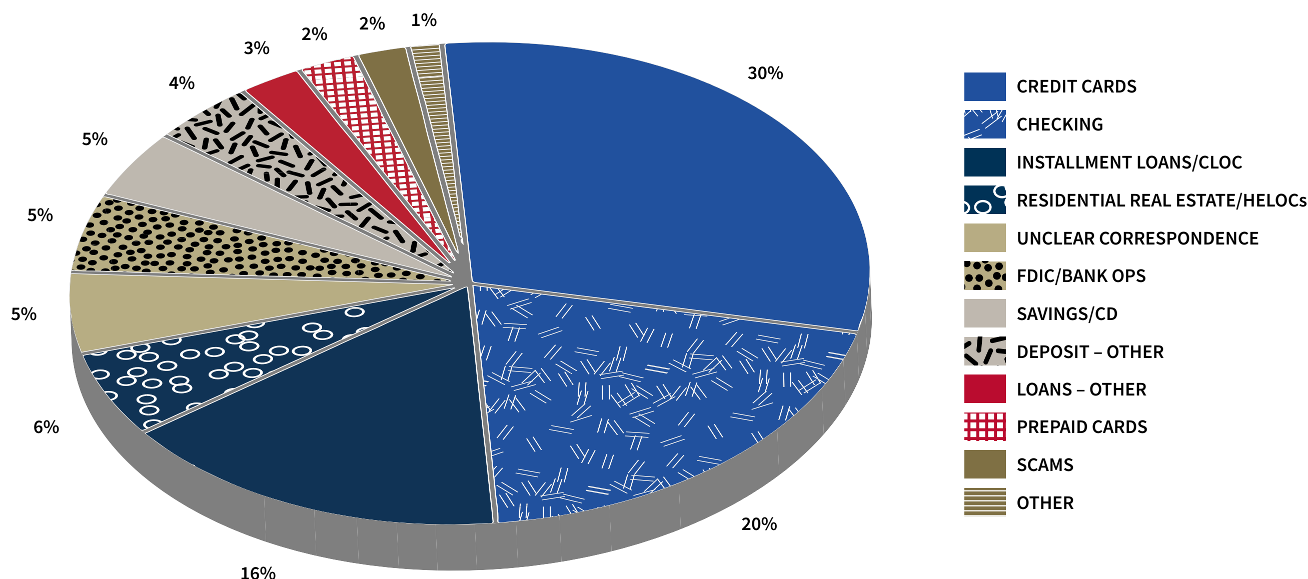
The CRU retained and investigated 9,748 of the 20,174 written complaints and inquiries received in 2023. These reviews found 477 apparent bank-handling errors and 193 apparent violations among various products, issues, and applicable consumer federal protections. Fair lending complaints decreased from 71 in 2022 to 68 in 2023, a 4 percent decrease.

The volume of complaints associated with a third-party provider increased from 5,152 in 2022 to 5,425 in 2023, or 5 percent. These relationships generally involve contractual agreements between banks and entities that perform a variety of services, such as credit card servicing and processing deposit account transactions and error disputes. Third parties were associated with 107 complaints resulting in an apparent violation of a federal consumer protection regulation.

The CRU's interaction with consumers and banks resulted in consumers receiving $7,045,115 in total voluntary restitution and compensation in 2023, compared to $6,574,629 received during the prior year, representing a 7 percent increase. In addition to voluntary restitution, the CRU's interactions also resulted in 862 cases reflecting non-monetary compensation. The types of non-monetary compensation included credit report updates, bank record updates, account reinstatements or account hold releases, cessation of debt collection calls, debt forgiveness, and loan modifications.

The CRU coded each complaint within its complaint management system with at least one product, issue, regulation (if applicable), and finding. In 2023, the CRU determined the top five products to include credit cards (4,691), checking accounts (3,110), installment loans (1,345), consumer lines of credit (CLOC) (1,177), and residential real estate (912). The following chart provides the breakdown of the top products in 2023.

PRODUCTS IDENTIFIED IN WRITTEN CONSUMER COMPLAINTS AND INQUIRIES ABOUT FDIC-SUPERVISED INSTITUTIONS



The CRU also associated 15,625 issues among the aforementioned bank products, with the top issues being "credit reporting" (2,386), "disclosures" (1,147), "loan forgery/ID theft" (877), "unable to provide requested service" (775), "billing disputes" (653), and "error resolution procedures" (647). The top 15 issues of 2023 are noted below:

MOST COMMON ISSUES IN CONSUMER COMPLAINTS AND INQUIRIES ABOUT FDIC-SUPERVISED INSTITUTIONS

Issue	%
Credit Reporting Disputes	15%
Disclosures	7%
Loan Forgery/ID Theft	6%
Discrepancy Transaction Error	5%
Unable to Provide Requested Service*	5%
Billing Disputes and Error Resolution	4%
Error Resolution Procedures	4%
Collection Practices	4%
Fees and Finance Charges	4%
Account Block	3%
Customer Identification Program	3%
Account Closure	3%
Loan Discrepancies/Crediting of Payments	2%
Adverse Action Notice	2%
Funds Availability/Hold Notifications	2%

* Includes service disruption issues and other service-related concerns when customers cannot immediately access their accounts.

The following table provides a five-year analysis of the top products and the associated top issues for those products:

MOST COMMON PRODUCT COMPLAINTS REVIEWED BY THE CRU IN 2023	% OF PRODUCTS COMPARED TO TOTAL VOLUME					MOST COMMON ISSUES (2023) (% OF PRODUCT TOTALS)
	2019	2020	2021	2022	2023	
Credit Cards	20%	18%	23%	30%	30%	1. Credit Reporting Errors (30%) 2. Loan Forgery/ID Theft (12%) 3. Billing Disputes (11%)
Checking Accounts	29%	25%	23%	22%	23%	1. Error Resolution (15%) 2. Discrepancy Transaction Error (15%) 3. Account Closure (10%)
Installment Loans	9%	7%	9%	8%	9%	1. Credit Reporting Errors (27%) 2. Disclosures (15%) 3. Loan Forgery/ID Theft (9%)
Consumer Lines of Credit	8%	7%	7%	7%	7%	1. Credit Reporting Errors (38%) 2. Disclosures (14%) 3. Loan Forgery/ID Theft (13%)
Residential Real Estate	10%	8%	9%	5%	5%	1. Disclosures (10%) 2. Credit Reporting Errors (9%) 3. Escrow (9%)