

Loan Compliance: Common Findings & High Risk Areas

Saltmarsh BankChat 2024

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FAST FACTS

Saltmarsh, Cleaveland & Gund

At Saltmarsh, we believe the way to achieve success is by contributing to the success of others, which is why we thrive in ***genuine relationships***. Our passion for people and ***excellence*** is more than a shared value; it's the foundation of our work.

SIZE OF FIRM



OFFICE LOCATIONS

5

FLORIDA
Destin
Orlando
Pensacola
Tampa

TENNESSEE
Nashville

AFFILIATIONS

SALTMARSH FINANCIAL ADVISORS, LLC



THE BDO ALLIANCE USA



WHAT WE DO

Audit & Assurance | Business Valuation | Employee Benefits Consulting | Financial Planning | Litigation Support & Dispute Advisory | Outsourced Accounting Solutions | Retirement Plan Administration | Tax Compliance & Consulting | Technology & Managed IT Consulting | Wealth Management

WHO WE SERVE

Financial Institutions | Construction & Real Estate Development | Governments, Municipalities & Pension Plans | High Net Worth Individuals | Manufacturing & Distribution | Non-Profit | Post-Acute Healthcare | Professional Employer Organizations (PEOs)



Top Federal Reserve Compliance Violations in 2023 (published 04/30/2024)

	Number of Violations	Percentage of Violations
Regulation C (Home Mortgage Disclosure Act), 12 C.F.R. 1003.4(a): requires a financial institution to collect for reporting specific and accurate data on applications for covered loans it receives, originates, and purchases for each calendar year.	276	48.3
Regulation B (Equal Credit Opportunity Act), 12 C.F.R. 1002.9(a): requires a creditor to notify an applicant within 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, or adverse action on the application.	10	1.8
Regulation Z (Truth in Lending Act), 12 C.F.R. 1026.38(f): requires a creditor to disclose all loan costs associated with a mortgage transaction on the Closing Disclosure.	8	1.4
(Tie) Regulation H (Flood Disaster Protection Act), 12 C.F.R. 208.25(i): requires a bank that makes a loan secured by a property in a special flood hazard area to deliver a notice to the borrower indicating whether flood insurance is available under the Flood Disaster Protection Act.	7	1.2
Regulation X (Real Estate Settlement Procedures Act), 12 C.F.R. 1024.17(i): requires a mortgage loan servicer to submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year.	7	1.2

Agenda

1. Home Mortgage Disclosure Act – HMDA
2. Real Estate Protection Act – RESPA
3. Equal Credit Opportunity Act – ECOA
4. Fair Credit Reporting Act – FCRA
5. Flood
6. TILA-RESPA Integrated Disclosures – TRID
7. Truth In Lending Act – TILA

HMDA-Common errors in HMDA reporting

1. Application Date
2. Loan Purpose
3. Government Monitoring Information
4. Income
5. HOEPA
6. Transitory Properties
7. Number of Units

CFPB Consent Order and \$12M CMP against Bank of America

On November 28, 2023, the Bureau issued an order against Bank of America, N.A., with branches and ATMs located in 38 states and DC.

The Bureau found that between 2016 and late 2020, at least hundreds of Bank of America's loan officers were not asking applicants for their race, ethnicity, and sex, as required by law, and instead falsely recorded that the applicants chose not to provide the information.

The order requires the Bank to pay a \$12 million civil money penalty, and develop policies and procedures to ensure compliance with HMDA and Regulation C, including recording and auditing phone applications to make sure that HMDA data are accurately collected and recorded.

CFPB fines Freedom Mortgage \$1.75M

The lawsuit, filed in the U.S. District Court Southern District of Florida, alleges the HMDA data that Freedom submitted for 2020 contained widespread errors across multiple data fields, and the errors constitute violations of HMDA, the Consumer Financial Protection Act and the 2019 order.

According to the CFPB, after they found 51 errors in an initial review of 159 files in Freedom's 2020 submission, the company had to resubmit its data.

In the resubmission, Freedom corrected errors in 35 different required HMDA data fields. This amounted to errors in over 174,000 data entries affecting almost 20% of Freedom's mortgage loan applications.

Application Date

What is an application under ECOA?

- An application is an oral or written request for an extension of credit that is made in accordance with procedures used by the creditor for the type of credit requested.
- *Procedures used by the creditor* – refers to the *actual practices followed by a creditor* in making credit decisions as well as its stated application procedures.
- A creditor has the latitude under Regulation B to establish its own application process and to decide the type and amount of information it will require from credit applicants (for a completed application).

What is an application under RESPA/TRID?

- (1) The consumer's name
- (2) The consumer's income
- (3) The consumer's Social Security number to obtain a credit report (or other unique identifier if the consumer has no Social Security number)
- (4) The subject property address
- (5) An estimate of the value of the property
- (6) The mortgage loan amount sought

More on Application Date

Per ECOA/Reg B and HMDA/Reg C an “application” is an **oral or written request** for an extension of credit that is **made in accordance with procedures used by the creditor** for the type of credit requested.

- ***Procedures used by the creditor*** – refers to the ***actual practices followed by a creditor*** in making credit decisions as well as its stated application procedures.
- A creditor has the latitude under Regulation B to establish its own application process and to decide the type and amount of information it will require from credit applicants

Loan Purpose

For multiple purpose HMDA loan/line, you proceed *down* the following hierarchy/“waterfall”:

- 1. Home Purchase** – if any of the proceeds are used to purchase a dwelling, it is reported as a home purchase loan.
- 2. Refinance** – a loan or line that is a refinance may also be for home improvement and may be used for other purposes if the refinance is a cash-out refinance and the funds will be used for both home improvement and to pay tuition. Report the loan as a refinance.
- 3. Home Improvement** – a loan or a line that may be used for multiple purposes (i.e., a loan is a home improvement loan as well as for another purpose, but the covered loan is not a home purchase loan, a refinancing, or cash-out refinance) is reported as a home improvement loan.
- 4. Home Equity (Other)** – If the loan or line is not a home purchase, refinance or home improvement purpose, report it as a home equity loan or line.

HMDA Purpose Waterfall

Multiple Purposes	Reportable Purpose
Home Purchase Loan and Home Improvement Loan	Home Purchase Loan
Home Purchase Loan and Refinancing	Home Purchase Loan
Home Purchase Loan and cash-out Refinancing	Home Purchase Loan
Home Purchase Loan and other	Home Purchase Loan
Home Improvement Loan and Refinancing	Refinancing
Home Improvement Loan and cash-out Refinancing	Cash-out Refinancing
Refinancing and other	Refinancing
Cash-out Refinancing and other	Cash-out Refinancing
Home Improvement Loan and other	Home Improvement Loan

Excluded Transactions

- **Non-Dwelling Secured Transaction** regardless of purpose.
- **Modifications** – cannot be satisfied and replaced – would not meet the definition of a refinance.
- **Agricultural Purpose** (100% exclusion) – A Bank may use any reasonable standard to determine the primary use of the property. (refer to 12CFR1026.3(a), comment #8, Reg Z Commentary).
- **Business Purpose Home Equity** – Generally, do not report business purpose home equity loans or lines. However, business purpose home purchase, refinance and home improvement loans or lines must be reported (refer to 12CFR 1026.3(a), Comment-8). The following business purpose loans and lines are not reportable because they do not meet the home purchase, home improvement or refinance definitions under HMDA:
 - Home Equity – Business Improvement or Expansion purpose – renovate a family restaurant that is not located in a dwelling, purchase a warehouse or purchase business equipment.
 - Home Equity – Purchase Business Inventory – a loan or line to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory.
- **Bare Land** – do not report loans or lines secured by bare land only – unless you know that the applicant or borrower will use the proceeds within 2 years after loan origination to construct a dwelling on, or to purchase a dwelling to be placed on the land. Depending on how structured could still be considered under the temporary financing exclusion.

Excluded Transactions, Continued

- **Temporary Financing** – a loan or a line is considered temporary financing and excluded if the loan or line is designed to be replaced by permanent financing at a later date (i.e., two phase financing). Both phases do not have to be made by the same lender.
 - Bridge or swing loan (two-phase financing) – Bank extends credit in the form of a bridge loan to finance the borrower’s down payment on a home purchase. The borrower pays off the bridge loan with funds from the sale of his existing home and obtains permanent financing for the new home from Bank. Bridge loan is excluded as temporary financing because the bridge loan will be replaced by the permanent financing. Bridge-Only Loan is not to be reported – considered as temporary financing since it will not be replaced by permanent financing.
 - Temporary vs. Short Term – If Lender originates a loan with nine-month term to enable an investor to purchase a home, renovate it and resell it before the term expires, the loan is not designed to be replaced by permanent financing and therefore, temporary financing does not apply!
 - Just because a transaction is short term, it does not make it temporary financing!
- **Less than \$500** – do not report loans or lines less than \$500.

Government Monitoring Information (GMI)

Section 8: Demographic Information. This section asks about your ethnicity, sex, and race.

Demographic Information of Borrower

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, sex, and race) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more designations for "Ethnicity" and one or more designations for "Race." **The law provides that we may not discriminate** on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, sex, and race on the basis of visual observation or surname. The law also provides that we may not discriminate on the basis of age or marital status information you provide in this application. If you do not wish to provide some or all of this information, please check below.

Ethnicity: Check one or more

- Hispanic or Latino
 Mexican Puerto Rican Cuban
 Other Hispanic or Latino – Print origin: _____

For example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.

- Not Hispanic or Latino
 I do not wish to provide this information

Sex

- Female
 Male
 I do not wish to provide this information

Race: Check one or more

- American Indian or Alaska Native – Print name of enrolled or principal tribe: _____

- Asian
 Asian Indian Chinese Filipino
 Japanese Korean Vietnamese
 Other Asian – Print race: _____

For example: Hmong, Laotian, Thai, Pakistani, Cambodian, and so on.

- Black or African American
 Native Hawaiian or Other Pacific Islander
 Native Hawaiian Guamanian or Chamorro Samoan
 Other Pacific Islander – Print race: _____

For example: Fijian, Tongan, and so on.

- White
 I do not wish to provide this information

To Be Completed by Financial Institution (for application taken in person):

- Was the ethnicity of the Borrower collected on the basis of visual observation or surname? NO YES
Was the sex of the Borrower collected on the basis of visual observation or surname? NO YES
Was the race of the Borrower collected on the basis of visual observation or surname? NO YES

The Demographic Information was provided through:

- Face-to-Face Interview (includes Electronic Media w/ Video Component) Telephone Interview Fax or Mail Email or Internet

Demographic Information Collection Methods

- ***In Person Applications***
- ***Telephone Applications*** – for applications taken by telephone, you must state the information in the collection form orally, except for the information which pertains to applications taken in writing.
- ***Electronic Media Applications*** – If you accept an application through electronic media with a video component (i.e., Skype, FaceTime, etc.), you *must treat* the application as taken in person. If you accept an application through electronic media without a video component (i.e., facsimile), you *must treat* the application as accepted by mail.

Information Not Provided

In person application only:

If the applicant chooses not to provide this information you **must** note this fact on the collection form and **then collect** the applicant's ethnicity, race and sex on the basis of **visual observation or surname**. When you collect this GMI information on basis of visual observation or surname, use the aggregate categories only.

Do NOT identify the subcategories on the basis of visual observation or surname.

Income

(20) Income

[§ 1003.4\(a\)\(10\)\(iii\)](#)
, Comments
[4\(a\)\(10\)\(iii\)-1](#)
through [.10](#)

If credit decision is made, gross annual income relied on in making the credit decision;
Or, if a credit decision was not made, the gross annual income relied on in processing the application

Enter, in dollars, the gross annual income relied on in making the credit decision, or if a credit decision was not made, the gross annual income relied on in processing the application. Round all dollar amounts to the nearest thousand (round \$500 up to the next \$1,000).

Example: If the income amount is \$35,500, enter 36.

Enter "NA" for:

- Covered loans or applications for which the credit decision did not consider, or would not have considered income, § 1003.4(a)(10)(iii); Comment 4(a)(10)(iii)-6;
- Covered loans or applications when applicant or co-applicant is not a natural person, Comment 4(a)(10)(iii)-7;
- Covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling, Comment 4(a)(10)(iii)-8;
- Purchased covered loans for which the financial institution chooses not to report the income, Comment 4(a)(10)(iii)-9;
- Covered loan to, or an application from, the institution's employees to protect their privacy, even if the institution relied on their income in

HOEPA*

(23) HOEPA Status	§ 1003.4(a)(13), Comment 4(a)(13)-1	Whether the loan is a high-cost mortgage under the Home Ownership and Equity Protection Act (HOEPA)	Indicate whether the covered loan is a high-cost mortgage under Regulation Z, § 1026.32(a) by entering: <ul style="list-style-type: none"> ▪ Code 1—High-cost mortgage ▪ Code 2—Not a high-cost mortgage ▪ Code 3—Not applicable 	To report not applicable, enter " Code 3 " for: <ul style="list-style-type: none"> ▪ Covered loans not subject to the Home Ownership and Equity Protection Act (HOEPA) of 1994, as implemented in Regulation Z, § 1026.32(a), § 1003.4(a)(13); Comment 4(a)(13)-1 ▪ Applications that did not result in originations, Comment 4(a)(13)-1
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**HOEPA only applies to purchase or refinance loans secured by a borrower's primary residence and not originated or made by a Housing Finance Agency.*

Transitory Properties

- **Transitory Uses are excluded** - short term use such as hotel rooms or suites, school dormitory rooms or suites, a single or multifamily property that is rented out for short term vacation rentals, a cabin that is rented out only for short term rentals in hunting season.
- Users of transitory residences have a residence elsewhere to which they plan to return.
- Properties with service and medical components:
 - Transitory residences that are used to provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, are not dwellings.
 - If used for long-term housing, such as assisted living for senior citizens or supportive housing for persons with disabilities, could be a dwelling (does not have a non-residential purpose merely because the property is used for both housing and to provide services)
 - You may use any reasonable standard to determine the property's primary use, such as by square footage, income generated, or number of beds or units allocated for each use. You may select the standard to apply on a case-by-case basis.
- Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are excluded, regardless of whether they are used as residences.

Number of Units

(41) Total Units	§ 1003.4(a)(31) , Comments 4(a)(31)-1 through 4	Number of individual dwelling units related to the property	Enter, in numeral form, the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. <i>Example:</i> If there are five (5) individual dwelling units, enter 5.
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HMDA Recommendations

- Clearly define application date in policies and procedures
- Use a mapping document to clarify sources for HMDA data
- Training to understand collection of Government Monitoring Information
- Timely testing of HMDA LAR
- Understand the number of HMDA eligible loans you are originating – make sure to include business purpose loans

Best Practices

- Policy and Procedures and mapping document
- Training
- Monitoring
- Review Getting it Right Guide
- Test your data
- Scrub HMDA LAR quarterly*
- DO NOT wait until March 1 to file LAR
- Network with peers
- BE CONSISTENT

**A financial institution shall record the data collected pursuant to this section on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, sale of a covered loan in the same calendar year it is originated or purchased, or denial or withdrawal of an application). [§1003.4\(f\)](#)*

Map Data Collection

DATA FIELD SOURCE DOCUMENT	RESIDENTIAL LOANS	CONSUMER LOANS	COMMERCIAL LOANS
Legal Entity Identifier (LEI)			
Universal Loan Identifier (ULI)			
Application Date			
Loan Type			
Loan Purpose			
Preapproval			
Construction Method			
Occupancy Type			
Loan Amount			
Action Taken			
Action Taken Date			
Street Address			
City			
State			
ZIP Code			
County			
Census Tract			

CFPB Reportable HMDA Data Chart

Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart

This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rules issued on October 15, 2015, and on August 24, 2017, and section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act as implemented and clarified by the interpretive and procedural rule issued on August 23, 2018 (2018 HMDA Rule).^a Relevant regulation and commentary sections are provided for ease of reference. The chart also incorporates the information found in Section 4.2.2 of the 2018 Filing Instructions Guide and provides when to report not applicable or exempt, including the codes used for reporting not applicable or exempt from section 4 of the 2018 Filing Instructions Guide for ease of reference. This chart does not provide data fields or enumerations used in preparing the HMDA loan/application register (LAR). For more information on preparing the HMDA LAR, please see <http://www.consumerfinance.gov/hmda>.

Data point	Regulation C references	Description	Filing instructions ^b	Reporting “Not Applicable” ^c or “Exempt” ^d
(1) Legal Entity Identifier (LEI)	§ 1003.4(a)(1)(i)(A)	Identifier issued to the financial institution (FI) by a utility endorsed by the Global LEI Foundation or LEI Regulatory Oversight Committee	Enter your financial institution’s LEI. <i>Example:</i> If your institution’s LEI is 10Bx939c5543TqA1144M, enter 10Bx939c5543TqA1144M.	

2. RESPA

- Must pay from escrow in time to avoid penalty
- Final Escrow Disclosures (60 days) and premium refunds (20 days) after loan payoff
- Annual escrow analysis – a statement of activity in prior year (including prior year’s analysis statement) and a projection of coming year
- *Escrow Account Balances – maintaining proper cushion amount*
- *Loan Servicing complaints-within 20 days*
- Affiliated Business Disclosure under RESPA is still required if affiliate is on the list

Residential Loan referrals

Real Estate Settlement Procedures Act/RESPA/Regulation X -- 12 CFR 1024



With respect to “federally related mortgage loans”: DIRT + 1-4 dwelling (or to be constructed)

- ✓ RESPA Section 8(a) prohibits kickbacks for business referrals related to or part of settlement services. 12 USC § 2607(a); 12 CFR § 1024.14(b).
- ✓ RESPA Section 8(b) **prohibits unearned fee arrangements, i.e., splitting charges made or received for settlement services, except for services actually performed.** 12 USC § 2607(b); 12 CFR § 1024.14(c).
- ✓ RESPA Section 8(c) identifies payments that are not prohibited by Section 8. 12 USC § 2607(c); 12 CFR § 1024.14(g)

These impact who and how you compensate third parties that source applications to and from you.

CFPB issued RESPA Section 8 Advisory Opinion on digital tech platforms 2/7/2023

Freedom Mortgage Company

- On August 17, 2023, the Bureau issued an order against Freedom Mortgage Corporation (Freedom), a residential mortgage loan originator and servicer headquartered in Boca Raton, Florida, for providing things of value—including subscription services, events, and monthly marketing services agreement payments—in exchange for referrals of mortgage loans in violation of the Real Estate Settlement Procedures Act and its implementing Regulation X. The order requires Freedom to stop its unlawful activities and pay a **\$1.75 million** civil money penalty.
- The CFPB separately took action against Realty Connect USA Long Island, Inc., a real estate brokerage firm based in New York, for accepting things of value from Freedom for mortgage referrals. The order against Realty Connect also requires it to stop its unlawful activities and pay a civil money penalty of **\$200,000**.

3. ECOA– Common Errors

- Joint Intent
 - At application! Not after application.
- Timely Loan Decision
- Completed Application definition
- Appraisal Disclosures
 - Applies to business purpose too!
- Appraisal Delivery
 - Applies to business purpose too!

Two things in ECOA commonly confused

Spousal Information/Permissible Inquiries Regarding Marital Status

- Spouse permitted to use the account;
- Spouse contractually liable on the account, or spouse owns property jointly;
- Applicant relying on spouse's income as basis for repayment of credit requested;
- Applicant resides on property located in community property state; or;
- Applicant is relying on alimony, child support or separate maintenance payments from spouse as basis for repayment of credit requested.

Documenting Intent to apply for Joint Credit

- A person's intent to be a joint applicant must be evidenced at the time of application.
- Method used to establish intent must be separate from debt instrument and from means used to affirm accuracy of information.
- Typically documented on an initialed or signed application
- *We intend to apply for joint credit* ____ ____
- This language is contained on the top section of URLA/FNMA Form 1003. It's a good idea to include the joint credit acknowledgement on all application forms (and to use Regulation B's model application forms in general).

Applications – ECOA/Reg B’s notification requirements

Notice of action taken must be provided to the primary applicant within 30 days:

- After receipt of a completed application (approval, counteroffer, or adverse action)
- After taking adverse action on an incomplete application, and
- After taking adverse action on an existing account

“Adverse action” - Refusal to grant credit in substantially the same amount or on substantially the same terms as requested in the application

- Includes a counteroffer to requested amount or terms if the applicant does not use or expressly accept it
- Includes a termination or unfavorable change in the terms of an existing credit arrangement
- Review contracts for Secondary Market Lenders as to responsibility for Adverse Action notifications

Counteroffer - If the applicant does not expressly use or accept a counteroffer, the creditor must provide notice of action taken within 90 days of the notification of counteroffer:

- You can send a combined notice of adverse action/notice of counteroffer initially, which negates need for 2nd notice.

Incomplete application - 2 choices

- You can deny the request and send notice of adverse action within 30 days of initial application, OR
- You can send notice of incomplete application within the 30 days that:
 - Specifies the information needed to make a credit decision
 - Designates a reasonable deadline for reply
 - Explains that applicant’s failure to respond will result in no further consideration of application

ECOA Appraisal Notice and Copy

ECOA Appraisal Notice

- Covers applications (i.e., originations and non-originated) for **business and consumer** purpose **closed-end or open-end** credit secured by a **first lien on a dwelling**.
 - Creditor must provide a notice to primary applicant within three (3) business days of receipt of application that states – *“We may order an appraisal to determine the property’s value and charge you for the appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your use at your own cost.”*

ECOA Appraisal Copy

- Same coverage as ECOA’s Appraisal Notice rule.
 - Creditor must provide a copy of the appraisal and other written valuations **“promptly upon completion”**, even if the loan does not close.
 - Must be provided at **LEAST 3 business days** prior to consummation (delivery presumed 3 business days after you mail or transmit, unless you have evidence of receipt)
 - Advance delivery can be waived at least 3 days prior to closing with appraisal provided at consummation

Citibank

Specifically, the CFPB alleges that between 2016 and 2021, the bank singled out credit card applicants suspected of being of Armenian descent based on their surnames, applying more stringent criteria to such applications, “including denying them and requiring additional information or placing a block on the account.”

The CFPB further asserts that bank **supervisors instructed employees not to discuss the practice in writing or on recorded phone lines and that employees were taught to lie about the reason for the adverse actions against the applicants, typically citing suspected credit abuse.** According to the CFPB, these practices violated the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, and the Consumer Financial Protection Act (CFPA).

Pursuant to the consent order, the bank has agreed to pay **\$1.4 million** to impacted consumers as well as a **\$25.4 million** penalty.

4. FCRA

ID Theft Red Flags

- “Red Flag” means a pattern, practice, or specific activity that indicates the possible existence of ID theft.
- Your bank is required to have an ID Theft policy & procedures that address your process
- You should be trained on that process. BSA/AML Customer Identification Program (CIP) and OFAC should address ID requirements for new customers, as well as for address & phone number changes
- Typical “Red Flag” on a credit report
 - Address discrepancy
 - Fraud alert (initial or extended)
 - Active- duty alert
- Must resolve by taking steps to verify the applicant’s identity, including following any instructions specified in the credit report.
- ***Retain evidence in the file.***
- ***Follow your policy***

5. Flood

Adequate flood insurance means, the lesser of:

- Outstanding Principal Balance of the Loan
- NFIP Maximums:
 - \$250,000 for Residential building (1-4 family) or each condo unit
 - \$500,000 for Commercial building and other residential building
- Insurable Value
 - Replacement cost

“Contents” must be insured for flood, if they are taken as collateral

- *Watch for inadvertent security interests in contents*
- No specific amount is required by the rules - \$100,000/\$500,000 maximums

Flood Issues

- Multiple properties or Multiple structures
- Condominium buildings
- Buildings in the course of construction/demolition
- Private policies
- Timely flood determinations
- Contents Coverage
- Ensure third party is within regulation and your policies and procedures

Flagstar

- The **Office of the Comptroller of the Currency (OCC)** issued a [consent order](#) against Michigan-based **Flagstar Bank** that levies a **\$3.62 million** civil penalty over violations of the Flood Disaster Protection Act, the regulator said on Thursday.
- The consent order states that between a three-year period – from February 2017 through February 2020 – the bank’s risk assessment, internal controls, and training led to various violations. It also said that the bank had an inadequate third-party risk management program for its loan servicing.
- According to the regulator, the bank violated the FDPA to “make, increase, extend, or renew loans” secured by properties in special flood hazard areas until after it obtained proof of adequate insurance. In addition, Flagstar violated the rules regarding timely pay for flood insurance premiums collected in escrow or to provide adequate notices to borrowers, including if a change in servicer occurred.

Flood Resources

- Resources at www.fema.gov, including the
- https://www.fema.gov/sites/default/files/documents/fema_nfip-all-flood-insurance-manual-apr-2021.pdf
- Also, the Interagency Flood Q&As, 5/31/2022
- 81 FR 32826 <https://www.govinfo.gov/content/pkg/FR-2022-05-31/pdf/2022-10414.pdf>

6. TRID – TILA/RESPA Integrated Disclosures

Finance Charges

- Identify fees as finance charges correctly
 - Convenience Fees
 - Technology Fees

Interest Rate/Payment Amount/ARM terms

- Verify back to the promissory note to ensure that they are consistent
- AIR/AP tables in Closing Disclosure are same as in promissory note

Timing of Loan Estimate and Closing Disclosure

- Must deliver the Loan Estimate within three (3) business days after receiving an application and not less than seven (7) business days from consummation
- Closing Disclosure must be received by the consumer no later than three (3) business days before consummation.

TRID Written List of Service Providers

Understanding the Written List of Service Providers

- Not allowing borrower to shop
 - Fees listed in section B of Closing Disclosure
 - Zero tolerance
- Borrower chooses provider from List of Service Providers
 - Fees listed in section B of Closing Disclosure
 - 10% tolerance
- Borrower chooses their own service provider
 - Fees listed in section C of Closing Disclosure
 - No tolerance limit

TRID Tolerance Cures

- Service Provider Tolerances
- Fees charged on the Closing Disclosure but not disclosed on the Loan Estimate without a valid change in circumstance
- Origination charges and transfer taxes/stamps increased from Loan Estimate to Closing Disclosure without a valid change in circumstance
- Finance charges understated in APR Calculation

7. TILA

HELOC Program disclosure fees are less than actual

Fees and Charges. In order to open and maintain an account, you must pay certain fees and charges.

Lender Fees. The following fees must be paid to us:

Description	Amount	When Charged
Future Release Recording Fee Paid By Lender:	\$10.00	At Account Opening
Stop Payment Fee:	\$34.00	At the time you request a Stop Payment

Late Charge. Your payment will be late if it is not received by us within **10 days after the "Payment Due Date" shown on your periodic statement.** If your payment is late we may charge you 5.000% of the unpaid amount of the payment or \$50.00, whichever is greater.

Third Party Fees. You must pay certain fees to third parties such as appraisers, credit reporting firms, and government agencies.

These third party fees generally total between **\$1.00 and \$8,000.00.** We estimate the breakdown of these as follows:

HOME EQUITY LINE OF CREDIT APPLICATION DISCLOSURE (Continued)

Page 2

Description	Amount	When Charged
O&E Search Paid by Lender:	\$150.00 - \$250.00	At Account Opening
Credit Report Cost Paid by Lender:	\$10.45 - \$28.50	At Account Opening
Appraisal Fee Paid by Lender:	\$500.00 - \$900.00 per property	At Account Opening
Title Insurance Paid by Lender:	based on Loan amount	At Account Opening
Post-Closing O&E Paid by Lender:	\$25.00 - \$50.00	
Flood Certification Fee Paid by Lender:	\$16.00 each per property	At Account Opening
Tax Service Paid by Lender:	\$78.00 per property up to the amount of 1 million dollars	At Account Opening
Flood Certification Technology Fee Paid by Lender:	\$1.00 each property	At closing
E-Recording - Paid by Lender:	\$3.00 - \$5.25 per document	At Account Opening
O&E Exam Fee Paid by Lender:	\$75.00 - \$125.00	At Account Opening

TILA Finance Charges for non TRID loans

Finance Charges 12 CFR 1026.4

- Identify fees as finance charges correctly. *Examples*
 - Convenience Fees
 - Technology Fees
 - Credit Report Fees on non real estate consumer loans
 - Insurance monitoring fees
- Identifying fees correctly on statements

Statements

- Statement format
 - Home secured can use either 1026.7(a) or 1026.7(b)
 - Non-home secured only 1026.7(b)

TILA Definition of business purpose

Commercial and Business Purpose loans are exempt from SOME requirements (TILA, TRID, e-SIGN, and some ECOA disclosures)

1. Commercial/Organizational credit

- An extension of credit to **other than a natural person**, including credit to government agencies or instrumentalities
 - E.g., loans to corporations, partnerships, associations, churches, unions, and fraternal organizations.
 - Exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.
 - But not Trusts. Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:
 - Trusts for tax or estate planning purposes...Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.
 - Land trusts...

TILA, TRID, e-SIGN, and some ECOA disclosure exemptions – cont'd

2. Business/Commercial purpose: Extensions of credit **primarily for business or commercial purposes**.

- **Factors.** In determining whether **credit to finance an acquisition**—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), consider:
 - The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.
 - The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.
 - The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.
 - The size of the transaction. The larger the transaction, the more likely it is to be business purpose.
 - The borrower's statement of purpose for the loan.
- Examples of **business-purpose credit** include:
 - A loan to expand a business, even if it is secured by the borrower's residence or personal property.
 - A loan to improve a principal residence by putting in a business office.
 - A business account used occasionally for consumer purposes.
- Examples of **consumer-purpose credit** include:
 - Credit extensions by a company to its employees or agents if the loans are used for personal purposes.
 - A loan secured by a mechanic's tools to pay a child's tuition.
 - A personal account used occasionally for business purposes.

Watch: “Investment” purpose does not automatically mean “business” purpose.

TILA, TRID, e-SIGN, and some ECOA disclosure exemptions – cont'd

- **Special rules for residential properties:**

- **Non-owner-occupied rental property.** Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for **more than 14 days** during the coming year, the property cannot be considered non-owner occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule.
- **Owner-occupied rental property.** If credit is extended to acquire, improve, or maintain rental property that is or will be owner occupied within the coming year, different rules apply:
 - Credit extended to **acquire** the rental property is **deemed to be for business purposes** if it contains more than 2 housing units.
 - Credit extended to **improve or maintain** the rental property is **deemed to be for business purposes** if it contains more than 4 housing units.

3. Agricultural purpose. An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

Compliance Challenges

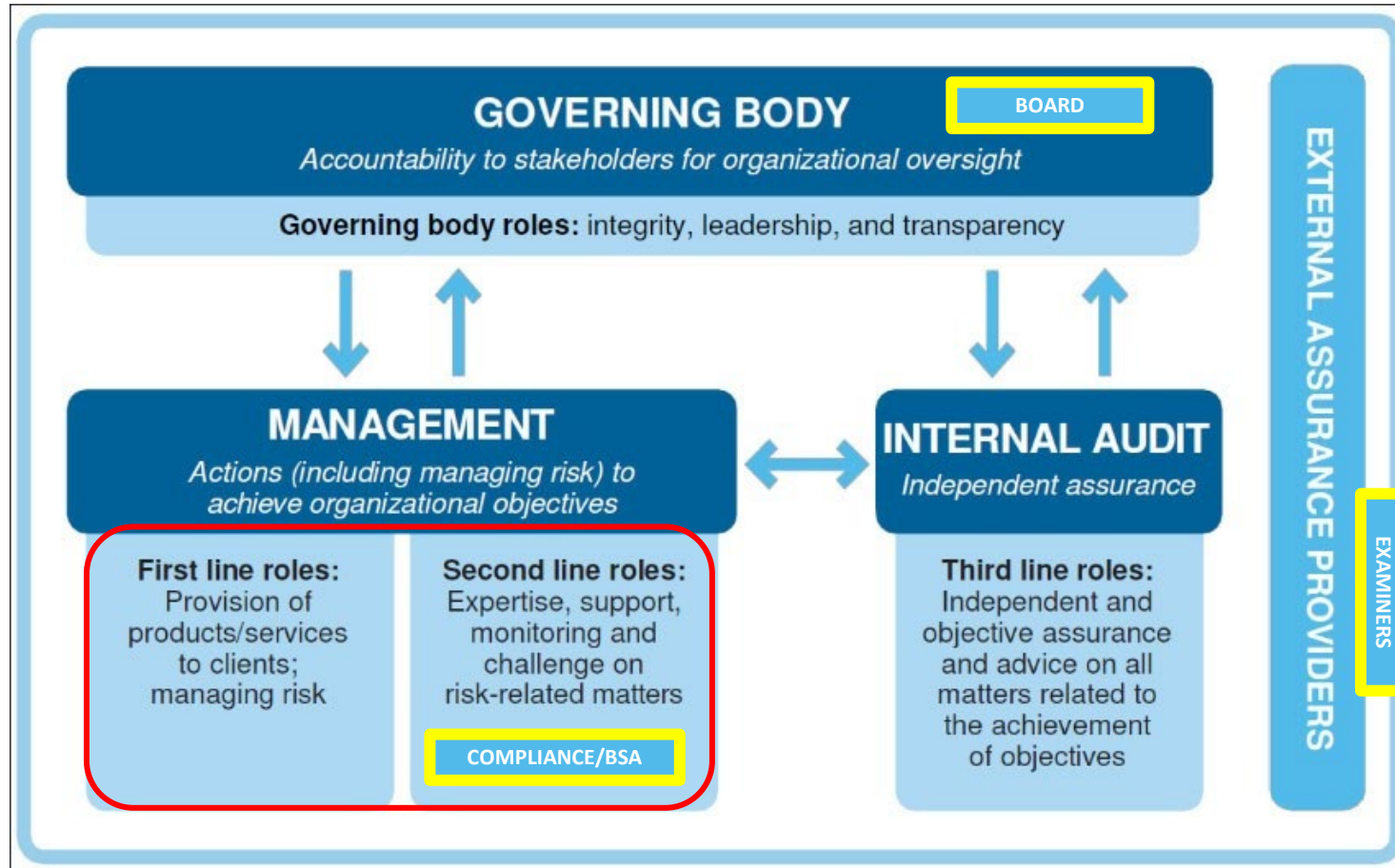
- Retiring Regulators
- Section 1071 - Implementation
- Compliance Talent/Staffing/Succession Planning
- Cost of Training/Providing valuable and effective training to employees and board
- Regulator scrutiny of junk fees
- Regulatory Change
- How best to handle 'gray areas'
- Fraud
- AI
- Time Management – how do we get it all done?

Third party oversight

A bank cannot outsource its compliance responsibilities to a third party.

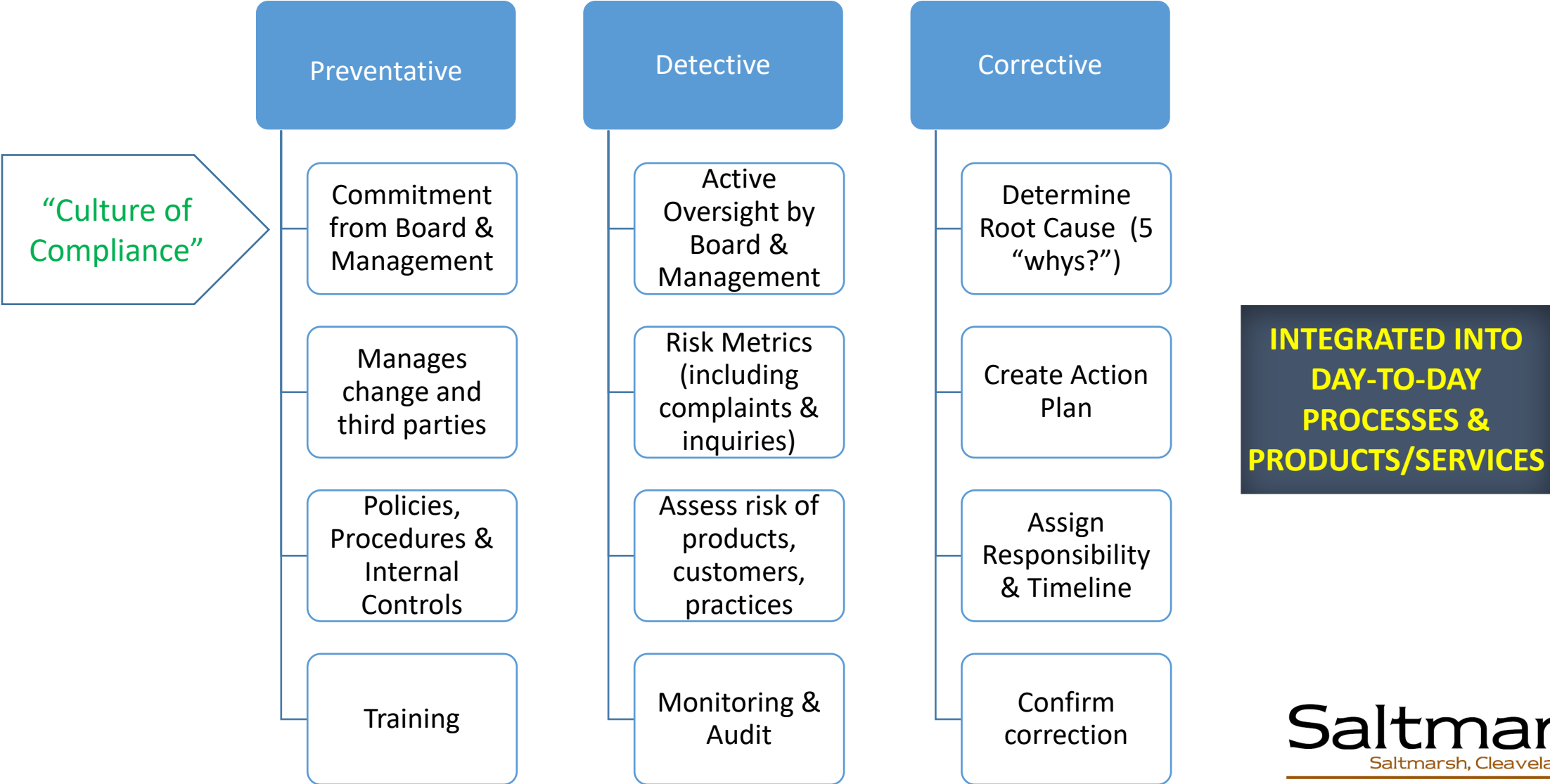
- An effective third-party risk management process will vary depending on the complexity and risk potential of the third-party relationship, but generally includes:
 - Understanding compliance risk and responsibilities (as well as other risk impact, such as credit, operational, compliance, strategic, etc.)
 - Due diligence in selecting the third-party provider
 - Appropriate contract structuring and review, to include access to complaints, policies & procedures, training, and audit
 - Sufficient oversight of third-party activities, including adequate quality control over products or services provided
- E.g., core service provider(s), LOS, deposit platform and AML system, providers, auditors, attorneys, appraisers, mortgage/loan brokers, bounce protection vendor, force placed insurance provider, etc., etc.
- Not just “critical” vendors or those that have access to your customer information

The “Three Lines” Model for Risk Management (includes Compliance Risk)



- From the Institute of Internal Auditors
- Not being called “Lines of Defense” anymore (2020)
 - Recognizes blurred lines of controls in the Management portion – Line of Business and Second line (Compliance Department)
 - Acknowledges Internal Audit’s risk management role in **helping** Management achieve objectives (“value add”)

Components of a Strong Compliance Management System (CMS)





**BUT DID
YOU
Document
IT?**

CONTACT



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