InCompliance Update White Paper 2018

ProBank Austin

About our Expert…

Robert J. (Bob) Mullenbach, CRCM, Managing Director, with regulatory compliance experience in billion dollar financial institutions, regional and community banks and leading consulting firm. Bob consults clients on the myriad of regulatory requirements associated with consumer/commercial lending, deposit operations, bank secrecy act/anti-money laundering, privacy, non-deposit investment products. Bob is also hands on with the conduct of compliance program risk assessments and fair lending/non-discrimination analysis. He assists clients nationwide with pre-regulatory examination preparation and examination management. Over the past 25 years, Bob has held leadership positions

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Focus on Fair Lending: Recent Actions & Publications

It is not new that the federal financial agencies – the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency (CFPB), the Federal Reserve (FRB), the National Credit Union Administration (NCUA), and the Consumer Financial Protection Bureau (CFPB) – have been focusing on fair lending in the past few years. Findings of violations continue, with significant fines and penalties.

In addition to understanding the law, financial institutions would be wise to learn about how an agency will conduct a fair lending examination, as well as recent fair lending violations to show us what the agencies are focusing on.

The Laws

The Equal Credit Opportunity Act (ECOA), which is implemented by the CFPB's Regulation B (12 CFR 1002), prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to businesses and consumers.

The ECOA prohibits discrimination based on:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant's receipt of income derived from any public assistance program; or
- The applicant's exercise in good faith of any right under the Consumer Credit Protection Act.

The Fair Housing Act (FHA), which is implemented in part by the Department of Housing and Urban Development (HUD) (24 CFR 100), prohibits discrimination in all aspects of "residential real-estate related transactions," including but not limited to:

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

About our Expert...

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including Vice President Compliance/CRA Officer and Risk Assessment Manager for a large community bank and Vice President District Manager, Vice President Compliance Trainer for CitiFinancial. Bob has been instrumental in the On-line lending/Fintech ecosystem serving bank partners and their online lending platforms coast to coast with a primary goal of enhancing their Compliance Management Programs. Bob is an experienced speaker, compliance trainer and has taught at the Graduate School of Banking at Louisiana State University.
Bob holds a Bachelor of Business Administration with a minor in Finance from the University of Minnesota – Duluth. He is also a Certified Regulatory Compliance Manager (CRCM).

- Selling, brokering, or appraising residential real estate; and
- Selling or renting a dwelling.

The FHA prohibits discrimination based on:

- Race or color;
- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); or
- Handicap.

The courts have recognized three methods of proof of lending discrimination under the ECOA and FHA:

- *Overt evidence of disparate treatment* – There is overt evidence of disparate treatment when a lender openly discriminates on a prohibited basis. For example, a lender creates a loan product available only to those under age 55.

- *Comparative evidence of disparate treatment* – Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself.

  The majority of fair lending violations brought within the past several years have been using this method. For example, most fair lending cases involve the lender providing credit to African- Americans and Hispanics at a higher interest rate or involving higher fees on a discriminatory basis.

- *Disparate impact* – When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a "disparate impact." For example, if a lender has a policy to not extend loans for residences for less than a certain amount, and that policy is shown to disproportionately exclude minority applicants, then a fair lending violation has occurred.

The fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation. When an agency finds that a lender's policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect.

Finally, evidence of discriminatory intent is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation.

It is important to note as well while discrimination often occurs during the application process, discrimination may occur at any time during the complete life cycle of a loan – from advertising/marketing, to the application, underwriting, and servicing of the loan.

Focus on Redlining

A number of recent cases concern redlining, which is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of 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.

Redlining will occur if, on a prohibited basis, an institution:

- Fails or refuses to extend credit in certain areas;
- Targets certain borrowers or certain areas with less advantageous products;
- Makes loans in such an area, but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- Omits or excludes such an area from efforts to market loans or solicit customers for credit.

As part of examining for redlining, an examiner will identify and delineate any areas within the institution's Community Reinvestment Act (CRA) assessment area and Reasonably Expected Market Area (REMA) for residential products that are of a racial or national origin minority character.

The CRA assessment area can be a convenient unit for redlining analysis because information about it typically is already in hand. However, the CRA assessment area may be too limited. The redlining analysis focuses on the institution's decisions about how much access to credit to provide to different geographical areas. The areas for which those decisions can best be compared are areas where the institution actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit (i.e., the REMA). Some of those areas might be beyond or otherwise different from the CRA assessment area.

Therefore, often the REMA is used to evaluate redlining risk; that is, an examiner will determine whether an institution is providing equal access to credit to those in its REMA. An examiner will determine a REMA by: conversations with the institution; reviewing where the institution is located, where the institution is marketing and where the institution is receiving customers from and determining the locations where the institution uses brokers and realtors.

Interagency Fair Lending Examination Procedures
(available at https://www.ffiec.gov/pdf/fairlend.pdf)
A crucial document to review before a fair lending examination is the Interagency Fair Lending Examination Procedures (Exam Procedures). The Exam Procedures review fair lending law, the methods a government agency may prove discrimination (both of which were discussed earlier), and procedures that an examiner will employ to guide the examination.

The procedures provide a basic and flexible framework to be used in the majority of fair lending examinations conducted by the federal agencies. However, examiners are to use their judgment, guided by the Exam Procedures, in examinations. Also, an examiner will use the Exam Procedures in conjunction with his or her own agency's priorities, examination philosophy, and detailed guidance for implementing the procedures.

Agencies routinely use statistical analyses or other specialized techniques in fair lending examinations to assist in evaluating whether a prohibited basis was a factor in an institution's credit decisions.

Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

Accordingly, although the Exam Procedures provide a beginning to which a financial institution can learn about the examination process, it is important for financial institutions to note that how an examiner will conduct a fair lending examination will depend greatly on that examiner while operating under his/her agency's directions.

The Exam Procedures are divided into four parts.

Part I – Examination Scope Guidelines. As an examiner begins to determine how to conduct a fair lending examination at a financial institution, he/she will go through several steps to identify an institution's risk factors and review products. A fair lending examination is a risk-focused review, whereby an examiner will determine how he/she believes the institution may be discriminating and which products are susceptible to discrimination.

Examiners will attempt to identify indicators of risk, including: loan officer discretion to set the pricing of a loan, vague or subjective underwriting criteria, or lack of loan file documentation regarding reasons for any exceptions.

Part II – Compliance Management Review. This part provides guidance on determining the intensity of the examination and the reliability of the institution's practices and procedures for ensuring compliance. There is naturally some interdependence between Part I and Part II. Ultimately, the scope and intensity of the examination will determine the record of performance that serves as the foundation for agency conclusions about institutional compliance with fair lending obligations.

Part III – Examination Procedures. Once the scope and intensity of the examination is established, an examiner will analyze the institution's fair lending performance. In this part, the examiner will sample a size of loans to review and will compare files. Depending on the intensity of the examination, the analysis may involve a comparative file review, statistical analysis, a combination of the two, or other specialized technique. For comparative file review, the Exam Procedures sets forth several steps for examiners to follow. Also, the Exam Procedures establish how an examiner will conduct a comparative analysis for redlining (the earlier discussion regarding redlining is in part from this section of the procedures).

Part IV – Obtaining and Evaluating Responses from the Institution and Concluding the Examination. Finally, the examiner will present any findings to the institution's management, review responses, and determine whether referral to the Department of Justice (for ECOA violations) or HUD (for FHA violations) is warranted.

Recent Fair Lending Violations
The following are examples of recent fair lending violations based on discriminatory terms, conditions, or procedures. Many violations were due to loan officers having discretion to set borrowers' rates and fees (pricing), resulting in African-American and Hispanics paying higher costs.

JP Morgan Chase (2017) – Mortgage loans; Pricing (higher interest rates)
The Department of Justice alleged that JP Morgan Chase violated the FHA and ECOA when African-American and Hispanic borrowers paid higher rates and fees for wholesale mortgage loans than similarly situated White borrowers. In particular, the government used a data model to project that, from at least 2006 through late 2009, thousands of African-American and Hispanic borrowers who obtained loans though independent mortgage brokers participating in Chase's wholesale channel paid higher rates and fees on home mortgage loans compared to rates and fees paid by similarly situated White borrowers. The consent order provides monetary relief of $53 million, including a civil penalty of $55,000.

Charter Bank (2016) – Vehicle-secured loans; Pricing (higher interest rates)
The Department of Justice announced that Charter Bank of Corpus Christi, Texas, would be required to maintain uniform pricing policies and pay more than $165,000 as part of a settlement to resolve allegations that it engaged in a pattern or practice of discrimination on the basis of national origin.

The complaint alleged that Charter violated the Equal Credit Opportunity Act between 2009 and 2014 by charging higher

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

interest rates to Hispanic borrowers than to similarly situated non-Hispanic borrowers on vehicle-secured consumer loans. The discrimination affected approximately 500 loans made through the bank's branches. A vehicle-secured consumer loan allows a customer to borrow from the bank by tapping the equity in a car the customer already owns. The complaint alleged that the discrimination occurred because Charter gave its employees discretion to adjust interest rates upward or downward by approximately three percentage points, which was not based on the borrower's credit risk.

Under the settlement, Charter was required to pay $165,820 to Hispanic victims of discrimination, monitor its loans for potential disparities based on national origin and provide equal credit opportunity training to its employees. Prior to the settlement, Charter revised its loan pricing policies to include objective, non-discretionary and non-discriminatory standards for determining interest rates for consumer loans. The settlement required Charter to maintain the revised policies for at least four years.

Bank of America, U.S. Bank, Fifth Third Bank (2012); Evolve Bank (2016) – Mortgage loans; Underwriting
In several cases, lenders required disabled loan applicants using Social Security Disability Income (SSDI) to provide a letter from a doctor that their receipt of this income would continue for at least three years, after applicants provided Social Security award letters, Social Security benefit statements and other documents that substantiated SSDI income. The banks, however, did not require borrowers with other types of income, including wage or salary income, to document the continuation of income. Although institutions/investors require that underwriting be based on long-term, stable income, lenders should ensure they do not inadvertently impose higher standards on those receiving disability income.

Also, in some cases, lenders required applicants to provide information about the nature and severity of their disability as a condition of receiving a mortgage.

Fannie Mae, Freddie Mac, and the Federal Housing Administration do not require a lender to request a doctor's letter as evidence of stable income.

The CFPB published a bulletin (2014-03) reminding institutions of their obligations under the fair lending laws and that a consideration of Social Security disability income as above may constitute a fair lending violation.

Fifth Third Bank (2015) – Indirect Auto; Pricing (higher interest rates)
The CFPB resolved an action with Fifth Third Bank that required Fifth Third to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. Fifth Third's past practices resulted in thousands of African-American and Hispanic borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. The consent orders required Fifth Third to pay $18 million in restitution to affected borrowers.

As of the second quarter of 2015, Fifth Third was the ninth largest depository auto loan lender in the United States and the seventeenth largest auto loan lender overall. As an indirect auto lender, Fifth Third sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Fifth Third then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. As described above, this is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Fifth Third's policy permitted dealers to mark up consumers' interest rates as much as 2.5% during the period under review.

Synchrony (2014) - Servicing; Different Procedures
The Department of Justice alleged that the company denied borrowers the opportunity to participate in two credit card debt repayment programs if they had indicated they preferred communications to be in Spanish or had a mailing address in Puerto Rico. In particular, from January 2009 to March 2012, the company excluded certain borrowers, due to their national origin, from the "Statement Credit Offer" – a program offer-

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

ing eligible borrowers a credit to their account if they met certain criteria – and the "Settlement Offer" – a program offering eligible borrowers the chance to settle their credit card debt if they paid a percentage of their remaining account balance, ranging from 25 percent to 55 percent.

As a result of the exclusions, Hispanic borrowers experienced higher debt levels and longer periods of debt. Some of these Hispanic borrowers may have suffered additional consequential economic damages, including increased risk of credit problems, default and repossession; having their accounts closed or "charged-off" and sold to a third party; and other damages, including emotional distress.

The following are examples of recent fair lending violations based upon redlining.

KleinBank (2017)
The Department of Justice alleged that from 2010 to at least 2015, KleinBank's redlining denied residents of the majority-minority neighborhoods of the Minneapolis-St. Paul-Bloomington, MN-WI Metropolitan Statistical Area, an equal opportunity to apply for and obtain residential real estate-related loans, on account of the racial and ethnic composition of those neighborhoods. For each year from 2010 to 2015, statistical analyses of KleinBank's residential real estate-related loan applications and originations show the Bank served the credit needs of the residents of majority-White census tracts to a significantly greater extent than it served the credit needs of the residents of majority-minority census tracts. During that time period, comparable lenders generated applications in majority-minority tracts at over five times the rate of KleinBank, and originated loans in majority-minority tracts at over four times the rate of KleinBank.

KleinBank's practices that denied or discouraged an equal opportunity to residents of majority-minority census tracts from applying for or obtaining a residential mortgage loan from KleinBank include, but are not necessarily limited to: excluding most majority-minority census tracts in the MSA from the geographic area that KleinBank delineated as its market area pursuant to the Community Reinvestment Act; locating branch offices and mortgage loan officers in majority-White census tracts, but not in majority-minority census tracts; and targeting marketing and advertising toward residents of majority-White census tracts, excluding majority-minority neighborhoods.

A map of KleinBank's CRA assessment area and branch locations can be found at *https://www.justice.gov/crt/case-document/file/927136/download* and a map of loan applications can be found at *https://www.justice.gov/crt/case-document/file/927146/download*.

BancorpSouth (2016)
The CFPB and the Department of Justice alleged that BancorpSouth:

- *Illegally redlined in Memphis:* The complaint alleged that from at least 2011 to 2013, BancorpSouth illegally redlined in the Memphis area—the market from which the bank received the most applications—by structuring its business to avoid and discourage consumers in minority neighborhoods from accessing mortgages. Specifically, the agencies alleged that the bank placed its branches outside of minority neighborhoods, excluded nearly all minority neighborhoods from the area it chose to serve under the Community Reinvestment Act, and directed nearly all of its marketing away from minority neighborhoods. As a result, BancorpSouth generated relatively few applications from minority neighborhoods as compared to its peers.
- *Discriminated in underwriting certain mortgages:* The agencies also alleged that one of BancorpSouth's lending units discriminated against African-American applicants by denying them mortgage loans—including loans with consumer as well as business purposes—more often than similarly situated White applicants. Specifically, the agencies alleged that BancorpSouth granted its employees wide discretion to make credit decisions on mortgage loans. This discretion resulted in African-American applicants being denied certain mortgages at rates more than two times higher than expected if they had been White.
- *Discriminated in pricing certain*

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

mortgage loans: The agencies also alleged that one of BancorpSouth's lending units discriminated against African-American borrowers that it did approve by charging them higher annual percentage rates than White borrowers with similar loan qualifications. Specifically, the agencies allege that BancorpSouth granted its employees wide discretion to set the prices of mortgage loans. This discretion resulted in African-American borrowers paying significantly higher annual percentage rates than similarly situated White borrowers, costing African-American consumers hundreds of dollars more each year they held the loan.

- *Implemented an explicitly discriminatory denial policy:* The complaint alleged that BancorpSouth required its employees to deny applications from minorities and other "protected class" applicants more quickly than those from other applicants and not to provide credit assistance to "borderline" applicants, which may have improved their chances of getting a loan. The bank generally permitted loan officers to assist marginal applicants, but the explicitly race-based denial policy departed from that practice. An audio recording of a 2012 internal meeting at BancorpSouth clearly articulates this discriminatory policy, as well as negative and stereotyped perceptions of African-Americans.

As part of its investigation, the CFPB sent testers to several BancorpSouth branches to inquire about mortgages, and the results of that testing support the CFPB and DOJ allegations. The agencies allege that, in several instances, a BancorpSouth loan officer treated the African-American tester less favorably than a White counterpart. Specifically, the complaint alleges that BancorpSouth employees treated African-American testers who sought information about mortgage loans worse than White testers with similar credit qualifications.

For example, BancorpSouth employees provided information that would restrict African-American consumers to smaller loans than White testers. This is the CFPB's first use of testing, sometimes referred to as "mystery shopping," to support an allegation of discrimination. Other government agencies, including the Department of Justice and the Department of Housing and Urban Development, as well as fair housing organizations, have used testers for decades as a method of identifying discrimination. Courts have long recognized testing as a reliable investigative tool.

Hudson City (September 2015)
The complaint alleged that from at least 2009 to 2013 Hudson City illegally redlined by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. Specifically, Hudson City structured its business to avoid and thereby discourage residents in majority-Black-and-Hispanic neighborhoods from accessing mortgages.

According to the complaint, Hudson City illegally avoided and thereby discouraged consumers in majority Black and Hispanic neighborhoods from applying for credit by:

- Placing branches and loan officers principally outside of majority Black and Hispanic communities;
- Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority Black and Hispanic communities;
- Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
- Excluding majority Black and Hispanic neighborhoods from its credit assessment areas.

Role of Community Reinvestment Act and the Home Mortgage Disclosure Act in Fair Lending
Community Reinvestment Act – The Community Reinvestment Act (CRA) provides that "regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered." Financial institutions are required to monitor the level of lending, investments, and services in low- and moderate-income neighborhoods traditionally underserved by lending institutions.

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Focus on Fair Lending: Recent Actions & Publications, *cont'd.*

Examiners assess and "grade" a lending institution's activities in low- and moderate-income neighborhoods (**Note:** Some examiners have downgraded an institution's CRA rating based on noncompliance with fair lending laws even though the CRA itself is not a fair lending law).

While the CRA primarily addresses discrimination on the basis of geography, concerns about fair lending and meeting the requirements of the CRA sometimes overlap, particularly with cases involving redlining. Among other things, and as seen above, the agencies may review a CRA assessment area to determine whether the assessment area excludes minority areas. Also, an examiner may identify any areas within the institution's CRA assessment area for products that have a racial or national origin character.

Home Mortgage Disclosure Act – The Home Mortgage Disclosure Act (HMDA) requires financial institutions to collect and report information about certain loans, which provides the ability of the government to monitor lending, including potential discrimination practices. The agencies use the information in an institution's loan application register to analyze and determine whether an institution is complying with fair lending laws.

Common Questions, Notes and What to Remember

Be concerned about potential discrimination in pricing, underwriting, and servicing activities. Also, be aware that discrimination could occur when/how creditors provide exceptions or waivers to customers.

Use of statistics – Agencies have been bringing cases against lenders based on statistical analyses, especially with redlining. A key element is how an institution's lending record compares to peers. However, it is unclear which institutions the agencies will include into a peer group, which is causing anxiety among institutions.

Importance of a Compliance Management System (CMS) – One of the key factors that the examiners will review is the quality of an institution's fair lending CMS prioritization process. While the appropriate scope of an institution's fair lending CMS will vary based on its size, complexity, and risk profile, common features of well-developed CMS include:

- Prevention:
  - An up-to-date fair lending policy statement; and
  - Regular fair lending training for all employees involved with any aspect of the institution's credit transactions, as well as all officers and board members.
- Monitoring:
  - Ongoing monitoring for compliance with fair lending policies and procedures, and appropriate corrective action, if necessary;
  - Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion), and appropriate corrective action if necessary;
  - Review of lending policies for potential fair lending violations, including potential disparate impact;
  - Depending on the size and complexity of the financial institution, regular statistical analysis, as appropriate, of loan-level data for potential disparities on a prohibited basis in pricing, underwriting, or other aspects of the credit transaction, to include both mortgage and non-mortgage products such as credit cards, auto lending, and student lending;
  - Regular assessment of the marketing of loan products; and
  - Meaningful oversight of fair lending compliance by management and where appropriate, the financial institution's board of directors.

Correction:

- Once a potential violation has been identified, the institution takes corrective action.

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Looking Ahead

With the volume of regulatory changes financial institutions have experienced over the past decade, it can be a challenge to remember the mandatory compliance dates that are different than the effective dates. The following table is a look ahead of what is to come in 2018.
Each key area of a financial institution will be impacted by regulatory changes in 2018 with changes in lending, deposits, and BSA/AML. Collaboration amongst all departments will be essential to ensure efficient and effective implementations.

Rule	Effective Date	Compliance Date
Home Mortgage Disclosure Act (HMDA); Regulation B (12 CFR 1003) Implementation of specific information covered institutions are required to collect, record, and report, and processes for reporting and disclosing HMDA data.	January 1, 2018	
Equal Credit Opportunity Act (ECOA); Regulation B (12 CFR 1002) Implementation of certain new model forms while removing others, and amending various other sections to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants to allow flexibility in complying with both Regulations B and C; also provides for amendments to accommodate future Uniform Residential Loan Application (URLA) changes.	January 1, 2018 Amended URLA references are January 1, 2022	
Prepaid Card Rule; Regulations E and Z (12 CFR 1005, 1026) Implementation of comprehensive consumer protections for prepaid accounts under Regulation E and Regulation Z; includes tailored provisions under Regulation E governing disclosures, limited liability and error resolution, and periodic statements, and the addition of new requirements regarding the posting of account agreements. The final rule amends Regulation Z to regulate the overdraft credit features that may be offered in conjunction with prepaid accounts.	April 1, 2018 Requirement to submit prepaid account agreements to CFPB on a rolling basis is October 1, 2018	
Mortgage Servicing; Regulation Z (12 CFR 1026) Provisions regarding periodic statements for borrowers in bankruptcy and successors in interest	April 19, 2018	
Customer Due Diligence; Bank Secrecy Act (31 CFR 1010, 1020, 1023, 1024, 1026) Implementation of customer due diligence requirements, including requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.	July 11, 2016	May 11, 2018
Prepaid Card Rule; Regulation E (12 CFR 1005) The requirement to submit prepaid account agreements to the CFPB	October 1, 2018	
Payday, Vehicle Title, and Certain High-Cost Installment Loans; Regulation Z (12 CFR 1026) Final rule establishing regulations creating consumer protections for certain consumer payday, vehicle title and high-cost installment loans, including reasonable determination of consumer's ability to repay. The rule prohibits evasions and operates as a floor leaving State and local jurisdictions to adopt further regulatory measures (whether a usury limit or other protections) as appropriate to protect consumers.	January 16, 2018 Deadline to submit an application for preliminary approval is April 16, 2018	August 19, 2019
TILA-RESPA Integrated Disclosures (TRID); Regulations X and Z (12 CFR 1024, 1026) Final rule modifying Regulations X (RESPA) and Z (TILA), as applicable, to memorialize the CFPB's informal guidance on various issues, make additional clarifications and technical amendments, and create tolerances for the total of payments, adjust a partial exemption affecting housing finance agencies and nonprofits, extend coverage of TRID requirements to all cooperative units, and provide guidance on sharing the integrated disclosures with various parties.	October 1, 2017	October 1, 2018

Annual Threshold Adjustments

The Consumer Financial Protection Bureau (CFPB), and, as applicable, other federal banking agencies, have published final rules amending regulations and official interpretations that implement the Truth-in-Lending Act (TILA), the Consumer Leasing Act (CLA), Home Mortgage Disclosure Act (HMDA) and the Community Reinvestment Act (CRA). Thresholds and dollar amounts are required to be adjusted annually typically in correlation to the annual per-

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Annual Threshold Adjustments

centage change reflected in the Consumer Price Index. Refer to the applicable regulation for any additional requirements that must be satisfied to meet the exemption. The thresholds are effective as of January 1, 2018, unless otherwise specified.

Annual Threshold Adjustments					
Threshold	**2017 Threshold**		**2018 Threshold**		**Transaction Type and Comments**
Regulation Z Truth-in-Lending Act (TILA)					
Exemption (12 CFR 1026.3)	> $54,600		> $55,800		Consumer loans; Exemption does not apply to private education loans or consumer loans secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer
HOEPA Points & Fees (12 CFR 1026.32)	**Loan Amount**	**Total Points & Fees Exceed**	**Loan Amount**	**Total Points & Fees Exceed**	Consumer mortgage loans
	≥ $20,579	5% of Total Loan Amount	≥ $21,032	5% of Total Loan Amount	
	< $20,579	The lesser of 8% of the Total Loan Amount or $1,029	< $21,032	The lesser of 8% of the Total Loan Amount or $1,052	
ATR/QM (12 CFR 1026.43)	**Loan Amount**	**Total Points & Fees Exceed**	**Loan Amount**	**Total Points & Fees Exceed**	Consumer mortgage loans
	≥ $102,894	3% of Total Loan Amount	≥ $105,158	3% of Total Loan Amount	
	≥ $61,737 < $102,894	$3,087	≥ $63,095 < $105,158	$3,155	
	≥ $20,579 < $61,737	5% of Total Loan Amount	≥ $21,032 < $63,095	5% of Total Loan Amount	
	≥ $12,862 < $20,579	$1,029	≥ $13,145 < $21,032	$1,052	
	< $12,862	8% of Total Loan Amount	< $13,145	8% of Total Loan Amount	
HPML Appraisal (12 CFR 1026.35)	Loan amount ≤ $25,500		Loan Amount ≤ $26,000		HPML consumer mortgage loans
HPML Escrow Account Asset Size (12 CFR 1026.35)	$2,052,000 consummated in 2017 for which applications were received before 4/1/2017 and $2,069,000 for any loan consummated in 2017		$2,069,000 consummated in 2018 for which applications were received before 4/1/2018 and $2,112,000 for any loan consummated in 2018 and consummated in 2019 for which applications were received before 4/1/2019		HPML consumer mortgage loans
Small-creditor Portfolio & Balloon-Payment QM (12 CFR 1026.43)	$2,069,000		$2,112,000		Consumer mortgage loans
CARD Act Minimum Interest Charge Disclosure (12 CFR 1026.60)	$1.00		$1.00		Consumer credit card accounts under an open-end (not home-secured) consumer credit plan
CARD Act Late Fee Penalties (12 CFR 1026.52)	First Late Fee = $27 Subsequent Late Fees = $38		First Late Fee = $27 Subsequent Late Fees = $38		Consumer credit card accounts under an open-end (not home-secured) consumer credit plan

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Annual Threshold Adjustments

Annual Threshold Adjustments, *Continued*

Threshold	2017 Threshold	2018 Threshold	Transaction Type and Comments
Regulation M Consumer Leasing Act (CLA)			
Exemption (12 CFR 1013.2)	Lessee's Total contractual obligation > $54,600	Lessee's Total contractual obligation > $55,800	Consumer Leases
Regulation C Home Mortgage Disclosure Act (HMDA)			
Asset-size Exemption (12 CFR 1003.2)	$44 million	$45 million	Consumer and Commercial loans secured by a dwelling
HELOC volume exemption (12 CFR 1003.2)	N/A	Originated less than 500 open-end lines of credit (not otherwise excluded) in either of the two preceding years	Consumer and commercial open-end lines of credit secured by a dwelling; Threshold is temporary for HMDA data collection in 2018 and 2019
Community Reinvestment Act (CRA)			
CRA Asset-size Exemption (12 CFR 25 and 195, 12 CFR 228.12 and 12 CFR 345)	Small institution: Assets less than $1.226 billion for either of the prior two calendar years (December 31, 2017 and December 31, 2016) Intermediate institution: Assets of at least $307 million for both of the two prior calendar years but less than $1.226 billion for either of those same years Large institution: Assets of at least $1.252 billion as of December 31 of both of the prior two calendar years	Small institution: Assets less than $1.252 billion for either of the prior two calendar years (December 31, 2017 and December 31, 2016) Intermediate institution: Assets of at least $313 million for both of the two prior calendar years but less than $1.252 billion for either of those same years Large institution: Assets of at least $1.252 billion as of December 31 of both of the prior two calendar years	Banks and savings associations

About Us.

Professional Bank Services, Inc. (ProBank) d/b/a ProBank Austin, is a consulting company for financial institutions. The company was founded in 1978. Our consulting staff is comprised of former federal and state regulators, bankers, attorneys, and financial analysts. ProBank has become one of the largest financial institution-consulting firms in the country by providing authoritative and practical advice in important issues facing financial institutions. Our clients range in size from small community banks to multi-billion dollar international institutions. We provide educational programs to thousands of bankers through our proprietary programs as well as through our relationships with many state banking associations and agencies. Training clients have included the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and various state regulatory agencies. ProBank is a wholly owned subsidiary of Pluribus Holdings Limited.

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