

MAY 2023 FREE COMPLIANCE NEWSLETTER

**CFPB LAUNCHES SMALL BUSINESS LENDING (SBL) HELP**

The CFPB has issued their SBL rule, section 1071, and we hope to wrap our heads around it more once we have had time to dig into it ourselves. If you would like to read the rule, you can find it [here](#). They have also launched a dedicated regulatory and technical support program called SBL Help. This can help provide oral and written assistance to financial institutions about their data collection and reporting obligations under the final rule. You can submit questions to SBL Help [here](#). They have also published a SBL implementation and guidance webpage found [here](#), which contains several regulatory implementation resources, and a SBL data webpage found [here](#), which contains several technical resources. They also plan to publish several more resources to help financial institutions implement and comply with the final rule. You can watch the Introduction to Regulatory Implementation and Guidance video they created [here](#) if you would like to know more about the CFPB. The CFPB also provided an SBL sample form that you can print and the source code versions. You can find that [here](#).

**1071 TRAINING – PLANNING AHEAD**

Unless you have been hiding under a rock, you know 1071 is official. There are implementation dates in place based on the number of small business loans you originate. While there is time to get a program in place, nearly all lenders will need to be trained on this new rule. It is hard to tell at this point, but it looks like training your compliance staff on this new rule can be anywhere from 5 to 10 hours of advanced training – maybe more. That is just a guess on our part based on the major HMDA rule changes and time involved we experienced back in 2018. After your compliance staff is trained, they will have to build a training program for your loan staff. This will be a large undertaking to say the least.

While Tuscan Club University has become a nationwide leader in fair lending training, it is not our intent to be a leader in 1071 technical training. There are other companies that have the time and resources to devote to learning all the technical aspects and requirements of the regulation, and we recommend seeking them out sooner than later.

Our friends at Bankers Compliance Consulting have been industry leaders in compliance technical training for 30 years. They are devoting the time and resources to reading hundreds of pages of regulatory guidance, and they excel at turning complicated regulations into plain English. If you are looking for a training resource to get you and your team trained up on 1071, we highly recommend you check them out [here](#).

**CFPB ISSUES GUIDANCE TO ADDRESS ABUSIVE CONDUCT IN CONSUMER FINANCIAL MARKETS**

The CFPB issued a policy statement that explains the legal prohibition on abusive conduct in the consumer financial markets and summarizes over a decade of precedent. In this policy statement, the CFPB sets forth how abusive conduct generally includes (1) obscuring important features of a product or service or (2) leveraging certain circumstances—including gaps in understanding, unequal bargaining power, or consumer reliance—to take unreasonable advantage. In particular, the statement describes how the use of dark patterns, set-up-to-fail business models like those observed before the mortgage crisis, profiteering off captive customers, and kickbacks and self-dealing can be abusive. You can read the policy statement [here](#).

### **FDIC ISSUES THEIR CONSUMER COMPLIANCE SUPERVISORY HIGHLIGHTS**

The Federal Deposit Insurance Corporation (FDIC) issued the March 2023 edition of the *Consumer Compliance Supervisory Highlights*. The purpose of this publication is to enhance transparency regarding the FDIC's consumer compliance supervisory activities and to provide a high-level overview of consumer compliance issues identified in 2022 through the FDIC's supervision of state non-member banks and thrifts.

This edition of *Consumer Compliance Supervisory Highlights* includes supervisory observations related to consumer protection laws, examples of practices that may be useful in mitigating risks, regulatory developments, and consumer compliance resources. The publication also provides an overview of consumer compliance trends. This information helps support efforts to manage consumer compliance responsibilities and stay abreast of regulatory topics. You can find the publication [here](#).

### **OFAC LAUNCHED A NEW WEBSITE**

OFAC has launched a new website located [here](#). This new website has a new landing page, sanctions program filter, enhanced FAQs, and a new mega menu interface. This will have no effects on sanctions compliance and list screening programs. All of that information will still be found at their current location [here](#). Just an FYI, when we published this newsletter, the link was not working, but hopefully they get it back up and running.

### **HMDA GETTING IT RIGHT GUIDE 2023**

The revised HMDA Getting It Right Guide for 2023 has been issued. This is for data collected in 2023 and reported in 2024. This is a great resource for any financial institution that has to collect and report HMDA data. You can find the new guide [here](#).

### **CFPB AND FEDERAL PARTNERS CONFIRM AUTOMATED SYSTEMS AND ADVANCED TECHNOLOGY NOT AN EXCUSE FOR LAWBREAKING BEHAVIOR**

Four federal agencies jointly pledged to uphold America's commitment to the core principles of fairness, equality, and justice as emerging automated systems, including those sometimes marketed as "artificial intelligence" or "AI," have become increasingly common in our daily lives – impacting civil rights, fair competition, consumer protection, and equal opportunity.

This is a topic we have been reading up on quite a bit. As leaders in fair lending training, AI making its way into lending is a very big concern. One of the things we have learned while studying AI and its impact in banking is that AI has to learn from somewhere. AI learns from the real world, and it takes what it learns and replicates that into its decisions. In other words, if there is already discrimination present, such as redlined communities, AI will learn from that and replicate that in its decision making. This is how AI can make problems of discrimination much worse.

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### **AI RISK CONTINUED...**

The Joint Statement specifically takes steps to protect customers from:

- Black box algorithms
- Algorithmic marketing and advertising
- Abusive use of AI technology
- Digital Redlining
- Repeat Offenders' use of AI technology

To you can learn more and read the 3-page Joint Statement [here](#).

### **SUPERVISORY GUIDANCE ON CHARGING OVERDRAFT FEES FOR AUTHORIZE POSITIVE, SETTLE NEGATIVE TRANSACTIONS**

The FDIC released Financial Institution Letter FIL-19-2023 regarding guidance on Authorize Positive, Settle Negative (APSN) scenarios for assessing overdraft fees. These happen when a transaction is authorized when a balance is positive but settles against a negative balance, and therefore is charged an overdraft fee. In other words, a customer authorizes a transaction against positive funds. They later authorize a second transaction that posts, and the available balance is reduced or becomes negative. When the original transaction then posts, it posts against the reduced or potentially negative balance, now triggering an overdraft fee that would not have originally been triggered without the second transaction happening. This has been deemed unfair under UDAP as borrowers could not avoid the issue.

We have a lot of opinions on this, as I am sure you do too. At first, I think back of the days of writing checks and you should always know what is in your account by actually balancing your checkbook. However, the days of payments pending, automatic payments hitting, different amounts being authorized than what posts, and direct deposits posting at sometimes unknown times really does make it hard for consumers to know the true balance of their accounts. It is hard to balance the liability on the consumer with the difficulty of reconciling new technology. Opinions aside, this is what we now face as an industry, and we are all in this together.

This is not just an FDIC problem either. The day after the FDIC guidance came out, the OCC released their own guidance, so this appears to be coming from all sides. We suggest reading up on the guidance. The FDIC's FIL can be found [here](#). There is an [attachment](#) that is only three pages, and there is some good risk mitigation advice on page 3 we highly recommend reading. The OCC's bulletin can be found [here](#). As of the publication date of this newsletter, we have not yet seen guidance from the Federal Reserve.