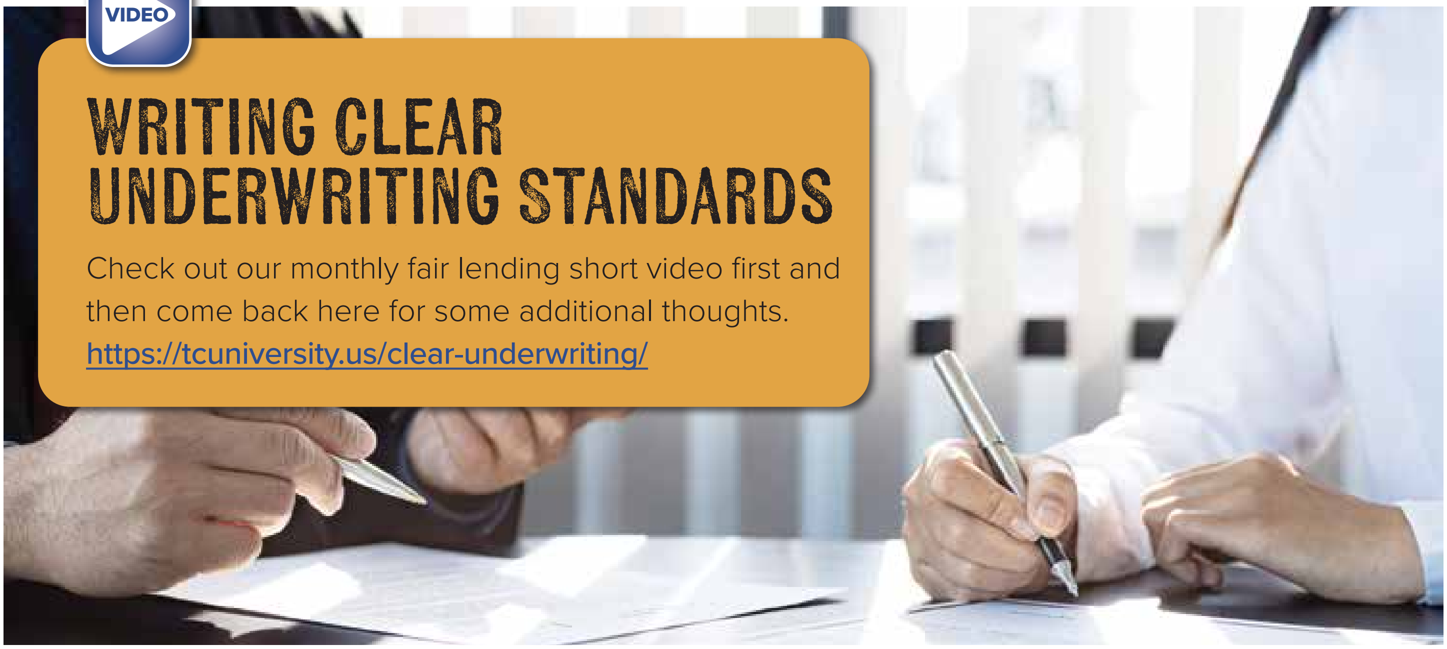
YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER



VIDEO

WRITING CLEAR UNDERWRITING STANDARDS

Check out our monthly fair lending short video first and then come back here for some additional thoughts.
https://tcuniversity.us/clear-underwriting/

Policies and procedures are an underappreciated tool in the banking industry. We often look at policies as something that says we will follow the law, and they get rubber stamped each year by the Board without anyone really reading them.

Procedures are different – these are the checklists and other guidance that employees follow to do their jobs, but even then, they are not always reviewed or scrutinized. Employees that have been around for years likely have not read procedures since the 1900s.

Don't overlook their value. If this is the guidance you give to your loan staff, make sure it is clear, concise, and free from guesswork. Also make sure employees actually read and follow the guidance. I gave a couple examples in the video, but those are just a few of the many we have seen doing fair lending audits.

Expand your thinking on procedures and how clear they should be. How is a lender supposed to calculate income? How should you treat overtime or retirement income, or maybe social security income that has never been taxed? What source do you use to look up the value of a car, or which credit score do you use when you have three bureaus pulled and two borrowers?

When you don't clearly state how to make loan decisions, lenders will make up their own procedures. They will guess, and they will not be consistent among all applicants. Now you risk making loan decisions not on the legal underwriting factors but on the illegal prohibited basis factors like race, ethnicity, or sex. That is the point of clear policies and procedures.

Step two – make sure all employees know, read, and follow procedures. You can have the most beautiful fair lending procedures written, but if nobody follows them, they hold little value.

Read your guidance and question all of it. Ask yourself “Could this possibly be interpreted more than one way?” If the answer is yes, it’s time to clarify and train.

Credit Risk or Credit Relief: How Medical Debt Reform Could Harm Minority Borrowers

The Consumer Financial Protection Bureau (CFPB) recently announced an amendment to the Fair Credit Reporting Act to remove medical debt from credit reports, a decision lauded as a step toward fairness in financial systems. The amendment stems from their 2022 report detailing the complicated and burdensome nature of medical debt. As noted in the report, medical debt disproportionately impacts individuals of color, where systemic inequities in healthcare access and financial resources amplify its burden. A 2021 report by the Urban Institute also revealed that 28% of individuals in majority-Black communities and 22% in majority-Hispanic communities have medical debt in collections, compared to just 17% in majority-White areas.

The CFPB’s rule addresses a key issue: medical debt often arises from sudden, unavoidable expenses and doesn’t accurately reflect an individual’s fiscal responsibility or financial habits. For minority borrowers, who are already more likely to face economic hardships and discrimination in financial services, this change might temporarily boost credit scores and open doors to new financial opportunities. However, the underlying debt remains unpaid, creating a financial illusion that can lead borrowers and financial institutions alike to overextend credit as a result of masking that debt. As these borrowers take on additional loans or credit obligations based on inflated scores and deflated debt-to-income ratios, they may face significant challenges managing both existing medical bills and new debt, increasing the risk of default.

This policy change also risks exacerbating predatory and discriminatory lending practices. Armed with the knowledge of potential or actual medical debt based on bank statements, conversations with the borrower, or other information outside of credit reporting, financial institutions may subjectively hedge their risk, lining themselves up for potential violations of fair lending laws. Additionally, with higher credit scores but unchanged financial realities, certain demographics may become targets for high-interest loans and other exploitative financial products. Without considering the potential unfair or discriminatory impact or failing to implement additional fair but consistent controls, the CFPB’s well-meaning policy could deepen the financial vulnerabilities for which it aims to alleviate, particularly for individuals of color where the burden of medical debt is most severe.

This article was written by Nicholas Harris, CRCM, FLE. Nick is a former FDIC examiner and current Senior Audit Manager at TD Bank.

1 https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/

2 https://www.consumerfinance.gov/about-us/newsroom/cfpb-estimates-88-billion-in-medical-bills-on-credit-reports/

3 https://www.urban.org/urban-wire/communities-color-disproportionally-suffer-medical-debt

FEBRUARY 2025

YOUR MONTHLY COMPLIANCE NEWSLETTER

CFPB Sues Experian for Conducting Sham Investigations of Consumer Report Errors

The CFPB sued Experian for unlawfully failing to properly investigate consumer disputes. The CFPB alleges that Experian does not take sufficient steps to intake, process, investigate, and notify consumers about consumer disputes, resulting in the inclusion of incorrect information on consumer reports. Inaccurate or false information on consumer reports can threaten consumers' access to credit, employment, and housing.

The CFPB alleges that Experian has violated the FCRA's requirements for handling consumer disputes in numerous ways. Specifically, the CFPB alleges that Experian is harming consumers by:

- Conducting sham investigations that fail to properly address consumer disputes
- Improperly reinserting inaccurate information on consumer reports

If you want to learn more about this case, you can find the full complaint HERE.

The FDIC's examination manual has an excellent breakdown of the different requirements each lender must adhere to regarding the FCRA. You can find that free regulatory resource HERE.

CFPB RELEASES WINTER 2025 EDITION OF SUPERVISORY HIGHLIGHTS

The latest CFPB Supervisory Highlights: Advanced technologies special edition is now available. This issue focuses on technology, but there are also many implications for fair lending. Find the latest issue HERE.

CFPB Issues New Electronic Fund Transfers Frequently Asked Question (FAQ)

If you are new to compliance, it's time to appreciate how useful FAQs are. In areas like flood insurance, they are invaluable. They are guidance by the regulatory agencies that help us lowly compliance professionals figure out what the heck the regulations really mean. Regulation E (Electronic Fund Transfer Act) also has FAQs.

They just issued a new FAQ about coverage, but you can find that and all of them at the CFPB's website HERE. If you have never read the FAQs on a regulation, I recommend taking the time to read them all. It takes a bit of time, but I always learn something new.

CFPB Issues Final Rule on Consumer Reporting of Medical Information

The CFPB issued a final rule on consumer reporting of medical debt under the Fair Credit Reporting Act (FCRA) and Regulation V.

The final rule removes a regulatory exception in Regulation V that previously permitted a creditor to obtain or use medical information, including medical debt information, and amends existing exceptions for using medical information related to credit eligibility determinations. The final rule generally prohibits consumer reporting agencies from including medical debt information in consumer reports to creditors making credit determinations.

Industry Fair Lending Expert Nicholas Harris wrote an article on this topic you can find in the Fair Lending Corner section of this month's newsletter. Nick brings up some interesting points. While this change in medical debt reporting could help many, most notably persons of color, it hurts those same individuals and lenders at the same time.

The debt is still owed, but now it is not showing up on a credit report. This could inflate credit scores and deflate debt-to-income ratios, leading consumers and lenders to believe that a loan applicant can handle more new debt than they really can afford. This is a complicated issue, and trying to attack the actual medical debt as opposed to attacking the real problem of healthcare will likely not have the intended impact. That is a topic of conversation for a different type of newsletter.

You can find the final FCRA rule change and quick references HERE.

CFPB ISSUES NEW REPORT ON FLOOD RISK

The CFPB issued a report discussing flood risk in the U.S. mortgage market. I know a lot of compliance professionals work in areas with very high flood risk, so this may be worth checking out.

Some of the risks they highlighted include:

- Current flood insurance maps may not capture accurate flood risk exposure
- Over 400,000 homes may be underinsured for flooding events in the southeast and central southwestern parts of the country alone
- Homeowners who may be underinsured for flood risk also are least likely to be able to self-insure and recover from flooding

You can find the full report HERE.

Justice Department Secures Third Settlement with a Non-Depository Mortgage Company to Resolve Redlining Claims in Miami

The first redlining case of 2025 is official, and it is another non-bank entity. The Mortgage Firm, Inc. agreed to pay $1.75 million to resolve allegations that it engaged in redlining of Black and Hispanic neighborhoods in Miami. The Compliant has many of the usual facts and figures:

- Concentrating nearly all offices, loan officers, marketing, and outreach in majority-white neighborhoods, even though more than half of neighborhoods in Miami are majority-minority
- Peer lenders in the area generated nearly twice as many applications in majority-Black and majority-Hispanic applications

There is a lot of political talk going on about the future of the justice department, civil rights, and even the combatting redlining initiative.

Regardless of what happens politically in the next four years, your HMDA data will live on. That means in four years, if we have another shift in the political climate, all the resources you dedicated (or didn't dedicate) to lending in high-minority areas will be scrutinized as the DOJ typically does a five-year lookback on your performance.

Inform your management teams that fair lending will always be a priority. All the decisions you make now, you will have to live with the data and performance in the future.

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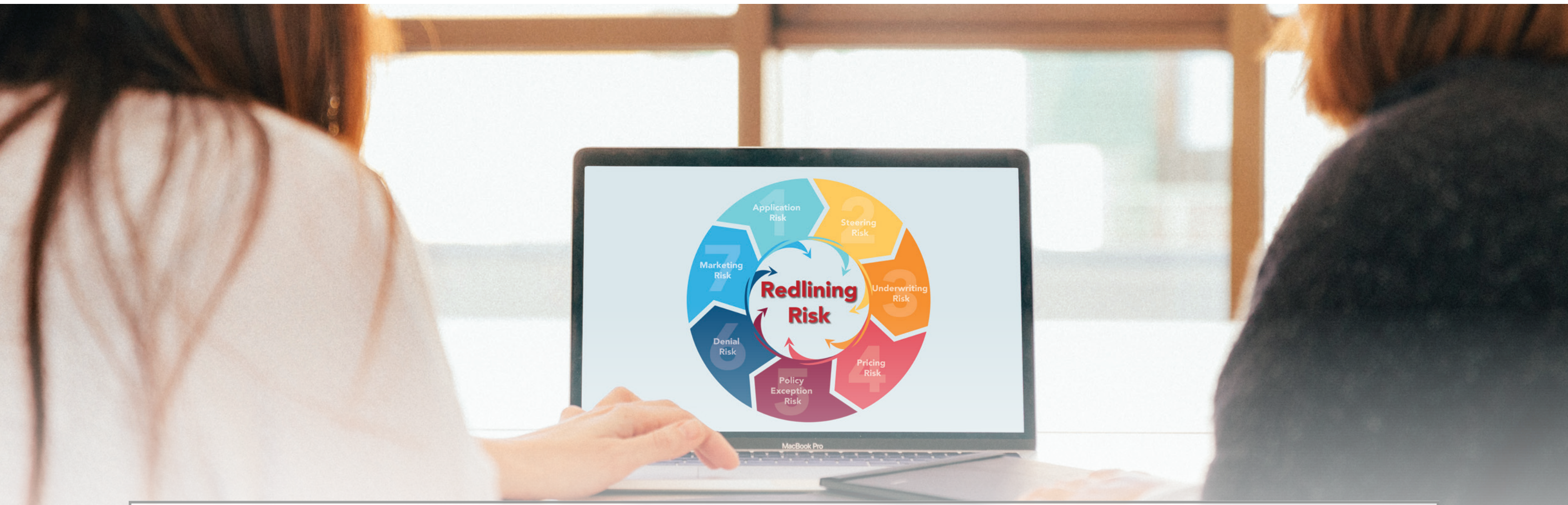

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- We submit all meetings for 2.5 hours of CRCM credit (earn up to 10 CPE hours every year)
- We focus on different fair lending training topics at each meeting
- Ask our experts your fair lending questions
- Keep updated on changes in regulations and the latest guidance
- Share fair lending exam and audit findings so you stay ahead on what the regulators are seeing
- All meetings are recorded if you miss the live broadcast

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