

SEPTEMBER 2022 FREE COMPLIANCE NEWSLETTER

**FDIC ISSUES SUPERVISORY GUIDANCE ON MULTIPLE RE-PRESENTMENT NSF FEES**

The FDIC issued guidance on multiple re-presentment NSF fees. This has been on our radar for a few months now, but it doesn't appear to be going away anytime soon. Based on what we have learned from reviewing guidance and speaking with clients, the major issue is your fee disclosure and how you disclose the fees. Many banks have been written up because their fee disclosure doesn't state or clarify that you could get charged an NSF fee each time the item is presented. The best way we have seen to correct that is after your NSF Fee description you can add something like (per presentment).

Another area of concern is how you label your fee. We know of a bank that labeled their NSFs as "Return Check Charge". The problem with that is there are other types of returned items, not just checks. It should be "Return Item Charge". Be sure your disclosures are crystal clear. The guidance suggests that if you find and fix these issues AND provide restitution, that you will be viewed favorably at the next exam.

For you non-FDIC regulated banks, it's up to you what you want to do. We highly recommend fixing any disclosure issues, but voluntarily providing restitution will have to be a management decision. We have not seen or heard any guidance from the other regulators on how they will handle these items or if they are even looking for this issue.

You can read the FDIC's guidance [here](#).

**FDIC RELEASES SUMMER 2022 EDITION OF SUPERVISORY INSIGHTS**

The FDIC published its Supervisory Insights, Summer 2022 Edition. The FDIC's Supervisory Insights is published by the Division of Risk Management Supervision to promote sound principles and practices for bank supervision. The current edition feature two main articles:

- Commercial Real Estate: An Update on Bank Lending Amid the Evolving Pandemic Backdrop; and
- Subordinated Debt: Issuance and Investment Considerations.

The issue concludes with a "regulatory and supervisory roundup" which is an overview of recently released regulations and other items financial institutions should be aware of.

The full edition can be found [here](#).

**FDIC ISSUES ADVISORY ON DEPOSIT INSURANCE AND CRYPTO COMPANIES**

The FDIC issued a Financial Institution Letter (FIL) to address certain misrepresentations about FDIC deposit insurance by some crypto companies. Through the FIL, the FDIC issued an Advisory to FDIC-insured institutions to address misconceptions about the scope of deposit insurance coverage and related concerns. The FDIC also published in its website a Fact Sheet to clarify for customers of non-bank entities, such as crypto companies, and the public generally, that deposit insurance does not cover non-deposit products, including crypto assets. The FDIC's FIL can be found [here](#). The FDIC Crypto Advisory can be found [here](#). The FDIC's Deposit Insurance Fact Sheet can be found [here](#).

## **FEDERAL HOUSING FINANCE AGENCY ANNOUNCES UPDATE FOR SERVICERS TO MAINTAIN FAIR LENDING DATA**

The Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac (the Enterprises) will require servicers to obtain and maintain fair lending data on their loans, and for this data to transfer with servicing throughout the mortgage term.

The fair lending data to be maintained includes borrowers' age, race, ethnicity, gender, and preferred language. Servicers will be required to implement this change starting on March 1, 2023. This update follows a [May 2022 announcement](#), which requires lenders to collect borrowers' language preference data.

"The need for collection and maintenance of quality fair lending data is a lesson learned from the foreclosure crisis and COVID-19 response," said FHFA Director Sandra L. Thompson. "Having fair lending data travel with servicing will help servicers do the important work of providing assistance to borrowers in need, helping to further a sustainable and equitable housing finance system."

## **CFPB ISSUES INTERPRETIVE RULE ON DIGITAL MARKETING**

The CFPB issued an interpretive rule laying out when digital marketing providers for financial firms must comply with federal consumer financial protection law. According to the CFPB, digital marketers acting as service providers can be held liable for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations.

Unlike traditional marketing which relies on getting a product or service out to as wide an audience as possible, digital marketers utilize personal data and behavioral analytics models to target individuals or groups that are more likely to interact with an ad or sign up for a product or service. The CFPB's interpretive rule titled *Limited Applicability of Consumer Financial Protection Act's "Time or Space" Exception to Digital Marketers* clarifies that:

- Digital marketing is covered by the Consumer Financial Protection Act as service providers.
- Companies that solely provide time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media are exempted.
- Digital marketers that provide material services to financial firms, meaning they are involved in the development of content strategy such as identifying or selecting prospective customers and selecting or placing content in order to encourage consumer engagement with advertising, do not qualify under the "time or space" exception.
- The CFPB, states, and other consumer protection enforcers can sue digital marketers to stop violations of consumer financial protection law.

You can find the CFPB's full release [here](#). The interpretive rule can be found [here](#).



## PART OF YOUR COMPLIANCE TEAM

### **SECOND ISSUE OF CONSUMER COMPLIANCE OUTLOOK FOR 2022 RELEASED**

The Federal Reserve System published its Consumer Compliance Outlook Second Issue 2022. Consumer Compliance Outlook is the agency's publication focusing on consumer compliance topics.

The current edition of the Consumer Compliance Outlook includes two feature articles titled "Merger Lessons Learned" and "Commercial Flood Insurance Compliance – Washing Away Common Pitfalls". The publication also includes regulatory updates, recent federal court opinions, and a calendar of upcoming or proposed regulatory changes.

The Second issue can be found [here](#).

### **HMDA QUARTERLY GRAPHS TOOL RELEASE**

The CFPB has released a Quarterly Graphs tool. This new tool helps users understand HMDA mortgage loan data, and provides, for the first time, important HMDA data on mortgage market trends during the collection year itself. The new HMDA Quarterly Graphs tool can be found [here](#).