Consumer Compliance Supervisory HIGHLIGHTS

Federal Deposit Insurance Corporation

FDIC FEDERAL DEPOSIT INSURANCE CORPORATION

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Contents

Introduction

The COVID-19 pandemic continued to impact financial institutions, consumers, and communities in 2022. Financial institutions maintained operations to provide consumers access to products and services and increased opportunities for in-person interaction. The FDIC leveraged technology and file-sharing tools to conduct consumer compliance examinations in a virtual environment until September 6, 2022, when the FDIC returned to conducting consumer compliance examinations onsite at banks.

The FDIC has learned many lessons in conducting effective and efficient examinations virtually and will continue to utilize technology to allow a portion of the examination to be conducted offsite; however, we remain committed to having an onsite presence at every consumer compliance examination. Examiners consider a myriad of factors in determining activities to conduct onsite versus offsite, such as the bank's business model, risk profile, and complexity; available technological capabilities of the bank being examined; and other considerations, such as coordinating with other regulatory agencies.

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 2022;
- A description of the most frequently cited violations and other consumer compliance examination observations;[1]
- 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 2022.

1 The legal violations discussed in this issue of the FDIC Consumer Compliance Supervisory Highlights are based on the particular facts and circumstances observed by the FDIC in the course of its examinations. A conclusion that a legal violation exists may not lead to such a finding under different facts and circumstances. The finding of a violation requires an analysis of both the applicable law, and the particular facts and circumstances of the act or practice found at a particular institution.

Summary of Overall Consumer Compliance Performance in 2022

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, through its Division of Depositor and Consumer Protection (DCP), is responsible for evaluating supervised institutions for compliance with consumer protection, anti-discrimination, and community reinvestment laws.

The FDIC's 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. The FDIC conducts periodic risk-based examinations of supervised institutions for compliance with over 30 Federal consumer protection laws and regulations. In 2022, the FDIC conducted approximately 1,000 consumer compliance examinations. Overall, supervised institutions demonstrated effective management of their consumer compliance responsibilities.

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, 2022, 99 percent of all FDIC-supervised institutions were rated satisfactory or better for consumer compliance (i.e., ratings of "1" or "2"), as well as for the Community Reinvestment Act (CRA) (i.e., CRA ratings of "Outstanding" or "Satisfactory").

Institutions rated less than satisfactory for consumer compliance (i.e., ratings of "3," "4," or "5") had overall compliance management system (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 represent 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

During 2022, 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).[2] This publication focuses on the five most frequently cited instances of Level 3 or Level 2 violations.

The most frequently cited violations (representing approximately 73 percent of the total violations cited in 2022) involve the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601-1666j, and its implementing regulation, Regulation Z, 12 C.F.R. Part 1026; Section 5 of the Federal Trade Commission Act (Section 5 of FTC Act), 15 U.S.C. § 45; the Flood Disaster Protection Act (FDPA), 42 U.S.C. §§ 4001- 4129, and its implementing regulation, 12 C.F.R. Part 339; the Electronic Fund Transfers Act (EFTA), 15 U.S.C. § 1693 et seq., and its implementing regulation, Regulation E, 12 C.F.R. Part 1005 et seq.; and the Truth in Savings Act (TISA), 12 U.S.C §§ 4301 – 4313, and its implementing regulation, Regulation DD, 12 C.F.R. Part 1030. This list is similar to the top violations cited for the previous year, with the exception of Section 5 of FTC Act, which replaced violations of the Real Estate Settlement Procedures Act (RESPA) and section 1024.37(c) of Regulation X, as one of the top five violations, and section 1026.38(f)-(k) of Regulation Z, replacing section 1026.19(e) of Regulation Z, as the top TILA-related violation cited.

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 that could result in consumer harm and require reimbursements to harmed consumers. Moreover, the flood insurance provisions included in the FDPA could result in civil money penalties if the supervised institution does not take appropriate steps to ensure compliance. Given the heightened risk for potential consumer harm, these five areas of the law generally represent a center of focus for consumer compliance examiners.

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

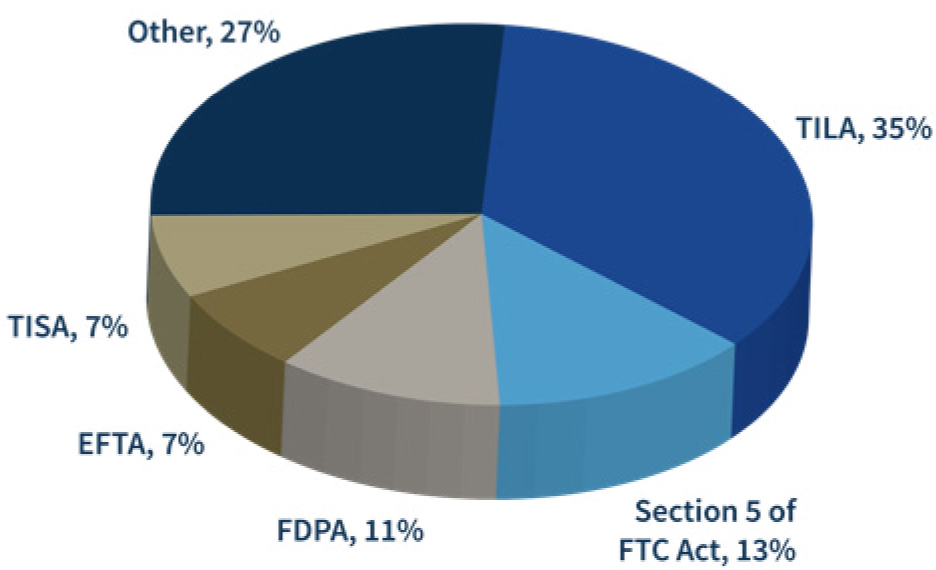
- **TILA/Regulation Z:** 15 U.S.C § 1604 of TILA and section 1026.38(f) – (k) of Regulation Z, which implements TILA, requires the creditor to disclose certain closing cost information on the Closing Disclosure using specified headings and tables.
- **Section 5 of FTC Act:** Section 5 of FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. The FDIC identified this violation most frequently when financial institutions charged multiple non-sufficient funds (NSF) fees for the re-presentment of the same transaction and disclosures did not fully or clearly describe the financial institution's re-presentment practice, including not explaining that the same unpaid transaction might result in multiple NSF fees if an item was presented more than once.
- **FDPA/12 C.F.R Part 339:** Section 102 of the FDPA, 42 U.S.C § 4012(b) and section 339.3(a) of the FDIC Rules and Regulations, which implements the FDPA, requires adequate flood insurance be in place at the time a covered loan is made, increased, extended, or renewed.
- **EFTA/Regulation E:** 15 U.S.C. § 1693f of the EFTA and section 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.

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

- **TISA/Regulation DD:** 12 U.S.C. § 4304 of TISA and sections 1030.4(a) and (b) of Regulation DD, which implements TISA, sets forth timing and content requirements for deposit account disclosures.

In 2022, the FDIC initiated 21 formal enforcement actions and 10 informal enforcement actions to address consumer compliance examination findings. During this period, the FDIC issued civil money penalty (CMP) orders against institutions to address violations of the FDPA, RESPA Section 8, Fair Credit Reporting Act (FCRA), and Section 5 of FTC Act, totaling $1.3 million. Supervised institutions provided voluntary restitution payments to more than 61,000 consumers for violations of various laws and regulations totaling $13.6 million.

MOST FREQUENTLY CITED STATUTES AND REGULATIONS IN 2022						
Statute/Regulation	**Level 3 Violations**		**Level 2 Violations**		**Total Violations**[3]	
	#	**%**	**#**	**%**	**#**	**%**
TILA	1	<1%	489	35%	490	35%
Section 5 of FTC Act	35	3%	137	10%	172	13%
FDPA	0	0%	146	11%	146	11%
EFTA	3	<1%	98	7%	101	7%
TISA	2	<1%	98	7%	100	7%
Total 5 Most Commonly Cited Statutes	41	3%	968	70%	1009	73%
All Cited Statutes in 2022	56	4%	1334	96%	1390	100%



3 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 during DCP's supervisory activities conducted in 2022. The issues include matters involving referral arrangements, trigger leads, servicemember protections, and fair lending compliance.

Real Estate Settlement Procedures Act Section 8: Referral Arrangements

Background

RESPA was enacted in 1974 to eliminate abusive practices in the real estate settlement process that can inflate the cost of obtaining a mortgage or other settlement services in connection with a real estate transaction. RESPA prohibits kickbacks for business referrals involving a federally related mortgage loan. Specifically, RESPA Section 8(a) prohibits the giving and accepting of kickbacks (e.g., cash or other "things of value" as defined in RESPA and Regulation X) pursuant to any agreement or understanding to refer settlement service business or business incident to a real estate settlement service in connection with those loans.

The Spring 2021 edition of the Consumer Compliance Supervisory Highlights discussed RESPA Section 8(a) violations and the difference between paying for a lead (which is generally acceptable) and paying for a referral (which is prohibited). True leads permissible under RESPA are often lists of customer contacts that are not conditioned on the number of closed transactions resulting from the leads, or any other consideration, such as endorsement of the settlement service. While a service may be characterized as a lead generation service, the activity could actually be a referral arrangement depending on the facts and circumstances. If the payment for the lead is in exchange for activity directed to a person that has the effect of affirmatively influencing the consumer to select a particular lender, then it becomes a referral fee. Banks often contract with third parties to provide what are characterized as lead generation services, but in some cases, the FDIC has found that the banks are actually paying for referrals.

Findings

In 2022, the FDIC identified RESPA Section 8(a) violations where a bank contracted with third parties that took steps to identify and contact consumers in order to directly steer and affirmatively influence the consumer's selection of the bank as the settlement service provider. In some cases, this process involved the third party calling identified consumers and directly connecting and introducing them to a specific mortgage representative on the phone. This process is often referred to as a "warm transfer." In other cases, the process involved operation of a digital platform that purported to rank lender options based on neutral criteria but where the participating lenders merely rotated in the top spot. Although each case is fact specific, indicators of risk in these arrangements include a third party that does one or more of the following activities:

- Initiates calls directly to consumers to steer them to a particular lender;
- Offers consumers only one lender or will only transfer the consumer to one lender;
- Describes the lender in non-neutral terms such as preferred, skilled, or possessing specialized expertise;
- Receives payment from the lender only if a "warm transfer" occurs; or
- On a consumer-facing digital platform that purports to rank settlement service providers based on objective factors, includes providers that pay to take turns appearing in the top spot in a round robin format.

Payment for activities that go beyond the simple provision of a "lead" may be improper payment for referrals when the activity affirmatively influences the consumer towards the selection of a particular lender.

Mitigating Risk
DCP has observed certain risk-mitigating activities that may assist supervised institutions in complying with RESPA requirements. Illustrative examples include:

- Training staff on RESPA Section 8, including the differences between a permitted lead and an illegal referral (including a warm transfer).
- Understanding the programs that lenders are involved with, how the programs function, and how the cost structure works.
- Developing policies and procedures that provide guidance to comply with regulatory requirements and management's expectations with regard to lead generation programs.
- Requiring loan officers to annually certify applicable relationships to ensure that the bank is aware of the arrangements used by loan officers to generate loans and that these arrangements have been vetted and controls put in place for associated risks.
- Monitoring lead generation activities regularly to ensure compliance with the bank's policies and procedures, and regulatory requirements.

Fair Credit Reporting Act: Trigger Leads

Background
FCRA helps ensure the accuracy, fairness, and privacy of information collected by consumer reporting agencies such as credit bureaus. FCRA regulates the way credit reporting agencies can collect, access, use, and share the data they collect in consumer reports. Accordingly, consumer reporting agencies may only furnish a consumer report under enumerated circumstances. One of the permissible purposes for furnishing a consumer report allows a requestor to ask for and to use the information under FCRA in connection with a credit transaction not initiated by the consumer for the purpose of "prescreening." Prescreening is the process whereby a consumer reporting agency compiles or edits a list of consumers who meet specific criteria and provides the list to a lender or third party (such as a mailing service) on behalf of the lender for use in soliciting these consumers to avail themselves of the lender's products or services.

In order for a consumer reporting agency to furnish credit information, the prescreened solicitation must include a "firm offer of credit." Per 15 U.S.C. 1681a(l), a "firm offer of credit" is generally defined as "any offer of credit ... to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer." Prescreened solicitations are associated with a wide variety of lending products including credit cards and mortgage loans.

One kind of prescreening, commonly referred to in the industry as a "trigger lead," involves a lender paying credit reporting agencies to produce a report on certain consumers' credit activity. The lender provides credit criteria, either directly or through third parties, to the credit reporting agencies, which then provide the lender with a list of consumers who both match the lender's criteria and had a "trigger" activity, such as recently applying for a mortgage loan. These "trigger leads" are a type of prescreened consumer report that is subject to FCRA. As such, purchasers of trigger leads must comply with FCRA requirements that pertain to prescreened reports, including the requirement to make a firm offer of credit. These offers must, at a minimum, convey that (1) an offer of credit is being made, and (2) that the offer is guaranteed so long as the consumer continues to meet the credit criteria.

Findings
In 2022, the FDIC examiners noted issues involving financial institutions that purchased "trigger leads," but failed to provide consumers with "firm offers of credit." By listening to recorded phone calls, reviewing scripts and consumer complaints, and interviewing loan officers, examiners identified instances where financial institution representatives were contacting consumers during sales calls, but did not communicate that (1) an offer of credit was being made, (2) the offer was guaranteed as long as the consumer met the credit criteria, (3) the offer was a prescreened offer based on the consumer's credit report, and (4) the consumer could opt out of future prescreened offers. FCRA does not state that a firm offer of credit must be in writing and does not explicitly prohibit verbal offers. However, these disclosure requirements of FCRA must still be met.

Mitigating Risk
DCP has observed certain risk-mitigating activities that may assist supervised institutions in complying with FCRA requirements. Illustrative examples include:

- Developing and implementing comprehensive oversight of marketing materials, including content approval and ongoing monitoring, to ensure compliance with applicable rules and regulations.
- Implementing an effective compliance management system for FCRA and the use of prescreen credit report information to ensure bank staff comply with regulatory requirements.
- Developing scripts that comply with FCRA prescreening requirements to use when calling consumers identified through the trigger lead process.
- Developing and implementing offer letters meeting all regulatory requirements to send to all consumers meeting prescreening criteria. The letters should provide firm offers of credit that are clear and accurate, avoid misleading representations, and include the opt-out language found in Section 615(d) of FCRA.

Servicemembers Civil Relief Act: Automatically Applying Excess Interest Payments to Principal Loan Balance

Background
The Servicemembers Civil Relief Act (SCRA) was created to provide extra protections for servicemembers in the event that legal or financial transactions adversely affect their rights during military or uniformed service. Among various protections provided to servicemembers under SCRA is the right to have the interest rate on any pre-service loans capped at a maximum of 6 percent. Any reduction of the interest rate must be implemented as a reduction in the periodic payments rather than a reduction in principal. SCRA defines interest to include service charges, renewal charges, fees, or any other charges other than bona fide insurance with respect to an obligation or liability. To obtain SCRA interest rate benefits, the servicemember must provide notice and a copy of the military orders. The interest rate benefit applies during the period of active-duty service for most loans and, for mortgages, for an additional year after the end of active duty. For reservists and National Guard members, the benefit also applies during the period starting on the date the servicemember received their military orders through the date they begin military service. Any interest that accrues at a rate in excess of 6 percent—including during the period between the benefit start date and the date the bank lowers the interest rate—must be forgiven, and not simply deferred.

Findings
During 2022, the FDIC identified violations of SCRA's anti-acceleration provision when banks unilaterally applied excess interest to the servicemember's principal loan balance without giving the servicemember an option of how to receive the funds. While SCRA does not require a specific method for reimbursing the excess interest, and does not prohibit a creditor from providing it to the servicemember as a cash refund or timely applying it to current or future monthly payments, or applying it to past-due amounts, SCRA prohibits accelerating principal (i.e. applying accrued interest savings or excess interest directly to principal), for both open-end and closed-end credit. Therefore, applying the excess interest to the principal balance of the loan is permitted only if the servicemember affirmatively chooses that method after being offered other options (such as cash refund and/or timely application to current or future payments). One of the central purposes of SCRA is to ease financial burdens on servicemembers during periods of military service. While reducing principal does provide some benefit to the servicemember, the choice of how to receive that benefit must be made by the servicemember and not unilaterally decided by the bank. In these cases, the bank would benefit from having procedures in place that document the options provided to the servicemember and the choice selected by the servicemember as to how the forgiven excess interest reimbursement is to be handled.

Mitigating Risk
DCP has observed certain risk-mitigating activities that may assist supervised institutions in complying with SCRA requirements. Illustrative examples include:

- Developing and implementing formal policies and procedures that comply with the provisions of SCRA.
- Reviewing, monitoring, and auditing SCRA loans to ensure policies and procedures are implemented and followed.
- Providing servicemembers with the option of how to receive the excess interest, or at a minimum, providing the excess interest in a cash payment.

Fair Lending

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 the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). While the vast majority of FDIC-supervised institutions maintain effective compliance programs, the FDIC does occasionally identify violations related to discrimination. In the rare instance 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 Department of Justice (DOJ). In 2022, the FDIC referred 12 fair lending matters to the DOJ.

Findings
In general, these DOJ referral matters involved a range of discrimination findings relating to redlining, pricing for indirect automobile financing, and overt policies for the pricing or underwriting of credit. The redlining matters generally involved instances where the banks' levels of lending did not penetrate geographies consisting of more than 50 percent minority populations (majority-minority census tracts) consistent with other lenders operating in the same markets. These lending issues were generally the result of a combination of issues involving branching activity that did not penetrate majority-minority areas, a lack of marketing and outreach in those areas, or the delineation of a market area that reflected illegal credit discrimination. The indirect automobile pricing matters generally involved issues where the banks incentivized dealer discretion in the pricing of credit. This unmonitored discretion led to borrowers being

priced differently on a prohibited basis. Other matters involved the use of third parties in the credit process to underwrite or price credit. Some of these third parties operated online lending platforms that included various policies or application screening methods that violated anti-discrimination rules by including prohibited bases (such as the applicant's marital status or the exercising of a right under a consumer credit protection act) in the credit decision process.

Mitigating Risks

An effective compliance management system helps ensure financial institutions treat consumers fairly by operating in compliance with fair lending laws. The FDIC's Banker Resource Center provides information to help support fair lending compliance. In addition, DCP has observed certain mitigating actions bankers may consider, including, for example:

- Evaluating written credit policies and procedures, including those of any third party with which the bank has a relationship, to ensure decision criteria and pricing methodologies do not reflect illegal credit discrimination.
- Reviewing any requirements or other criteria used to screen potential applicants to ensure there is no discriminatory impact.
- Conducting monitoring efforts or audits to ensure credit is not being priced in a discriminatory manner.
- 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.
- Assessing the bank's lending performance within its reasonably expected market area.

Regulatory and Other Developments

There were several regulatory and other developments involving consumer compliance laws and regulations, including rules, statements, or other guidance that were issued or finalized in 2022 or scheduled to become effective in 2023. Below is information on several such developments, including the FDIC's efforts to address appraisal bias in property appraisals, efforts to modernize CRA, and assessment of crypto-asset-related activities. This section is meant to highlight important developments and is not intended to provide an exhaustive discussion of recent developments involving consumer compliance matters.

PAVE Task Force

The FDIC is working collaboratively with the other federal agencies on the Property Appraisal and Valuation Equity (PAVE) Task Force to address property appraisal bias that negatively affects wealth building opportunities for homeowners and communities of color. The PAVE Task Force Action Plan, released in 2022, highlights key actions being taken by PAVE member agencies, including:

- Addressing potential bias in automated valuation models by including a nondiscrimination quality control standard in an upcoming rulemaking;
- Issuing guidance to improve the opportunity to have a home valuation reconsidered if the initial valuation is lower than expected;
- Reviewing and updating guidance and procedures to ensure nondiscrimination requirements applicable to appraisals are effectively evaluated in examinations;
- Collaborating with other members of the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council to exercise its authorities to support a more equitable state appraisal certification and licensing system;
- Supporting additional research into appraisal bias; and
- Providing consumers with additional information and resources related to appraisals.

To meet these key actions, the FDIC is expanding its consumer protection examination approach to include consideration of appraisal-related matters in our existing fair lending review process. This includes enhancing our risk scoping process to evaluate a bank's compliance management system for appraisals. The FDIC is also developing enhanced examiner training to heighten awareness of potential bias in the appraisal process, as well as educational materials to inform consumers about appraisal bias and the PAVE Action Plan. Consumer educational materials will include information on requesting a Reconsideration of Value, which will be available on the FDIC public website and incorporated into the Money Smart program.

Community Reinvestment Act Rulemaking

On May 5, 2022, the Board of Governors of the Federal Reserve Board (Federal Reserve Board), the FDIC, and the Office of the Comptroller of the Currency (OCC) issued a notice of proposed rulemaking (NPR) to strengthen and modernize the Community Reinvestment Act (CRA) regulations. Comments on the NPR were due August 5, 2022, and approximately 1,000 unique comment letters were received. The Federal Reserve Board, the FDIC, and the OCC continue to review the comments submitted. The FDIC is committed to working toward a uniform application of the CRA framework to ensure banks meet the credit needs of their communities while clarifying the types of activities for which banks can receive consideration under the CRA, the locations for which banks can obtain such consideration, and the extent to which such activities will impact a bank's CRA rating.

Special Purpose Credit Programs under ECOA

On February 22, 2022, the FDIC announced that it, along with the Federal Reserve Board, the National Credit Union Administration (NCUA), the OCC, the Consumer Financial Protection Bureau (CFPB), the Department of Housing and Urban Development (HUD), the DOJ, and the Federal Housing Finance Agency, issued an interagency statement to remind creditors of the ability under ECOA and Regulation B to establish special purpose credit programs (SPCPs) to meet the credit needs of specified classes of persons. Regulatory requirements regarding SPCPs can be found under Section 1002.8 of Regulation B, which implements ECOA.

In addition, on December 21, 2020, the CFPB issued an Advisory Opinion regarding SPCPs, which became effective on January 15, 2021. Specifically, the advisory opinion clarifies what a for-profit organization must include in a written plan that establishes and administers an SPCP under Regulation B. The advisory opinion also clarifies the research and data that may be appropriate to inform a for-profit organization's determination that an SPCP is needed to benefit a certain class of persons. Moreover, on December 6, 2021, HUD issued guidance that SPCPs, where instituted in conformity with ECOA and Regulation B, generally would not violate the Fair Housing Act.

As stated in the February 22, 2022, interagency statement, "[a]s creditors consider how they may expand access to credit to better address special social needs, the agencies encourage creditors to explore opportunities to develop special purpose credit programs consistent with ECOA and Regulation B requirements as well as applicable safe and sound lending principles." Resources relevant to establishing a SPCP are available at the FDIC's Bankers Resource Center – Fair Lending. Similar to other products and services offered, financial institutions should ensure that their compliance management system addresses SPCPs. For example, institutions are encouraged to implement or enhance internal controls to analyze if the SPCP is achieving the goals for which the program was implemented. Bank management should analyze lending under the program to ensure that within the tenets of the SPCP, the bank is complying with all aspects of the fair lending laws, particularly if discretion in the underwriting or pricing processes will be allowed.

Home Mortgage Disclosure Act – Threshold Changes

On February 3, 2023, the FDIC issued FIL-06-2023 to announce changes regarding the Home Mortgage Disclosure Act (HMDA) reporting threshold for closed-end mortgage loans and the FDIC's supervisory approach for enforcing related requirements. The announcement was in response to the CFPB's statement on December 6, 2022, indicating the threshold for reporting closed-end mortgage loan data pursuant to HMDA is now 25 loans in each of the two preceding calendar years, which was the threshold established by the CFPB's 2015 HMDA Final Rule, rather than the 100-loan threshold set by the CFPB's subsequent 2020 HMDA Final Rule.

The FDIC recognizes that financial institutions affected by this change may need time to implement or adjust policies, procedures, systems, and operations to come into compliance with reporting obligations. Accordingly, for closed-end mortgage data, the FDIC plans to implement a supervisory approach for FDIC-supervised institutions consistent with the CFPB's approach. For FDIC-supervised institutions that are subject to Regulation C's other coverage requirements, and which originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, but fewer than 100 closed-end mortgage loans in either or both of the two preceding calendar years, the FDIC does not intend to initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data for 2022, 2021, or 2020.

Flood Insurance: Revised Interagency Questions and Answers

On May 11, 2022, the FDIC, the OCC, the Federal Reserve Board, the NCUA, and the Farm Credit Administration (FCA) issued the revised *Interagency Questions and Answers Regarding Flood Insurance* (Interagency Questions and Answers). The Interagency Questions and Answers provide information to assist financial institutions in meeting their federal flood insurance compliance responsibilities, and to increase public understanding of flood insurance requirements. There are now 144 new and updated questions and answers on flood insurance to reflect significant legislative changes to the flood insurance requirements made by the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014. The Interagency Questions and Answers were also reorganized to provide a more logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders.

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

On June 2, 2022, the FDIC issued a Final Rule to implement section 18(a)(4) of the FDI Act, which prohibits any person from making false or misleading representations about deposit insurance or misusing the FDIC's name or logo. The final rule, which amends part 328 of the FDIC's Rules and Regulations, became effective on July 5, 2022, and establishes a more transparent process that will promote stability and public confidence in FDIC deposit insurance and the nation's financial system. Specifically, the final rule describes the: (1) process by which the FDIC will identify and investigate conduct that may violate section 18(a)(4); (2) standards under which such conduct will be evaluated; and (3) procedures which the FDIC will follow when formally and informally enforcing section 18(a)(4). In conjunction with the issuance of this final rule, the FDIC Information and Support Center is available for the public to submit an inquiry or complaint regarding potentially false or misleading statements about FDIC deposit insurance, or misuse of the FDIC's name or logo.

The FDIC observed an increasing number of instances where financial service providers or other entities or individuals misused the FDIC's name or logo, or made false or misleading representations about deposit insurance. Since the issuance of its final rule, the FDIC has received numerous submissions to its complaint portal and continues to investigate potential violations of section 18(a)(4). In August of 2022, the FDIC sent letters to five entities demanding that they cease and desist from making misrepresentations about deposit insurance.

Additionally, the December 2022 notice of proposed rulemaking, discussed below, includes further clarification of the prohibitions against misrepresentations about deposit insurance and misuse of the FDIC name or logo.

Notice of Proposed Rulemaking Relating to FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo

On December 21, 2022, the FDIC issued a Notice of Proposed Rulemaking to amend part 328 of its regulations. These amendments would substantially update FDIC official sign and advertisement statement rules and amend the FDIC's final rule regarding making false or misleading representations about deposit insurance or misusing the FDIC's name or logo. The proposed rule would generally: (1) modernize the rules governing the display of the official sign in branches and address the application of sign requirements to non-traditional branches; (2) require the use of signs that differentiate insured deposits from non-deposit products across all banking channels, including automated teller machines (ATMs) and evolving digital channels (which functionally serve as digital teller windows); (3) require banks to maintain policies and procedures addressing compliance with part 328; (4) clarify the FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; and (5) amend definitions of ''non-deposit product'' and "uninsured financial product" to include crypto-assets. The proposal is intended to enable consumers to better understand when they are doing business with an insured bank and when their funds are protected by FDIC's deposit insurance coverage. The FDIC announced a 45-day extension of the comment period, which now ends on April 7, 2023.

Notification of Engaging in Crypto-Related Activities

On April 7, 2022, the FDIC issued FIL-16-2022 requesting that all FDIC-supervised institutions that intend to engage in, or that are currently engaged in, any activities involving or related to crypto-assets (also referred to as "digital assets") notify the FDIC. Once a notification is received, the FDIC will request that the institution provide information necessary to allow the agency to assess the safety and soundness, consumer protection, and financial stability implications of the activities and will provide relevant supervisory feedback, as appropriate. Among other things, the FDIC is concerned about risks to consumers related to crypto-asset-related activities. For example, the FDIC is concerned about the risk of consumer confusion regarding crypto-assets offered by, through, or in connection with insured depository institutions, as consumers may not understand the role of the bank or the speculative nature of certain crypto-assets as compared to traditional banking products, such as deposit accounts. FDIC-supervised institutions should be able to demonstrate their ability to conduct crypto-related activities in a safe and sound manner and in compliance with applicable law.

FIL-16-2022 notes various crypto-related activities, including acting as crypto-asset custodians; maintaining stablecoin reserves; issuing crypto and other digital assets; acting as market makers or exchange or redemption agents; participating in blockchain- and distributed ledger-based settlement or payment systems, including performing node functions; and related activities such as finder activities and lending.[4] This list is not all-inclusive and does not mean that a listed activity is permissible for FDIC-supervised institutions. In response to this FIL, a number of FDIC-supervised institutions provided notifications of intent to engage or engagement in a number of these different crypto-asset-related activities.[5] Among other concerns, FDIC reviews of crypto-related activities have indicated there is risk for customer confusion regarding the unavailability of deposit insurance coverage, a lack of understanding of the nature and risk of certain crypto-asset products, and difficulty distinguishing crypto-asset-related non-deposit products from traditional banking products, such as deposit accounts.

In July 2022, the FDIC issued FDIC FIL-35-2022, Advisory to FDIC-Insured Institutions Regarding FDIC Deposit Insurance and Dealings with Crypto Companies. This FIL highlights the risks and concerns arising from crypto-assets offered by, through, or in connection with, insured depository institutions and discusses that Part 328, subpart B of the FDIC's Rules and Regulations, titled "False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo," can also apply to non-banks, such as crypto companies. (See 12 CFR part 328, subpart B) Insured banks need to be aware of how FDIC insurance operates, and they need to assess, manage, and control risks arising from third-party relationships, including those with crypto companies. Accordingly, banks should determine if its third-party risk management policies and procedures effectively manage crypto-asset-related risks, including compliance risks related to part 328, subpart B.

4 See footnote 2, Federal Deposit Insurance Corporation, Financial Institution Letter 16–2022: Notification of Engaging in Crypto–Related Activities, FDIC (April 7, 2022) available at https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html.

5 See footnote 8, Remarks of FDIC Acting Chairman Gruenberg at the Brookings Institution on the Prudential Regulation of Crypto-Assets, October 20, 2022, https://www.fdic.gov/news/speeches/2022/spoct2022.html.

Finally, the FDIC, the Federal Reserve Board, and the OCC issued an interagency Joint Statement on Crypto-Asset Risks to Banking Organizations (Joint Statement) on January 3, 2023. This statement, FIL-01-2023, highlights a number of key risks associated with crypto-assets and crypto-asset sector participants that banking organizations should be aware of, including inaccurate or misleading representations and disclosures by crypto-asset companies, including misrepresentations regarding federal deposit insurance, and other practices that may be unfair, deceptive, or abusive, contributing to significant harm to retail and institutional investors, customers, and counterparties. This Joint Statement may serve as a useful resource for the board and management of financial institutions regarding crypto-asset related activities.

Amendments to Guidelines for Appeals of Material Supervisory Determinations

On December 13, 2022, the FDIC announced that it adopted the revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines). This announcement followed the FDIC's request for comment in October 2022 on proposed changes to the Guidelines. The revised Guidelines include the changes that the FDIC proposed in October, as well as further changes incorporating suggestions and addressing concerns raised by commenters.

Supervisory Guidance on Multiple Re-Presentment NSF Fees

On August 18, 2022, the FDIC issued guidance to FDIC-supervised institutions to address certain consumer compliance risks associated with assessing multiple NSF fees for the re-presentment of the same unpaid transaction when disclosures did not fully or clearly describe the financial institution's re-presentment practice. This practice results in heightened risks of violating Section 5 of FTC Act, which prohibits unfair or deceptive acts or practices, and litigation risk. Numerous financial institutions, including some FDIC-supervised institutions, have faced class action lawsuits alleging breach of contract and other claims because of the failure to adequately disclose re-presentment NSF fee practices in their account disclosures, including not explaining that the same unpaid transaction might result in multiple NSF fees if an item is presented more than once. Third parties, including core processors, often play significant roles in processing payments, identifying and tracking re-presented items, and providing systems that determine when NSF fees are assessed. Such third-party arrangements may also present risks if not properly managed. Additionally, the FDIC shared its supervisory approach when a violation of law is identified, as well as expectations for corrective action, including remediation to harmed customers.

Financial institutions are encouraged to review their practices and disclosures regarding the charging of NSF fees for re-presented transactions and the guidance and risk-mitigation practices described in FIL–40-2022.

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, 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.

In 2022, the FDIC worked with other agencies to provide up-to-date important information affecting the banking industry. The 2022 Fair Lending Interagency Webinar discussed a variety of fair lending topics including redlining, appraisal bias, Special Purpose Credit Programs, and other supervision or enforcement-related updates from the agencies. Additionally, the 2022 Interagency Flood Insurance Q&A Webinar discussed updates to the Q&As that reflected significant changes to the federal flood insurance requirements in recent years.

An Overview of Consumer Complaint Trends

The FDIC's National Center for Consumer and Depositor Assistance's (NCDA) Consumer Response Unit (CRU) closed and responded to 22,207 written complaints and telephone calls from consumers in 2022, which represents a 25 percent increase from the 17,714 case records in 2021. The CRU closed and responded to 19,094 written consumer complaints in 2022 by investigating the complaint or referring the complaint to the appropriate FDIC division/office or other agency. The CRU acknowledged 100 percent of written complaints within 14 days and investigated and responded to 98.8 percent of non-fair lending complaints within established timeframes.

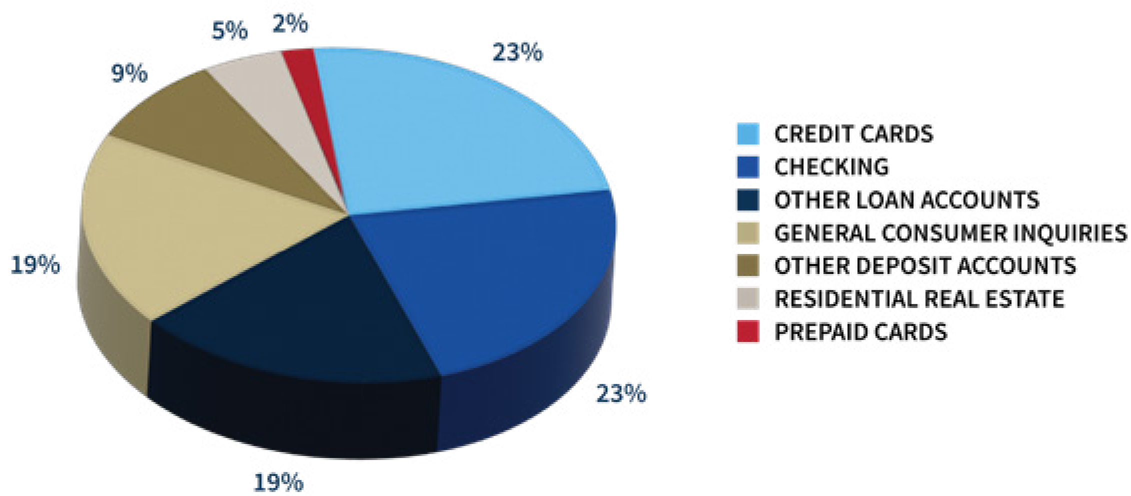
Of the 19,094 written complaints, the CRU investigated 9,926 of the written complaints or inquiries. Of the 9,926 investigated complaints, 7,638, or 77 percent, were sent to the applicable bank for a response. The other 23 percent of cases did not need a bank response as the consumer had previously contacted the CRU regarding the same matter and did not provide any new information that could be acted upon. Additionally, a consumer may have asked a general banking question or did not reference a bank. The completed investigations of the noted products, issues, and applicable regulations found 662 apparent bank errors and 271 apparent violations. Fair lending complaints investigated by the CRU increased from 63 in 2021 to 71 in 2022, a 13 percent increase.

The volume of third-party providers (TPPs) associated with complaints increased from 4,678 in 2021 to 5,093 in 2022, or 9 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. The CRU identified 4,328 complaints that involved a TPP. TPPs were associated with 171 complaints reflecting an apparent violation of a federal consumer protection law or regulation.

The CRU's interactions with consumers and banks resulted in consumers receiving $6,211,984 in total voluntary restitution and compensation through December 2022, compared to $2,467,803 received for the same period in 2021, a 152 percent increase. In addition to monetary compensation, the CRU's interactions also resulted in 967 cases receiving some sort of non-monetary remediation. The types of non-monetary remediation provided included: updating bank records and credit reports, reinstating an account or releasing a block on a card, ceasing collection calls or actions, loan modifications, and forgiving debt.

The CRU coded each complaint within the Enterprise Public Inquiries and Complaints (EPIC) system with at least one product, issue, regulation, and finding. In 2022, the CRU determined the top five products to include: *credit cards* (3,822), *checking accounts* (3,614), *installment loans* (1,426), *consumer line of credit* (1,066), and *residential real estate* (870). The following chart provides the breakdown of the top products in 2022.

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



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 2022	% OF PRODUCTS COMPARED TO TOTAL VOLUME					MOST COMMON ISSUES (2022) (%OF PRODUCT TOTALS)
	2018	2019	2020	2021	2022	
Credit Cards	17%	20%	18%	23%	24%	1. Credit Reporting Errors (31%) 2. Loan Forgery/ID Theft (13%) 3. Billing Disputes (13%)
Checking Accounts	17%	23%	29%	24%	23%	1. Error Resolution (18%) 2. Discrepancy Transaction Error (14%) 3. Customer Identification Policy (13%)
Installment Loans	8%	9%	7%	9%	9%	1. Credit Reporting Errors (26%) 2. Disclosures (15%) 3. Loan Forgery/ID Theft (9%)
Consumer Line of Credit	14%	10%	8%	7%	7%	1. Credit Reporting Errors (41%) 2. Loan Forgery/ID Theft (16%) 3. Collection Practices (12%)
Residential Real Estate	11%	8%	7%	8%	5%	1. Disclosures (11%) 2. Escrow (10%) 3. Credit Reporting Errors (9%)

Credit card complaints increased to 3,822, or 26 percent to become the top product complained about in 2022. Complaints regarding *credit reporting error* involve concerns regarding the reporting of inaccurate information and fraudulent accounts. *Loan forgery/ID theft* concerns increased 14 percent through December 31, 2022. The CRU noted an increase in *loan forgery/ID theft* concerns across several loan products, not just credit cards, in 2022.

Checking account complaints dropped to the second top product in 2022, reflecting a decrease since it peaked in 2019. The CRU will monitor this decrease to see if the availability of alternative banking products may be responsible for the decline.

Residential real estate complaints decreased 15 percent in 2022. The CRU did not receive an increase in complaints regarding COVID-19 forbearance exit plans in 2022.

The CRU associated 16,112 issues with the complaints received. The top 15 issues of 2022 are noted below:

MOST COMMON ISSUES IN CONSUMER COMPLAINTS AND INQUIRES ABOUT FDIC-SUPERVISED INSTITUTIONS	
Credit Reporting Disputes	14%
Disclosures	6%
Unable to Provide Requested Service*	6%
Error Resolution Procedures	5%
Loan Forgery/ID Theft	5%
Discrepancy Transaction Error	5%
Customer Identification Policy	5%
Billing Disputes	4%
Debt Collection Practices	4%
Account Closures	3%
Account Block	3%
Fees and Finance Charges	2%
Funds Availability/Hold Notifications	2%
Loan Discrepancies	2%
Adverse Action Notices	2%

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

Two top issues reflect connections with three other top issues. *Credit reporting* remained the top issue in 2022, with a 3 percent increase from 2021. Four products comprise 94 percent of the credit reporting concerns: *credit cards*, *consumer line of credit*, *installment loans*, and *residential real estate*. Of the complaints noting *credit reporting error* concerns, approximately a third of the complaints also reflected *loan forgery/ID theft* concerns. Overall, *loan forgery/ID theft* concerns increased 14 percent in 2022. Three products reflected 95 percent of the concerns: *credit cards*, *consumer line of credit*, and *installment loans*. In most instances, consumers claimed that accounts were established in their name without their permission.

Concerns regarding *account blocks* increased by 65 percent through December 31, 2022. This issue involves cases where the bank blocked an account due to fraud concerns or because customer identification supporting documents were needed. Four products reflect 94 percent of the concerns: *checking accounts*, *savings accounts*, *prepaid cards*, and *virtual wallets*. Concerns regarding *discrepancy transaction error* increased by 57 percent. This issue involved instances regarding the investigation of unauthorized transaction and resulted in several apparent violations of Regulation E. The products *checking accounts*, *savings accounts*, *prepaid cards*, and *virtual wallets* comprised 91 percent of the concerns regarding this issue.