NOVEMBER 2023 FREE COMPLIANCE NEWSLETTER

FREE FAIR LENDING TRAINING FOR YOUR BOARD OF DIRECTORS

Fair lending training for the Board is hard to find, so we made some for you. Tory recorded a FREE 25-minute training video. We realize this is maybe a bit longer than they want, but it covers the basics of what a Board member should know about fair lending at your organization. It is available for free on YouTube. Please feel free to pass the word along to everyone you know. You can watch the video at the link HERE.

CFPB EXAMS RETURN $140 MILLION TO CONSUMER HIT BY ILLEGAL JUNK FEES IN BANKING, AUTO LOANS, AND REMITTANCES

The CFPB released a special edition of its Supervisory Highlights focused on the agency's efforts to protect consumers from illegal junk fees. The junk fees discussed in the report – including fees for fake paper statements and worthless add-on products for auto loans – can strain the financial stability of even the most financially savvy families. As a result of the CFPB's supervisory work, the companies in the report are refunding $140 million to consumers, $120 million of which is for surprise overdraft fees and double-dipping on non-sufficient funds fees. A separate report finds that most financial institutions have eliminated non-sufficient funds fees, saving consumers an estimated $2 billion every year.

Most of the fees are not typical fees charged by community banks, but the NSF fees may be fees you might be charging. If you want to see the special edition of the supervisory highlights, you can find it HERE. The NSF fee section is found on page 4 and references the re-presentment issue, so it is not a new issue that we should not already know about.

CFPB AND JUSTICE DEPARTMENT ISSUE JOINT STATEMENT CAUTIONING THAT FINANCIAL INSTITUTIONS MAY NOT USE IMMIGRATION STATUS TO ILLEGALLY DISCRIMINATE AGAINST CREDIT APPLICANTS

The CFPB and Justice Department issued a joint statement that reminds financial institutions that all credit applicants are protected from discrimination on the basis of their national origin, race, and other characteristics covered by the Equal Credit Opportunity Act, regardless of their immigration status. The CFPB and Justice Department are issuing this statement because consumers have reported being rejected for credit cards as well as for auto, student, personal, and equipment loans because of their immigration status, even when they have strong credit histories and ties to the United States and are otherwise qualified to receive the loans.

While ECOA allows a creditor to consider an applicant's immigration status when necessary to ascertain the creditor's rights regarding repayment, creditors should be aware that unnecessary or overbroad reliance on immigration status, including when that reliance is based on bias, may run afoul of the law.

Some institutions have maintained blanket policies denying credit based on immigration status, regardless of their personal circumstances and demonstrated ability to repay, arguing that the Equal Credit Opportunity Act, and the regulation that implements it, protect them whenever they consider immigration status in making a credit decision. Others have incorrectly claimed that the Act shields lenders from liability under other federal and state civil rights laws that bar discrimination on the basis of someone's status as an immigrant or noncitizen.

The joint statement explains that while the Equal Credit Opportunity Act allows creditors to consider immigration status when necessary to ascertain the creditor's rights regarding repayment, unnecessary or overbroad reliance on immigration status may violate the Act's prohibition of discrimination on the basis of national origin, race or another prohibited basis. The joint statement also confirms that neither the Equal Credit Opportunity Act nor its regulations provide companies a safe harbor with respect to other laws barring discrimination on the basis of immigration status. You can find the full joint statement HERE.

AGENCIES ISSUE FINAL RULE TO STRENGTHEN AND MODERNIZE COMMUNITY REINVESTMENT ACT REGULATIONS

The long awaited CRA final rule is here, and this time, all of the regulators came together to release the rule at the same time. Here is a bullet point list of what the new rule has for key goals:

- **Encourage banks to expand access to credit, investment, and banking services in LMI communities.** Under the final rule, the agencies will evaluate bank performance across the varied activities they conduct and communities in which they operate so that the CRA continues to be a strong and effective tool to address inequities in access to credit and financial services. It promotes financial inclusion by supporting bank activities with Minority Depository Institutions and Community Development Financial Institutions and in Native Land Areas, rural areas, persistent poverty areas, and other high-need areas.
- **Adapt to changes in the banking industry, including internet and mobile banking**. The final rule will update the CRA regulations to evaluate lending outside traditional assessment areas generated by the growth of non-branch delivery systems, such as online and mobile banking, branchless banking, and hybrid models. It is calibrated to recognize the continued importance of bank branches, while establishing a framework to evaluate the digital delivery of banking products and services for certain banks.
- **Provide greater clarity and consistency in the application of the CRA regulations.** The final rule adopts a new metrics-based approach to evaluating bank retail lending and community development financing, using benchmarks based on peer and demographic data. The agencies will develop data tools using reported loan data that give banks and the public additional insight into performance standards. The final rule also clarifies eligible CRA activities, such as affordable housing, that are focused on LMI, underserved, native, and rural communities.
- **Tailor CRA evaluations and data collection to bank size and type**. The final rule recognizes differences in bank size and business models. For example, small banks will continue to be evaluated under the existing framework with the option to be evaluated under the new framework. The rule also exempts small and intermediate banks from new data requirements that apply to banks with assets of at least $2 billion and limits certain new data requirements to large banks with assets greater than $10 billion.

Most of the rule's requirements will be applicable beginning January 1, 2026. The remaining requirements, including the data reporting requirements, will be applicable on January 1, 2027. You can find the Federal Register Notice with the final rule in all of its nearly 1,500 page glory HERE. To find the Interagency Overview of the CRA final rule in a much more reasonable 7-page read you can click HERE.