

JUNE 2023 FREE COMPLIANCE NEWSLETTER

**INTRODUCING FAIR LENDING SCHOOL 2.0**

If you have not heard, we have totally overhauled our Fair Lending School and just released version 2.0. This one-of-a-kind training experience just got even better. All 15 videos have been redone and updated with new content and stories. Of course, we reshot everything in a professional studio and in high definition 4K video. *Fun fact – Tory was a video production major before getting into business and banking, so he does not hold back on quality video production.* Back to the task at hand – the modules and manual have been reorganized to better align with our loan lifecycle concept. We also filmed a video for the new risk assessment module, and the risk assessment tool has been completely rebuilt with an extensive questionnaire and assessment tool. There are also now 12 hours of continuing education available that count towards the CRCM (Previously 10 Hours).

For those of you that have unlimited access to the school, you will be able to go through the training again. If you have been thinking about attending, now is the best time. We are running our summer special again. From now until August 31, you can get 25% off the school and Fair Lending Expert (FLE) certification by using the code **fairlending** at checkout. While we did invest heavily in making the school even better, the price did not change. We feel this school should always look to improve, and we are thrilled to introduce Fair Lending School 2.0. You can see our short promo video and watch the intro to Module 1 at our home page [HERE](#). You can also download a copy of the Table of Contents to see every topic that is included in the course.

**CFPB ISSUES NOTICE OF PROPOSED RULE MAKING FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING**

The CFPB proposed a rule to implement a Congressional mandate to establish consumer protections for residential Property Assessed Clean Energy (PACE) loans. PACE loans, secured by a property tax lien on the borrower's home, are often promoted as a way to finance clean energy improvements such as solar panels. The proposed rule would require lenders to assess a borrower's ability to repay a PACE loan and would provide a framework for how these loans will be treated under the Truth in Lending Act. The CFPB also published a report on residential PACE loans, which found that the loans caused an increase in borrowers falling behind on their mortgage payments, along with other negative credit outcomes.

"When unscrupulous companies bait homeowners into unaffordable loans with exaggerated promises of energy bill savings, this can lead to serious financial distress," said CFPB Director Rohit Chopra. "We are proposing new rules that would require sensible safeguards on these clean energy loans." You can read the proposed rule, fast facts, and report [HERE](#).

**FDIC OPTIONS FOR DEPOSIT INSURANCE REFORM**

We realize this is outside of regulatory compliance, but it does affect us all and may be of interest to you. The FDIC released a deposit insurance reform optional report that you can check out. In [Section 6](#), they lay out different options to reform deposit insurance. They talk about limited coverage (essentially the current system), unlimited coverage, and targeted coverage. The goal is to help cover events like what happened in March 2023. You can find all sections of the report [HERE](#).

### **OCC ADDRESSES FEES ON REPRESENTMENT OF ITEMS**

The OCC has officially opined on the representment issue and another longstanding overdraft issue, but we missed it. The OCC slipped one past Tory in the last newsletter, but they also slipped it past many others as well. Unintentional or not, they buried this all-important guidance into some other semi-related guidance. If you are an OCC bank, please pay extra attention as we will get it right this month.

In our May Newsletter, we talked the FDIC's recent guidance on Authorize Positive, Settle Negative (APSN) fee practices. If you missed that, you can find the FDIC's Financial Institution Letter [HERE](#). The very next day, the OCC released their own [Bulletin 2023-12](#) that addressed virtually the same topic. This happens often. We monitor all regulator's e-mails, and we get the same e-mail from all regulators within an hour on the same topic. But this time the OCC included additional information later in their bulletin that most people missed.

After the (APSN) section of the OCC e-mail and bulletin, the OCC tacked on a formal opinion regarding the representment fee practice issue that the FDIC has been pushing for some time now. The guidance is not near as extensive as FDIC guidance, and they say nothing about restitution, but this is the first we have seen someone other than the FDIC formally opine on this topic.

In addition, they added on another topic that we have yet to see them tackle, and that is other additional overdraft practices that again the FDIC has been pushing for over a decade. Those are things like setting limits on the number of overdraft fees charged in a day and sustained overdraft fees. Perhaps the OCC is finally starting to adopt some long-standing FDIC overdraft guidance? We do not know, and we are not getting into those politics, but if you are an OCC bank, we highly recommend that you go back to this bulletin and give it a much more thorough read. There is a lot more to it than what originally appeared. Here is the [link again](#).

### **AGENCIES ISSUE HOST STATE LOAN-TO-DEPOSIT RATIOS**

For those of you that operate branches outside of your home state, you need to complete your annual Interstate Banking and Branching Efficiency Act 1994 (IBBEA) review. Even if you do not have branches outside of your home state, feel free to read this and learn about a very obscure regulatory requirement every compliance professional should know about.

The gist of this Act is that you should not be branching across state lines for deposit production purposes. This Act prevents a financial institution from crossing state lines, collecting deposits, and not making loans while bringing those deposits back to the home state. Think Community Reinvestment Act here – are you reinvesting into those communities? Essentially, when you have branches in states outside of your home state, you need to calculate your statewide loan-to-deposit (LTD) ratio in those states, and your statewide LTD must be at least half of the host state LTD to comply. As long as you are making loans in those states where you have branches and are taking deposits, it should be quite simple. If you do not have branches in states outside of your home state, you do nothing. The FDIC compliance manual has a nice little section where you can read more [HERE](#). Regardless of your primary regulator, the FDIC exam manual reference is a good tool. We recommend that you utilize it. You can find the statewide LTDs you measure against [HERE](#).