



PART OF YOUR COMPLIANCE TEAM

JANUARY 2024 FREE COMPLIANCE NEWSLETTER

Happy New Year to everyone! We at Tuscan Club Consulting and Tuscan Club University hope you all had some time off over the holiday season to spend with friends and family. This past year has been busy with regulatory changes. With 1071 (still in limbo status), sweeping Community Reinvestment Act changes, and the DOJ's Combatting Redlining Initiative settling an unprecedented number of fair lending cases, 2024 will likely be another big year for change. We will do our best to keep you informed and provide you with resources so you can help your organization stay on top of it all.

FDIC COMPLIANCE EXAMINATION MANUAL UPDATES

If you are a long-time reader of our newsletter, at least once a year we mention the FDIC's Compliance Examination Manual. As former FDIC examiners, we know how useful this tool is. It often offers a better narrative explanation of complex regulatory guidance that you won't find in the regulations themselves. It doesn't matter if you work for an FDIC-regulated institution or not. The regulations are the same, and this manual should be in every compliance and audit professional's toolbox. In November, they made several updates to it. Sometimes updates are minor, but when they make big changes, we like to use it as an excuse to talk about the manual and encourage everyone to use it. You can find a link to the updated manual [HERE](#). When you are looking up regulatory questions and cannot find the answer in the regs themselves, this should be your next resource.

OCC OFFERS GUIDANCE AND BULLETIN ON BUY NOW, PAY LATER LOANS (BNPL)

This likely won't affect most of you, but for any organization involved in BNPL loans, you'll want to read the guidance. Essentially, BNPL is when a consumer buys products online, and they are allowed to make 4 or fewer installment payments. There are no fees, interest, or finance charges involved for the consumer. Banks will finance the cost of the goods, and the merchant will discount the funds received, paying the bank for the services. The bank is then tasked with collecting payments and servicing the loan.

These can be a good thing for consumers, but they have many challenges that are outlined in the bulletin. If you are an organization that is involved in these transactions, or if you are thinking about it, we encourage you to read this, regardless of if you are an OCC bank or not. You can find a summary and link to the bulletin [HERE](#).

CFPB ORDERS ATLANTIC UNION BANK TO PAY \$6.2 MILLION FOR ILLEGAL OVERDRAFT FEE HARVESTING

The summary of this situation boils down to simply not properly disclosing the opt-in program for one-time payment of POS and ATM transactions, and not providing proper and required written disclosures. This is a good reminder that all organizations should test their opt-in program and ensure all aspects of Regulation E are followed. Having a customer opt-in to these programs is a multi-step process, and you technically cannot start charging fees until all steps have been completed. We have tested this process for dozens of clients, and we have seen more than one deficient program where the process was not complete. In those cases, the bank technically charged fees against the regulation, and you could be held to restitution for every instance. That's why it's so important for you to test and ensure your opt-in program is complete. [Regulation E's 1005.17](#) lists out everything you need to do to comply. You can read the Atlantic Union Bank summary and order [HERE](#).



CFPB ISSUES REPORT SHOWING MANY AMERICANS ARE SURPRISED BY OVERDRAFT FEES

Staying on the overdraft topic for a moment, the CFPB issued a new report on another recent overdraft study. Overdraft research and studies seem to be happening with greater frequency lately, and not surprising as the regulatory agencies are pushing for more consumer friendly programs. The latest study had the following bullet points highlighted:

- Households frequently incurring overdraft and NSF fees are more likely to struggle to meet their financial obligations.
- Many consumers do not expect overdraft fees.
- Most households incurring fees had available credit on a credit card.
- Households face a substantial overlap in being charged overdraft and NSF fees.
- Low-income households are hit the hardest on these fees.

We have talked about consumer-friendly overdraft programs in many previous newsletters, so we won't rehash them all here. If you want to read the recent CFPB report and summary, you can find it [HERE](#).

MORE 2024 REGULATORY THRESHOLD ADJUSTMENTS

In the [December 2023](#) Newsletter, we listed out the annual adjustments for different Regulation Z requirements. The regulatory agencies have released a few more that may affect you.

- HMDA/Regulation C – the annual exemption threshold for HMDA will increase from \$54 million to \$56 million in 2024.
- CRA – Intermediate Small Bank threshold has increased to \$391 million.
- CRA – Large Bank threshold has increased to \$1.564 billion.
- Of course, the CRA thresholds will greatly increase for both bank sizes once the new rule becomes effective.

INTERAGENCY STATEMENT FOR BANKS ON THE ISSUANCE OF THE BENEFICIAL OWNERSHIP INFORMATION ACCESS RULE

We have had many conversations about the beneficial ownership (BO) change rules, how that will impact you (if at all), and if it will change the BO requirements. From everything we have heard, it will not change much and will not take away your BO requirements. On December 21, the joint agencies released a very brief statement addressing essentially the second of three-part changes. You can read the short statement [HERE](#). Our interpretation of it is you will be able to, but not required to, access the new information system storing BO information. This will likely not impact your requirement to collect the information but offer you a new way to do so with requirements and restrictions. The third part of the rule has not been written.

Below is a bullet list of items they wanted to highlight – FYI.

- The interagency statement addresses banks’ access to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to the Corporate Transparency Act (CTA) and stored in the Beneficial Ownership Information Technology (BO IT) System (the “Access Rule”).
- The Access Rule does not create a new regulatory requirement for banks to access BOI from the BO IT System or a supervisory expectation that they do so.
- Therefore, the Access Rule does not necessitate changes to Bank Secrecy Act (BSA)/anti–money laundering (AML) compliance programs designed to comply with the 2016 Customer Due Diligence rule and other existing BSA requirements, such as customer identification program requirements, and suspicious activity reporting.
- The CTA directs FinCEN to revise the 2016 Customer Due Diligence rule to bring the 2016 rule into conformity with the Anti–Money Laundering Act of 2020 and the CTA.
- To date, the 2016 Customer Due Diligence rule has not been revised and remains unchanged.