



RISK ADVISORY

# Regulatory Compliance Digest

October/November 2023

The October/November issue of the Regulatory Compliance Digest features a summary of the latest updates from the regulators including the long-awaited Community Reinvestment Act changes, Regulation Z Annual Threshold Adjustments, OCC Bank Supervision 2024 Operating Plan, Dodd Frank Section 1071 compliance and more.

The Regulatory Compliance Digest is intended to keep you informed of regulatory changes in advance of their effective date so your institution can evaluate changes or updates to necessary policies, procedures, and processes in place to be compliant at the time of enactment.



## Community Reinvestment Act (CRA) Modernization is Released

The long-awaited and anticipated Community Reinvestment Act regulation was rolled out on October 24, 2023. The good news is that the regulation will “modernize” the CRA in relation to the current banking environment and allow more flexibility to achieve compliance. It’s hard to believe that the last amendment to the regulation was in 1995. According to the joint regulatory agencies, the objectives of the changes will<sup>1</sup>:

- ▶ **Encourage banks to expand access to credit, investment, and banking services in low- and moderate-income communities** by addressing inequities in access to financial products and services. In particular, focus will be on supporting bank activities with Minority Depository Institutions and Community Development Financial Institutions, as well as Native Land Areas, persistent poverty areas and other high-need areas.
- ▶ **Adapt to changes in the banking industry, including mobile and online banking.** This amendment to the regulation will result in evaluation of lending outside of the Bank’s traditional assessment and focus on access and delivery through non-branch systems and digital banking.
- ▶ **Provide greater clarity and consistency in the application of the CRA regulations.** The amendment adopts a new metrics-based approach to evaluating bank retail lending and community development financing, using benchmarks based on peer and demographic data. It also clarifies eligible CRA activities are focused on LMI, underserved, native, and rural communities.
- ▶ **Tailor CRA evaluations and data collection to bank size and type.** Small banks will continue to be evaluated under the existing framework with the option to be evaluated under the new framework. The rule also exempts small and intermediate banks from new data requirements that apply to banks with assets of at least \$2 billion and limits certain new data requirements to large banks with assets greater than \$10 billion. The Regulators have provided an [illustration \(Page 3\) to summarize the evaluation framework and process.](#)

### Timing of Implementation

Rollout of compliance with the various pieces of the regulation will be staged as follows:

**April 1, 2024:** 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.

**January 1, 2026:** Banks will be required to comply with all other provisions of the final rule, except for certain reporting requirements, which will be applicable on January 1, 2027.

**January 1, 2027:** Applicable reporting requirements.

### Action Plan

April 1, 2024 is quickly approaching. Now is the time to review your current program and implement the changes necessary to ensure compliance. Your action plan should include the following:

1. Study the [new CRA final rule](#) to ensure an understanding of the impact based on your institution’s size, complexity, products and services, and assessment area. The Federal Reserve released a summary [overview of key objectives and elements](#), which may further aid in your understanding of the final rule.
2. Perform a “gap” analysis of your current program against the expectations that will be in effect.
3. Remember also to review the Bank’s strategic plan and its CRA action plan to ensure that actions that need to be taken are incorporated. Consideration should be given to resource and technology needs as growth plans over the next several years as it relates to products and services, business model changes, and assessment area changes.
4. Understand data reporting requirements and review these with your vendors to ensure that their systems will be compliant by the required dates.
5. Provide training to your CRA Officers, lenders, business development and others to ensure that they are aware of the changes and how they will impact their focus and responsibilities for compliance.

As we move closer to the effective date of 2026, we will provide periodic updates regarding interpretations of this new rule to ensure that you are able to work toward a compliant CRA Program within your organization. As you gear up to comply, please don’t hesitate to reach out to us with any questions that you may have. We are here to make the transition a little smoother for you.

## Industry Trends & Insights

### Agencies Issue Principles for Climate-Related Financial Risk Management for Large Financial Institutions

On October 24, 2023, [Federal bank regulatory agencies jointly finalized principles that provide a high-level framework](#) for the safe and sound management of exposures to climate-related financial risks for large financial institutions. The principles are intended for the largest financial institutions, those with \$100 billion or more in total assets, and address physical and transition risks associated with climate change.

<sup>1</sup> <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/fact-sheet-cra-20231024.pdf>

The principles are intended to support efforts by the largest financial institutions to focus on key aspects of climate-related financial risk management. General climate-related financial risk management principles are provided with respect to a financial institution's governance; policies, procedures, and limits; strategic planning; risk management; data, risk measurement, and reporting; and scenario analysis. Additionally, the principles describe how climate-related financial risks can be addressed in the management of traditional risk areas, including credit, market, liquidity, operational, and legal risks.

The final principles neither prohibit nor discourage large financial institutions from providing banking services to customers of any specific class or type, as permitted by law or regulation. The decision regarding whether to make a loan or to open, close, or maintain an account rests with the financial institution, so long as the financial institution complies with applicable laws and regulations.

On October 24, [a summary of the final principles](#) was also released.

## Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)

On September 19, 2023, the [CFPB issued the following Regulation Z annual threshold adjustments](#) for 2024:

- ▶ The threshold that triggers requirements to disclose minimum interest charges will remain unchanged at \$1.00
- ▶ HOEPA loans: The adjusted total loan amount threshold for high-cost mortgages will be \$26,092
- ▶ The adjusted points-and-fees dollar trigger for high-cost mortgages will be \$1,305
- ▶ For qualified mortgages (QMs) under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) will be:
  - 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$130,461
  - 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$78,277 but less than \$130,461
  - 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than \$78,277
  - 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than \$130,461

- 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to \$78,277
  - 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than \$78,277
- ▶ For all QMs, the thresholds for total points and fees will be:
- 3% of the total loan amount for a loan greater than or equal to \$130,461
  - \$3,914 for a loan amount greater than or equal to \$78,277 but less than \$130,461
  - 5% of the total loan amount for a loan greater than or equal to \$26,092 but less than \$78,277
  - \$1,305 for a loan amount greater than or equal to \$16,308 but less than \$26,092
  - 8% of the total loan amount for a loan amount less than \$16,308

## Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act

On October 12, 2023, the [CFPB and Justice Department issued a joint statement](#) that reminds financial institutions that all credit applicants are protected from discrimination on the basis of their national origin, race, and other characteristics covered by the Equal Credit Opportunity Act, regardless of their immigration status. The CFPB and Justice Department are issuing this statement because consumers have reported being rejected for credit cards as well as for auto, student, personal, and equipment loans because of their immigration status, even when they have strong credit histories and ties to the United States and are otherwise qualified to receive the loans.

## CFPB Issues Guidance to Halt Large Banks from Charging Illegal Junk Fees for Basic Customer Service

On October 11, 2023, the [CFPB issued an advisory opinion regarding a provision enacted by Congress](#) which generally prohibits large banks and credit unions from imposing unreasonable obstacles on customers, such as charging excessive fees, for basic information about their own accounts. Under a 2010 federal law, large banks and credit unions must provide complete and accurate account information when requested by account holders. As many large banks shift away from a relationship banking model that prioritizes high levels of customer service, this advisory opinion clarifies that people are entitled to get the basic information they need without having to pay junk fees.

## The Financial Crimes Enforcement Network (FinCEN)

Analysis Reveals Trends and Patterns in Suspicious Activity Potentially Tied to Evasion of Russia-Related Export Controls

On October 20, 2023, [FinCEN announced the renewal and expansion of its Geographic Targeting Orders \(GTOs\)](#) that require U.S. title insurance companies to identify the natural persons behind companies used in non-financed purchases of residential real estate.

The terms of the GTOs are effective beginning October 22, 2023, and ending on April 18, 2024. The GTOs continue to provide valuable data on the purchase of residential real estate by persons possibly involved in various illicit enterprises. Renewing the GTOs will further assist in tracking illicit funds and other criminal or illicit activity, as well as continuing to inform FinCEN's regulatory efforts in this sector.

FinCEN renewed the GTOs that cover certain counties within the following major U.S. metropolitan areas: Boston; Chicago; Dallas-Fort Worth; Houston; Laredo; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; Seattle; Denver; the District of Columbia, Maryland, and Northern Virginia (DMV) area; as well as the City and County of Baltimore, the Counties of Fairfield and Litchfield, Connecticut, and the Hawaiian islands of Honolulu, Maui, Hawaii, and Kauai. FinCEN, working in conjunction with our law enforcement partners, identified additional regions that present greater risks for illicit finance activity through non-financed purchases of residential real estate. Accordingly, FinCEN expanded the geographic coverage of the GTOs to the counties of Bristol, Essex, Norfolk, and Plymouth in Massachusetts; the counties of Hillsborough, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee, and Collier in Florida; and the county of Travis in Texas.

The effective period of the GTOs for purchases in these newly added areas begins on November 21, 2023. The purchase amount threshold remains \$300,000 for each covered metropolitan area, with the exception of the City and County of Baltimore, where the purchase threshold is \$50,000.

The FinCEN also [released an FAQ document](#) covering items related to the Geographic Targeting Orders Involving Certain Real Estate Transactions.

## FinCEN Provides FBAR Relief to Filers Affected by the Terroristic Action in the State of Israel - Filing Deadline is October 7, 2024

On October 16, 2023, [FinCEN announced that certain individuals and businesses affected by the terroristic action in the State of Israel](#) that are required to file Reports of Foreign Bank and Financial Accounts (FBARs) have until October 7, 2024, to file FBARs for the 2022 calendar year. The FBARs for calendar year 2022 otherwise would be due on or before October 16, 2023.

FinCEN is offering this expanded relief to any individuals or businesses that have been provided tax relief pursuant to the IRS announcement on October 13, 2023. Should the IRS offer tax relief to additional individuals and businesses impacted by the terroristic action in the State of Israel, those FBAR filers will receive the same filing relief automatically.

## Treasury Department Affirms Title VI Protections Against Ancestry and Ethnicity Discrimination

On September 28, 2023, The [U.S. Department of the Treasury \(Treasury Department\) joined seven other federal agencies in clarifying for the first time that Title VI of the Civil Rights Act](#), which protects individuals from discrimination based on actual or perceived shared ancestry or ethnic characteristics, offers protection against certain forms of antisemitic, Islamophobic, and related discrimination and bias. The fact sheet describes ways this protection may cover individuals who are or are perceived to be Jewish, Christian, Muslim, Sikh, Hindu, Buddhist or of another religious group.

The Treasury Department released a [Facts Sheet](#) on Protecting Individuals from Discrimination Based on an Actual or Perceived Shared Ancestry or Ethnic Characteristics.

## OCC Releases Bank Supervision Operating Plan for Fiscal Year 2024

On September 28, 2023, the [OCC published its 2024 Operating Plan](#). The plan outlines the OCC's supervision priorities and objectives for the year. It also facilitates the implementation of supervisory strategies for individual national banks, federal savings associations, federal branches and agencies of foreign banking organizations, and third-party service providers subject to OCC examination. OCC staff uses this plan to guide its supervisory priorities, planning, and resource allocations. Key areas of heightened focus for supervisory strategies in FY 2024:

- ▶ Asset and liability management
- ▶ Credit
- ▶ Allowance for credit losses
- ▶ Cybersecurity
- ▶ Operations
- ▶ Digital ledger technology activities
- ▶ Change management
- ▶ Payments
- ▶ Bank Secrecy Act/anti-money laundering/countering the financing of terrorism and Office of Foreign Assets Control
- ▶ Consumer compliance
- ▶ Community Reinvestment Act
- ▶ Fair lending
- ▶ Climate-related financial risks

## CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence

On September 19, 2023, the [CFPB issued guidance about certain legal requirements](#) that lenders must adhere to when using artificial intelligence and other complex models. The guidance describes how lenders must use specific and accurate reasons when taking adverse actions against consumers. This means that creditors cannot simply use CFPB sample adverse action forms and checklists if they do not reflect the actual reason for the denial of credit or a change of credit conditions. This requirement is especially important with the growth of advanced algorithms and personal consumer data in credit underwriting. Explaining the reasons for adverse actions helps improve consumers' chances for future credit and protects consumers from illegal discrimination.

## CFPB Small Business Lending Rule FAQs

On September 18, 2023, the CFPB updated its small business lending rule Frequently Asked Questions (FAQs) applicable to Dodd Frank Section 1071 compliance. Note, this FAQs is a Compliance Aid issued by the CFPB. The CFPB published a Policy Statement on Compliance Aids, available [here](#), that explains the CFPB's approach to Compliance Aids.

## FinCEN Issues Compliance Guide to Help Small Businesses Report Beneficial Ownership Information

On [September 19, 2023, FinCEN](#) published a [Small Entity Compliance Guide](#) to assist the small business community in complying with the Beneficial Ownership Information (BOI)

reporting rule. Starting in 2024, many entities created in or registered to do business in the United States will be required to report information about their beneficial owners—the individuals who ultimately own or control a company—to FinCEN. The Guide is intended to help businesses determine if they are required to report their beneficial ownership information to FinCEN. The Guide is now available on FinCEN's [Beneficial Ownership Information Reporting webpage](#).

Among other things, the Guide:

- ▶ Describes each of the BOI reporting rule's provisions in simple, easy-to-read language;
- ▶ Answers key questions; and
- ▶ Provides interactive checklists, infographics, and other tools to assist businesses in complying with the BOI reporting rule.

The requirements become effective on January 1, 2024, and companies will be able to begin reporting beneficial ownership information to FinCEN at that time. FinCEN will provide additional guidance on how to submit beneficial ownership information soon. Small businesses can continue to monitor FinCEN's website for more information or subscribe to FinCEN updates.

## FinCEN Analysis Reveals Trends and Patterns in Suspicious Activity Potentially Tied to Evasion of Russia-Related Export Controls

On September 8, 2023, [FinCEN issued a Financial Trend Analysis \(FTA\)](#) on patterns and trends contained in Bank Secrecy Act (BSA) reporting on suspected evasion of Russia-related export controls. The BSA reports analyzed for this FTA were filed in response to previous joint Alerts on this topic and indicate almost \$1 billion in suspicious activity.

The FTA describes several trends found in this BSA reporting:

- ▶ Suspicious transactions conducted after Russia's invasion indicate that companies in intermediary countries appear to have purchased U.S.-origin goods on behalf of Russian end-users.
- ▶ Suspicious transactions link trade activity, likely involving sensitive items, between end users in Russia and other jurisdictions, particularly China, Hong Kong, and Turkey.
- ▶ The majority of companies within the dataset are linked to the electronics industry and are potentially associated with—or directly facilitating—Russian export control evasion.
- ▶ Companies in the industrial machinery industry are also potentially supplying Russia with equipment.

## FinCEN Issues Alert on Prevalent Virtual Currency Investment Scam Commonly Known as “Pig Butchering”

On September 8, 2023, [FinCEN issued an alert to highlight a prominent virtual currency investment scam known as “pig butchering.”](#) Multiple U.S. law enforcement sources estimate victims in the United States have lost billions of dollars to these scams and other virtual currency investment frauds.

“Pig butchering” scams resemble the practice of fattening a hog before slaughter. Victims invest in supposedly legitimate virtual currency investment opportunities before they are conned out of their money. Scammers refer to victims as “pigs,” and may leverage fictitious identities, the guise of potential relationships, and elaborate storylines to “fatten up” the victim into believing they are in trusted partnerships before they defraud the victims of their assets—the “butchering.” These scams are largely perpetrated by criminal enterprises based in Southeast Asia who use victims of labor trafficking to conduct outreach to millions of unsuspecting individuals around the world.

FinCEN’s alert explains the scam’s methodology; provides behavioral, financial, and technical red flags to help financial institutions identify and report related suspicious activity; and reminds financial institutions of their reporting requirements under the Bank Secrecy Act.

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## Have Questions?

If you would like to discuss any compliance matters for your institution, please contact your Cherry Bekaert Advisor or reach out to the Firm’s [Risk Advisory](#) regulatory compliance team today.

### For more information please contact:



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