JULY 2023 FREE COMPLIANCE NEWSLETTER

FAIR LENDING SCHOOL 2.0

As we mentioned in the June newsletter, we totally overhauled our Fair Lending School into version 2.0. Our summer special of 25% off of the school training program and Fair Lending Expert (FLE) Certification program is in full swing. If you want to take advantage of the special, you can sign up through August 31st with the coupon code **fairlending** at our website www.tcuniversity.us

CFPB FINDS THAT BILLIONS OF DOLLARS STORED ON POPULAR PAYMENT APPS MAY LACK FEDERAL INSURANCE

We realize this may not be the typical consumer protection topic we normally cover, but a timely topic nonetheless that applies to most of you. The CFPB is reminding consumers that storing money in apps such as PayPal, Venmo, and Cash App may not afford you the deposit insurance you enjoy when that money is stored in a financial institution. Those tech companies are not FDIC or NCUA insured, and consumers could lose everything in the event of those companies failing. We recommend that you tread lightly if you try and advertise that fact to your customers. Talking about FDIC insurance and advertising that fact has gotten some companies in trouble if you use misleading statements about how insurance works or what products are insured. You can read the CFPB's consumer advisory on this by clicking HERE.

REQUEST FOR COMMENTS ON REAL ESTATE VALUATIONS: QUALITY CONTROL STANDARDS FOR AUTOMATED VALUATION MODELS

The federal banking regulatory agencies have jointly released a Notice of Proposed Rule Making (NPR) seeking comment on a proposed rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Covered AVMs must adhere to quality control standards designed to:

1) Ensure a high level of confidence in the estimates produced by AVMs;
2) Protect against manipulation of data;
3) Seek to avoid conflicts of interest;
4) Require random sample testing and reviews; and
5) Account for any other such factor the agencies determine to be appropriate.

Each of the agencies sent out e-mails with their own guidance, but we will provide two here. To see the FDIC's release, you can click HERE. To see the CFPB's release, you can click HERE. Since it is joint guidance, the topics should be substantially similar.

CFPB ORDERS INSTALLMENT LENDER ONEMAIN TO PAY $20 MILLION FOR DECEPTIVE SALES PRACTICES
We get tons of e-mails about organizations paying fines for all kinds of reasons, and we do not typically include them in the newsletter, but this one is different. This organization pushed hard on add-on products, and that is a big fair lending risk. If you know us and what we do, fair lending is what we are known for. OneMain and its employees were aggressively pushing add-on products to consumers, tricking them, and sometimes implying they were required to receive the loan. In our fair lending school, we have an entire module dedicated to steering risk, and add-on products is a big part of steering risk.

If you are an organization that offers any type of add-on products or services, take some time to look through the highlights of this case. Add-on products should be a benefit to what you are already offering, and they are always optional. If you are seeing big profits from these types of product sales, that could be a potential red flag. You can find the CFPB's press release on the case HERE.

FDIC CONSUMER COMPLIANCE EXAMINATION MANUAL UPDATE
The FDIC has made multiple updates to its compliance examination manual. We push this resource hard on everyone, regardless of who your primary regulator is. The FDIC's exam manual is such a great resource for compliance professionals as it often has a wonderful narrative on regulations as opposed to just the regulation itself. If you are not currently using it as part of your daily resources, we highly recommend you do. You can find the compliance examination manual HERE.

CFPB ISSUE SPOTLIGHT ANALYZES "ARTIFICAL INTELLIGENCE" CHATBOTS IN BANKING
This is an interesting topic that the CFPB recently discussed; the use of chatbots on banking websites. They argue that using a chatbot as your primary way of interacting with customers on your website can diminish customer service and trust, harm the consumer, and even lead to non-compliance with federal consumer financial protection laws. While the article did not elaborate heavily on the law/compliance part, there were several good points brought up.

If your chatbot is programmed to give guidance or advice, and that advice is wrong, we all know what trouble that can put you in. There are also potential privacy concerns, the fact that a customer may be trying to exercise rights such as a Regulation E error dispute, or simply the bots are unhelpful and lead customers into unending loops of useless conversations and jargon that is frustrating. There could also be issues with penalties or fees if used to assist with customer payments and the bots make errors. If your organization relies heavily on chatbots, you may want to look more into the article. It is quite eye-opening. You can find it HERE.

AGENCIES ISSUE FINAL GUIDANCE ON THIRD-PARTY RISK MANAGEMENT
The federal bank regulatory agencies issued final joint guidance designed to help banking organizations manage risks associated with third-party relationships, including relationships with financial technology companies. The final guidance replaces each agency's existing general third-party guidance and promotes consistency in the agencies' supervisory approaches toward third-party risk management. You can find it HERE.

AGENCIES PROPOSE INTERAGENCY GUIDANCE ON RECONSIDERATIONS OF VALUE FOR RESIDENTIAL REAL ESTATE VALUATIONS

Five federal regulatory agencies are requesting public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions. The proposed guidance advises on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal. ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to reassess the value of residential real estate. An ROV may be warranted if a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value.

The proposed guidance shows how ROVs intersect with appraisal independence requirements and compliance with applicable laws and regulations. The proposed guidance describes how financial institutions may create or enhance their existing ROV processes while remaining consistent with safety and soundness standards, complying with applicable laws and regulations, preserving appraiser independence, and remaining responsive to consumers. If you want to read more or provide comments, you can do so HERE.

FDIC SUPERVISORY GUIDANCE ON MULTIPLE RE-PRESENTMENT NSF FEES

The FDIC released updated guidance to the gift that keeps on giving - represented NSF items in June 2023. Tory read through the guidance quite thoroughly, and he's not sure what really changed. We have heard talk that you might not have to provide restitution, but reading through that, it did not sound that way. In an ABA news byte, they indicated that the agency "does not intend to request an institution to conduct a lookback review absent a likelihood of substantial consumer harm." However, the guidance does not define substantial consumer harm. Your guess is as good as ours on what to do. You can find the updated guidance HERE.

We do tons of deposit disclosure reviews each year, and we have run across a couple recently where the terms and conditions do not list NSF fee guidance on represented items. It is our recommendation that your upfront fee schedule clearly explain that NSF fees can be charged when items are presented more than once (if that is your intent) and that language **ALSO** be included in your terms and conditions, just to fully protect yourself. Your software vendor should easily be able to add it, so if they can, we recommend that you do.

GAP ANALYSIS FOR OCC BANKS REGARDING OVERDRAFT PROGRAMS

Staying on the overdraft train for a moment, since we are having so much fun, we recently had an OCC client finish up an exam, and they gave us some valuable feedback we wanted to share with you all. This is not official OCC guidance, so take this as a bit of useful information for now. Their examiners were "strongly recommending" that they perform a GAP analysis of their overdraft program to see how it compares to the OCC's recent guidance on overdrafts in their April Bulletin 2023-12. In other words, determine if your bank (if you are an OCC bank) is following the suggestions within the bulletin and decide whether you want to change your program. We cannot tell you for sure this will be the norm and that they will start doing this for every bank, so use the information as you see fit, but don't say you were not warned. FYI – FDIC banks have been following much more stringent overdraft guidance for more than a dozen years, so this is only new and special to OCC banks. We do not know the overdraft history of Federal Reserve banks.

AGENCIES RELEASE LIST OF DISTRESSED OR UNDERSERVED NONMETROPOLITAN MIDDLE-INCOME GEOGRAPHIES

If you or someone you know is in charge of handling the Community Reinvestment Act at your organization, please pass along the info that the 2023 list of distressed and underserved census tracts is now available on the FFIEC's website. While income levels of census tracts do not change every year, these do, so you need to monitor this list as census tracts are added and removed each year. That can have a big impact on your community development activities. You can find the 2023 list HERE.

FFIEC ANNOUNCES AVAILABILITY OF 2022 DATA ON MORTGAGE LENDING

The FFIEC released the 2022 mortgage lending transactions reported under HMDA by 4,460 U.S. financial institutions, including banks, savings associations, credit unions, and mortgage companies. The HMDA data are the most comprehensive publicly available information on mortgage market activity. The data are used by industry, consumer groups, regulators, and others to assess potential fair lending risks and for other regulatory and informational purposes.

The data helps the public assess how financial institutions are serving the housing needs of their local communities and facilitate federal financial regulators' fair lending, consumer compliance, and Community Reinvestment Act examinations. The Snapshot National Loan-Level Dataset contains the national HMDA datasets as of May 1, 2023.

Key observations from the Snapshot include the following:

- ✓ For 2022, the number of reporting institutions increased by about 2.63 percent from 4,338 in the previous year to 4,460.
- ✓ The 2022 data include information on 14.3 million home loan applications. Among them, 11.5 million were closed-end and 2.5 million were open-end. Another 287,000 records are from financial institutions making use of Economic Growth, Regulatory Relief, and Consumer Protection Act's partial exemptions and did not indicate whether the records were closed-end or open-end.
- ✓ The share of mortgages originated by non-depository, independent mortgage companies has decreased and, in 2022, accounted for 60.2 percent of first lien, one- to four-family, site-built, owner-occupied home-purchase loans, down from 63.9 percent in 2021.
- ✓ In terms of borrower race and ethnicity, the share of closed-end home purchase loans for first lien, one- to four-family, site-built, owner-occupied properties made to Black or African American borrowers rose from 7.9 percent in 2021 to 8.1 percent in 2022, the share made to Hispanic-White borrowers decreased slightly from 9.2 percent to 9.1 percent, and those made to Asian borrowers increased from 7.1 percent to 7.6 percent.
- ✓ In 2022, Black or African American and Hispanic-White applicants experienced denial rates for first lien, one- to four-family, site-built, owner-occupied conventional, closed-end home purchase loans of 16.4 percent and 11.1 percent respectively, while the denial rates for Asian and non-Hispanic-White applicants were 9.2 percent and 5.8 percent respectively.