



COMPLIANCE SOUP

DECEMBER 7, 2023

Presented by Jennifer Cliber Smith, CRCM





Beneficial Ownership Information

September 29, 2022

The FinCEN final rule implements the bipartisan Corporate Transparency Act's BO Information reporting provisions.

Purpose: To enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use and provide information to law enforcement and other agencies and FI to help prevent drug traffickers, fraudsters, corrupt actors from laundering or hiding money and other assets in the U.S. This will make it harder to use shell companies and legal structures to hide assets, traffic humans and drugs, commit serious tax fraud, or launder money.

Dec., 2022 – FinCEN proposed an Access Rule

Beneficial Ownership – 2022 Final Rule Recap

- Cost to reporting companies with management and ownership structures approx. \$85 to prepare and submit an initial BOI Report
- There are 2 types of reporting companies: domestic (entity formed by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe) and foreign (formed under the law of a foreign country and registered to do business in the U.S.) 23 types of entities are exempt from the definition of “reporting company”. Not excluded: LLC, LLP, LLLP, Business Trusts, LP, Corporations
- Reports must identify 2 categories of individuals: (1) the Beneficial Owners of the company (exercises control or owns or controls 25% or more) and (2) the company applicants of the entity (2 persons: the individual who files the document creating the entity (or for a foreign reporting company the person who files the document that first registers the entity to do business in the U.S.) and the individual who . 5 types of individuals are exempted from the definition of BO.

Beneficial Ownership Information Reporting

- > 32million small businesses will face new reporting to FinCEN
- Is it not permissible for reporting companies to respond “unknown”. The “Unknown” checkbox on appendix form permitted avoidance of reporting Corporate Transparency Act-mandated information. In October, 2023, FinCEN announced a new BOIR Form that will require every field to be complete.
- BOI FAQ - Updated September 18, 2023, November 16, 2023, and December 1, 2023

Beneficial Ownership Information

11/29/2023

- **FinCEN Extends Deadline for Companies Created or Registered in 2024 to File Beneficial Ownership Information Reports**
- The Financial Crimes Enforcement Network (FinCEN) is extending the deadline for certain reporting companies to file their initial beneficial ownership information (BOI) reports. Specifically, reporting companies created or registered in 2024 will have 90 calendar days from the date of receiving actual or public notice of their creation or registration becoming effective to file their initial reports.
- This extension will give reporting companies created or registered in 2024 more time to become familiar with FinCEN's guidance and educational materials located at <https://www.fincen.gov/boi>, and to resolve questions that may arise in the process of completing their initial BOI reports.
- Reporting companies created or registered before January 1, 2024, have until January 1, 2025, to file their initial BOI reports with FinCEN, while reporting companies created or registered on or after January 1, 2025, will have 30 calendar days to file their initial BOI reports after receiving actual or public notice of their creation or registration becoming effective.
- FinCEN will not accept BOI reports from reporting companies until January 1, 2024 — no reports should be submitted to FinCEN before that date.
- **News Release:** <https://www.fincen.gov/news/news-releases/fincen-extends-deadline-companies-created-or-registered-2024-file-beneficial>
- **Federal Register Notice:** <https://www.federalregister.gov/public-inspection/2023-26399/beneficial-ownership-information-reporting-deadline-extension-for-reporting-companies-created-or>
- **FinCEN's BOI Webpage:** <https://www.fincen.gov/boi>

Beneficial Ownership Information Reporting

Date of Creation or Registration	Initial Report Deadline
Before January 1, 2024	January 1, 2025
January 1, 2024 – December 31, 2024	Within 90 days of notice of creation or registration
On or after January 1, 2025	Within 30 days of notice of creation or registration

Beneficial Ownership Information

ABA Newsbyte 11/29/23

FinCEN is finalizing a final rule to establish who may request BOI, how recipients can use that information and how they can secure it.

The Treasury Department is also crafting proposed rules to enhance transparency in the real estate sector and to establish AML/CFT requirements for investment advisers.

Beneficial Ownership Information

- Follow CIP Rules!
- Comply with the CDD Rule, which amended BSA regulations, and requires covered financial institutions to identify and verify the identity of the natural persons (known as beneficial owners) of legal entity customers who own, control, and profit from companies when those companies open accounts.
- Consider educating customers on the new Beneficial Ownership Information Reporting requirements

The current CDD Rule re: Beneficial Ownership

- **Exceptive Relief**
- [Ruling \(FIN-2018-R004\): Exceptive Relief from Beneficial Ownership Requirements for Legal Entity Customers of Rollovers, Renewals, Modifications, and Extensions of Certain Accounts](#)
- [Ruling \(FIN-2018-R003\): Extension of Limited Exception from Beneficial Ownership Requirements for Legal Entity Customers of Certain Financial Products and Services with Rollovers and Renewals](#)
- [Ruling \(FIN-2018-R002\): Beneficial Ownership Requirements for Legal Entity Customers of Certain Financial Products and Services with Automatic Rollovers or Renewals](#)
- [Ruling \(FIN-2018-R001\): Premium Finance Cash Refunds and Beneficial Ownership Requirements for Legal Entity Customers](#)
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- For more information, please see:
- [CDD FAQs \(Aug 2020\)](#)
- [CDD Final Rule](#)
- [FFIEC Exam Procedures \(May 2018\)](#)
- [CDD FAQs \(Apr 2018\)](#)
- [CDD FAQs \(July 2016\)](#)

Beneficial Ownership Information

11/30/2023

FinCEN Director Andrea Gacki noted at the Financial Crimes Enforcement Conference that “we are on an incredible education and outreach campaign at this point.” In addition to providing educational materials and guidance to financial institutions, she said FinCEN is engaging with secretaries of state, which register companies, and the IRS, which issues EINs to newly created companies.

FinCEN will only take enforcement actions against **willful violations of the Bank Secrecy Act**, said Paul Ahern, counselor for enforcement at the Treasury Department. Speaking during a separate session at the Financial Crimes Enforcement conference, Ahern said FinCEN isn’t interested in playing “gotcha” with requirements like BOI reporting. “It’s a new requirement and so FinCEN’s focus, at least in the first year, is going to be on compliance, education, and just understanding how people comply with this.”



More BSA Topics

- The plethora of Sanctions and how to stay on top of them
- SAR Reporting and the key terms
 - “FIN-2023-GLOBALEXPORT” suspected evasion of U.S. export controls not related to Russia’s invasion of Ukraine
 - “FIN-2022-RUSSIABIS” suspected Russian export control evasion
- SARs re check fraud, FinTechs and BAAS
- FinTech liability: Consent Order: First Northwest Bancorp’s subsidiary, First Fed Bank, has entered into a consent order with the FDIC in connection with a fintech it developed through a joint venture. The bank engaged in unsafe or unsound banking practices and deceptive and unfair practices in or affecting commerce.



CRYPTOCURRENCY

BY FATIMA HUSSEIN AND KEN SWEET | ASSOCIATED PRESS

NOV. 27, 2023 3 AM PT



WASHINGTON — The scandals in the cryptocurrency industry seem to never end, but Washington policymakers appear to have little interest in pushing through legislation to codify the structure of the industry.

The latest shoe to drop was [Binance's multibillion-dollar settlement](#) with U.S. authorities and the resignation of its chief executive last week. Before that came the conviction of FTX founder Sam Bankman-Fried for stealing billions from customers and the implosion of smaller crypto companies that cost investors large sums of money.

When cryptocurrencies collapsed and a number of companies failed last year, Congress [considered multiple approaches](#) for how to regulate the industry in the future. But most of those efforts have gone nowhere, especially in this chaotic year that has been dominated by geopolitical tensions, inflation and the upcoming 2024 election.

Crypto

In fact, the appetite for new rules seems more diminished than ever.

At a news conference last week announcing the \$4-billion settlement with Binance, U.S. Treasury Secretary Janet L. Yellen said existing regulations already apply to cryptocurrency: “I think today’s actions show that we are serious about enforcing strong regulations that are already in place to make sure that illegal transactions are not fostered by cryptocurrency entities,” she said.

“In cases like this, where there are violations of a truly egregious nature,” she said, “of course we want to make sure our tools stay up to date and are adjusted so that we can address emerging threats. We believe we have strong tools and we have been increasingly deploying them to counter this type of abuse.”

Crypto

- Cryptocurrencies collapsed and a number of companies failed last year
- Congress considered several different approaches for regulating this industry
- Most of these efforts are at a standstill; lawmakers are unable to coalesce around what crypto is in the first place; powerful members of Congress are opposed to crypto altogether
- In the House a bill passed the Financial Services Committee that would regulate stablecoins but it has gotten no interest from the White House or Senate

Crypto

- \$4 billion settlement with Binance, Coinbase and FTX all are either in severe legal trouble, are under investigation, or have collapsed
- Kraken was charged by the SEC with operating its crypto trading platform as an unregistered securities exchange
- PayPal received a subpoena from the SEC related to its PayPal USD stablecoin
- Yiannis Giokas, senior director of digital assets at Moody's Analytics stated, "With digital currencies becoming more mainstream and institutional players entering the space, regulations and enforcement will become stricter to ensure compliance and consumer protection".
- **Discuss with Regulators!!**



Marijuana Banking –

Secure and Fair Enforcement Regulation (SAFER) Banking Act status

- * Bill approved by the Senate Committee on Banking, Housing and Urban Affairs with amendments:
- * Eases access to traditional banking services for cannabis companies operating legally under state or tribal law; protects financial institutions providing these services
- * Uniform guidance and exam procedures are required within one year (including legacy cannabis-related deposits and updating guidance related to hemp-related businesses and service providers)
- * Regulators are prohibited from ordering account closure without a valid reason
- * Protects employees of state-legal cannabis businesses trying to obtain mortgages

Marijuana Banking –

Secure and Fair Enforcement Regulation (SAFER) Banking Act status

- * SARs are required
- * Revised language on how cannabis-related financial transactions should not be considered proceeds from an unlawful activity
- * Required reporting on availability of financial services for minority-owned, Tribal community-owned, small State-sanctioned marijuana businesses
- * Bars federal regulators from taking discriminatory enforcement action against any industry (i.e. firearm, energy, cryptocurrency)
- * Business operated by agents of China and Russia added to a list of possible “national security and illicit finance threats”

Marijuana Banking –

Secure and Fair Enforcement Regulation (SAFER) Banking Act status

Other changes likely:

- Expungement of past marijuana offenses
- Protection of gun rights of marijuana users

Next steps: Vote in the House of Representatives, where it is generally not expected to pass

Marijuana Banking

Marijuana publications report that Biden top health officials are making a strong push to change Marijuana from a Schedule 1 (most dangerous) drug to a Schedule 3 (Tylenol with codeine).

2024 is an election year.

Marijuana Banking

Fox Business News report that you can use to amaze and impress your friends and colleagues: “U.S. residents are spending more money to purchase legal cannabis than they are on chocolate, craft beer, and topical pain relief. A report from MJBizDaily showed Americans spent roughly \$30 billion on legal marijuana in 2022 while only spending around \$20 billion on chocolate. The cannabis purchases eclipsed sales of “feel-good” products, including beer, opioid medications, and topical pain relief.”

Marijuana Banking To Do

- Detailed policy with Board's Directives is a must
- “We don't bank marijuana businesses” or “Marijuana Banking is prohibited” are not enough.
- Compliance Officer and BSA Officer are on vacation. Current customer brings in a new rent roll for an existing shopping center that secures a line of credit. One of the new businesses is a marijuana business – a CBD Dispensary. What do you do?
- Staff, resources, monitoring, security, etc. must reflect the policy and risk level.

Marijuana Banking . . . Guess what?

- Several banks in Maryland openly bank direct Marijuana Businesses
Customer Risk Profile, Institution Risk Profile, Infrastructure
SAR Reporting per Cole Memo Priorities and red flags & alerts,
Robust Board reporting and approval, Cannabis Compliance Co
- Would data show that institutions are banking marijuana businesses and customers and don't realize it? (and are not charging for the risk)
- Is it better to get in on the ground floor and build the process than to play catch up and be late to the game?

Third Party Relationship Management

The Hottest Issue for 2024
according to Regulators!



Third Party Relationship Management

The Evolution of Vendor Management

IT-focus

Exclusion of bank customers

Security Incidents

Vendor Management Vendors

All Third-Party Relationships, including Fintechs

Board and Senior Management Role

What can't be outsourced

All areas of Banking Organization affected

Impacts Compliance and S&S Exams

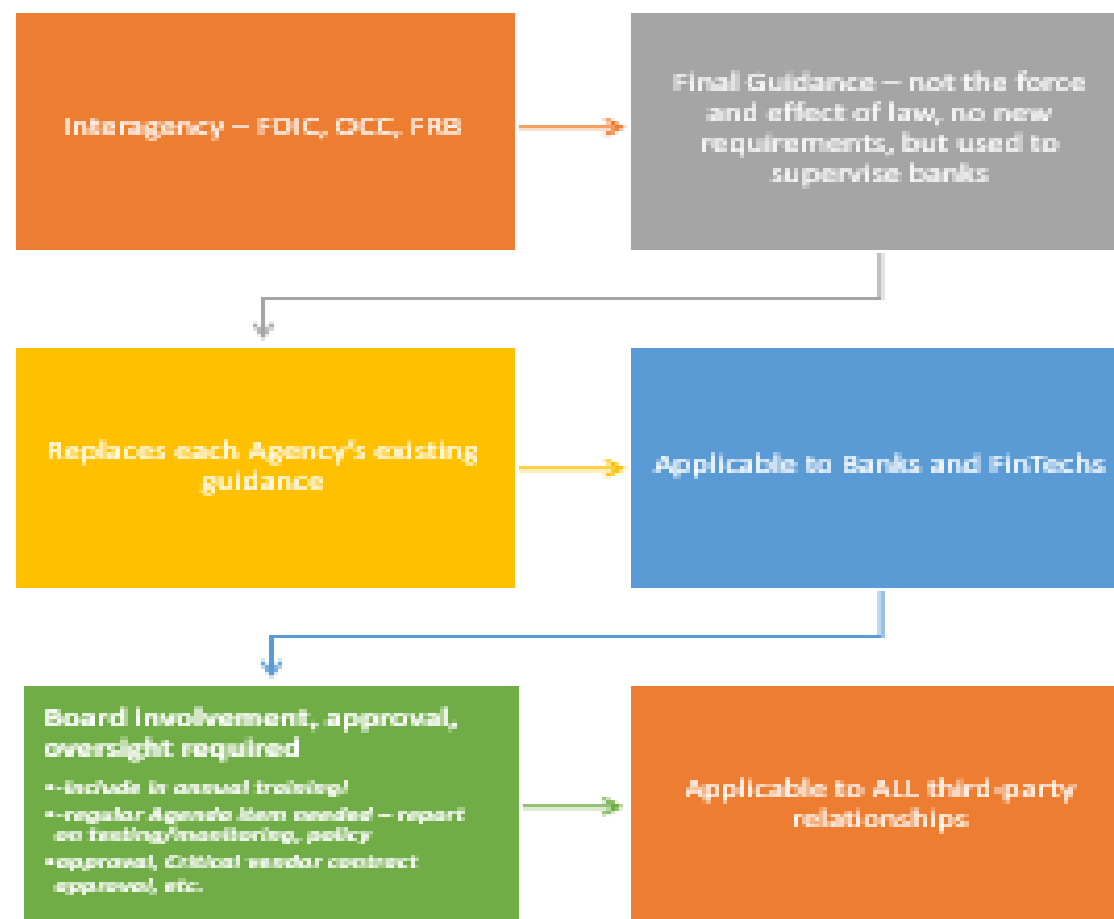
Third Party Relationship Management

Interagency Guidance on Third Party Relationships 6/2023

- References to “bank” should be read as “banking organizations”
- References to compliance with laws and regulations (or regs) include but are not limited to those designed to protect consumers (such as fair lending laws and prohibitions against unfair, deceptive, or abusive acts or practices) and those addressing financial crimes.
- The new Guidance was issued by Agencies which did not include the NCUA. <https://ncua.gov/files/publications/regulation-supervision/third-party-vendor-authority.pdf>

Third Party Relationship Management

Interagency
Guidance on
Third-Party
Relationships:
Risk
Management
6/2023



Third Party Relationship Management

Interagency Final Guidance 6/2023 Defines
Third Party Relationships:

- “any business arrangement between a banking organization and another entity, by contract or otherwise”
 - No contract needed
 - No remuneration needed
 - May include “outsourced services, use of independent consultants, referral arrangements, merchant payment processing services, services provided by affiliates and subsidiaries, and joint ventures”
- Third Party Vendor Management Vendor is a TPR!
- Business Arrangement is synonymous with “Third-Party Relationship”
- Includes situations where a supervised banking organization provides services to another supervised banking organization
- Includes third party assessment services or utilities used throughout the Risk Management Life Cycle

Third Party Relationship Management

How is a Comprehensive Current TPR Inventory Maintained?

By Department, Branch

Payees reviewed

Unpaid TPR – Memberships that provide benefits vs outside vendor

New Products/Services

Fintechs

Periodic Risk Assessment for each TPR to determine changes, risk

Circulated and updated periodically

Current List Reviewed by Board

Third Party Relationship Management

Interagency
Final Guidance
6/2023
“Musts”:

- Tailor Risk Management Practices
- Make practices commensurate with Banking Organization’s Size, complexity and risk profile - address this at the beginning of the Vendor Management Program/Policy, Procedures

However, the implementation aids and tools for small banks that were in the Proposed Guidance were not included in the Final Guidance.

The Agencies plan to engage with community banks and develop resources.

- Consider the nature of the TPR

Obtain Board approval of the Vendor Management Program/Policy, Procedures, Reporting.

Third Party Relationship Management

Interagency
Final
Guidance
6/2023 Does
Not:

- Specifically exclude customer relationships from the definition of “business arrangement”. The proposal stated, “*While determinations of business arrangements may vary depending on the facts and circumstances, third-party business arrangements generally exclude a banking organization's customers*”. Some business relationships may incorporate elements or features of a customer relationship.
- The Agencies state that this change is intended to reduce ambiguity
- When does the Guidance apply to arrangements involving depositors, borrowers, or other customers?

Third Party Relationship Management

Interagency
Final
Guidance
6/2023
clarifies:

- “Foreign-based third party” does not include a U.S.-based subsidiary of a foreign firm. This term refers to a third-party whose servicing operations are located in a foreign country and are subject to the laws and jurisdiction of such foreign country.

Third Party Relationship Management

Interagency
Final
Guidance
6/2023
addresses
“critical
activities”:

- They may require more comprehensive and demanding oversight and management of TPR
- They may include:
 - (1) Cause substantial risk if the vendor fails to meet expectations;
 - (2) Has significant customer impacts; or
 - (3) Has significant impact on the financial condition or operations
- A critical activity may not be “critical” for all banking organizations
- “Significant investment” and “significant bank function” were eliminated
- Assign criticality/risk level to each TPR or identify critical activities and those third parties that support such activities. Sound methodology is needed to designate what activities and TPR require more comprehensive oversight . . . *And this must be spelled out in the Board-approved Program/Policy, and Procedures*

Third Party Relationship Management

Interagency
Final Guidance
6/2023
emphasizes
Banking
Organization
Responsibility
& Governance

- Collaboration with other banking organizations may reduce the burden of due diligence but does not shift responsibility to manage TPR. *State in the Program/Policy and Procedures when outside due diligence will be reviewed/considered.*
- Consideration of a TPR's subcontractors and that flow-down due diligence and monitoring must be evaluated based on the risk of the relationship. Mitigating factors may have to be applied. *State in the Program/Policy and Procedures when subcontractors must be reviewed/considered.*
- Effective third-party risk management follows a continuous life cycle for TPR. Utilize staff/external support with requisite knowledge and skill in each stage (Planning, Due Diligence, Contract Negotiation, Monitoring, Testing, Termination). Board oversight is required throughout the life cycle!

Third Party Relationship Management

Figure 1: Stages of the Risk Management Life Cycle



Third Party Relationship Management

Documentation Needed for Each Stage

1. Planning – evaluating risks

Strategic Purpose and fit

Benefits vs. Risks

Nature of Business Arrangement – volume, subcontractors,
technology needed, customer interaction, use of
foreign-based third parties

Costs – direct and indirect, staffing, systems, processes

Impact on employees, dual employees, transition

Impact on customers, access to customer information,
potential for customer harm, handling of complaints

Security implications – physical, information, system access

Monitoring compliance, remediation, contractual provisions,
oversight needed, contingency planning

Third Party Relationship Management

Documentation
Needed for
Each Stage

2. Due Diligence and Third-Party Selection

Assessing the third party's ability to perform the activity as expected, adhere to policies, comply with laws and regulations, conduct activity in safe & sound manner

Tailored due diligence is required; relying solely on experience with or prior knowledge of the party is not adequate

Higher risk/complexity of relationship/critical activities and questionable information increases scope & degree of due diligence

Document limitations (no on-site visits, no operational history, information requested not provided), associated risk, and alternatives/risk mitigators/supplements

Consider these factors:

Strategies and Goals – mergers, acquisitions, partnerships and philosophies, quality initiatives, employment practices

Legal and Regulatory Compliance – ownership structure (BO), legal ability to perform, OFAC, expertise and systems to comply, responsiveness to compliance issues, internal process to mitigate potential consumer harm

Third Party Relationship Management

Documentation Needed for Each Stage

Due Diligence and Third-Party Selection (continued)

Financial Condition – audited financial statements, annual reports, access to funds, expected growth, earnings pending litigation, debt rating reports

Business Experience – depth of resources (including staffing), previous experience performing activity, history of addressing customer complaints or litigation and outcomes, significant changes in activities offered, review of website, marketing materials, assertions

Qualifications and Backgrounds of Key Personnel and Other HR Considerations

Periodic background checks of key personnel and contractors with access to info technology systems/ confidential information, identification of employees who do not meet minimum suitability requirements or who are barred, training re laws and regs, succession planning, accountability for compliance with laws/regs

Third Party Relationship Management

Documentation
Needed for
Each Stage

Due Diligence and Third-Party Selection (continued)

Risk Management – Policies, Procedures, Internal

Controls, segregation of duties, governance, audits, independent testing and objective reporting of results, processes for escalating remediating, holding management accountable for audit concerns, internal compliance reviews, SOC report review

Information Security – Program, approach to protecting confidentiality, availability of data. Identify gaps such as multifactor authentication, end-to-end encryption, secure source code management. How do they identify, assess, mitigate known and emerging threats?

Assess data, infrastructure, and application security programs, software development life cycle, results of vulnerability and penetration tests, implementation of effective corrective actions to address deficiencies discovered

Third Party Relationship Management

Documentation
Needed for
Each Stage

Due Diligence and Third-Party Selection (continued)

Management of Information Systems - What business processes and information systems will be used? Identify gaps in service level expectations, interoperability issues. Review the processes for timely and accurate inventories of technology and contractors. How is performance of information systems assessed? How much technology is involved in the activity?

Operational Resilience – Can they operate through and recover from disruption or incidents – internal and external? This is particularly important if the third party interacts with customers or disruption has an adverse affect on the bank. Review Disaster Recovery and Business Continuity Plans – consider the timeframe to resume activities and recover data. Also review results of testing, preparations for threats and vulnerabilities (natural disasters, pandemics, denial of service attacks). Also consider dependency on a single provider for multiple activities and interoperability or end of life issues with software programming language, computer platform, data storage technologies used by the third party

Third Party Relationship Management

Documentation
Needed for
Each Stage

Due Diligence and Third-Party Selection (continued)

- Incident Reporting and Management Processes - Is there a clearly documented process, timelines, and accountability for identifying, reporting, investigating, and escalating incidents?
- Physical Security – Are there sufficient physical and environmental controls to protect safety and security of employees, customers, etc., facilities, technology systems, data, as applicable? Review employee on- and off- boarding procedures.
- Reliance on Subcontractors – Evaluate the volume and types of subcontracted activities and the degree that subcontractors will be relied upon to determine additional risk. Can the third party identify, manage, and mitigate risks with subcontracting, how are subcontractors selected and overseen? Is there an issue with the geographic location of a subcontractor or dependency on a single subcontractor for multiple activities?
- Insurance Coverage – Evaluate the existing insurance coverage; consider potential losses that the third party is exposed to and that the third party poses to the bank (from dishonesty, negligence, natural disasters, cyber attacks, etc.). Review fidelity bond coverage, liability, property hazard and casualty, commercial policy specific coverages such as cybersecurity or intellectual ' property

Third Party Relationship Management

Documentation
Needed for
Each Stage

Due Diligence and Third-Party Selection (continued)

Contractual Arrangements with Other Parties – What legal, financial, or operational implications exist due to commitments to other parties? What risks do any binding arrangements raise for the third party and for the bank?

Third Party Relationship Management

Documentation Needed for Each Stage

3. Contract Negotiation – Is a written contract needed?

Determine if the contract meets the needs or increases risk and whether residual risks are acceptable. The Board should approve or delegate approval of contracts – especially for high-risk activities. Legal counsel should review. Periodic review of contracts is needed.

Consider the following factors in contract negotiations:

- a. Nature and Scope of Arrangement – rights and responsibilities of each party, ancillary services such as software support, activities the third party will perform, terms governing use of bank's information, facilities, personnel, systems, intellectual property, and equipment, access to bank customer's information, dual employees' responsibilities and reporting lines, changes in business /circumstances triggering renegotiation
- b. Performance Measures or Benchmarks – This will assist in evaluating performance and clarifies expectations and responsibilities. Ensure that imprudent performance or behavior is not incentivized (setting processing volume or speed without regard for accuracy, compliance)

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

c. Responsibilities for Providing, Receiving, and Retaining Information

Make sure to address:

- ability to access data in appropriate and timely manner
- access to third-party's data and supporting documentation
- ability to share data and documentation with regulators
- whether the third party is permitted to resell, assign or permit access to customer data or any bank data, systems, etc.
- notification to bank whenever compliance lapses, enforcement actions, or other events pose a significant risk to bank or customers
- notification to bank of significant strategic or operational changes (mergers, acquisitions, key personnel changes, use of subcontractors)
- specification of type and frequency of reports from third party

d. The Right to Audit and Require Remediation – establish provisions for periodic, independent audits of the third party and its relevant subcontractors. Consider provisions for the types and frequency of audits and reports provided to bank (SOC, PCI compliance reports, financial, etc.). Reserve the right for the bank to conduct its own audits.

e. Responsibility for Compliance with Applicable Laws and Regulations
Specify the obligations to comply; provide for the bank to have the right to monitor and remain informed of the third party's compliance and to require timely remediation if there are issues.

Third Party Relationship Management

Documentation Needed for Each Stage

3. Contract Negotiation (continued)

f. Costs and Compensation – Address all costs and compensation arrangements, fees, cost schedules, calculations for base services, fees based on volume, special requests. Address when/why cost structure may change, limits on cost increases. Ensure that there is no incentive that promotes inappropriate risk taking. Consider whether there are burdensome upfront or termination fees, or provisions requiring reimbursement to the third party. Identify which party is responsible for payment of legal, audit, exam fees. Outline cost and responsibility for purchasing and maintaining hardware and software, if applicable.

Third Party *Relationship* Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (cont)

g. Ownership and License – State the extent to which the third party has the right to use the bank's name, logo, trademark, and copyrighted material. Does data generated by the third party become the bank's property? Include warranties related to third party acquisition of licenses or subscriptions for use of intellectual property developed by other third parties. When the bank purchases software, it is important to establish escrow agreements to provide access to source code and programs under certain conditions (such as insolvency of the third party).

h. Confidentiality and Integrity – Prohibit the use and disclosure of bank and customer information by the third party and its subcontractors, except as necessary to provide the activity or comply with legal requirements. Address the security measures that the third party will comply with for any PII. Address how and when the third party will disclose information security breaches/unauthorized intrusions. Consider types of data stored, legal obligations for the bank to disclose breach to regulators and customers, potential for consumer harm, etc. Include what must be included in the data intrusion notification to the bank (estimate of effect on bank and customers) and the corrective action to be taken. Address the powers of each party to change security and risk management procedures and requirements and resolve confidentiality/integrity issues arising from shared use of facilities, frequency of incident management exercises.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

i. Operational Resilience and Business Continuity – Provide for the continuation of the activity in the event of problems affecting the third party's operation (i.e., natural disaster or cyber incidents). Address the third party's responsibility for appropriate controls to support operational resilience of the services, such as protecting and storing programs, backing up data, cybersecurity issues, maintaining current and sound business resumption and business continuity plans. Require third party to provide bank with operating procedures in the event the BCP is implemented, including recovery time and points. State how often the plan will be tested. Address the transfer of the bank info to another third party without penalty in the event of the third party's bankruptcy, business interruption.

Third Party Relationship Management

Documentation Needed for Each Stage

3. Contract Negotiation (continued)

j. Indemnification and Limits on Liability – Include indemnification provisions stating the extent to which the bank is liable for claims or reimbursement for damages based on the failure of the third party or its subcontractor to perform, including failure to obtain any necessary intellectual property licenses. Include an assessment of whether any limits on liability are in proportion to the amount of loss the bank experiences, or whether indemnification clauses require the bank to hold the third party harmless from liability.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

k. Insurance - Require the third party to:

- (1) maintain specified types and amounts of insurance (naming the bank as insured or additional insured, if appropriate)
- (2) notify the bank of material changes to coverage
- (3) provide evidence of coverage

The type and amount of insurance should be commensurate with the risk of losses – those caused by the third party to the bank or that might prevent the third party from fulfilling its activities

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

I. Dispute Resolution – Establish a process to resolve problems between the third party and the bank in an expeditious manner and state whether the third party is to continue to provide activities during the dispute resolution period. Address arbitration or forum selection.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

m. Customer Complaints – Specify whether the bank or the third party is responsible for responding to complaints or inquiries. If it is the third party, include provisions for them to receive and respond in a timely manner and to provide the bank with timely information to analyze the complaint and inquiry activity and trends. If it is the bank, include provisions for the bank to receive prompt notification from the third party of any complaints or inquiries received.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

n. Subcontracting – Address when and how the third party should notify the bank of its use or intent to use a subcontractor and whether specific subcontractors are prohibited by the bank. Consider prohibiting the assignment, transfer, or subcontracting of the third party's obligations to another entity without the bank's consent. Consider whether there should be reporting on subcontractors' performance, audit results, compliance. State the third party's liability for activities or actions by its subcontractors and which party is responsible for the costs and resources required for monitoring them. Reserve the right to terminate contract without penalty if third party's subcontractor does not comply with contractual obligation.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

- o. Foreign-Based Third Parties – Include choice of law provisions that includes a jurisdiction in the U.S., if possible. Seek legal advice on the enforceability of the contract with a foreign-based third party and other legal ramifications, including privacy laws and cross-border flow of information.

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

p. Default and Termination – Stipulate what constitutes default, identifies remedies, allows opportunities to cure defaults, and establishes the circumstances and responsibilities for termination. Include provisions that:

- * Provide termination and notification requirements
- * Provide for timely return/destruction of bank info
- * Assign all related costs and obligations
- * Enable bank to terminate with reasonable notice without penalty if required by regulator

Third Party Relationship Management

Documentation
Needed for
Each Stage

3. Contract Negotiation (continued)

q. Regulatory Supervision – Stipulate that the performance of activities by third parties is subject to regulatory examination and oversight, including appropriate retention of and access to all relevant info.

Third Party Relationship Management

Documentation
Needed for
Each Stage

4.

Ongoing Monitoring

This is required throughout the relationship on a periodic or continuous basis (based on risk) to:

- 1) Confirm the quality and sustainability of a third party's controls and abilities
- 2) Escalate issues or concerns
- 3) Respond to significant issues or concerns

Include provisions for monitoring that cover: review of performance reports and effectiveness of its controls, periodic visits and meetings, regular testing by bank or external resources. Sufficient bank staffing is needed with necessary expertise.

Third Party Relationship Management

Documentation
Needed for
Each Stage

4.

Ongoing Monitoring (cont)

Monitoring of third party considers:

- Overall effectiveness of the third party relationship
- Changes to third party's strategy, obligations, clients, financial condition, insurance coverage, key personnel
- Audit results, reports
- Ongoing compliance, performance
- Reliance on subcontractors and effectiveness of use
- Training for employees of bank and third party
- Response to threats, new vulnerabilities, incidents, Business Continuity and resumption plans, testing results
- Ability to maintain confidentiality, availability, integrity of data and info and customer data
- Factors that could affect performance (new laws, economic conditions, etc.)
- Volume, trends of customer inquiries and complaints, responses, and remediation

Third Party Relationship Management

Documentation Needed for Each Stage

5. Termination

Consider the following to facilitate termination:

- *Options for an effective transition, such as an alternate third party
- *Relevant capabilities, resources, and time frame required to transition
- *Costs and fees
- *Managing risks with data retention and destruction, info system connections and access control, control concerns, risk management and monitoring after the termination
- *Handling of joint intellectual property
- *Managing risks to bank, impact on customers

Third Party Relationship Management

Governance Practice Considerations for Each Stage

Structure:

- Disperse accountability for Third Party Risk Management amount business lines

- Centralize processes under compliance, information security, procurement, or risk management

- Each applicable business line can provide valuable input, for example, by completing risk assessments, reviewing due diligence, and evaluating controls over the relationship

- Other?

Third Party Relationship Management

Governance Practice Considerations for Each Stage

1. Oversight and Accountability

Board of Directors – ultimate responsibility



hold management accountable

provides clear guidance regarding acceptable risk

approves policies

ensures appropriate procedures and practices are in place

Management –

develops and implements third party risk management policies, procedures, practices

Third Party Relationship Management

Governance Practice Considerations for Each Stage

1. Oversight and Accountability (cont)

Board of Directors are responsible for:

- Whether third party relationships are managed consistent with strategic goals and risk appetite and In compliance with laws and regulations
- Whether there is appropriate reporting on the relationships (due diligence, contract negotiation, monitoring)
- Whether management has taken appropriate action to remedy deterioration in performance or to address changing risks or issues identified

Third Party Relationship Management

Governance Practice Considerations for Each Stage

1. Oversight and Accountability (cont)

Management is responsible for:

- Integrating third party risk management with bank's overall risk management process
- Directing planning, due diligence, and ongoing monitoring
- Reporting periodically to the Board (or designated Co) on activities
- Providing that contracts with third parties are reviewed, approved, executed
- Establishing appropriate organizational structures and staffing to support third party risk management
- Implementing and maintaining internal controls
- Assessing compliance management system appropriateness for nature, size, complexity, and scope of third party relationships
- Determining whether bank has appropriate access to data and info
- Escalating significant issues to the Board, monitoring remediation and actions taken by third party
- Terminating third parties when needed

Third Party Relationship Management

Governance Practice Considerations for Each Stage

2. Independent Reviews should cover these factors:

- Whether third party relationships align with strategy, policies, procedures, and standards
- Whether risks of third-party relationships are identified, measured, monitored, and controlled
- Whether the bank's processes and controls are designed and operating adequately
- Whether appropriate staffing and expertise are performing risk management of third-party management throughout life cycle
- Whether conflicts of interest or appearances of conflict of interest are avoided or eliminated when selecting and overseeing third parties

. . . and Management must respond promptly and thoroughly to issues or concerns identified and escalate them to the Board, as appropriate

Third Party Relationship Management

Governance Practice Considerations for Each Stage

3. Documentation and Reporting best practices:

- Current Inventory of all TPR (and related subcontractors, as appropriate) that identifies those associated with higher-risk activities, including critical activities
- Planning and risk assessments related to third party use
- Due diligence results
- Executed contracts
- Remediation plans and related reports addressing quality and sustainability of third party's controls
- Risk and performance reports from third party as part of monitoring
- Reports related to customer complaint and inquiry monitoring, and any remediation reports
- Reports from third parties re service disruptions, security breaches, etc.
- Results of independent reviews
- Periodic reporting to Board

Board Training, Third Party (and subcontractor) Employee Training, Bank Employee Training

Third Party Relationship Management

Interagency Final Guidance 6/2023 discusses
“new or novel structures and features”

- In other words, Fintechs!
- Include in the TPR Inventory!
- Beware “new or novel structures and arrangements” and the related risks (i.e. CIP, BSA/AML/OFAC if the bank is not customer-facing)
- Pay attention to Fintechs that interact directly with end customers – these are “bank customers”, too (i.e. Reg E notification of disputes, UDAPP)
- Contracts! Oversight! Bank approvals! Recent Enforcement Actions! Testing!
- More frequent review/risk assessment

Third Party Relationship Management

Use of Third Parties/Fintechs

Benefits



New technologies



Human Capital



Delivery Channels



Products



Services

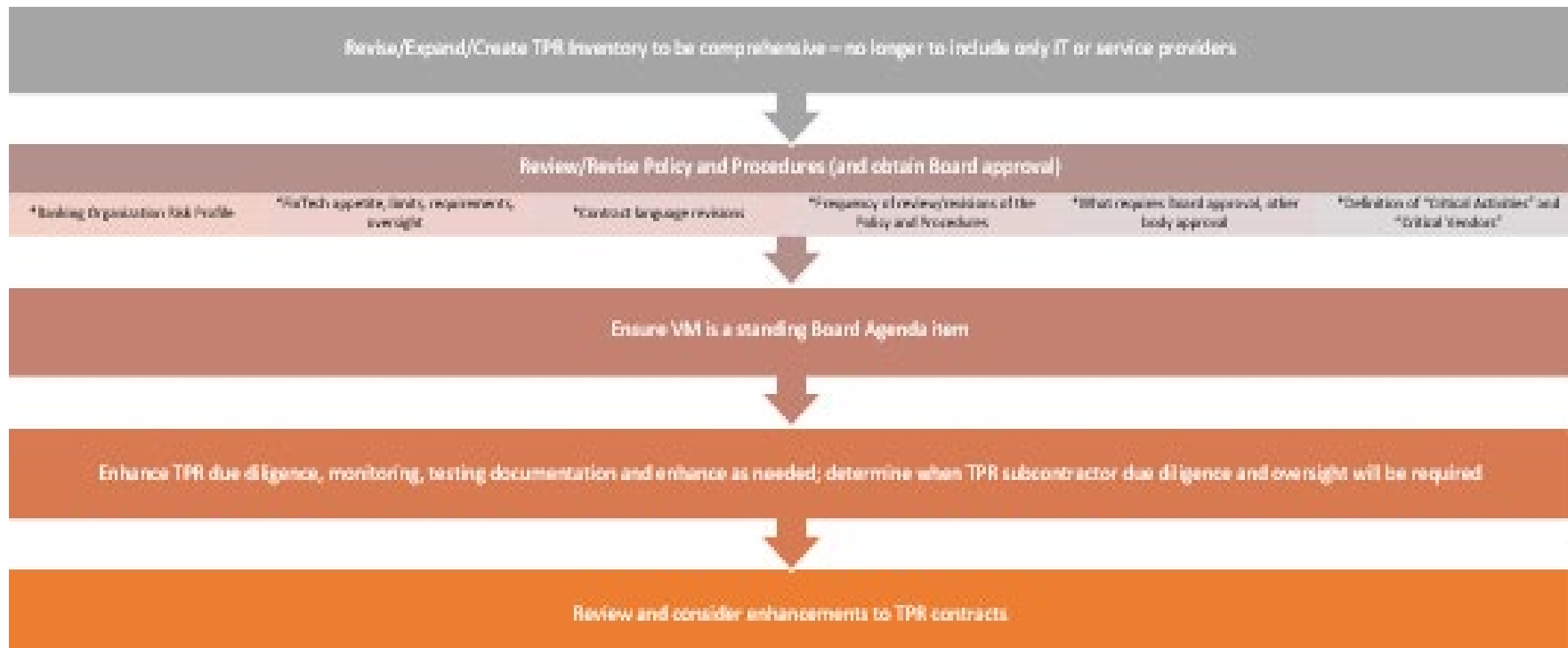


Markets

Risks

- Greater operational/ technological complexity
- New/Different types of relationships
- Potential inferior performance
- Potential financial loss, operational disruption if risks aren't appropriately managed

Third Party Relationship Management To Do:



Third Party Relationship Management To Do:

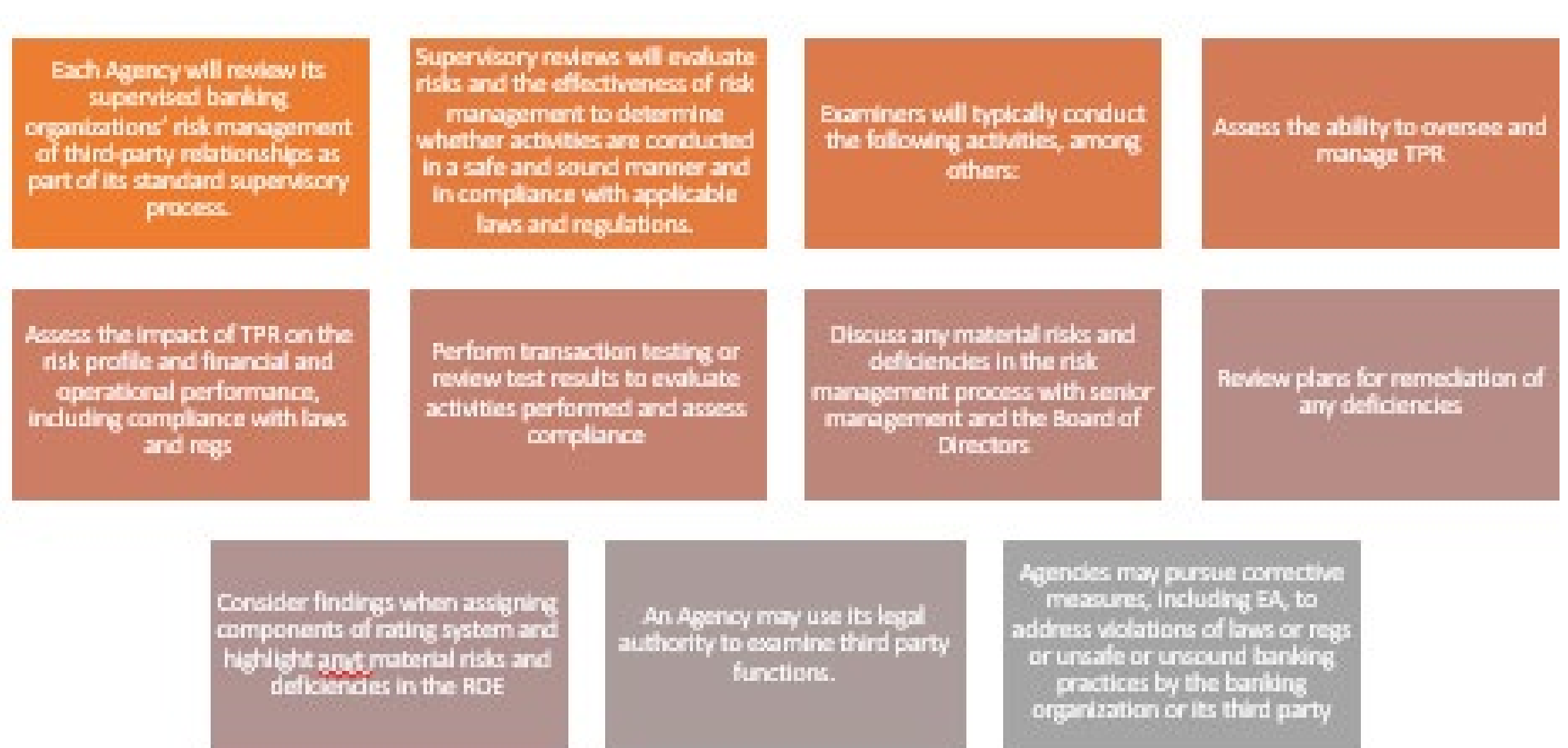


Revise what TPR are “critical” and the frequency of reviews/audits, due diligence required, documentation, etc.



FinTechs must be scrutinized and they involve complex and costly onboarding, monitoring, and oversight (i.e., marketing materials, AML/BSA/OFAC, disclosures). Consider whether this will result in an increased number of exams of service providers

Third Party Relationship Management Supervisory Reviews



Third Party Relationship Management

FINRA Vendor Management Guidance

“You Can’t Outsource Responsibility”

- Any outsourced functions must be supervised and the ability to use supervisory controls must be memorialized in the vendor contracts and in written procedures.
- Vendors and the functions they perform must be addressed in business continuity plans.
- Vendors must retain records of the work they do and these records must be subject to inspection.
- Vendors may require FINRA registration
- Cybersecurity controls, access management, change management, testing, data loss prevention compliance applies to vendors

Third Party Relationship Management Policy

- ❑ Risk Appetite – what is not acceptable, Third Parties/Subcontractors not permitted and why (business type, Beneficial Owner, etc.)
- ❑ Strategic Goals – which goals required third parties
- ❑ Statement of responsibilities of Board and Management (“Governance”)
- ❑ Identification of Risk/Criticality Levels/Ratings and related due diligence and oversight requirements, frequency, etc.
- ❑ Training – required for Board, Bank employees, Third Party and subcontractor employees
- ❑ Triggers for identifying new third party relationships
- ❑ “Planning”

Third Party Relationship Management Procedures

- ☐ Approval requirements
- ☐ What are specific roles for review of due diligence, monitoring, etc.
- ☐ Who oversees the independent testing of the Program?
- ☐ How are responsibilities fulfilled, how is reporting to Board facilitated, etc.
- ☐ How is the Termination process determined/overseen/approved
- ☐ How is it ensured that there is sufficient staffing and resources for the type/#, etc. of third-party relationships
- ☐ What types/risk level of third-party relationship will require due diligence/monitoring of their subcontractors

Third Party Relationship Management Program Templates

- Inventory of Third Party Relationships and Status
- Risk Assessment
- Contract (“Contract Negotiations”)
- Due Diligence List of Requirements
- Monitoring Requirements (“Ongoing Monitoring”)
- Termination Worksheet (“Termination”)

Third Party Relationship Management Documentation

- Current Inventory of Third Party Relationships
- Risk Assessments for each (prior and current)
- Contracts
- Monitoring, Reports, Remediation documentation for each
- Third Party Relationship Process Program Testing Results (“Independent Reviews”)
- Training documentation for each entity, employees
- Reporting to Board



The Fair Treatment Emphasis

- The discriminatory aspect of rules and regulations (HMDA, FCRA, Appraisal, UDAAP) vs accuracy of compliance
- Immigration issues have become a top concern – it is legal to rely on legal citizenship status as a basis for denial? Joint Statement issued 10/12/2023 by U.S. Justice Dept and the CFPB cautioning lenders about considering immigration status in credit decisions
- New Regulations (CRA, 1071, Fair Treatment vs Fair Lending)

HMDA CMP

- The CFPB has ordered **Bank of America, N.A.** to pay a \$12 million civil money penalty for submitting false mortgage lending information to the federal government under the Home Mortgage Disclosure Act. For at least four years, hundreds of Bank of America loan officers failed to ask mortgage applicants certain demographic questions as required under federal law, and then falsely reported that the applicants had chosen not to respond.

The CFPB's review of Bank of America's HMDA data collection practices found that the bank was submitting false data, including falsely reporting that mortgage applicants were declining to answer demographic questions. This conduct violated HMDA and its implementing regulation, Regulation C, as well as the Consumer Financial Protection Act, by:

- **Falsely reporting that applicants declined to provide information:** Hundreds of Bank of America loan officers reported that 100% of mortgage applicants chose not to provide their demographic data over at least a three month period. In fact, these loan officers were not asking applicants for demographic data, but instead were falsely recording that the applicants chose not to provide the information.
- **Failing to adequately oversee accurate data collection:** Bank of America did not ensure that its mortgage loan officers accurately collected and reported the demographic data required under HMDA. For example, the bank identified that many loan officers receiving applications by phone were failing to collect the required data as early as 2013, but the bank turned a blind eye for years despite knowledge of the problem.

2022 Top Compliance Violations: #1 HMDA

For State Member Banks according to FRB

- Loan Purpose re: Refinancing or Cash-Out Refinancing
 - A *cash-out* refinance depends on the creditor's internal standards (i.e. threshold of cash-back, interest rate/origination charges/terms differential)
 - Each Lender needs a HMDA Policy, Procedure, Field Definition, Source Document, Sale/Purchase Reference, etc.
- Gross Annual Income: Gross Annual Income *Relied Upon (vs. Provided)* in processing or making the credit decision
- Credit Score
 - Only report "N/A" when permitted (i.e. no credit decision was made, no credit score was relied on)
- Credit Scoring Model (vs. credit reporting agency)
 - Report using the codes in the CFPB reference tool for data points

(25) Credit Score	§ 1003.4(a)(15). Comments 4(a)(15)-1 through - 7	Credit score(s) relied on and the name and version of the credit scoring model	<p>CREDIT SCORE OF APPLICANT OR BORROWER. Enter, in numeral form, the credit score, or scores relied on in making the credit decision for the applicant or borrower, or of the first co-applicant or co-borrower, as applicable. If Regulation C requires your institution to report a single score that corresponds to multiple applicants or borrowers, report the score in either the applicant field or the co-applicant field.</p> <p>Or, enter</p> <ul style="list-style-type: none"> Code 1111—Exempt Code 7777—Credit score is not a number <p>NOTE: Use Code 7777 if your institution relied on a credit score that is not a number (e.g., a credit score of “Meets Threshold”). Code 7777 should not be used if a credit scoring model that produces numeric credit scores returns a result stating that the credit score could not be determined.</p> Code 8888—Not applicable Code 9999—No co-applicant <p>NOTE: Use Code 9999 in the co-applicant field if there are no co-applicants or co-borrowers.</p> 	<p>To report not applicable, enter “Code 8888” for Credit Score of Applicant or Borrower or “Code 9” for Name and Version of Credit Scoring Model for:</p> <ul style="list-style-type: none"> Purchased covered loans, § 1003.4(a)(15)(i); Comment 4(a)(15)-6; Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(15)-4; Transactions for which the credit decision was made without relying on a credit score, Comment 4(a)(15)-5; Covered loans or applications when applicant and co-applicant are not natural persons, Comment 4(a)(15)-7. <p>Enter “Code 1111” for Credit Score and Name and Version of Credit Scoring Model if, pursuant to the</p>
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NOTE: If Regulation C requires your institution to report a single score that corresponds to multiple applicants or borrowers, either report the credit score in the applicant field, and use Code 8888 in the co-applicant field; or report the credit score in the co-applicant field and use Code 8888 in the applicant field.

2018 HMDA Rule, your institution is not reporting **Credit Score**.

NAME AND VERSION OF CREDIT SCORING MODEL. Indicate the name and version of the credit scoring model used to generate the credit score, or scores, relied on in making the credit decision by entering:

- Code 1111—Exempt
- Code 1—Equifax Beacon 5.0
NOTE: Use Code 1 for Equifax Beacon 5.0, which may also be known as FICO Score 5.
- Code 2—Experian Fair Isaac Risk Model v2
NOTE: Use Code 2 for Experian Fair/Isaac Risk Model v2, which may also be known as FICO Score 2 or FICO Classic v2.
- Code 3—TransUnion FICO Risk Score Classic 04
NOTE: Use Code 3 for TransUnion FICO Risk Score Classic 04, which may also be known as FICO Score 4 or TU-04.
- Code 4—TransUnion FICO Risk Score Classic 98
NOTE: Use Code 4 for TransUnion FICO Risk Score Classic 98, which may also be known as FICO 98 or TU-98.
- Code 5—VantageScore 2.0
- Code 6—VantageScore 3.0
- Code 7—More than one credit scoring model
- Code 8—Other credit scoring model
NOTE: If Code 8 is selected in the Name and Version of Credit Scoring Model Field, enter the specific other credit scoring model

that is not listed above in the **Name and Version of Credit Scoring Model Conditional Free Form Text Field** for **Code 8**. If Code 8 is not entered, leave this field blank.

- Code 9—Not applicable
- Code 10—No co-applicant
NOTE: Use Code 10 in the co-applicant field if there are no co-applicants or co-borrowers.
- Code 11—FICO Score 9

NOTE: Use Code 11 for FICO Score 9, which also may be known as FICO 9.

NOTE: If Regulation C requires your institution to report a single score for a covered loan or application involving multiple applicants or borrowers, report either (A) the name and version of the credit scoring model, or that multiple credit scoring models were used, in the applicant field, and use Code 9 in the co-applicant field; or (B) the name and version of the credit scoring model, or that multiple credit scoring models were used, in the co-applicant field, and use Code 9 in the applicant field.

2022 Top Compliance Violations: #1 HMDA

For State Member Banks according to FRB

- Discount Points and Lender Credits – verify accuracy of manual input
- Business or Commercial Purpose – Business or Commercial Purpose loans (per Reg Z) that are for home purchase, home home improvement, or refinancing
 - Loans primarily for business or commercial purpose are NOT unilaterally exempted from HMDA
 - Determine whether request is consumer vs. commercial first, then determine HMDA coverage

Reg Z's Business Purpose Test

- Primary Purpose (over 50%) is for business, purpose, commercial purpose
- Borrower is an entity and not an individual(s) = Business Purpose *but an individual borrower does not necessarily mean it is Consumer Purpose*
- Primary Purpose is to acquire, improve, or maintain Non-Owner-Occupied Rental Property = Business Purpose

Note: If the owner expects to occupy the property for more than 14 days during the coming year, the property is not non-owner-occupied

- Owner-Occupied Rental Property:

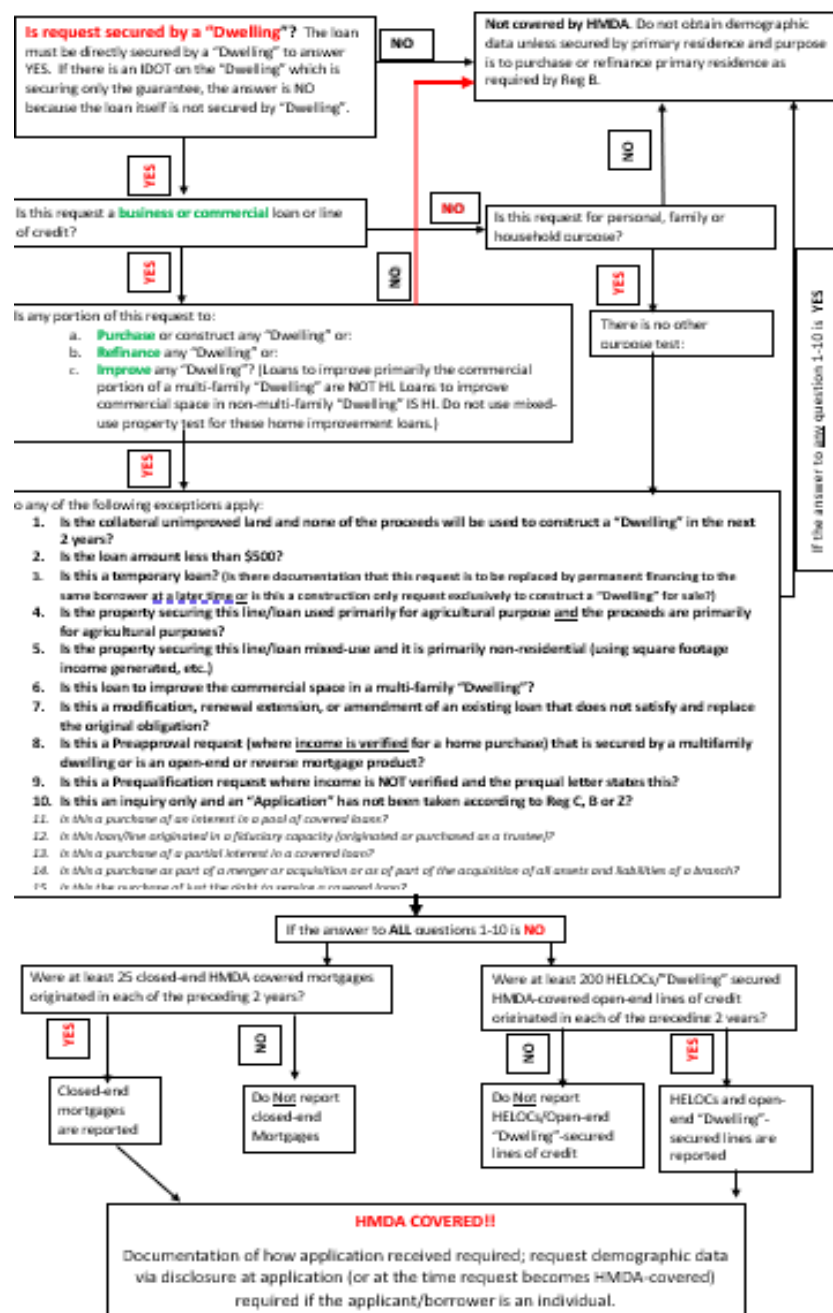
If to acquire – Business Purpose if it contains more than 2 housing units

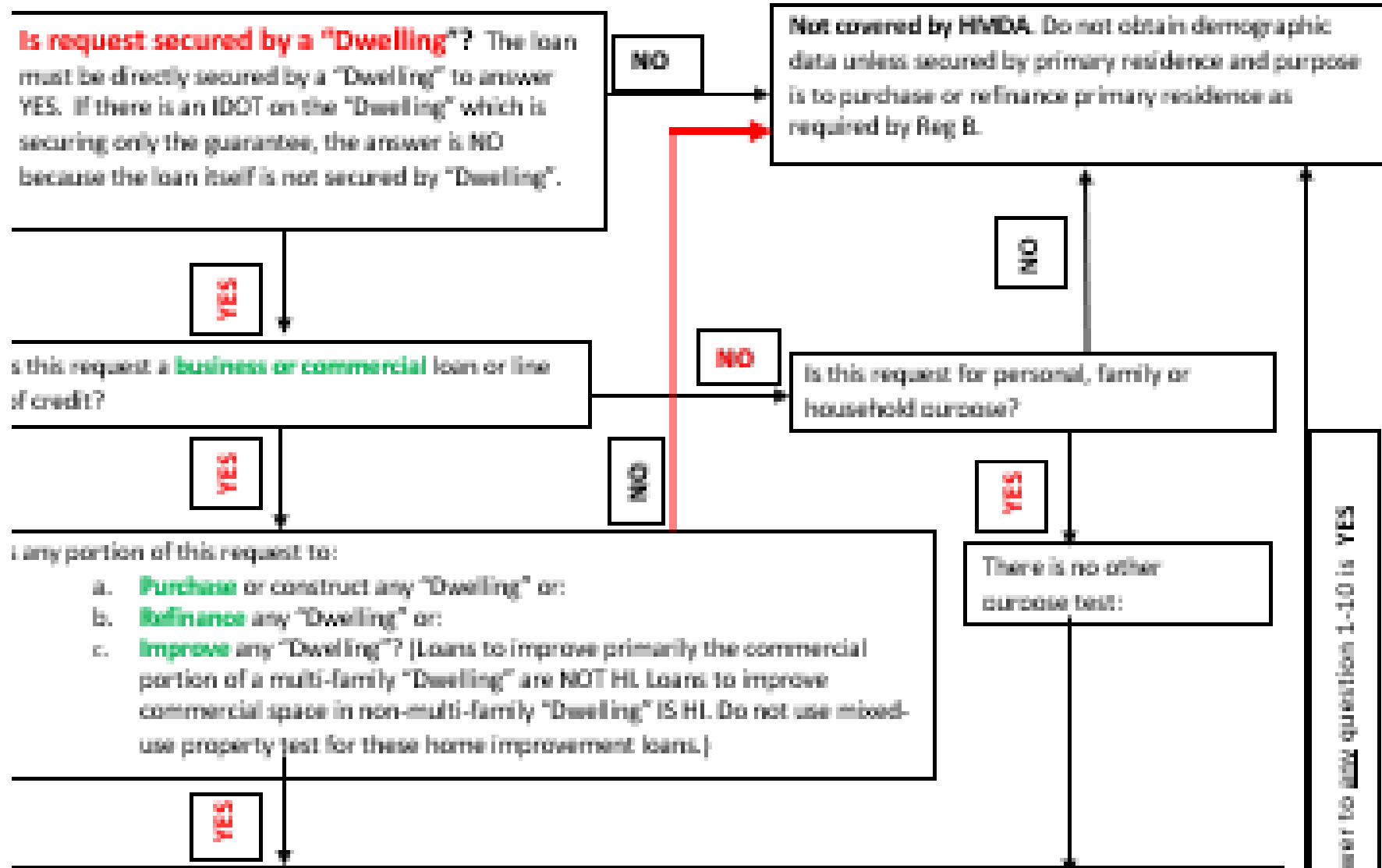
If to improve/maintain – Business Purpose if it contains more than 4 housing units

Reg Z's Business Purpose Test (cont)

- When neither of the above apply or are clear, use the following test to determine whether credit to finance an acquisition is primarily for business vs consumer purposes. Consider whether the response to each of these factors is consumer or business:
 - 1)What is the relationship of the borrower's primary occupation to the acquisition/purpose of the loan? The more closely related, the more likely it is to be business purpose.
 - 2)What is the degree to which the borrower will personally manage the acquisition/purpose of the loan? The more personal involvement there is, the more likely it is to be business purpose.
 - 3)What is the ratio of income from the acquisition/purpose of the loan to the total income of the borrower? The higher the ratio, the more likely it is to be business purpose.
 - 4)What is the size of the transaction? The larger the transaction, the more likely it is to be business purpose.
 - 5)What is the borrower's statement of purpose?
- *This 5-way test can be applied to any request. Document and justify the responses. Note that information from the applicant is required to respond and make the determination.*
- *Consider incorporating all these questions into the Commercial Loan Application. Refer to Reg Z and commentary for further details*

HMMA TRANSACTIONAL COVERAGE (as of 12/3/2023)





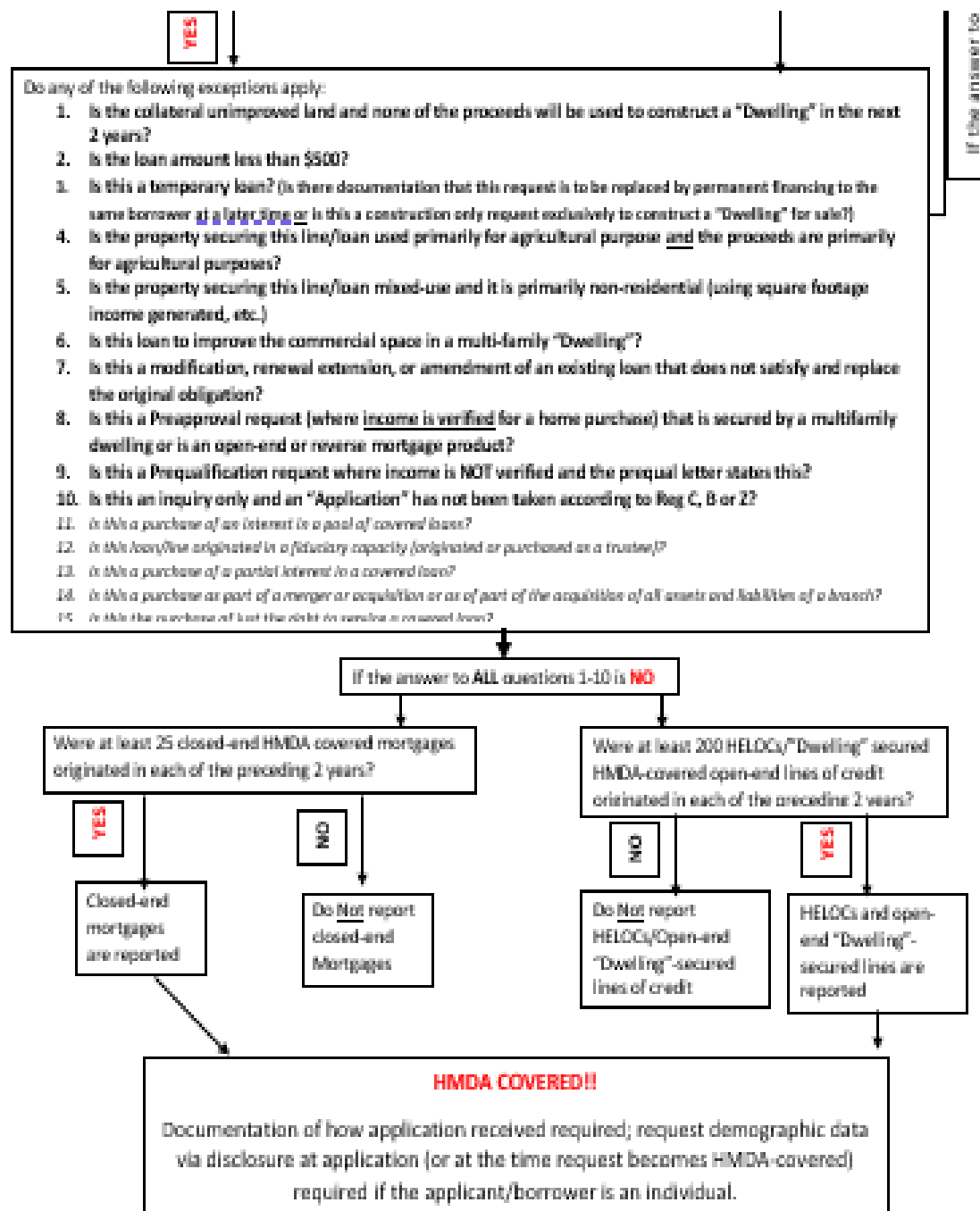


EXHIBIT B – HMDA TERMINOLOGY

DWELLING	NOT A DWELLING
<ul style="list-style-type: none"> -Someone's primary or secondary or vacation residence -Apartment buildings -Single Family Dwelling -Condo -Townhouse -Mobile Home constructed June 15, 1976 or later -Manufactured Homes or factory-built homes that meet HUD's regs and generally that bear a HUD Certification Label and data plate noting compliance with Federal standards -Manufactured Home Communities (even if only the real estate is taken as collateral – and no dwelling secures the loan) -Multi-family residential structures (other than Manufactured Home Communities) only if one or more individual dwelling units secure the loan. (A loan secured by only the common areas would not be a dwelling.) -Condominium buildings or complexes -Cooperative buildings or complexes -Mixed-use property if primary use is residential -Properties for long-term housing and related services (such as assisted living for senior citizens or supportive housing for people with disabilities) -Properties for long-term housing and medical care if primary use is residential <p>... unless listed as "Not a Dwelling"</p>	<ul style="list-style-type: none"> -Transitory residences -Hotels -Hospitals and properties used to provide medical care (such as skilled nursing, rehabilitation, or long-term medical care) -College dormitories -Recreational vehicle parks -Boats -Campers -Recreational vehicles -Park model RVs -Houseboats -Mobile homes constructed before June 15, 1976 -Mixed-use property if primary use is not residential -Structures originally designed as dwellings but used exclusively for commercial purposes -Properties for long-term housing and medical care if primary use is not residential



2022 Top Compliance Violations

- #2 – (Current Large Bank) CRA data collection and reporting for each small business or small farm loan originated or purchased by the bank

Maturity Date must be extended in order for a LOC to be reported!

This reporting will change with the new CRA.



CRA Large Bank Reporting Recommendations

1. It is recommended that the Bank maintain an internal listing of Community Development loans and that the list include the collateral, collateral ownership or other reason why the loan is not reportable under HMDA or as a CRA Small Business loan if the loan amount is \$1,000,000 or less.
2. It is recommended that the Bank maintain a List of Loans whose purpose would have qualified them as CD but they were HMDA or CRA Small Business reportable. This is to show the types of loans that are being made and to give examiners a feel for the Bank's lending. This could be on the same List as in #1 above with a separate designation or notation.
3. Verify Call Report coding to CRA LAR reporting. It is strongly recommended that the Bank implement a review and verification of Call Report coding to ensure the CRA LAR is correct.
4. When business loans are secured by mixed collateral (residential and non-residential), the approval needs to document the value of each so that it is clear which is the primary collateral. The prior liens, etc. need to be taken into consideration. The collateral with the most value should determine how the loan is categorized on the Call Report, which should equate to how the loan is reported on the CRA LAR.
5. Each loan needs to be reviewed closely for the correct location codes rather than using the business address when business assets are the collateral. Consider the use of proceeds.
6. Each loan should have a location code printout in the file for the CRA location codes on the LAR. The location codes used (collateral vs. use of funds) needs to be verified.
7. It is recommended that a specific location in each CRA-reportable file indicate the amount of total income/revenues relied upon to make the credit decision. This should be a reflection of the source of the income/revenue with the amount and then the total with an indication of the applicable CRA Revenue Code. Sometimes the borrowing entity income is listed but then the guarantors' income is also listed. It should be indicated whether or not the guarantor's income is included in the debt ratio. It is also recommended that each guarantor be identified as being an affiliate/parent of the borrowing entity or having no affiliation.
8. It is recommended that the Bank adopt CRA-reportable loan documentation that reflects detailed purpose of each dollar of the proceeds when there is a mixed-purpose loan. This checklist or document would contain an option for a portion to be personal purpose (with an explanation and examples), small farm purpose (with an explanation and examples), small business purpose (with an explanation and examples), and Community

Development purpose (with an explanation and examples). The Loan Officer would fill in the amount and an explanation for each, as applicable.

9. It is recommended that the Bank adopt specific CRA Procedures that address unusual situations that have required research and that will require ongoing consistency for reporting purposes.

*One area that should be documented and addressed is the reporting of Guidance Lines of Credit. Each individual loan may be required to be reported in some circumstances – even though they are all under a guidance line of credit. The following stipulations are required in this scenario:

- The Guidance Line is not reported as a small business loan – there is no double reporting
- The Guidance Line is not booked on the system and no advances are made based on the Guidance Line approval alone

-Each request under the Guidance Line is subject to review and approval of established requirements and is booked as a separate loan with a specific term and maturity date.

*Another area to be addressed are consortium loans where the Bank books directly on its books its portion of the participation. The Bank should correctly identify these loans and their renewals – and whether or not they are small business loans or CD.

Some of the most common CRA Reporting Errors are:

*Revenue Code doesn't match documentation in file or file lacks any documentation of revenues

*Date of Origination is Incorrect

*File not reported on CRA LAR when it was required to be or File reported on CRA LAR and had to be removed

*Location code

*Loan Amount incorrect

Common Types of File Remediation required for accurate CRA Reporting

Documentation misfiled
Date of Loan Approval reflects incorrect year.
Lack of Loan Approval in file
Lack of Documentation of Primary Use of Mixed Use Property
Lack of Documentation of % of collateral that is not residential when multiple pieces of collateral secure the loan.
Lack of Documentation of primary purpose of proceeds when there is mixed use documented in file.
Lack of Documentation of type of RE securing the line.



The New CRA

Asset Thresholds

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default <i>or</i> Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in <i>or</i> Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric And	New CD Services Test And

The New CRA

Compliance Dates

- The April 1, 2024, effective date is applicable to provisions of the final rule that are similar to the current CRA regulations: facility-based assessment area delineations, effect of CRA on applications, public file, bank public notice, and CRA examination schedule public notice provisions, as well as the new public engagement provision.
- As of January 1, 2026, banks are required to comply with all other provisions of the final rule, except for certain reporting requirements, which will be applicable on January 1, 2027.

The New CRA

Facility-Based Assessment Areas (FBAAs)

- All banks will continue to be required to delineate an assessment area in locations where they have a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding counties in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans).
- A small or intermediate bank may adjust the boundaries of its facility-based assessment areas to include only the portion of a county that it reasonably can be expected to serve so long as that adjustment does not reflect illegal discrimination; nor arbitrarily exclude low- or moderate-income census tracts.

The New CRA

Retail Lending Assessment Areas (RLAAs)

- Large banks may be required to delineate RLAA in geographic areas where they do not have a branch.
- If, in the prior two years, the large bank originated or purchased within its facility-based assessment areas (i.e. the areas near branches where the bank has existing assessment areas) more than 80 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans (if automobile loans are a majority of its business) – it is not required to delineate any RLAA.
- However, if a bank originated more than 20 percent of its home mortgage, multifamily, small business, and small farm loans outside its facilities-based assessment areas, it will be required to delineate a RLAA in either:
 - the entirety of a single MSA, excluding any counties inside the large bank's facility-based assessment areas;
 - or all of the counties in the nonmetropolitan area of a State excluding any counties included in the large bank's facility-based assessment areas; and any counties in which the large bank did not originate any closed-end home mortgage loans or small business loans that are reported loans during that calendar year.
- WHERE it originated:
 - At least 150 closed-end home mortgage loans that are reported loans in each year of the prior two calendar years; or
 - At least 400 small business loans that are reported loans in each year of the prior two calendar years.

The New CRA: What to Do Right Now

- Determine what Size Threshold will be applicable
- How close to the thresholds is your institution?
- Review the applicable Assessment Area(s)
- How many loans are made outside of the current AA?
- How close to the RLAA thresholds is your institution?
- Get familiar with the terminology
- Consider how the CRA Public File would be made available online
- Sign up for alerts, watch, and listen

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance



The (Tentative) New CRA Vocabulary – A Work In Progress! (11/30/2023)

Terminology	Acronym	Applicable Test/Size Institution	Test Component	Triggers	Requirements
Facility-based Assessment Area	FBAA	All		All institutions <u>Similar to current AA</u>	<ul style="list-style-type: none"> *Large banks- whole counties required *Small, Intermediate, Large – no discrimination *No larger than MSA; may have multiple FBAA's *Must include main office, branches, deposit- taking remote facilities <p>Include where substantial portion of home mortgage loans, multifamily loans, small business loans, small farm loans, & auto loans were originated or purchased</p> <p>Applicable for all tests</p>
Retail Lending Assessment Area	RLAA	Large		<ul style="list-style-type: none"> *No branch *In prior 2 years, originated or purchased < 80% of home mortgage, multifamily, small business, small farm, and auto <u>loans within</u> FBAA(s) 	<ul style="list-style-type: none"> *Either: Entire MSA less counties <u>in FBAA</u> OR All counties in non-Metropolitan area of a State excluding counties in FBAA, and any counties where no reportable closed-end home mortgage loans <u>or small</u> bus loans were originated during that calendar year *<u>and</u> WHERE and IF either: 150 or more reportable closed-end home mortgage loans were originated in each year of the prior 2 calendar years OR 400 or more reportable small business loans were originated in each year of the prior 2 calendar years <p>Applicable for Geographic Distribution Analysis calculations under the Retail Lending Test (RLT)</p> <p>Not applicable for Community Development (CD) test</p>

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance

Major Product Line	RLT	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT, GDA		>15% of all loan <u>originations</u> <u>except</u> for automobile lending, which has to be >50% of all loan originations to be a major product line
Retail Lending Test	RLT	Small – <u>Optional</u> ; Intermediate and Large – Required			1) Retail Lending Volume Screen 2) Geographic Distribution Analysis 3) Borrower Distribution Analysis
Retail Lending Volume Screen	RLVS	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT		Assesses volume of retail lending vs deposit base compared to other banks in each FBAA
Retail Lending Volume Threshold	RLVT	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; RLVS		*Must meet or surpass Retail Lending Volume Threshold of FBAA by having a Bank Volume Metric of 30% or > of the Market Volume Benchmark for the FBAA
Bank Volume Metric	BVM	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; RLVS	Sum of annual \$ of all home mortgage, multifamily, small business, and small farm loans originated/purchased in FBAA DIVIDED BY Annual \$ of deposits in FBAA	<u>BVM Loans \$</u> Bank Deposits \$
Bank Market Benchmark/ Bank Volume Metric	BMB/ BVM	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; RLVS - BVM	Sum of annual \$ of all home mortgage, multifamily, small business, and small farm loans originated/purchased in FBAA DIVIDED BY Annual \$ of deposits in FBAA	<u>BVM Loans \$</u> Bank Deposits \$
Market Volume Benchmark	MVB	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; RLVS	Sum of annual \$ of all reported home mortgage, multifamily, small business, small farm loans originated by Intermediate and Large Banks in FBAA <u>DIVIDED BY</u> <u>Annual \$</u> deposit volume in those institutions	<u>VolBenchmarkLoans\$</u> <u>AggMarketDeposits \$</u>

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance

Geographic Distribution Analysis	GDA	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT	In each AA, up to 6 Geographic Bank Metrics will be calculated (one for low-income CT and one for moderate-income CT for each major product line (home mortgage, small business, small farm), each of which will be compared to 2 possible comparators (Geographic Market Benchmark or Geographic Community Benchmark)	Geographic Distribution Analysis compares geographic and borrower distributions to performance ranges based on applicable market and community benchmarks in EACH Assessment Area (FBAA and RLAA).
Geographic Bank Metric	GBM	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; GDA	For each AA, sum of # of originated and purchased loans in each major product line in low-income and then in moderate-income CT DIVIDED BY the total number of loans made in that AA for each product line over the exam period	<u>BankLoans LowInc CT</u> Bank Loans
Geographic Market Benchmark	GMB	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; GDA	Sum of # of reported loans in major product line in low-income CT and then in moderate-income CT in each AA over exam period originated by all lenders DIVIDED BY annual # of reported loans in product line in AA originated by ALL lenders	<u>AggMarketLoans LICT</u> Agg Market Loans Outstanding 115% Satisfactory 105% Low <u>Satisfactory</u> 80% Needs to Improve 33%
Geographic Community Benchmark	GCB	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; GDA	Relevant targeted population (eg, annual # owner-occ housing units, annual # non-farm bus, etc.) in Low-income CT (and then moderate-income CT) DIVIDED BY Total # of owner -occupied housing units, non-farm businesses in FBAA.	<u>Bus LICT</u> Businesses Outstanding 100% Satisfactory 80% Low <u>Satisfactory</u> 60% Needs to Improve 30%

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance

Borrower Distribution Analysis	BDA	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT	<p><u>Usually</u> will yield 6 Borrower Bank Metrics in each AA: one for Low Income Borrowers, Moderate Income Borrowers, Small Businesses with <\$250K in revenue, small businesses with \$250K - <\$1mil in revenue, small farms with < \$250K in revenue, small farms with \$250K - <\$1mil in revenue</p> <p>Choose comparator: either Borrower Market Benchmark or Borrower Community Benchmark</p>	Evaluates lending to the absolute # of LMI individuals, small businesses, or small farms
Borrower Bank Metric	BBM	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT; BDA	Sum of annual # of originated and purchased loans for each major product line to LI Borrowers in each <u>AA over</u> exam period DIVIDED BY # Bank's annual originated and purchased loans in the major product line in the AA	<u>Bank Loans LI Borrow</u> <u>Bank Loans</u>
Borrower Market Benchmark	BMB	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT: BDA	Sum, over exam period, annual # reported loan in major product line to LI borrowers (and MI borrowers) in the FBAA's or RLAA's originated by all lenders DIVIDED BY sum over exam period of annual # of reported loans in major product line in the AA originated	<p><u>AggMarketLoansLI Bor</u> <u>Agg Market Loans</u></p> <p>Outstanding 115% Satisfactory 105% Low <u>Satisfactory 80%</u> Needs to <u>Improve 33%</u></p>
Borrower Community Benchmark	BMB	Small – <u>Optional</u> ; Intermediate and Large – Required	RLT: BDA	Sum of # of LI (and then MI) families, small businesses with < \$1 million in revenue, small farms with < \$1 million in revenue in AA DIVIDED BY Sum of, over exam period, the annual # of same relevant population in AA	<p><u>Low Inc Families</u> <u>Families</u></p> <p>Outstanding 100% Satisfactory 80% Low <u>Satisfactory 60%</u> Needs to <u>Improve 30%</u></p>

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance

Retail Services and Products Test		Large		All Large and If above \$10 billion there will be an additional review of digital delivery systems	#&% of branches and remote service facilities in LMMU CT vs % LMMU CT FBAA % households in FBAA in LLMU CT % bus in FBAA in LMMU CT % branches in FBAA In LMMU CT Will consider branch: -in Middle and Upper Inc CT where services are delivered to Low or moderate <u>inc</u> & they use services -in Distressed or underserved CT -in Native Land Areas
Community Development Loans and Services	CD Loans and Services	Large		Impact Review of CD Activity: Poverty county(ies) CT w poverty of 40% Low CD financing MDI, WDI, LICU, CDFI (excludes CDs <1yr) LI families Small Bus & Small farms w gross revenue of \$250K or less High Opportunity Areas Native Land Areas Grant or Donation LIHTCs or NMTCs New CD product or service for LMI	CD credit for loan, investment or service that supports CD via: Affordable Housing <u>Economic Development</u> Community Supportive Services Revitalization or Stabilization Revitalization or stabilization, essential community facilities, disaster preparedness, essential community infrastructure, weather resiliency in Native Land Areas Essential community infrastructure Recovery of designated disaster areas Activities with MDIs, WDIs, LICUs, CDFI Financial Literacy – no income test!

The New CRA Vocabulary – A Work in Progress

This summary is very tentative and is based on an initial read of the new rule. Any information listed may be revised based on further interpretation and Guidance.

CD Financing Test	CD FT	Large – required Intermediate - opt in	CD FT		Conducted in each FBAA Quantitative test but there are no benchmarks
Bank Assessment Area CD Financing Metric		Large – required Intermediate - opt in	CD FT	For each FBAA, relevant state or multistate MSA, and nationwide: Sum of bank's CD loans and investments in AA DIVIDED BY deposits in that AA	Bank's CD loans and <u>investments in AA</u> Deposits in Bank in AA
<u>AA CD Financing Benchmark</u>		Large – required Intermediate - opt in	CD FT	Bank Metric is compared to a peer comparator calculated in each AA	CD Loans & Invest in AA by <u>all large Banks</u> Deposits in the AA in all Large Banks
Metropolitan Nationwide CD Financing Benchmark		Large – required Intermediate - opt in	CD FT	If AA is in a metropolitan area, it will also be compared to this benchmark	CD loans and invest nationwide in metro <u>areas all large banks</u> Deposits nationwide in metro areas in all large banks
Non-metropolitan Nationwide CD Financing Benchmark		Large – required Intermediate - opt in	CD FT	If AA is in a non-metro area, it will also be compared to this benchmark	CD loans and invest Nationwide in nonmetro areas by <u>all large banks</u> Deposits nationwide in nonmetro areas in all large banks
CD Service Test	CD ST	Large	CD ST	# CD services Capacity # hours # LMI individuals served	Tests record of helping to meet the CD service need in the community. Evaluates the # of community organizations served by staff, capacity, # hours.

The New CRA - RLT

Retail Lending Test

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test	New Retail Lending Test (Default or Opt-in)	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

The new Retail Lending is designed to ensure a bank is making sufficient home mortgage, small farm, and small business loans in its assessment areas. The test is applied in each of a bank's assessment areas in each of its retail product lines, home mortgage, small business, and small farm lending. In general, the process works as follows:

- First, a Retail Lending Volume screen is applied to assess a bank's volume of retail lending relative to its deposit base, compared to other banks in each facility-based assessment area.
- Second, metrics and benchmarks are used to evaluate the following four categories of lending for each of a bank's major product lines in each Retail Lending Test Area:
 - Loans in low-income census tracts;
 - Loans in moderate-income census tracts;
 - Loans to low-income borrowers (or to businesses or farms with gross annual revenues of \$250,000 or less); and
 - Loans to moderate-income borrowers (or to businesses or farms with gross annual revenues greater than \$250,000 but less than or equal to \$1 million).
- Conclusions assigned to each Retail Lending Test Area, and a weighted average approach to determine Retail Lending Test conclusions at the State, multistate MSA, and institution levels, are computed to create a final Retail Lending Test Score.

The New CRA - RLT

Retail Lending Volume Screen

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test (Optional)	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test (And)		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test (And)	New CD Financing Metric	New CD Services Test (And)

- The first component of the Retail Lending Test is the Retail Lending Volume Screen, which is applied in each assessment area. A bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area if the bank has a Bank Volume Metric of **30 percent** or greater of the Market Volume Benchmark for that facility-based assessment area.
- The **Bank Market Benchmark** is calculated by summing the bank's annual dollar volume of all home mortgage loans, multifamily loans, small business loans, small farm loans originated or purchased by the bank in the facility-based assessment area in that year. That number is then divided by the bank's annual dollar volume of deposits in the facility-based assessment. For example:

$$\frac{\text{Bank Volume Metric Loans (\$1 million)}}{\text{Bank Deposits (\$5 million)}} = \text{Bank Volume Metric (20\%)}$$

- The **Market Volume Benchmark** is calculated by summing the annual dollar volume of all home mortgage loans, multifamily loans, small business loans, and small farm loans in the facility-based assessment area in that year that are reported loans originated by benchmark depository institutions (an intermediate or large bank for CRA purposes) and then dividing that number by the annual dollar volume of deposits for benchmark depository institutions in the facility-based assessment area. For example:

$$\frac{\text{Volume Benchmark Loans (\$20 million)}}{\text{Aggregate Market Deposits (\$50 million)}} = \text{Market Volume Benchmark (40\%)}$$

The New CRA – RLT

Geographic Distribution Analysis

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default) Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric And New CD Services Test

For closed-end home mortgage loans, small business loans, and small farm loans, respectively, the agencies compare a bank's **geographic and borrower distributions** to performance ranges based on the applicable **market and community benchmarks**.

In each assessment area, the bank will sum, over the years in the evaluation period, the bank's annual number of originated and purchased loans in each major product line in low-income census tracts and in moderate-income census tracts. It will then divide that number by the total number of loans made in that assessment area in each product line. For example:

$$\frac{\text{Bank Loans in Low – Income Census Tracts (50)}}{\text{Bank Loans (250)}} = \text{Geographic Bank Metric (20\%)}$$

The New CRA - RLT

Geographic Distribution Analysis

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional
Intermediate	\$600 million to \$2 billion	New Retail Lending Test		New CD Financing Metric (Opt-in or Default) Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test	New CD Financing Metric And New CD Services Test

- The **Geographic Market Benchmark** is calculated by summing, over the years in the evaluation period, the annual number of reported loans in the major product line in low income census tracts and moderate income census tracts in the facility-based assessment area or retail lending assessment area originated by all lenders and then dividing that by the annual number of reported loans in the major product line in the facility-based assessment area or retail lending assessment area originated by all lenders. For example:

$$\frac{\text{Aggregate Market Loans in Low – Income Census Tracts (400)}}{\text{Aggregate Market Loans (1,000)}} = \text{Geographic Market Benchmark (40\%)}$$

- The **Geographic Community Benchmark** is calculated by the relevant targeted population (eg, the annual number of owner-occupied housing units, the annual number of non-farm businesses, etc.) in low-income census tracts and moderate-income census-tracts by the total number of owner-occupied housing units, non-farm businesses, etc. in the entire facility-based assessment area. For example:

$$\frac{\text{Businesses in Low – Income Census Tracts (500)}}{\text{Businesses (4,000)}} = \text{Geographic Community Benchmark (12.5\%)}$$

The New CRA - RLT

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test	New CD Financing Metric	New CD Services Test

To summarize: in each assessment area, banks will calculate up to 6 Geographic Bank Metrics, each of which will be compared to two possible comparators, as illustrated by the chart below:

Product Line	Bank Geographic Metrics	Comparators
Closed-end home mortgage loans	Percent of mortgage loans in low-income census tracts	Percent of all lenders' mortgage loans in low-income census tracts
		Percent of owner-occupied units in low-income census tracts
	Percent of mortgage loans in moderate-income census tracts	Percent of all lenders' mortgage loans in moderate-income census tracts
		Percent of owner-occupied units in moderate-income census tracts
Small business loans	Percent of small business loans in low-income census tracts	Percent of all lenders' small business loans in low-income census tracts
		Percent of non-farm businesses in low-income census tracts
	Percent of small business loans in moderate-income census tracts	Percent of all lenders' small business loans in moderate-income census tracts
		Percent of non-farm business in moderate-income census tracts
Small farm loans	Percent of small farm loans in low-income census tracts	Percent of all lenders' small farm loans in low-income census tracts
		Percent of farms in low-income census tracts
	Percent of small farm loans in moderate-income census tracts	Percent of all lenders' small farm loans in moderate-income census tracts
		Percent of farms in moderate-income census tracts

The New CRA - RLT

Geographic Benchmarks

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default <i>or</i> Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test <i>Optional</i>
Intermediate	\$600 million to \$2 billion	New Retail Lending Test <i>And</i>		New CD Financing Metric (Opt-in <i>or</i> Default) Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test <i>And</i>	New CD Financing Metric <i>And</i> New CD Services Test

- To calculate a presumptive “recommended” rating in each retail lending area, a bank’s geographic metric is compared to the more favorable comparator in that area. It must attain the following percentage of that benchmark in order to attain the listed recommended rating. Ratings may be adjusted up or down based on certain other performance factors including but not limited to low loan volume, missing data, etc.

Rating	Geographic Market Benchmark	Geographic Community Benchmark
“Outstanding”	115%	100%
“High Satisfactory”	105%	80%
“Low Satisfactory”	80%	60%
“Needs to Improve”	33%	30%

The New CRA - RLT

Borrower Distribution Analysis

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric And New CD Services Test

- The borrower distribution analysis works similarly to the geographic distribution analysis, except instead of evaluating a bank's performance relative to lending in LMI census tracts, it is instead focused on bank lending to the absolute number of LMI individuals, small businesses, or small farms.
- First, a **Borrower Bank Metric** is calculated in each major product line in each assessment area. That metric is calculated by summing, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line to designated borrowers in the Retail Lending Test Area and then dividing that number by the sum, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line in the Retail Lending Test Area. For example, the calculation for loans to low-income borrowers might look like:

$$\frac{\text{Bank Loans to Low – Income Borrowers (20)}}{\text{Bank Loans (100)}} = \text{Borrower Bank Metric (20\%)}$$

- Once again, this calculation will usually yield six Borrower Bank Metrics in each assessment area. One each for loans to low-income borrowers, moderate income borrowers, small businesses with less than \$250,000 in revenue, small businesses with less than \$1 million in revenue, small farms with less than \$250,000 in revenue, and small farms with less than \$1 million in revenue.

The New CRA - RLT

Borrower Distribution Analysis

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default) Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric And New CD Services Test

- **The Borrower Market Benchmark** is calculated by summing, over the years in the evaluation period, the annual number of reported loans in the major product line to designated borrowers in the facility-based assessment area or retail lending assessment area originated by all lenders and then dividing that number by the sum, over the years in the evaluation period, the annual number of reported loans in the major product line in the facility-based assessment area or retail lending assessment area originated by all lenders. For loans to low-income borrowers, it might look like:

$$\frac{\text{Aggregate Market Loans to Low - Income Borrowers (100)}}{\text{Aggregate Market Loans (1,000)}} = \text{Borrower Market Benchmark (10\%)}$$

- The **Borrower Community Benchmark** is calculated by summing, over the years in the evaluation period, the annual number of the relevant population (low-income families, small businesses with less than \$1 million in revenue, etc.) in the facility-based assessment area or retail lending assessment area and dividing that number by the sum, over the years in the evaluation period, the annual number of the same relevant population in the facility-based assessment area or retail lending assessment area. For example, for low-income families, that calculation might look like:

$$\frac{\text{Low - Income Families (1,000)}}{\text{Families (4,000)}} = \text{Borrower Community Benchmark (25\%)}$$

The New CRA - RLT

Borrower Benchmarks

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

Once the six bank metrics and twelve bank benchmarks are calculated in each assessment area, the bank will be compared to the most favorable benchmark in the same manner as the geographic distribution analysis. The bank's "recommended" ratings are then calculated based on the following percentages:

Rating	Borrower Market Benchmark	Borrower Community Benchmark
"Outstanding"	115%	100%
"High Satisfactory"	105%	80%
"Low Satisfactory"	80%	60%
"Needs to Improve"	33%	30%

The New CRA

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test (Default or Opt-in)	Can continue, but are not required to request credit for CD activity under Existing CD test (Optional)	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test (And)		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test (And)	New CD Financing Metric	New CD Services Test (And)

New Retail Services and Products Test

- The Retail Services and Products Test is designed to evaluate the availability of a bank's retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank's entire community. **The test is applicable only to large banks and is worth 10% of the bank's overall rating.**
- Banks above \$10 billion will have additional review of digital delivery systems.
- The agencies will consider the number and percentage of the bank's branches and remote service facilities within low-, moderate-, middle-, and upper-income census tracts compared to:
 - (1) The percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;
 - (2) The percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts;
 - (3) The percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts; and
 - (4) The percentage of all full-service depository institution branches in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.
- Agencies will also consider whether there are branches or remote service facilities in:
 - (1) Middle- and upper-income census tracts in which a branch delivers services to low- and moderate-income individuals, families, or households to the extent that these individuals, families, or households use the services offered;
 - (2) Distressed or underserved nonmetropolitan middle-income census tracts; and
 - (3) Native Land Areas.

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test	New CD Financing Metric	New CD Services Test

The New CRA

Community Development Loans, Investments, and Services

A bank may receive community development credit for a loan, investment, or service that supports community development according to any of the following factors:

- a) Affordable housing, which comprises:
 - i. rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy
 - ii. Multifamily rental housing with affordable rents
 - iii. One-to-four family rental housing with affordable rents in a nonmetropolitan area
 - iv. Affordable owner-occupied housing for low- or moderate-income individuals
 - v. Mortgage-backed securities – where a majority of the underlying loans are home mortgage loans made to low- or moderate-income individuals or loans that finance multifamily affordable housing.
- b) Economic development – which comprises:
 - i. Government-related support for small businesses and small farms
 - ii. Intermediary support for small businesses and small farms
 - iii. Other support for small businesses and small farms.
- c) Community supportive services – which are services or activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services programs, and housing services programs.
- d) Revitalization or stabilization – which comprises activities that support revitalization or stabilization of targeted census tracts, including adaptive reuse of vacant or blighted buildings, brownfield redevelopment, support of a plan for a business improvement district or main street program, or any other activity that supports revitalization or stabilization.

The New CRA

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

Community Development Loans, Investments, and Services

A bank may receive community development credit for a loan, investment, or service that supports community development according to any of the following factors:

- Essential community infrastructure – activities benefitting or serving targeted census tracts, including, but not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems.
- Recovery of designated disaster areas – activities that promote recovery of a designated disaster area are those that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA).
- Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas.
- Activities with MDIs, WDIs, LICUs, or CDFI – activities include loans, investments, or services undertaken by any bank. In a difference from the current rule, **an MDI, WDI, or CDFI bank can gain credit from partnering with another MDIs, WDIs, LICUs, or CDFI.** However, credit will not be given for investments by an MDI, WDI, or CDFI bank in itself.
- Financial literacy – Activities that promote financial literacy are those that assist individuals, families, and households, including low- or moderate-income individuals, families, and households, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership. In a difference from the current rule, there is **no income test for financial literacy education** and banks will not have to verify that individuals they provide financial literacy education to are LMI individuals.

The New CRA

Impact Review of CD Activities

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

The agencies will also evaluate whether a bank's community development loans, investments, and activities are impactful and responsive in meeting community development needs. In conducting this review, agencies will consider whether a loan, investment, or service:

- 1) Benefits or serves one or more persistent poverty counties;
- 2) Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher;
- 3) Benefits or serves one or more geographic areas with low levels of community development financing;
- 4) Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with a term of less than one year;
- 5) Benefits or serves low-income individuals, families, or households;
- 6) Supports small businesses or small farms with gross annual revenues of \$250,000 or less;
- 7) Directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;
- 8) Benefits or serves residents of Native Land Areas;
- 9) Is a grant or donation;
- 10) Is an investment in projects financed with LIHTCs or NMTCs;
- 11) Reflects bank leadership through multi-faceted or instrumental support; or
- 12) Is a new community development financing product or service that addresses community development needs for low- or moderate-income individuals, families, or households.

The New CRA

CD Financing Test

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

- The community development financing calculation is calculated in each of a bank's facility-based assessment areas, states, and multistate MSAs, and the nationwide area. It is a quantitative test, but does not include benchmarks for establishing presumptive conclusions like the Retail Lending Test.
- First, in each facility-based assessment area, relevant state or multistate MSA, and nationwide, a Bank Community Development Financing Metric is calculated. This metric is the sum of a bank's CD loans and investments in the relevant area, divided by the deposits in the assessment area, calculated as follows:

$$\begin{aligned}
 & \frac{\text{Bank's community development loans and investments in the assessment area } (\$100,000)}{\text{Deposits in the bank in the assessment area } (\$10 \text{ million})} \\
 & = \text{Bank Assessment Area Community Development Financing Metric (1\%)}
 \end{aligned}$$

The New CRA

CD Financing Test

Size Category	Assets	Retail Lending		Community Development (CD)
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default) Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric And New CD Services Test

- The bank metric is then compared to a peer comparator calculated in each relevant area as follows:

$$\begin{aligned}
 & \frac{\text{Community development loans and investments} \\
 & \text{in the assessment area by all large depository institutions } (\$10 \text{ million})}{\text{Deposits in the assessment area in all large depository institutions } (\$1 \text{ billion})} \\
 & = \text{Assessment Area Community Development Financing Benchmark (1\%)}
 \end{aligned}$$

- If the assessment area is in a metropolitan area, it will also be compared to the following nationwide metropolitan benchmark:

$$\begin{aligned}
 & \frac{\text{Community development loans and investments} \\
 & \text{nationwide in metropolitan areas by all large depository institutions } (\$300 \text{ billion})}{\text{Deposits nationwide in metropolitan areas in all large depository institutions } (\$45 \text{ trillion})} \\
 & = \text{Metropolitan Nationwide Community Development Financing Benchmark (0.7\%)}
 \end{aligned}$$

The New CRA

CD Financing Test

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test	New Retail Lending Test (Default or Opt-in)	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

- If the assessment area is in a non-metropolitan area, it will also be compared to the following nationwide non-metropolitan area benchmark:

$$\begin{aligned}
 & \frac{\text{Community development loans and investments} \\
 & \quad \text{nationwide in nonmetropolitan areas by all large depository institutions (\$10 billion)}}{\text{Deposits nationwide in nonmetropolitan areas in all large depository institutions (\$1 trillion)}} \\
 & = \text{Nonmetropolitan Nationwide Community Development Financing Benchmark (1\%)}
 \end{aligned}$$

- Currently, the agencies are not implementing benchmarks to establish presumptive ratings based on the comparison of bank metrics to the relevant benchmarks, but they may at a later date once more data has been collected. They plan to issue additional guidance surrounding this calculation, as well as considering the qualitative impact of community development loans and investments.

The New CRA

CD Service Test

Size Category	Assets	Retail Lending		Community Development (CD)	
Small	<\$600 million	Existing Retail Lending Test (Default or Opt-in)	New Retail Lending Test	Can continue, but are not required to request credit for CD activity under Existing CD test Optional	
Intermediate	\$600 million to \$2 billion	New Retail Lending Test And		New CD Financing Metric (Opt-in or Default)	Existing CD Test
Large	>\$2 billion	New Retail Lending Test	New Retail Products and Services Test And	New CD Financing Metric	New CD Services Test And

- The new CD Services Test evaluates a bank's record of helping to meet the community development services needs of its entire community. This includes evaluation of the number of community organizations served by staff, including in what capacity, for example as member of a board of a nonprofit, and hours served. **This test will count for 10% of the large bank's overall rating.**
- In each facilities-based assessment area, the agencies will consider:
 - (1) The number of qualifying community development services attributable to each type of community development (e.g. community supportive services, disaster recovery, activities with MDIs, WDIs, LICUs, or CDFIs, financial literacy, etc.)
 - (2) The capacities in which a bank's or its affiliate's board members or employees serve (e.g., board member of a nonprofit organization, technical assistance, financial education, general volunteer);
 - (3) Total hours of community development services performed by the bank;
 - (4) Any other evidence demonstrating that the bank's community development services are responsive to community development needs, such as the number of low- and moderate-income individuals that are participants, or number of organizations served; and
 - (5) The impact and responsiveness of the bank's community development services that benefit or serve the facility-based assessment area, as described by the regulation's impact review.



Limited English Proficiency

- CFPB encourages providing LEP consumers with clear and timely disclosures in non-English languages describing the extent and limits of any language services provided throughout the product lifecycle
- CFPB encourages providing financial information in languages other than English in order to create more opportunities for consumers to have financial services
- A number of CFPB model forms are available in English and Spanish, including TRID disclosures
- In the past, CFPB has found a failure to offer account disclosures in languages other than English an abusive act or practice under UDAAP (In 2021, the CFPB brought suit against Libre by Nexus, alleging that Libre engages in abusive acts by using predominantly English language agreements to enroll clients, even though Libre knew that many clients and co-signers did not understand English, and alleging its employees rushed through the enrollment process and omitted or misrepresented material terms.
- ECOA violations for excluding consumers with Spanish-language preferences and Puerto Rico mailing addresses from certain offers.

Immigration Status Warnings

On October 12, the Consumer Financial Protection Bureau (CFPB) and Department of Justice (DOJ) issued a joint statement emphasizing the risk associated with considering an applicant's immigration status when making credit decisions. Specifically, the CFPB and DOJ emphasized that creditors should carefully consider how they use immigration status when accepting and evaluating applications and should guard against the use of immigration status as a proxy for a prohibited basis such as race or national origin.

Immigration Status Warnings

The CFPB and DOJ emphasize in the advisory opinion the limited permissible use for immigration status (i.e., immigration status can only be used to the extent necessary to ascertain the creditor's rights and remedies) and indicated that the use of immigration status as a factor in credit decisions, if not carefully managed, can easily become a proxy for a prohibited basis such as race or national origin. The CFPB and DOJ specifically noted the risk associated with the following types of practices:

1. Refusing applications from certain groups of noncitizens (e.g., holders of a particular type of visa), without considering individual credit qualifications;
2. Requiring specific types of documents or identification from certain groups of noncitizens;
3. Requiring certain groups of noncitizens to apply through a specific pipeline (e.g., requiring noncitizens to apply for loans in person when others are allowed to apply via other methods).

Immigration Status Warnings

The CFPB and DOJ further noted that proxies for immigration status, such as a requirement that a borrower have a Social Security number, can be potentially problematic to the extent they are not necessary to ascertain the creditor's rights and remedies and become proxies for a prohibited bases.

- Based on the joint statement, creditors should consider the following steps to mitigate risks of impermissibly using immigration status:
 1. Be able to explain and document how immigration status is necessary to ascertain the creditor's rights and remedies regarding repayment;
 2. Be able to explain and document the use of factors that could serve as a proxy for immigration status (e.g., a requirement to have a Social Security number for a specified period of time);
 3. Avoid making blanket credit decisions based on immigration status without consideration of other factors;
 4. Avoid policies that could disproportionately impact noncitizens who are otherwise creditworthy (e.g., requiring certain types of documentation or identification when other documentation or identification would allow the creditor to ascertain its rights and remedies regarding repayment, requiring noncitizens to apply using a specific method, etc.).



The Appraisal Bias Issue

- Major concerns regarding the appraisers, licensing, review, etc.
- Evaluation and Appraisal Review are critical
- Lenders to become the police?
- Baltimore law suit
- Who are the approved appraisers?
- Disclose to applicants: “Appraisal bias is illegal. You are entitled to a valuation of your collateral that is free of any bias. Contact us at___ if ...”
- Tools to identify bias:

Undervaluation by %/\$ under sales price

Text detection – use objective criteria – NOT:

Up and coming neighborhood, shows pride of ownership,
crime-ridden, good school district, statistics re: crime,

Database of Appraisers with complaints

The Appraisal Bias Issue

- Valuation Review Policy and Templates needed (search for trigger terms)
- Training
- Policy needed regarding providing ROV and who will pay for it (if the 2nd one comes in higher, Lender pays?) Who chooses the appraiser?
- Provide 2nd valuation only if there is a request/complaint, it is known/suspected that there is an issue, or there are trigger terms used
- AVM – potential historical redlining



ROBERTSONS
THE SPICE PEOPLE

Origanum

ROBERTSONS
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Rosemary

ROBERTSONS
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Sweet
Basil

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Parsley

FDIC Updates EHL Poster: FIL-47-2023

Summary:

FDIC-supervised institutions are required to maintain up-to-date Equal Housing Lender (EHL) posters in branches, as required by the Fair Housing Act. The FDIC recently amended some details of the posters, including updating the name of the office to which complaints should be addressed, as well as adding the web address of the FDIC's web-based complaint portal. FDIC-supervised institutions may obtain compliant posters from the FDIC Online Catalog through FDICconnect.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions

Highlights:

On April 23, 2023, the FDIC issued a Federal Register Notice to update and clarify the requirements for EHL posters that are required to be displayed in FDIC-supervised institutions. These changes were necessitated by a name change of the FDIC's entity that receives complaints, from the Consumer Response Center to the National Center for Consumer and Depositor Assistance (NCCA), and the introduction of the web address of the FDIC's web-based complaint portal.

FDIC Updates EHL Poster: FIL-47-2023

FDIC-supervised institutions are required to update their EHL posters with the following name, address, and web address:

National Center for Consumer and Depositor Assistance

Federal Deposit Insurance Corporation

1100 Walnut Street, Box #11

Kansas City, MO 64106

<https://ask.fdic.gov/fdicinformationandsupportcenter>

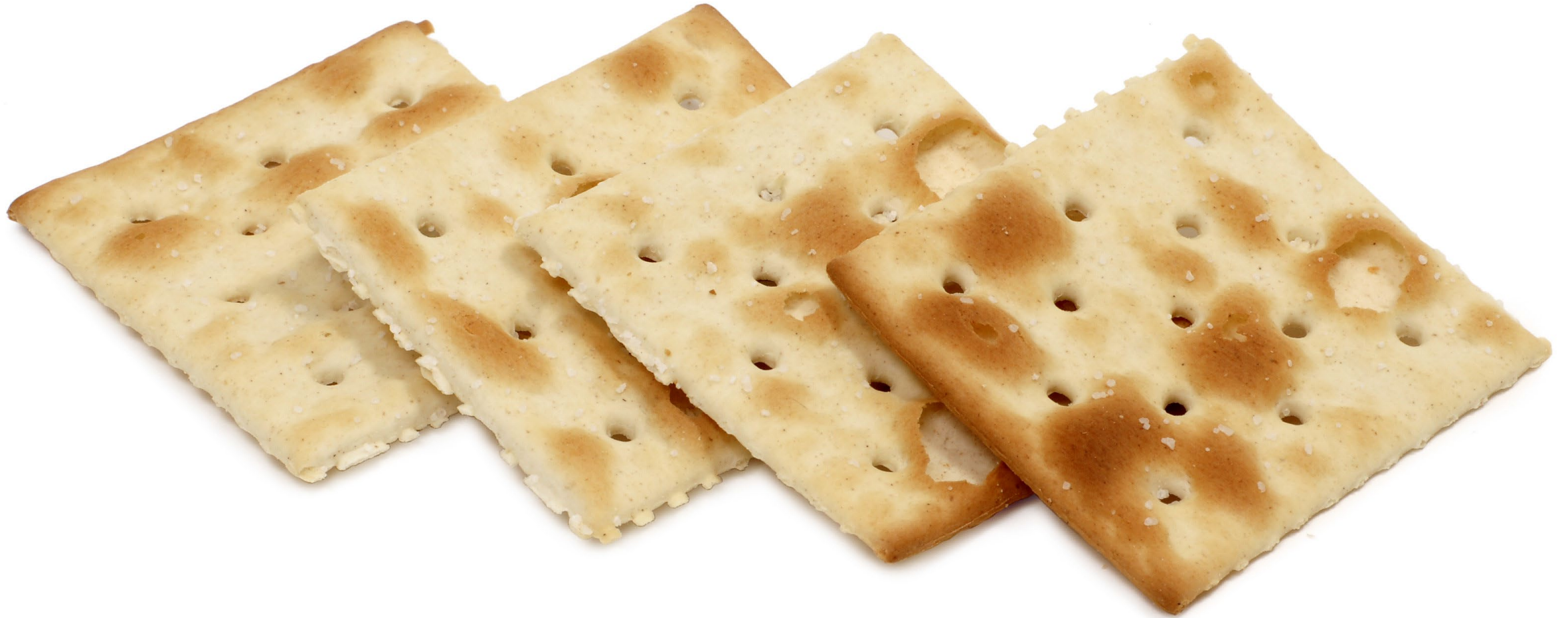
The effective date for these changes was June 23, 2023. Financial institutions are reminded that the NCDA's address to physically mail complaints will be maintained at FDIC.gov, and EHL posters should reflect the correct address. FDIC-supervised banks may, but are not required to, obtain posters from the FDIC Online Catalog. Institutions may also wish to create their own posters or use third-party providers. Institutions are expected to make good-faith efforts to update the EHL posters as soon as reasonably practicable.

To request copies of the EHL posters from the FDIC, financial institutions must be registered users of the FDICconnect (FCX) system and provisioned for the FDIC Online Catalog.



CFPB Guidance re: Denials based on AI

- On September 19, the Consumer Financial Protection Bureau (CFPB) issued [Circular 2023-03](#), which provides guidance as to how lenders must explain denials of applications of credit when the underwriting is based on artificial intelligence (AI) or complex credit models. The upshot of the guidance is that a lender that denies an application for credit based on AI or similar predictive decision-making technologies may not rely on the use of a standard “checkbox” adverse action notice form. if the use of the form would not “accurately describe the factors actually considered or scored by a creditor.” Instead, the lender must provide the specific information that led to the denial. The CFPB used the example that an explanation that the applicant had “insufficient projected income” or “income insufficient for amount of credit requested” would be inadequate if the actual basis for the denial was an income estimation based on the applicant’s profession.
- Circular 2023-03 follows two 2022 publications from the CFPB ([Circular 2022-03](#) and a [May 2022 Advisory Opinion](#)) that expressed similar concerns that lenders may be attempting to avoid their obligations under the Equal Credit Opportunity Act (ECOA) and Regulation B to avoid unlawful discrimination and explain bases for the denial of credit applications by the use of more complicated “black box” underwriting technology.
- The CFPB’s repeated warnings have come in an environment where more companies are leveraging technology to use new methods of underwriting that can offer better predictive results than traditional credit scores. This new wave of “alternative” underwriting provides new means for extending credit to applicants who would not be eligible under traditional credit-score-based underwriting – but critics contend that it also introduces new methods for lenders to engage in discrimination through the use of informational proxies.



Section 1071 -

The need for small business lending data

- (A) improved understanding of the role of small businesses in the U.S. economy;
- (B) existing data on small business financing;
- (C) the landscape of small business financing;
- (D) estimating the size of the small business financing market despite limited data;
- (E) the particular challenges faced by women-owned, minority-owned, and LGBTQI+-owned small businesses; and
- (F) the purposes and impact of section 1071 (Fair, Equitably, and Nondiscriminatory access to credit for individuals and their communities)

Section 1071 –

The lawsuit that led to the injunction argues that:

- The Section 1071 final rule goes well beyond the 13 data points specified in the Dodd-Frank Act to impose a final rule that “requires banks to develop and implement new software and compliance mechanisms to address over 80 reporting requirements that have been exponentially grown by the CFPB since the Act requiring this Rule was passed”. The agency took the original 3 pages of legislation and turned them into almost 900 pages of rulemaking. More resources will be put into government reporting than lending in the community.
- By promulgating a final rule beyond the statutory scope, the bureau engaged in “an abuse of agency discretion” under the Administrative Procedures Act
- By failing to account for industry comments relevant to the purpose of the statute and by failing to conduct a proper cost-benefit analysis, the bureau acted arbitrarily and capriciously in violation of the APA
- The CFPB’s funding structure violates the constitutional separation of powers which voids the Section 1071 final rule

Section 1071 – CFPB Structure Questions

- In 2020 the Supreme Court held that the CFPB's leadership by a single independent director (and the restrictions on the director's removal) violated constitutional separation of powers - but all agency actions are valid. The Court said that the leadership removal defect was severable because there was nothing in the text or DFA that demonstrates that Congress would have preferred no CFPB to a CFPB supervised by the President. The CFPB was constructed to be maximally independent.
- There was a 2022 decision from the U.S. Court of Appeals for the Fifth Circuit that held that the CFPB funding structure violates constitutional separation of powers.
- The 1071 lawsuit argues that the final rule would not have taken place – and certainly would not have grown into the crushing massive requirement that it did – if the agency had not been funded inappropriately and thereby lacked oversight. It could be concluded that the funding structure, like the leadership structure, was set up to be independent but any funding structure flaw is severable.

Section 1071 – CFPB Funding

- The CFPB receives its funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments. Each year the CFPB requests an amount determined by the CFPB director to be “reasonably necessary to carry out” the agency’s functions.
- All other agencies have to turn to Congress for annual appropriations.

Section 1071 – Understanding the Injunction

- 7/31/2023 U.S. District Court Judge of Texas granted the TBA and Rio Bank and the ABA a Preliminary Injunction, “sparing TBA and ABA members from having to devote time and resources complying with the rulemaking until the Supreme Court resolves a separate case involving the constitutionality of the CFPB’s funding”.
- The U.S. Supreme Court is to address the constitutionality of the CFPB’s funding by June 2024. If it rejects the holding that the funding structure is unconstitutional, the CFPB will have to extend all compliance deadlines to compensate for the period of the stay.
- Entities that were not part of the TBA or ABA continued to be required to implement the 1071 Rule.
- 10/26/2023 – Federal District Court issued a nationwide injunction prohibiting the CFPB from implementing or enforcing Section 1071.

Section 1071 – Understanding the Injunction

- It buys time – but it may only buy 6-9 months
- “Use the time to be purposeful but keep moving forward”
- “It is highly unlikely the rule will be scrapped”
- The CFPB continues to issue resources to “help the industry understand and comply” with the rule

<https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/>

Small Entity Compliance Guide (Nov. 2023)

FAQs (Sept 14, 2023)

Section 1071 – Tiered Implementation

Compliance Date Tier	Origination Threshold	Date that Data Collection Must Begin and Compliance with Rule (i.e. Firewall, Recordkeeping) is Required	Date that <u>First Year</u> of Data Must be Reported to CFPB
Tier 1	At least 2,500 covered originations in both 2022 and 2023	October 1, 2024	June 1, 2025
Tier 2	At least 500 covered originations in both 2022 and 2023 but not 2,500 or more covered originations in both 2022 and 2023	April 1, 2025	June 1, 2026
Tier 3	At least 100 covered originations in both 2022 and 2023 but not 500 or more covered originations in both 2022 and 2023	January 1, 2026	June 1, 2027

Section 1071 – “Small Business”

- Must be for-profit
- Has Gross Annual Revenue of \$5Million or less in the preceding fiscal year
- Can be a corporation, joint venture (with no more than 49% participation by foreign businesses), sole proprietorship, individual, association, trust, cooperative. An individual or sole proprietorship does not have to have formed an entity under the applicable law to operate a business. An individual or sole proprietorship can be a small business regardless of whether the individual is doing business in the individual's own name , or whether the individual is doing business using a trade name or other name (such as DBA)
- Is not a non-profit or governmental entity
- Many more rules regarding this definition

Section 1071 – “Small Business”

Small business

Is it a “**small business**”?

A small business is:

1. A business concern as defined in the SBA regulations
 - Generally, a business that is “organized for profit” with a place of business in the United States
 - May be in a variety of legal forms
2. That had gross annual revenue of \$5 million or less in its preceding fiscal year

Section 1071

- There is no asset-based exemption. Going through these steps (and documenting them) is the only way to determine whether an institution is exempt or not.
- Motor Vehicle Dealers satisfying the definition in section 1029 of the Consumer Financial Protection Act of 2010 are excluded from coverage.
- It does not matter if the covered financial institution has a branch or office in an MSA

Section 1071

- “Financial Institutions will need to determine if they are covered financial institutions annually.”
- Voluntary data collection and reporting for a financial institution that is not a covered financial institution is permissible in certain circumstances, such as if it recently reported data as a covered financial institution, is about to become a covered financial institution, or is not covered but commits to report data it voluntarily collects. **Otherwise, this is a violation of Regulation B.**

Section 1071 – Part One

Identify the originations that must be counted to determine who is a covered financial institution.

When determining whether it is a covered financial institution and what compliance date tier applies to it, a financial institution must count “covered originations”, which are certain covered credit transactions that it originated to small businesses. A covered financial institution originated at least 100 covered credit transactions for small businesses (\$5 million or less in gross annual revenue for the preceding fiscal year – which may be updated for inflation every 5 years) in each of the two preceding calendar years (or use one of the other permissible measurements).

Section 1071 – Part One

These are **excluded** (NOT covered credit transactions) (don't count to determine Tiers):

- **Trade credit** (financing arrangement wherein a small business acquires goods or services from another business without making immediate payment in full to the business providing the goods or services)
- **Public Utilities Credit** per 12CFR 1002.3(a)(1), **Securities Credit** per 12CFR1002.3(b)(1)
- **Incidental credit without regard to whether it is consumer credit** per 12 CFR 1002.3(c)(1) (not payable in more than 4 installments per Reg B)
- **HMDA-reportable transactions** (even if the FI is not subject to HMDA)
- **Insurance premium financing, Factoring, Leases**
- **Consumer credit that is used for business or agricultural purposes**
- **Credit Card Accounts if FI is not the Issuer and FI does not set the material terms**
- **Purchases of credit transactions/purchases of an interest in a pool of credit transactions**
- **Purchase of loan participation** (Only the Lead Lender includes, if covered)
- **Originations that the FI is not the last FI with authority to set the material terms**
- **“Extensions, renewals, & other amendments of existing transactions are not considered covered originations even if they increase the credit line or credit amount of the existing transaction”. “Refinancings can be covered originations.”**

Section 1071 – Part One and Part Two

“Originations” – what is counted from the prior 2 years to determine if the 100 threshold is met

“Applications” – what is reported going forward

“The final rule treats amendments, renewals, and extensions that increase the credit line or credit amount of an existing transaction differently when determining the number of covered originations (for purposes of determining institutional coverage and compliance date tier) and when determining whether an application is reportable” **If they increase the loan/line they ARE covered applications and are reported. They are NOT counted as covered originations – no matter what.**

“A request from a small business for a refinancing is a reportable application, regardless of whether the small business requests additional credit amounts or a line increase, if the request is for an extension of business credit that is not otherwise excluded from coverage” **Refinancings are covered applications and originations (if they meet the other criteria).**

Section 1071 –

Questions to be addressed

1.) As of now, is your financial institution covered? Are you required to comply with 1071? If so, when would your institution begin to collect data?

2.) How are these calculations documented and retained for justified lack of reporting or the effective date of data reporting and collection? Whose responsibility is it to perform the calculation on an ongoing basis and to retain the results? Is there verification of the calculations?

3.) Voluntary collection and reporting is permitted in certain circumstances. Will your institution voluntarily comply if it is not required to comply? Data may only be collected within 12 months prior to beginning to fully report or if the institution has been reporting and falls beneath the threshold and it is within 5 years after cessation of reporting.

Section 1071 – Part Two

Identify the applications that must be reported going forward.

Similarly, a covered financial institution must collect and report data about an application if the application is from a small business and is for a covered credit transaction. Thus, it is important to know how the final rule defines the terms “small business” and “covered credit transaction.”

Section 1071-

Part Two

These are not covered **applications** and are not reported going forward:

- Re-evaluation, Extension, Renewal requests unless the request seeks additional credit amounts
- Inquiries
- Prequalification Requests
- Solicitations, firm offers of credit, and other evaluations that the Lender initiates unless the Lender invites the business to apply and the small business applies

Section 1071 – Part Two

- **Inquiry** – A request by a prospective applicant for information about credit terms offered by the financial institution
- **Prequalification** – A request by a prospective applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under a financial institution's standards or for a determination on the amount of credit for which the prospective applicant would likely qualify.

Each institution needs to clarify their process for handling and documenting an inquiry vs prequalification vs application.

Section 1071 – The rest of the story

- Data Collection

- Rules regarding Data Points to be collected and reported

- Same Data Collection form reflects legal requirements

- Restrict access of underwriters and others to certain data

- Recordkeeping

- Publication of lending data

- Firewalls

Section 1071 –

Is part of ECOA and Reg B

- The CFPB will use its enforcement and supervisory authorities to focus on compliance with the prohibition against discouraging applicants from submitting responsive information. An institution's response rates for data requested from applicants will be compared to other institutions of similar size, type, geographic reach, and/or other relevant factors. Irregularities in particular responses (i.e. high rates relative to similar institutions of a response indicating the applicant does not wish to provide the requested information) will be looked at because this could indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses.
- Institution, Division, Location, Loan Officer response rates should be assessed so that potential discouragement or steering is identified and responded to promptly. Retain documentation of this monitoring and any related actions.

Section 1071 –

Data collected from Applicant

- Institutions must have “reasonably designed” procedures in place to obtain a response. These should include:
 - * The initial request for applicant-provided data occurs prior to notifying an applicant of a credit decision
 - * The request for data is prominently displayed or presented
 - * The process does not have the effect of discouraging an applicant to respond
- Applicants can easily respond

Commercial Application form and process revamping consideration needed

Section 1071 – Data Points Collected from Applicant

- Credit Product-reported using codes provided
- Guarantees-reported using codes provided. This field includes both private and government guarantees
- Loan Term-in months until maturity
- Credit Purpose-reported using codes provided using up to three purposes
- Amount applied for
- Gross Annual Revenue for preceding calendar year

Section 1071 – Data Points Collected from Applicant

- Three-digit NAICS code
- Number of workers-may be reported using a range
- Time in business
- Number of principal owners
- Business Status
- Demographic Information on Principal Owners

Section 1071 – Data Collection Form

Sample data collection form

Federal law requires that we request the following information to help ensure that all small businesses applying for loans and other kinds of credit are treated fairly and that communities' small business credit needs are met.

One or more employees or officers involved in making a determination concerning your application may have access to the information provided on this form. However, **FEDERAL LAW PROHIBITS DISCRIMINATION** on the basis of your answers on this form. Additionally, we cannot discriminate on the basis of whether you provide this information.

While you are not required to provide this information, we encourage you to do so. Importantly, our staff are not permitted to discourage you in any way from responding to these questions. **Filling out this form will help to ensure that ALL small business owners are treated fairly.**

Business ownership status

Please indicate the business ownership status of your small business. For the purposes of this form, your business is a minority-owned, women-owned, or LGBTQI+-owned business if one or more minorities,* women, or LGBTQI+ individuals (i) directly or indirectly own or control more than 50 percent of the business AND (ii) receive more than 50 percent of the net profits/losses of the business.

What is your business ownership status? (Check one or more of the options below)

- ☐ Minority-owned business
- ☐ Women-owned business
- ☐ LGBTQI+-owned business
- ☐ None of these apply
- ☐ I do not wish to provide this information

*Minority means Hispanic or Latino, American Indian or Alaska Native, Asian, Black or African American, or Native Hawaiian or Other Pacific Islander. A multi-racial or multi-ethnic individual is a minority for this purpose.

Number of principal owners

For purposes of this form, a principal owner is any individual who owns 25 percent or more of the equity interest of a business. A business might not have any principal owners if, for example, it is not directly owned by any individuals (i.e., if it is owned by another entity or entities) or if no individual directly owns at least 25 percent of the business.

How many principal owners does your business have? (Check one)

- ☐ 0
- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4

Demographic information about principal owners

As a reminder, applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of any person's ethnicity, race, or sex/gender. Additionally, we cannot discriminate on the basis of whether you provide this information.

Please fill out one sheet for each principal owner.

1 Are you Hispanic or Latino?

(i.e., What's your ethnicity? (Check one or more))

- ☐ Hispanic or Latino
 - ☐ Cuban
 - ☐ Mexican
 - ☐ Puerto Rican
 - ☐ Other Hispanic or Latino (Please specify your origin, for example, Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on):
- ☐ Not Hispanic or Latino
- ☐ I do not wish to provide my ethnicity

2 What is your sex/gender?

(Please specify):

- ☐ I do not wish to provide my sex/gender

3 What is your race?

(Check one or more)

- ☐ American Indian or Alaska Native (Please specify the name of your enrolled or principal tribe):
- ☐ Asian
 - ☐ Asian Indian
 - ☐ Chinese
 - ☐ Filipino
 - ☐ Japanese
 - ☐ Korean
 - ☐ Vietnamese
 - ☐ Other Asian (Please specify your race, for example, Cambodian, Hmong, Laotian, Pakistani, Thai, and so on):
- ☐ Black or African American
 - ☐ African American
 - ☐ Ethiopian
 - ☐ Haitian
 - ☐ Jamaican
 - ☐ Nigerian
 - ☐ Somali
 - ☐ Other Black or African American (Please specify your race, for example, Barbadian, Ghanaian, South African, and so on):
- ☐ Native Hawaiian or Other Pacific Islander
 - ☐ Guamanian or Chamorro
 - ☐ Native Hawaiian
 - ☐ Samoan
 - ☐ Other Pacific Islander (Please specify your race, for example, Fijian, Tongan, and so on):
- ☐ White
- ☐ I do not wish to provide my race

Section 1071 - Safe Harbors

- Census tracts

If obtained through the correct use of a geocoding tool provided by FFIEC or the Bureau

- NAICS codes

When an FI does not rely on information from the applicant, but identifies the NAICS code for an applicant and the identified NAICS code is incorrect, there is a safe harbor as long as the first two digits of the NAICS code are correct and the financial institution maintains procedures reasonably adapted to correctly identify the subsequent four digits.

- Application date

As long as the reported application date is within three calendar days of the actual application date, there is no violation.

- Determination of small business status

If an FI initially determines that an applicant is a small business and collects demographic information, but then later concludes the applicant is not a small business, does not violate ECOA or Regulation B

Section 1071 - Next Steps

- Train Board and applicable staff on the requirements
- Review the current Commercial Loan Application to ensure it asks for responses to detailed questions to determine whether the applicant is a small business, detailed purpose to determine if this is a business-purpose request, HMDA-covered, etc.
- Implement calculation and retention of the calculation of # of Business Credit transaction originations and “covered transactions”
- Implement collection and retention of annual revenue for all Business Credit applications
- Implement calculation and retention of the calculation of # of “covered originations” on an annual basis; determine reporting mechanism and body
- Be aware of the data points required to be collected and reported and the firewall requirements vs. software/vendor capabilities
- Consider the implications of this ECOA change
- Determine additional training requirements and steps

Section 1071 - Next Steps

- Commercial Lenders have additional compliance requirements – just to determine if 1071 applies:
 - ✓ Identifying when there is an “application” vs. an “inquiry” is critical
 - ✓ What is the Commercial Loan “Application Date”, how is this documented and tracked, how does this compare to HMDA reporting?
 - ✓ Consistently documenting when an application is received (vs. a completed application), the applicant (individual vs. small business entity), the annual revenue of the applicant, the collateral for the request, the amount of the request, (HMDA coverage)
 - ✓ Discerning requests for extensions or renewals or re-evaluations vs. refinance

Section 1071 - Next Steps

- Our nation's first consistent and comprehensive database regarding lending to small businesses, including small farms is created and will allow enforcement agencies to assess potential areas for fair lending enforcement
- Ensure that all Commercial Loan Applications request all information required to determine if this is a covered application and that must be reported
- Ensure that this information is obtained at time of application
- Ensure that all Loan Officers are trained

Section 1071 – To Do:

Review the Commercial Loan Process, definitions, documentation – all information must be requested up front

Review the Commercial Loan origination data for majority-minority census tracts

Review outreach strategies for women-owned, LGBTA!+-owned, and other minority-owned businesses & farms

Determine and document and report how 1071 will affect your institution

Threshold Calculation and reporting, Timing, Forms, Disclosures, Firewall, Reg B compliance for Commercial Loans
(inquiry vs prequalification vs application, etc.)

Determine which products will include small business loans

Will new class codes be needed to identify covered loans?

Commercial Loan Application revisions/automation

Ability to turn off Demographic Data Collection

Contact providers to determine how and when changes to facilitate compliance will be implemented; Will new vendors be needed?

Training

Etc.

Section 1033

The CFPB's recently proposed rule to implement Section 1033 could impact the consumer reporting ecosystem. For example, aggregators that currently are not consumer reporting agencies (CRAs) may be defined as CRAs by the proposed rule. This classification would require those that provide data to and receive it from CRAs to fully understand and provide input to the CFPB on the interplay between the Section 1033 proposal and FCRA rulemaking.

FCRA Proposal

September 21, 2023

- Ban medical debt collection information from consumer reports
 - 2022 - CFPB issued a compliance bulletin asserting that CRAs violate FCRA if consumer reports reflected inaccurate info about medical debts
 - 2023 – the three nationwide CRAs voluntarily began removing certain medical debt info from consumer reports
 - White House Request for Information on financial products used to pay for healthcare
 - CFPB research on consumer protection hazards in medical finance
- Prevent lenders from using medical information in underwriting

FCRA Proposal

September 21, 2023

- Regulate certain data brokers that sell certain consumer data (Pay history, income, criminal records)
- Bright-line definition for when entities that facilitate electronic data access between parties, or act as intermediaries in transmitting consumer data, may engage in assembling or evaluating information (CRA)
- Identify credit header data identifying info that constitutes “consumer report”, narrowing scenarios under which an entity may sell or disclose such data
- Expand FCRA reach and significantly impact traditional CRAs, furnishers, users of consumer report information, certain data brokers, and entities providing consumer information to and receive consumer information from such data brokers

FCRA Proposal

September 21, 2023

- Address CRA's role in targeted marketing and whether this is furnishing a consumer report, implicating permissible purpose
- Firmer parameters around when permissible purposes apply (following the Advisory Opinion re: when CRAs may provide consumer report info to third parties and risk of consumer harm)
- Clarify CRAs' and furnishers' dispute handling obligations

Trade groups have issued a letter requesting an ANPR.

Credit Score Algorithm Changes

- How has the elimination of medical debt affected consumers?
- Is there bias in the credit score algorithm?
- Noisy data – data that can't be used to make accurate predictions
- Potential underlying causes
- Supplemental information to credit scores below “X”
- A complete overhaul?
- Updated credit score models and credit report requirements for loans acquired by Fannie and Freddie



2022 Top Compliance Violations

- **#3 – Reg E (EFT) investigation and determination of whether an error occurred** within 10 business days of receiving a notice of error

10 days from when verbal notice is given if notified that written notice is required and can be provided at branches, mail, etc.

Reasonable investigation documented & communicated to customer

Reg E Dispute Handling

When are mobile payments unauthorized? Contractor working in customer's home and they take a picture of the debit card and use it to purchase. Does the Financial Institution call the customer a liar?

The burden of proof is on the FI! There are consumer class action law suits due to claims being denied or not even being accepted to investigate!! FI must accept dispute and investigate!! Review policy and practice. Review complaints.

Reg E Dispute Handling

Call Center Risks – Third Party Management! Handicapped customer risk, POA risk, and refusal or declination of dispute, complaint is a risk and reflects on the FI

Setting a minimum error amount to investigate and credit disputes below that threshold; policy needed. Adherence needed. Monitor for abuse of threshold and continual disputes below threshold.

UDAAP! How is monitoring occurring for UDAAP concerns? What is being done? Where is reporting?

Reg E Dispute Handling

Policy needed re threshold, “abuse of threshold” defined, adherence to threshold, card revoked for defined activity (3 disputes in set period, etc.) with defined and not vague limits, “We may close an account for # of EFT disputes” – include in Deposit Account Agreement

Reg E spreadsheet tracking all requirements is needed

Was a customer harmed?

Reg E Sample Error Notification/Resolution Spreadsheet

Name/Account	Verbal Notice Date Rec'd	Written Notice Date Rec'd	Type of EFT Error	Provisional Credit Date Credited (within 10 days of written notice or sooner if VISA/MC or 20 days if new account)	Provisional Credit Date of Notice (within 2 days)
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Research Completed Date (within provisional credit timing or, if no provisional credit given, within 10 days of written notice or sooner if VISA/MC or within 20 days if new account)	If there was an Error but no provisional credit, Date of Credit of disputed amount + Interest, if applicable (within 1 day of determination of error)	If there was an Error, Date that Provisional Credit Final (including interest, if applicable) and Resolution (within 3 days of resolution)	If there was NOT an Error, the Date of the Notice that there was no error found and notice of the consumer's rights to request the documents upon which the financial institution relied in making its determination within 2 days of determination	If there was NOT an Error, Date Notification that Provisional Credit will be Debited and Resolution (5 business	Date of Debiting of Provisional Credit
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Rumors

- **CFPB to unveil Overdraft Regulations before year-end**

Details have been kept secret

OD and NSF fees have been on their Agenda

Considering whether to propose amendments to Reg Z

(Reg Z excludes OD LOC accessed by debit card or account # from the definition of credit card account)

Some FI have voluntarily stopped charging NSF fees. The Bureau is considering new rules re NSF Fees

Rumors (cont)

The CFPB does not appear to be considering changes to Reg E (Opt-In and disclosures for fees for paying ATM or one-time debit card transactions, prohibits conditioning payment of other OD on affirmative consent, requires same terms, conditions, and features for those who do not consent to OD) or to Reg DD (disclose total OD and NSF fees by statement cycle and year, advertising disclosure for OD, disclosing account balance that excludes OD service).

OD and NSF fees have been under attack as “junk fees”.

Representment Fee = Junk Fee

CFPB reported in May 24, 2023 Data Spotlight nearly 50% decline in OD and NSF revenues compared to pre-pandemic levels

Rumors, etc.

Reported voluntary changes in industry trends:

- eliminating [NSF fees](#) charged when transactions bounce;
- reducing the overdraft fee amount;
- reducing the number of overdraft/NSF fees the bank can charge you each day;
- providing or increasing the amount an account can go negative before charging an overdraft fee;
- providing a grace period to bring the account back to positive before charging an overdraft fee; and
- eliminating “extended” or “sustained” overdraft fees charged when the account is not brought back to a positive balance after a certain period of time.

Representment Fee/OD & NSF Fee To Do:

- Request reports to identify ACH Representments/Retried payments.
- Review higher risk products and customers and the volume of NSF/OD and Representment Fees. Where is the risk? What can't be identified?
- Is there a Third Party Provider that is “working on being able to track” representments? If so, implement a manual procedure. Third Party Management needed! Oversight and monitoring needed! Make requests! Understand all systems. Can the fee be turned off?
- How many OD/NSF transactions are allowed?
- Is there a fee on minimal OD?
- Determine % of OD/NSF/Representment Fee income

Looking to 2024:

**Was a customer
harmed?**

