

# Consumer Compliance Supervisory HIGHLIGHTS

*Federal Deposit Insurance Corporation*



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# Introduction

Consistent with our *Trust through Transparency* initiative, this Federal Deposit Insurance Corporation (FDIC) publication provides an overview of the consumer compliance supervision activities and issues identified through the FDIC's supervision of state non-member banks and thrifts in 2019.

The FDIC supervises nearly 3,500 state-chartered banks and thrifts that are not members of the Federal Reserve System (supervised institutions). Most of these institutions are community banks that provide credit and services locally. The FDIC is responsible for evaluating supervised institutions for compliance with consumer protection, anti-discrimination, and community reinvestment laws, among other duties.<sup>1</sup> The FDIC conducts supervisory activities, including examinations, to review institutions' compliance posture. The consumer compliance examination program focuses on identifying, addressing, and mitigating the greatest potential risks to consumers, based on the business model and products offered by a particular institution. The supervisory approach apportions resources to areas of higher risk for consumer harm, financial or otherwise, rather than focusing on evaluating technical compliance issues.

## **This issue of the FDIC Consumer Compliance Supervisory Highlights:**

- Provides an overview of consumer compliance performance of supervised institutions in 2019;
- Includes supervisory observations regarding findings related to applicable consumer protection laws;
- Identifies examples of practices that may be useful in mitigating risks;<sup>2</sup>
- Addresses regulatory developments; and
- Summarizes resources and information the FDIC makes available to supervised financial institutions.

The legal violations discussed in this issue and in any previous issues of the FDIC Consumer Compliance Supervisory Highlights are based on the particular facts and circumstances observed by the FDIC in the course

of its individual examinations. A conclusion that a legal violation exists on the facts and circumstances described here may not lead to such a finding under different facts and circumstances. The finding of a violation requires an individualized analysis of applicable law, and the facts and circumstances of the act or practice at a particular institution.

# Summary of Overall Consumer Compliance Performance in 2019

The FDIC conducts periodic risk-based examinations of supervised institutions for compliance with over 30 federal consumer protection laws and regulations. In 2019, the FDIC conducted over 1,150 consumer compliance examinations, using a risk-focused process, based on the potential for bank consumer compliance deficiencies to have an adverse impact on banking customers. Overall, supervised institutions demonstrated strong and effective management of their consumer compliance responsibilities.

The FDIC utilizes the Federal Financial Institutions Examination Council's (FFIEC) Uniform Interagency Consumer Compliance Rating System to conduct examinations and evaluate supervised institutions' adherence to the consumer compliance requirements. As of December 31, 2019, 99 percent of all FDIC-supervised institutions were rated satisfactory or better for consumer compliance ("1" or "2"). The high percentage of institutions rated satisfactory or better for consumer compliance indicates that the vast majority of supervised institutions maintain effective programs to manage their consumer compliance responsibilities.

Institutions rated less than satisfactory for consumer compliance ("3" or more adverse) demonstrated overall compliance management system (CMS) weaknesses and had violations of law with potential or actual impact on consumers. Weaknesses in institutions' CMSs can stem from programmatic deficiencies potentially resulting in violations of consumer protection laws and regulations.

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<sup>1</sup>The FDIC is responsible for maintaining stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. With regard to state non-member banks with assets of \$10 billion or less, the FDIC has primary examination authority over these institutions' compliance with all consumer protection laws and regulations. With regard to state non-member banks with more than \$10 billion in assets, the FDIC shares examination authority with the Consumer Financial Protection Bureau (CFPB).

<sup>2</sup>Institutions are encouraged to tailor their compliance programs to their particular business model and products and may employ approaches to mitigate risks different from those discussed in this publication.

## Most Frequently Cited Violations

During 2019, FDIC examiners identified violations that ranged in severity from highest to lowest level of concern (Level 3, Level 2, and Level 1)<sup>3</sup> for a number of regulations. The information noted for the purpose of this publication focuses on the five most frequently cited statutes and implementing regulations resulting in Level 3 or Level 2 violations.

The five most frequently cited statutes and implementing regulations identified represent nearly 80 percent of all Level 3 and Level 2 violations cited in 2019 were the Truth in Lending Act (TILA), Flood Disaster Protection Act (FDPA), Truth in Savings Act (TISA), Electronic Funds Transfer Act (EFTA), and the Real Estate Settlement Procedures Act (RESPA).

Statute/Regulation	Level 3 Violations		Level 2 Violations		Total Violations	
	#	%	#	%	#	%
TILA	16	1%	862	43%	878	44%
FDPA	0	0%	226	11%	226	11%
TISA	5	0%	215	11%	220	11%
EFTA	3	0%	156	8%	159	8%
RESPA	4	0%	98	5%	102	5%
<b>Total 5 Most Commonly Cited Violations</b>	<b>28</b>	<b>1%</b>	<b>1557</b>	<b>78%</b>	<b>1585</b>	<b>79%</b>
<b>Total Cited Violations in 2019</b>	<b>43</b>	<b>2%</b>	<b>1956</b>	<b>98%</b>	<b>1999</b>	<b>100%</b>

<sup>3</sup>See FDIC Consumer Compliance Examination Manual, Section II-6.1 (Communicating Findings): <https://www.fdic.gov/regulations/compliance/manual/2/ii-6.1.pdf>.

The FDIC initiated 19 formal enforcement actions and 15 informal enforcement actions to address consumer compliance examination findings. For 2019, Civil Money Penalty (CMP) orders were issued against institutions to address violations of the FDPA, RESPA, and Section 5 of the Federal Trade Commission Act for unfair or deceptive acts or practices, totaling over \$2.1 million, and voluntary payments to consumers totaled approximately \$4.8 million to 19,250 consumers.

## Consumer Compliance Examination Observations

The following describes some of the most salient compliance issues identified by the FDIC during 2019 consumer compliance examinations. The issues include matters involving TILA, RESPA, FDPA, TISA and Section 5(a) of the Federal Trade Commission Act (Section 5).

### Truth in Lending Act

#### Background

TILA is intended to ensure that credit items are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably.

#### Findings

TILA was the most frequently cited statute at institutions nationwide. A significant portion of TILA violations identified were issues related to the Truth in Lending Act – Real Estate Settlement Procedures Act Integrated Disclosure (TRID) Rule, Finance Charges, and the Annual Percentage Rate.

#### *Truth in Lending Act – Real Estate Settlement Procedures Act Integrated Disclosure (TRID) Rule*

Though the TRID rules have been in effect for several years, the significant number of violations cited reflects the challenges that still exist for institutions implementing regulatory changes.

TRID-related violations represent over 40 percent of all TILA violations cited by the FDIC in 2019. The most commonly cited TRID-related violations resulted from incorrectly disclosing specific information on the Loan Estimate or Closing Disclosure, and from omitting or incorrectly itemizing specific items under the appropriate headers in a separate table on the Loan Estimate or

Closing Disclosure (i.e., *Projected Payments, Other Costs, and Costs at Closing*). Another commonly cited violation resulted from inaccurately disclosing the contact information on the Closing Disclosure for each creditor, mortgage broker, consumer real estate broker, seller real estate broker, and settlement agent participating in the transaction.

#### *Finance Charge and Annual Percentage Rate*

Other violations commonly cited by FDIC examiners include those related to the finance charge or annual percentage rate. Specifically, examiners identified institutions that did not properly calculate or disclose the finance charge or annual percentage rate for mortgage loans.

#### Banker Teleconference

To assist institutions, the FDIC hosted a banker teleconference entitled [Understanding the Requirements of the TRID Rule](#) in December 2019. The teleconference discussed common topics and questions regarding the Loan Estimate and Closing Disclosure provisions of the rule and provided suggestions on strengthening one's compliance management system (CMS) to address these issues.

#### Mitigating Risk

Through our examinations and supervisory experience, the FDIC has observed certain risk-mitigating activities that institutions may consider and find useful. For example:

- Providing training to executives, senior management, as well as staff responsible for and involved in mortgage lending operations;
- Enhancing monitoring efforts to perform a secondary review of applicable loans prior to consummation to self-identify and correct deficiencies;
- Considering implementation of a centralized process to complete or review disclosures to ensure accuracy and consistency; and
- Establishing effective policies and procedures to assist staff in complying with regulatory requirements when carrying out activities such as preparing disclosures.



# Real Estate Settlement Procedures Act

## Background

RESPA was enacted to provide consumers with disclosures related to the home purchase and settlement process, and to prohibit certain real estate settlement practices. Section 8(a) of RESPA prohibits giving or accepting a thing of value for the referral of settlement service business involving a federally-related mortgage loan.

## Findings

The FDIC identified instances where institutions entered into co-marketing arrangements where the institution and real estate brokers agreed to market their services together using third-party online platforms. In these instances, advertisements for real estate agents and institution loan officers appeared together on websites that were visited by consumers searching for residential properties. Moreover, the advertisements contained express or implied endorsements of the loan officer or institution by the real estate agent.

Co-marketing arrangements are permissible under Section 8(c) of RESPA, so long as the fees paid bear a reasonable relationship to the fair market value of marketing received by each party. However, FDIC examiners identified institutions that engaged in co-marketing arrangements where the amounts paid by the lender did not bear a reasonable relationship to the fair market value of the marketing the lender received. In such cases, the amounts paid by the lender in excess of the fair market value of the marketing received constituted payments for the referral of mortgage business in violation of Section 8(a) of RESPA and Regulation X.

## Mitigating Risk

The FDIC has observed certain risk-mitigating activities that institutions may consider in efforts to comply with Section 8(a) of RESPA:

- Providing training to executive and senior management responsible for mortgage operations and marketing, as well as bank personnel involved in mortgage lending operations to ensure risks are appropriately identified and addressed;
- Developing a monitoring process for identifying, assessing, documenting, and reporting risks to executive and senior management; and
- Conducting appropriate due diligence on existing and new third-party relationships with settlement service providers that involve marketing, generating leads or identifying prospective mortgage borrowers.

# Flood Disaster Protection Act

## Background

The FDPA requires federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in a standard flood hazard area (SFHA) in a community participating in the National Flood Insurance Program (NFIP) unless the property securing the loan is covered by flood insurance. There are several flood insurance requirements with which lending institutions must comply.

The FDPA provides penalties for violations of: mandatory flood purchase requirement, escrow requirements, notice requirements, and force placement requirements. Where certain pattern or practice violations of the Flood Act are observed, the FDIC is required to assess a CMP. In other instances where violations are identified, the assessment of a CMP is discretionary (and assessed under Section 8 of the Federal Deposit Insurance Act).

## Findings

In 2019, the FDIC identified instances where financial institutions did not comply with the requirements of the FDPA. The following describe the three most cited violations:

1. Making, increasing, extending, or renewing a designated loan secured by a building, mobile home, or personal property without flood insurance coverage;
2. Failing to provide flood insurance for the term of the loan; or
3. Providing inadequate amount of flood insurance coverage on the designated loan.

## Mitigating Risk

Institutions may consider the following to mitigate the risks of FDPA noncompliance:

- Enhancing monitoring efforts to ensure applicable loans have adequate and sufficient flood insurance coverage, in the proper amount, during the life of the loan;
- Providing training to executives, senior management, and personnel involved in mortgage lending operations; and
- Ensuring policies and procedures are implemented and up-to-date and practices are in compliance with regulatory requirements.

# Truth in Savings Act

## Background

The purpose of TISA is to help consumers make informed decisions about their accounts at depository institutions through the use of uniform disclosures. Although there have not been significant changes to the regulation since 2010, TISA was the third most commonly cited statute in 2019.

## Findings

The FDIC identified instances where institutions either misinterpreted Regulation DD or failed to comply with its requirements resulting in violations cited during examinations. The three most commonly identified violations were related to general disclosure requirements, the content of account disclosures, and advertising.

### General Disclosure Requirements

Regulation DD requires that financial institutions provide account disclosures and periodic statement disclosures that meet the requirements in §1030.3. The FDIC found that some institutions failed to provide disclosures that were:

- Clear and conspicuous;
- In writing;
- In a form the consumer may keep;
- Clearly identifiable for different accounts, if disclosures for different accounts were combined;
- Reflective of the terms of the legal obligation of the account agreement between the consumer and the institution;
- Available in English upon request if disclosures are made in languages other than English; and
- Consistent in terminology when describing terms or features required to be disclosed.

### Content of Account Disclosures

Regulation DD requires institutions to provide applicable and accurate information on account disclosures as set forth in §1030.4(b). The FDIC identified institutions that failed to provide account disclosures that include information, as applicable, such as: rate information, methods of compounding and crediting interest, balance information, fees, transaction limitations, features of time accounts, and bonuses.

### Advertising

Regulation DD prohibits any advertisement that is misleading, inaccurate, or misrepresents a deposit account. The FDIC identified institutions that provided misleading,

inaccurate or misrepresentative information on deposit accounts; used the terms “free” or “no cost” (or similar term) or the word “profit” when referring to interest paid on an account.

## Mitigating Risk

The FDIC has observed certain risk-mitigating activities that institutions may consider in efforts to comply with Regulation DD:

- Enhancing monitoring efforts, including a secondary review process, to ensure accuracy of applicable account disclosures and advertisements; and
- Conducting periodic training on regulatory requirements for Regulation DD.

## Regulatory Developments

The following developments or changes were issued by the FDIC in 2019. The purpose of this section is to provide useful information to assist financial institutions strengthen their CMS, ensure regulatory compliance, and stay abreast of regulatory matters impacting the industry.

## Private Flood Insurance Rule

### Issuance of Final Rule on Loans in Areas Having Special Flood Hazard - Private Flood Insurance

The FDIC, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the National Credit Union Administration (NCUA), and the Farm Credit Administration amended their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act). The final rule amended the FDIC’s flood insurance regulation at Part 339 of Title 12 of the Code of Federal Regulations to incorporate and implement certain provisions in the Biggert-Waters Act regarding private flood insurance.

The final rule includes four provisions: (1) Mandatory Acceptance of Private Flood Insurance; (2) Compliance Aid for Mandatory Acceptance; (3) Discretionary Acceptance of Private Flood Insurance; and (4) Coverage by Mutual Aid Societies. The rule requires institutions to accept policies that meet the statutory definition of “private flood insurance,” and permits institutions to exercise their discretion to accept flood insurance policies issued by private insurers and flood plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of “private flood insurance,” subject to certain

restrictions. The final rule was effective on July 1, 2019. More information on this final rule is highlighted in the Financial Institution Letter (FIL) issued ([FIL-8-2019 Issuance of Final Rule on Loans in Areas Having Special Flood Hazards—Private Flood Insurance](#)).

## Notice of Proposed Rulemaking on Revisions to the Community Reinvestment Act (CRA) Regulations

In December 2019, the FDIC and the OCC issued a joint Notice of Proposed Rulemaking (NPR) to comprehensively amend the Community Reinvestment Act's (CRA) implementing regulations. The proposed revisions would seek to modernize and update CRA regulations to better achieve the statute's underlying purpose of encouraging banks to serve their communities. The NPR is intended to enhance the regulatory framework to be more objective, transparent, consistent, and easy to understand. The proposed rule would allow banks with \$500 million or less in total assets to opt in to the performance standards included in the proposal. The comment period was initially scheduled to end on March 9, 2020 but a 30-day extension was provided by the FDIC and the OCC, extending the period until April 8, 2020.

## Alternative Data in Credit Underwriting

### Interagency Statement on the Use of Alternative Data in Credit Underwriting

The FDIC, the CFPB, the OCC, FRB, and the NCUA issued an interagency statement on the use of alternative data<sup>4</sup> in underwriting by banks, credit union, and nonbank financial firms. The statement focuses on the consumer protection implications of the use of alternative data in underwriting, highlighting potential benefits and risks. The highlights of this statement can be referenced in the FIL issued ([FIL-82-2019 Interagency Statement on the Use of Alternative Data in Credit Underwriting](#)).

## Resources for Financial Institutions

The FDIC provides resources for financial institutions to support their efforts to serve and meet the needs of their communities. In addition, these resources may provide information found to be helpful in assisting institutions stay abreast of regulatory developments and provide guidance on consumer compliance topics.

### Minority Depository Institutions Program

The FDIC has a continued interest in supporting, promoting and preserving Minority Depository Institutions (MDIs). MDIs often promote the economic viability of minority and under-served communities. The FDIC has long recognized the importance of these institutions and has historically taken steps to preserve and encourage minority ownership of insured financial institutions.

The FDIC implemented a number of initiatives in 2019, including:

- Hosting roundtables between MDIs and other FDIC-supervised institutions to share expertise and to promote possible collaborative opportunities, including direct investments and deposits in MDIs;
- Publishing a research study on MDIs and hosting the 2019 Interagency MDI and Community Development Financial Institution (CDFI) Bank Conference;
- Continuing to provide technical assistance to groups seeking to organize new MDIs, and to existing MDIs to support their efforts to acquire failing institutions; and
- Establishing a new MDI subcommittee on the Community Banking Advisory Committee (CBAC) to both highlight the MDIs' efforts in their communities and to provide a platform for MDIs to exchange best practices.

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<sup>4</sup>The Interagency Statement notes that alternative data is information not typically found in the consumer credit files of the nationwide consumer reporting agencies or customarily provided by consumers as part of applications for credit. The statement applies to the use of consumer data in the credit process rather than the furnishing, compilation, or transfer of such data.



The FDIC will continue other technical assistance efforts with these institutions, including groups seeking to create MDIs. Additional resources about the FDIC's MDI Program can be found at <https://www.fdic.gov/regulations/resources/minority/index.html>.

### **Proposal Drafts & Official Applications for Deposit Insurance**

The FDIC is committed to working with groups interested in organizing de novo institutions. New institutions with sound business plans, experienced leadership at the board and management levels, and appropriate capital support can play a vital role in serving the deposit and credit needs of their communities.

The FDIC observed an increase in deposit insurance applications from organizing parties in 2019. To provide organizing groups the opportunity to better understand and identify potential challenges prior to submitting a formal application for deposit insurance, the FDIC has established a process to allow prospective organizers the option to request FDIC review of a draft deposit insurance proposal prior to filing an official application. The draft review process builds on FDIC's efforts to engage in more collaborative pre-filing discussions with organizers seeking federal deposit insurance, and can be helpful for business models that present novel, unique, unusual or complex issues, or for groups seeking technical assistance.

The FDIC expects to provide organizers interim feedback on any draft proposal within 30 days, and to complete its review and communicate overall feedback within 60 days of receipt of a draft proposal.

Additional resources on the process for reviewing draft deposit insurance proposals and the formal application process are available on the FDIC's website at <https://www.fdic.gov/regulations/applications/depositinsurance/>

### **Director's Resource Center**

Many resources are available on the FDIC's Director's Resource Center at <https://www.fdic.gov/regulations/resources/director>.

The Director's Resource Center provides information and resources for directors and officers of FDIC-insured institutions. Some of the resources provided include information about the Director's College Program, materials from past Director's College and outreach events, a regulatory calendar, supervisory guidance related to consumer compliance topics, and technical assistance videos. The Resource Center is updated periodically to include information that address issues and topics faced by the banking industry.

### **Regional Quarterly Newsletters**

Each FDIC Regional Office provides FDIC-supervised institutions with quarterly newsletters to keep them updated of consumer compliance related regulatory changes and issues identified by examiners during examination activities. FDIC-supervised financial institutions that wish to receive these quarterly newsletters can contact their designated Regional Office.

### **Banker Teleconference Series**

The FDIC hosts a Banker Teleconference Series. This series of teleconferences and webinars is designed to maintain open lines of communication and update bank management and staff on important bank regulatory and emerging issues in the industry. To be notified of the next event in the Banker Teleconference Series and receive information on other consumer compliance related matters, sign up for the [FDIC's email Subscription Service](#).