YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER

KNOW YOUR DATA

Check out our monthly fair lending short video first, and then feel free to come back here for some additional thoughts.

https://tcuniversity.us/know-your-data/

Too often, people think someone is reviewing their institution's data, and many times, it is just not true. I get it – fair lending software is expensive, and good fair lending software is really the most effective way to review things like HMDA data.

I don't know the threshold of HMDA lines before you invest in software. I've heard people mention crossing over the 500 HMDA applications is when you should purchase software. If you have several hundred applications in a major metro area, I would want to know what the data says. We have conducted many audits of banks with just 150 applications and found some major issues.

Your loan download is also full of useful data. Yes, you must know how to analyze the data, but you can do pricing reviews and redlining reviews, for free, with that data alone.

When it comes to exceptions, you should be tracking all underwriting and pricing exceptions, and then compare that to your loan download data. For example, if you find in a pricing review for car loans where 30 percent of loans went to a target group, do the same analysis on exceptions. What percentage of exceptions do you think should go to the target group? Somewhere in the ballpark of loans originated.

I say this a lot, but it's worth repeating. This is an open book test, and you get to look up the answers. If you don't know how, our fair lending school will teach you. If you have significant HMDA, you should also invest in software or pay someone to evaluate your HMDA data for you. There is too much risk in not knowing. If you find issues, act. Put aggressive corrective action plans in place to fix your issues. Regulators will look kindly on identifying and fixing your own issues. If they have to find them and force you to fix them, that's when you will make headlines.

JANUARY 2025

YOUR MONTHLY COMPLIANCE NEWSLETTER

CFPB Proposes Rule to Stop Data Brokers from Selling Sensitive Personal Data to Scammers, Stalkers, and Spies

We don't often include early proposals of rules in our newsletter because let's be honest – we have enough to worry about without worrying about something that "might" happen years from now, but this one we wanted to include.

The CFPB proposed a rule that would limit the sale of personal identifiers, like your SSN or phone number, and make sure that your financial data such as income is only used for legitimate purposes. An example would be for mortgage approval, not selling it to scammers targeting those in financial distress.

Why it's even legal to sell our personal information to known scammers is a bit concerning, but here we are. The new rule essentially makes it clear that these data brokers selling our personal data would be consumer reporting agencies under the Fair Credit Reporting Act, requiring them to comply with Regulation V. You can find the notice HERE and a fact sheet HERE.

FEDERAL COURT BLOCKS ENFORCEMENT OF BENEFICIAL OWNERSHIP REPORTING RULE

A federal court has again blocked enforcement of the requirement. What does this mean? Well, it looks like covered companies do not have to register as of January 1, for now. This decision has already changed multiple times. ABA did a nice summary article on this if you want to read more HERE.

Regulatory Guidance Updates

For those of you new to compliance, the regulators often put out excellent and FREE resources for us to use. As a company that employs former regulators and other compliance professionals, we highly recommend that you use them.

The FDIC, for example, has their compliance examination manual. This is a treasure trove of great resources. It often includes the regulations and their requirements, but unlike the regulations themselves, there is often more of a narrative and story behind what you need to do. They recently updated their manual, and you can find it HERE. FDIC not your primary regulator? That's okay. The regulations apply to all of us, so it's still a wonderful resource no matter who your regulator is.

The OCC also made updates to one of their manuals – UDAAP. You can find that manual HERE.

FDIC UPDATES Q&AS REGARDING OFFICIAL SIGNS, ADVERTISING REQUIREMENTS, AND OTHER KEY AREAS

There is a new FAQ list put out by the FDIC that covers official signs and advertising requirements, false advertising, misrepresentation of insured status, and misuse of the FDIC name or logo. You can find the updated FAQs HERE.

Agencies Issue Statement on Elder Financial Exploitation

This is one near and dear to pretty much all of us as we all have elder family members at risk. The federal regulators, along with FinCEN and state regulators, issued a statement to provide supervised institutions with examples of risk management and other practices that may be effective in combatting elder financial exploitation.

Here are some highlights:

- Develop effective governance and oversight, including policies and practices to protect account holders and the institution
- Train employees on recognizing and responding to elder financial exploitation
- Use transaction holds and disbursement delays, as appropriate, and consistent with applicable law
- Establish a trusted contact designation process for account holders
- File suspicious activity reports to FinCEN in a timely manner
- Report suspected elder financial exploitation to law enforcement, Adult Protective Services, and other appropriate entities
- Provide financial records to appropriate authorities where consistent with applicable law
- Engage with elder fraud prevention and response networks
- Increase awareness through consumer outreach

You can find the full statement HERE.

FEDERAL BANK REGULATORY AGENCIES RELEASE 2023 SMALL BUSINESS, SMALL FARM, AND COMMUNITY DEVELOPMENT LENDING DATA

The federal regulators released data on small business, small farm, and community development lending during 2023. The Community Reinvestment Act regulations require the agencies to disclose this data annually. You can find the statements HERE.

Flood Disaster Protection Act

This is not so much a regulatory update, but a reminder based on many flood reviews we have conducted recently. For those of you newer to compliance, flood and HMDA are two areas you do not want to get wrong. When you have a pattern or practice of not complying with these regulations, you face a lot of scrutiny and potentially civil money penalties.

Here are some best practices you should consider incorporate into your program to ensure you do not face examiner scrutiny:

- Pull your Standard Flood Hazard Determination Forms (SFHDFs) timely. While there is no set timeline, the industry standard is at least 10 days prior to closing. The idea is to give your borrower enough time to get insurance when required. If you have a habit of doing them at closing, you may be criticized.
- Ensure the SFHDFs are accurate. That means triple check the address. We have seen 123 Main St get turned into 132 Main St on the form and mistakenly say it's not in a flood zone when it actually was.
- Do not forget cardinal directions. If it is 123 Main St N., ensure that's what you use, especially if there is a 123 Main St S. It is not Google – it will not correct it for you.
- When your customer is in a flood zone, ensure you notify them timely AND have them acknowledge it when you notify them. If you have them sign the flood notice at closing, you could be criticized. Either have them sign it, E-Sign it (once you've complied with the requirements), or send it certified mail with the little green receipt.
- When you force-place insurance, and you are requiring the minimum, don't forget to add that flood insurance premium! For example, if you force-place to get up to $100,000, but then you add a $2,000 premium to the loan amount, you likely are underinsured by that $2,000 you added. Don't forget to account for it and put that in your procedures.

NEW FLOOD INSURANCE INSTALLMENT PLAN – FREQUENTLY ASKED QUESTIONS

In last month's newsletter, we talked about a new change to flood insurance rules that allow borrowers to now make monthly payments. FEMA has since put out a short Q&A fact sheet. You can find the FAQs HERE.

CFPB CLOSES OVERDRAFT LOOPHOLE TO SAVE AMERICANS BILLIONS IN FEES

The CFPB took action to close an outdated overdraft loophole that exempted overdraft loans from lending laws. FYI – this applies to banks with more than $10B in assets. The reforms will allow large banks several options to manage their overdraft lending program:

- They can choose to charge $5;
- To offer overdraft as a courtesy by charging a fee that covers no more than costs or losses; or
- Continue to extend profit-generating overdraft loans if they comply with longstanding lending laws, including disclosing any applicable interest rate.

The final rule is expected to add up to $5 billion in annual overdraft fee savings to consumers, or $225 per household that pays overdraft fees.

You can read the CFPB's guidance and summary by clicking HERE.

AGENCIES RELEASE ANNUAL ASSET-SIZE THRESHOLDS UNDER COMMUNITY REINVESTMENT ACT REGULATIONS

As a result of the 2.91 percent increase in the CPI-W for the period ending in November 2024, the CRA asset-size thresholds for small banks and intermediate small banks are:

- A small bank is an institution that, as of December 31 of either of the prior two calendar years, had assets of less than $1.609 billion.
- An intermediate small bank is a small institution with assets of at least $402 million as of December 31 of both of the prior two calendar years and less than $1.609 billion as of December 31 of either of the prior two calendar years.

These thresholds are in effect from January 1, 2025, through December 31, 2025

CFPB Sues JPMorgan Chase, Bank of America, and Wells Fargo for Allowing Fraud to Fester on Zelle

We have seen so many recent concerns over third-party cash applications in this past year, many in regards to FDIC insurance and others with access to funds. This time, Zelle is being criticized surrounding fraud.

Early Warning Services, which operates Zelle, along with three of its owner banks—Bank of America, JPMorgan Chase, and Wells Fargo—rushed the network to market to compete against growing payment apps such as Venmo and CashApp, without implementing effective consumer safeguards. Customers of the three banks named in the lawsuit have lost more than $870 million over the network's seven-year existence due to these failures.

The CFPB's lawsuit describes how hundreds of thousands of consumers filed fraud complaints and were largely denied assistance, with some being told to contact the fraudsters directly to recover their money. Bank of America, JPMorgan Chase, and Wells Fargo also allegedly failed to properly investigate complaints or provide consumers with legally required reimbursement for fraud and errors.

You can learn more about this case **HERE**.

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