

SALTMARSH, CLEVELAND & GUND



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CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

March 5, 2025
FBA Consumer Compliance Forum

Loan Compliance for Beginners


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Saltmarsh, Cleaveland & Gund

ABOUT THE FIRM

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




150+

PROFESSIONALS


AFFILIATIONS

SALTMARSH FINANCIAL ADVISORS, LLC



AN AFFILIATE OF SALTMARSH, CLEVELAND & GUND

THE BDO ALLIANCE USA
AN INDEPENDENT MEMBER OF




OFFICE LOCATIONS


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FLORIDA
Destin
Orlando
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Tampa

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WHAT WE DO

Audit & Assurance | Business Valuation | Employee Benefits Consulting | Financial Planning | Litigation Support & Dispute Advisory | Outsourced Accounting Solutions | 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)



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Agenda

- Unfair Deceptive or Abusive Acts or Practices - UDAAP
- Regulation Z – Truth in Lending Act - TILA
- Regulation X – Real Estate Settlement Protection Act - RESPA
- TILA-RESPA Integrated Disclosures, aka TRID
- Resources

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

Unfair, Deceptive or Abusive Acts or Practices

“Unfair”

- likely to cause substantial injury,
- not reasonably avoidable, and
- not outweighed by benefits

“Deceptive”

- material act or practice that is likely to mislead , and
- consumer's interpretation is reasonable

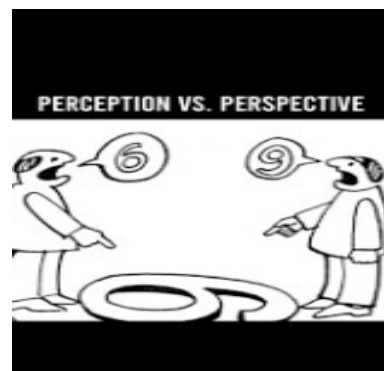
“Abusive”

- interferes with ability to understand the term or condition OR
- takes advantage of the consumer's:
 - lack of understanding;
 - inability to protect own interests; or
 - reliance on Bank to act in consumer's interests

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UDAAP is all about Perception: a way of regarding, understanding, or interpreting something; a mental impression.



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You may have increased UDAAP risk, when you:

- Introduce new, modified, or expanded bank products and services (collectively, new activities), particularly those that are targeted at financially unsophisticated individuals, or those vulnerable to financial abuse.
 - Elderly
 - Young people
 - Limited English proficient (LEP) individuals
 - Financially distressed individuals
- Offer products or services through third parties
 - direct or target marketing companies
 - mortgage loan brokers
 - mortgage loan originators

particularly if the bank does not appropriately manage these third-party relationships

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Increased UDAAP Risk (Continued)

- Have heightened operational risk or operational risk management weaknesses, including:
 - Having improper compensation incentives that reward excessive risk taking or places the profits of the bank ahead of the customers needs or suitability of products or services
 - Failing to develop a proper control environment inclusive of policies and procedures aimed at preventing fraud or other abuses
 - Failing to provide training and support for employees
 - Failing to have a proper information technology (IT) system or application to support the initiatives

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Mortgage Servicing Violations

- **Failing to end preauthorized electronic fund transfers.** Otherwise known as EFTs, some servicers failed to end automatic electronic payments when an account had been closed, often resulting in additional and repeated fees when borrowers had insufficient funds in their banking account.
- **Charging consumers unauthorized amounts.** Our report found that, in some cases, mortgage servicers overcharged borrowers for services or added fees outside of their loan terms, including for home inspections and Broker Price Opinions.
- **Misrepresenting mortgage loan transactions and payment history in online accounts.** Examiners found that servicers provided inaccurate descriptions of payments and transaction information, which may have misled borrowers.
- **Failing to review borrowers' applications for loss mitigation options within 30 days.** Examiners found that mortgage servicers violated Regulation X because the servicers didn't evaluate the borrowers' complete loss mitigation applications and provide a written notice stating the servicers' determination of available options within 30 days of receiving borrowers' applications.
- **Incorrect handling of partial payments.** Servicers are required to take one of the following specific actions when they receive a partial payment from a borrower: crediting the payment, returning it to the consumer, or holding it in an unapplied funds account. Examiners found that, in some cases, servicers put these payments in borrowers' escrow accounts rather than returning the amount or crediting it to borrowers' next monthly payment.
- **Failing to automatically terminate Private Mortgage Insurance (PMI) on time.** For borrowers with PMI, servicers are generally required to automatically terminate those additional PMI payments once the mortgage loan's principal balance is first scheduled to reach 78 percent of the original value of the property. Examiners found that in many cases the servicers' data was inaccurate, and the PMI wasn't terminated in a timely manner.

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Equifax Consent Order January 17, 2025

- The Bureau found that Equifax violated FCRA
- The Bureau also found that Equifax engaged in unfair acts or practices in violation of the Consumer Financial Protection Act of 2010 by:
 - (1) using ineffective systems, flawed processes, and excessive deference to furnishers to resolve consumer disputes and failing to adequately inform consumers of the results of reinvestigations; and
 - (2) selling inaccurate consumer credit scores and credit attributes after it introduced "test code" into a production environment in a scoring model server.
- \$15 million civil money penalty

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Truth in Lending Act

- Mandates uniform disclosures of the cost of credit for comparison shopping
- Requires a maximum interest rate and other disclosures for variable-rate contracts secured by the consumer's principal dwelling (Adjustable-Rate Mortgage loans);
- Imposes limitations on home equity lines of credit and minimum standards on dwelling secured loans, along with rate caps and rights of rescission on certain primary home mortgage loans;
- Prohibits certain compensation payments to mortgage loan originators and prohibits steering of customers based on compensation considerations.
- Regulates credit card practices;
- Provides a means for fair and timely resolution of credit billing disputes;
- Regulates practices of creditors who extend private education loans;
- Delineates and prohibits unfair and deceptive mortgage lending practices.

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TILA coverage

Consumer credit for consumer purpose

- Credit extended to consumers
- Primarily for personal, family or household purposes
- Involves a written agreement that is either subject to a finance charge or is repayable in more than four installments

Exemptions

- Credit for business, commercial or agricultural purposes.
- Consumer credit over \$71,900 (as of 01/01/2025, subject to annual adjustment) that is not secured by real property or a dwelling.

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Finance Charges

Finance Charge -- THE most important definitions in Regulation Z!!

- Finance Charge-total amount of interest and fees paid on a loan.
- The cost of consumer credit expressed in dollars. Includes any charge:
 - Payable directly or indirectly by consumer; and
 - Imposed directly or indirectly by creditor as condition to extension of credit; and
 - Provided charge is not payable in comparable cash transaction; and
 - Subject to specific exclusions listed in Regulation Z.

Prepaid Finance Charge

- Any finance charge paid separately in cash or by check before or at consummation of a transaction, or, withheld from the proceeds of the credit at any time. Prepaid finance charges are also known as closing costs.

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TILA Disclosures

Must include the following information, as applicable:

- Creditor
- Amount financed using that term and a brief description
- Itemization of amount financed
- Finance charge using that term and a brief description
- Annual percentage rate using that term and a brief description
- Variable rate disclosures, if annual percentage rate may increase after consummation:
 - Circumstances under which the rate may increase
 - Any limitations on the increase
 - Effect of increase
 - Payment example
- The number, amounts and timing of payments

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TILA Disclosures continued

- The total of payments using that term
- Demand feature, if applicable
- Total sales price using that term, for credit sale transactions
- Definitive statement of whether or not a prepayment penalty will be imposed
- Any late payment fee imposed
- The fact that the creditor has or will take a security interest in collateral property
- Insurance and debt cancellation
- Security interest charges
- Statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate, and prepayment penalties

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Timing of TILA Application Disclosures

- HELOC Application Disclosure – at time of application
- Consumer Loans - can be provided at closing
- ARM Loan – at time of application

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Right of Rescission

- The right of a person, who has an ownership interest, to cancel a transaction in which a security interest will be taken in his/her principal residence.
- The persons entitled to rescind must receive 2 copies of the material disclosures before the rescission period can begin to run.
- Excludes business purpose loans and residential mortgage purchase transactions.
- Includes open and closed-end loans (special rule for open-end lines of credit)
- Each consumer with ownership rights has right to rescind. Any one consumer can rescind transaction.

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What we are seeing

- TILA disclosures not matching note
- Third party fees charged exceed what was disclosed
- Finance charges are not identified correctly causing tolerance cures
- HELOC HOEPA testing not identifying fees correctly
- ARM notices incorrect-core system not matching note
- Periodic statements-fees not disclosed properly

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Real Estate Settlement Protection Act

The primary purposes of the law and the regulation are to:

- Provide customers with timely and accurate disclosures regarding the costs associated with real estate transactions.
- Require disclosure of lender servicing and escrow account practices.
- Prohibit abusive practices such as kickbacks, referral fees, and excessive escrow balances that tend to increase unnecessarily the cost of certain settlement services.

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RESPA Section 8

Prohibition Against Kickbacks and Unearned Fees/RESPA Section 8

RESPA Section 8 basically:

- Prohibits the payment of fees or other "things of value" for the referral of real estate settlement services.
- Any referral of a settlement service is not a compensable act, except for certain payments specifically allowed in Regulation X, such as payment:
 - By a lender to its duly appointed agent for services actually performed in originating, processing, or funding a loan
 - To any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed
 - Payment by employer to its own bona fide employee for generating business for that employer

Prohibition against Kickbacks and Unearned Fees/No Split of Charges

- No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of the settlement service in connection with a transaction involving a federally related mortgage loan other than the services actually performed.
 - A charge by a person in which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable.

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CFPB Sues Rocket Mortgage December 2024

- Providing kickbacks in exchange for referrals: Rocket Homes gave incentives, such as home-buyer referrals and priority for future homebuyer referrals from the network, in exchange for brokers' and agents' mortgage lending and settlement service referrals.
- Requiring brokers and agents to steer consumers toward Rocket Mortgage: Rocket Homes required that the brokers and agents receiving its referrals "preserve and protect" the relationship between the consumer and Rocket Mortgage by steering clients away from other competing lenders and preventing brokers and agents from sharing valuable information with their clients concerning products not offered by Rocket Mortgage, including the availability of programs that provide assistance for a borrower's down payment.

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RESPA List of Homeownership Counseling Organizations

Homeownership Counseling Disclosure

- Applies to all consumer purpose closed-end and open-end loans/lines secured by consumer's principal dwelling.
- Not later than three (3) business days after a lender, mortgage broker or dealer receives an application or information sufficient to complete an application, the lender must provide a clear and conspicuous written list of homeownership counselors that provide relevant counseling services in the loan applicant's location.
- For HELOCs, it must be provided at time of application or within 3 days of application.
- To mirror RESPA and Regulation Z, the lender is not required to provide this disclosure if loan applicant withdraws, or lender denies the application within three (3) business days of receipt of completed application.
- It can be mailed to each applicant or delivered via electronic means. If provided electronically, ESIGN Act provisions apply.
- If a request has multiple applicants, only one list has to be provided.
- DFA requirement is not an amendment to HOEPA, but requires first-time borrowers receive homeownership counseling before taking out a negative amortization loan.

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What we are seeing

- Final Escrow statement not being sent within 30 calendar days of payoff
- Annual Escrow disclosure statements not containing all the information mandated
- Force Placed Hazzard-no evidence that a 45-day notice prior to charging borrower
- Homeowners' Counselor List- no evidence that it was sent timely

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TILA-RESPA Integrated Disclosures

- The TILA-RESPA rule consolidated four existing disclosures required under TILA and RESPA for closed-end credit transactions secured by real property into two forms:
 - Loan Estimate
 - Combines GFE and Early TIL
 - Closing Disclosure
 - Combines HUD-1/HUD-1A and Final TIL
- TRID Final Rules are housed in Regulation Z –
 - Loan Estimate –1026.37
 - Closing Disclosure –1026.38
 - Appendix H – Model Forms

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Scope & Coverage of TRID Rules

Applies to most closed-end consumer credit transactions secured by real property.

- Does not apply to the following:
 - HELOCs
 - Reverse Mortgages
 - Mobile homes and dwellings not secured to real property
 - Creditors making five or fewer mortgage loans per year
 - Certain no-interest second mortgage loans made for the purpose of down payment assistance, property rehabilitation, energy efficiency or foreclosure avoidance.
 - Loans primarily for an agricultural purpose

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Not Exempt from TRID Rules

- Loans on secured properties covering 25 acres or more that are for personal, family or household purposes;
- Loans secured by vacant land
- Construction only loans;
- Loans secured by cooperative units (all)
- Investment properties where borrower intends to live in the dwelling for more than 14 days within the year, or if investment property was used for cash out to pay for a consumer purpose
- Certain Trusts –
 - Personal, family or household trusts established for tax or estate planning purposes is considered to be extended to a natural person rather than to an organization – even if a legal entity.

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Definition of Loan Application

- An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit.
- For transactions subject to TRID, an application consists of the submission of the following six pieces of information:
 - Name;
 - Income;
 - Social security number to obtain a credit report;
 - Subject Property address;
 - Estimated value of property; and
 - Mortgage loan amount sought
- Triggers timing for Loan Estimate Disclosure – 3 business days from receipt of application.
 - No additional items are permitted to be considered an "application"

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Pre-Disclosure Restrictions

Regardless of when the application was received, Creditor may **not**:

- Impose a fee before Loan Estimate has been received by consumer and intent to proceed indicated:
 - May charge reasonable credit report fee;
 - Must document intent to proceed
 - No model form
 - No collecting post-dated checks or credit card numbers
- Provide written estimate of terms or costs before consumer receives Loan Estimate unless provide written statement informing consumer that terms and costs may change.
 - Must use Model Form H-26
- Require consumer to submit documents verifying information before providing Loan Estimate.

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Providing the Loan Estimate

- Creditor must deliver or place the Loan Estimate in the mail within three (3) business days after receipt of the application.
- Consumer is considered to have received the disclosures three (3) business days after they are sent or placed in the mail.
- Must deliver the LE at least seven (7) business days before consummation.
 - Bona fide personal financial emergency waiver (same definition-ROR)
- Mortgage Brokers
 - If mortgage broker receives an application, either the creditor or mortgage broker has to provide the LE.
 - Creditor must ensure that the LE is provided in accordance with the rule.
- The LE is good for ten (10) business days.

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Business Day Definitions

- Definition of "Business Day"
 - Different definitions apply
 - Use General Business Day definition for providing initial Loan Estimate -
 - *Days on which the creditor's offices are open to the public for carrying on substantially all of its business functions (MDIA).*
 - Use Precise Business Day definition for the seven (7) day waiting period for consummation (also use precise business day definition for rescission):
 - *All calendar days except Sundays and Federal legal public holidays*

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Intent to Proceed

- Must document consumer's Intent to Proceed
 - Consumer may show his or her intent to proceed in any manner that he or she chooses
 - Unless your Bank's Policy requires a specific method or form of communication by a consumer to show intent to proceed.
- No Model form provided by CFPB.
- Documentation could be a memo in file.
- Must be documented by Bank.

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Good Faith Tolerances

Whether a Loan Estimate was provided in "good faith" is determined by whether the charges disclosed exceed an applicable tolerance:

- **Zero Tolerance:** Cannot increase
 - Creditor's charges; Affiliate charges; Consumer cannot shop; Transfer taxes
- **10% Aggregate Tolerance:** Certain third-party services and recording fees cannot increase in the aggregate by more than 10%
 - Third-party service providers not shopped; Recording fees
- **No Tolerance:** Can increase by any amount, but must still be disclosed based on best information reasonably available
 - Prepaid interest, Property insurance premiums, Amounts placed in escrow/impound, Third-party service providers shopped, Services not required

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Good Faith/BIRA Standard

- Unknown fees are subject to the **Best Information Reasonably Available** (the "BIRA" standard) at the time of disclosure, which requires creditor to exercise **due diligence** in obtaining the needed information
- Allowable **tolerances** depend on the nature of the service and whether the creditor **allowed the consumer to shop** (i.e. to select any service provider, with only reasonable creditor requirements)
 - Creditor must provide a written list of at least 1 provider for each required settlement service s/he is permitted to shop

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Written List of Providers

- Written List of Providers--
 - Must provide a written list identifying at least one available provider for each settlement service for which the consumer is permitted to shop.
 - Must include sufficient information to allow the consumer to contact the provider.
 - Must also state that the consumer may choose a different provider for that service.
 - Must be provided separate from the Loan Estimate.
 - Shopping means being able to go off the list.
 - The written list is a referral under RESPA.

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Examples of Changed Circumstances

Causes the charge to increase or affects the consumer's creditworthiness or the value of the security for the loan:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
- Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or
- New information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate.

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Providing the Closing Disclosure

Closing Disclosure must be received by the consumer **no later than three (3) business days before consummation**. Use the Precise Rule Business Day Definition -

All calendar days except Sundays and Federal legal public holidays

- If provided in any method other than face-to-face, Mailbox Rule applies, so must be provided six (6) business days from consummation to rely on presumption of receipt.
- Consumer may notify you that the disclosure was received by them
- For a rescindable loan, CD must be provided to each consumer with right to rescind.
- Consumers may waive the three (3) day waiting period for bona fide personal financial emergency – preprinted waivers prohibited.

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Settlement Agents/Closing Disclosure

- Creditor is ultimately responsible for providing the Closing Disclosure (CD).
- Settlement Agent may provide the CD, but the Creditor is still ultimately liable!
- Creditor and Settlement Agent can divide responsibilities for providing the CD, either timing or dividing different portions of the CD. Highly recommend the duties are specific as to what each party will do.
- Settlement Agent responsible for providing the final CD to the Seller.
 - Required to be provided no later than the day of consummation.
 - If within thirty (30) days after consummation, an event causes the CD to become inaccurate with respect to an amount the seller pays, the settlement agent must provide a corrected CD within thirty (30) days after learning of the change.

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Record Retention

- **Loan Estimate**
 - Must retain for three (3) years
 - After the later of the date of consummation, the date disclosures are required to be made or the date the action is required to be taken.
- **Closing Disclosure**
 - Must retain for five (5) years
 - If sell or transfer the loan, Creditor is still required to retain records for the remainder of the five (5) years.

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What we are seeing

- SSPL (service provider list) does not identify each of the lender-required services available from the settlement agent provider
- Time zones incorrect on LE/CD
- Understated finance charges
- Services not shopped for in wrong box on CD

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Additional Resources

- Interactive Bureau (CFPB) Regulations:
<https://www.consumerfinance.gov/rules-policy/regulations/>
- Consumer Compliance Outlook:
<https://www.consumercomplianceoutlook.org/index-by-topic/>
- Examiner newsletters and websites. Join mailing lists --- especially by your prudential regulator.
- Saltmarsh Regulatory Updates: <https://www.thebankadvisors.com/> (Join mailing list at bottom of page).

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