AUGUST 2023 FREE COMPLIANCE NEWSLETTER

FAIR LENDING SCHOOL 2.0

We have one month left of our 25% off summer special. You can still take advantage of 25% off our popular fair lending school and Fair Lending Expert (FLE) certification if you sign up by August 31st with the coupon code **fairlending.** Learn more and sign up at our website www.tcuniversity.us

CFPB TAKES ACTION AGAINST BANK OF AMERICA FOR ILLEGALLY CHARGING JUNK FEES, WITHHOLDING CREDIT CARD REWARDS, AND OPENING FAKE ACCOUNTS

The CFPB has ordered BOA to pay more than $100 million back to consumers and $150 million in fines for double-dipping on fees, withholding rewards, and opening fake accounts. The withholding rewards stems from promising different rewards on credit card accounts and not following through. The opening fake accounts dates to practices starting in 2012 of aggressive sales practices, sounding much like the culture formerly present at Wells Fargo. Incentivizing employees to start new relationships and basing compensation off those sales tactics.

What is eye-opening about this case is what they call illegally charging junk fees or "double-dipping" on fees. This is essentially the NSF re-presentment issue that the FDIC has pushed for the last year or two that all FDIC banks had to deal with, and now the FDIC has pulled back somewhat on their guidance. The other regulators did not follow near the FDIC's lead on, but this cases' press release makes it sound like the CFPB has uncovered some totally new issue. We will not get into the politics of it, and there was more than just the re-presentment issue, but they presented it in a totally different light than any other case we have seen when it is simply the same issue as 1,000 other banks likely had. You can read more on the news story and enforcement action HERE.

OCC ANNOUNCES $15 MILLION CIVIL MONEY PENALTY AGAINST AMERICAN EXPRESS RELATED TO GOVERNANCE AND OVERSIGHT OF THIRD-PARTY AFFILIATE

The OCC announced a $15 million civil money penalty against American Express National Bank (American Express) for failing to govern and oversee a third-party affiliate and for violations of regulations relating to certain efforts to retain small business customers. The OCC found that American Express failed to ensure that its third-party affiliate had appropriate call monitoring controls and appropriate mechanisms to document and track customer complaints. Additionally, American Express failed to collect necessary consumer information and properly maintain and produce records to show compliance with Customer Identification Program regulations. You can read more on this story HERE.

This just serves as a gentle reminder about third-party risk. As a chartered financial institution in the US, you are responsible for everything a third-party does on your behalf. That includes the products and services they offer to your customers. The FDIC's Compliance Examination manual lists out four main elements of an effective third-party risk/compliance management process:

1. **Risk Assessment –** The process of assessing risks and options for controlling third-party arrangements.

2. **Due Diligence in Selecting a Third Party –** The process of selecting a qualified entity to implement the activity or program.

3. **Contract Structuring and Review –** The process of ensuring that the specific expectations and obligations of both the institution and the third party are outlined in a written contract prior to entering into the arrangement—a contract should act as a map to the relationship and define its structure.

4. **Oversight –** The process of reviewing the operational and financial performance of third-party activities over those products and services performed through third-party arrangements on an ongoing basis, to ensure that the third party meets and can continue to meet the terms of the contractual arrangement.

If you want a refresher on third-party risk management, you can find that section of the compliance examination manual HERE.

CFPB EXAMS FIND UDAAP ACROSS A WIDE ARRAY OF CONSUMER FINANCIAL PRODUCT LINES

The CFPB released a new Supervisory Highlights report which found unfair, deceptive, and abusive acts or practices across many consumer financial products. For example, auto lenders have originated loan balances above the real value of the car being purchased and engaged in illegal collection practices while servicing these loans. The latest edition of the Supervisory Highlights report covers findings from CFPB supervisory examinations completed from July 2022 to March 2023.

Some of the findings within the recent Supervisory Highlights report include:

- Charging fraudulent interest on inflated loan balances
- Canceling automatic payments without sufficient notice, leading to unavoidable late fees
- Engaging in illegal collection practices after repossession
- Unlawful debt collection attempts including on medical debt
- Illegal payday lender collection practices

You will likely notice from this list that many of these items are not practices that typical community banks engage in, so the risk at your institution is low. However, it is always wise to be up-to-speed on what the CFPB is finding so you can always be vigilant on what is going on at your institution. You can read the report by clicking HERE.

CFPB ISSUES ITS ANNUAL FAIR LENDING REPORT TO CONGRESS

Every year, the CFPB issues its annual fair lending report to congress. Tory read through the 2022 report and has summarized some of the highlights for you from this year's 39-page report. To read the full report, you can find it HERE.

Below are some bullet point takeaways from the report:

- Automated Valuation Models (AVMs) – the CFPB is participating in interagency rulemaking to develop regulations concerning AVMs. The rules are designed to ensure a high level of confidence in the estimates produced by these models, protect against the manipulation of data, avoid conflicts of interest, require random sample testing, and account for other such factors the agencies determine appropriate.
- HMDA Threshold Adjustment – as a result of the September 23, 2022 court order, the threshold for reporting data about closed-end mortgage loans went back down from 100 to 25.
- Denial Notices in Connection with Complex Algorithms – federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying credit to applicants. This is not a new concept, but the CFPB Circular 2022-03 makes it clear that creditors cannot justify noncompliance with ECOA rules based on the mere fact that technology they use to evaluate credit applications is too complicated, too opaque in its decision-making, or too new. In other words, you still must give clear and concise denial reasons, regardless of the complexity of the underwriting models you use. You always need to understand how the credit decision process is handled, and using automated software or complex algorithms can often make it harder to understand how that process actually works.
- Medical Burden in the US – medical debt is the most common collection tradeline reported on consumer credit reports, and people of color have experience higher rates of COVID-19 infection, partially because those individuals are more likely to be essential workers. Medical debt can have a compounding impact in reducing future access to credit, housing, and employment for populations who already face financial exclusion.

Public Enforcement Actions

- The FTC brought enforcement against Napleton, an auto group that violated ECOA and Reg B by discriminating against black consumers, charging them more in financing for interest rate markups and illegal junk fees for unwanted "add-ons" that they snuck onto customers' bills.
- The FTC brought enforcement against Passport Automotive Group, alleging that they violated ECOA and Reg B by discriminating against black and Latino consumers, charging them higher financing costs and illegal junk fees. They claimed Passport regularly advertised certified, reconditioned, or inspected cards at specific prices, but then added extra certification, reconditioning, or inspection fees that it falsely claimed consumers are required to pay, charging black and Latino consumer more for the fees and imposing fees more often.

Commonly Cited Fair Lending-Related Violations

Below is a list of the most cited Regulation B violations in 2022. In the report, it did list the federal agency who was most likely to cite the violation. You can reference page 31 of the report if you are interested in more details.

- *1002.4 & 1002.7(d)(1): Discrimination* – Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant's spouse or other person.
- *1002.5(b), (c), & (d): Inquiring about a protected class* – Inquiring about the race, color, religion, national origin, or sex of an applicant in connection with a credit transaction, except as permitted…
- *1002.6(b)(2): Special rules concerning use of information* – Improperly evaluating age or receipt of public assistance in a credit transaction.
- *1002.9(a)(1)(i), (a)(2), (b)(2), (c): Adverse Action* – Providing the adverse action notice.
- *1002.12(b)(1): Record Retention* – Failure to retain records of the original application or copy for 25 months after the data a credit notifies an applicant of action taken on an application or of incompleteness.
- *1002.14(a)(1-4): Appraisals and Valuations* – Failure to provide appraisals and other valuations.

Most Common Referrals to the Department of Justice

Below is a list of the referral case reasons to the DOJ in 2022.

- National origin in auto loan pricing – 2 cases
- Sex in auto loan pricing – 1 case
- Race in mortgage lending (redlining) – 2 cases
- Discrimination in underwriting consumer loans (marital status) – 1 case
- Underwriting credit cards on the basis of age – 2 cases
- Discrimination in underwriting consumer loans (exercising rights under the CPA) – 2 cases
- Discrimination in underwriting consumer loans (receipt if income from public assistance) – 1 case
- Discrimination in underwriting/pricing consumer loans (marital status) – 1 case
- Discrimination on race and national origin in mortgage lending (redlining) – 5 cases
- Discrimination in underwriting mortgage loans (public assistance income) – 1 case
- Discrimination in underwriting consumer loans (age) – 5 cases
- Discrimination in underwriting consumer loans (marital status) – 1 case
- Discouragement of applicants in mortgage lending based on marital status – 1 case

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BANK GROWTH OPPORTUNITY – MUST READ

As a small business owner that provides compliance services to financial institutions, we often meet other small business owners that provide different services to the same clients. It makes sense to work with those other small business owners to better service you. Every so often, we come across someone that really impresses us, and Nick Bentele is one of those individuals that we would like to introduce you to. In full disclosure, we earn nothing from Nick on referrals. We simply believe strongly in what he does and what he stands for, and we are trying to help get his name out there because we feel he can make a real difference in your organization.

Nick has been a business banker in Sioux Falls, SD and has achieved remarkable success throughout the past five years, consistently maintaining an impressive growth trajectory. He has spent a tremendous amount of time cultivating his knowledge and skills into his newly launched business to help other community banks growth and see the same success he has enjoyed.

Nick has launched his own firm, where he will share his invaluable insights and strategies for success. His secrets include not only learnable skills but also a transformative mindset that can empower your employees to unlock their full potential. By engaging with Nick Bentele and his consulting services, your bank can:

1. Cultivate a High-Performing Workforce: Nick's coaching will equip your employees with the necessary skills and mindset to excel in their roles, driving productivity, efficiency, and innovation.

2. Foster a Culture of Continuous Improvement: Through targeted development programs and personalized coaching, your staff will embrace a growth-oriented mindset, constantly seeking ways to enhance their performance and contribute to the bank's success.

3. Increase Customer Satisfaction and Loyalty: Investing in employee development will result in a more competent and engaged workforce, leading to improved customer interactions, higher satisfaction levels, and increased customer loyalty.

4. Retain Top Talent: Demonstrating a commitment to employee growth and development helps create a positive work environment and enhances employee satisfaction. This, in turn, fosters higher employee retention rates, ensuring that your bank retains its most valuable assets.

Tory has personally met with Nick multiple times, and Nick is quite impressive. Talk to him for just 10 minutes and you will see exactly with he means. To learn more about Nick and his services, please visit www.bankgrowthconsulting.com or contact e-mail him at nick@bankgrowthconsulting.com.