APRIL 2025

YOUR MONTHLY COMPLIANCE NEWSLETTER

FAIR LENDING CRITICISMS ARE COMING

The one thing we are anticipating is that more work is going to be pushed onto the financial institutions themselves, especially as it relates to fair lending risks. You can also apply this to risks in other compliance-related areas as well.

Across the country, the prudential banking regulators have been holding field office meetings with their examination staff discussing ideas for how to conduct their examinations more efficiently. Everyone is aware that large reductions in the workforce are possible. This means regulators will have to evaluate the same risk with less resources. What is one way they can accomplish this goal? Make the financial institutions do the work themselves.

Over the past ten years, when a bank's fair lending program hasn't addressed all the inherent fair lending risks adequately, the examiners would be tasked with calculating various disparities to measure those risks. Many times, the disparities then warranted file reviews to ensure discrimination had not occurred, which are very demanding on time and resources for both the bank and the regulators.

Over the past year however, even before the new administration took office, we noticed the regulators not performing those additional tasks as often but rather choosing to criticize the bank's fair lending programs in reports and in Matters

See CRITICISMS page 2

SOME OFAC RECORDKEEPING REQUIREMENTS ARE BEING EXTENDED

The Office of Foreign Assets Control (OFAC) is issuing an interim final rule to amend recordkeeping requirements, extending those requirements for certain transactions from 5 years to now 10 years. This is consistent with the statute of limitations for violations of certain sanctions administered by OFAC.

The rule is effective as of March 12, 2025. The part of the regulation affected is 31 CFR 501.601. You can find the final rule in the federal register HERE.

CRITICISMS

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Requiring Board Attention. That work of file reviews, increased monitoring, auditing, and building up your CMS will fall solely on the bank. You must figure it out.

As regulators may face increased resource limitations, we expect this could be the new normal. Examiners may not complete in-depth testing of your program, but that doesn't mean you will get a pass on fair lending programs. Instead, the burden of proof will be passed on to the bank's program. If the program is not then enhanced to be commensurate with the risk at the institution, you can expect further criticism of the Board and management in following examination cycles, as well as resumption of costly file reviews when warranted. After all of that, in that second examination cycle, you'll likely be under yet another administration with a whole new set of priorities.

Now is not the time to scale back. Now is the time you continue to build up your fair lending program. Investing in additional training, increased internal monitoring, quality audits, and software are all ways to strengthen your program early before the regulators force you to do it.

Nate Price – Senior Consultant at Tuscan Club Consulting and former Senior Compliance Examiner with the FDIC

FDIC Delays Compliance Date for Certain Provisions in Sign and Advertising Rule

The FDIC has again delayed parts of the new advertising rule. The deadline has been pushed back multiple times, so it's hard sometimes to keep up. What was pushed back this time?

Essentially, Part 328.4 and Part 328.5 have been delayed until March 1, 2026. Those regulations have hyperlinks right to the regulations.

Part 328.4 is the part of the rule that requires the new FDIC digital sign on ATMs, and Part 328.5 is the part of the rule that requires the new digital sign to be on your digital deposit taking channels like your website, online banking, or mobile apps.

If you are already ahead of the game and have implemented these parts of the rules, leave it as is. If you are still working on implementing these parts, you just were gifted another year to get it done. If you want to read the final rule, you can find it HERE.

TREASURY DEPARTMENT ANNOUNCES SUSPENSION OF ENFORCEMENT OF CORPORATE TRANSPARENCY ACT AGAINST U.S. CITIZENS AND DOMESTIC REPORTING COMPANIES

This is the rule that keeps on changing, and it has changed again. Now, FinCEN will "not enforce any penalties or fines associated with the beneficial ownership information reporting rule under the existing regulatory deadlines" and "not enforce any penalties or fines against U.S. citizens or domestic reporting companies or their beneficial owners after the forthcoming rule changes take effect either." You can check out the Treasury Department's press release on this topic HERE.

REGULATORS ARE REMOVING REPUTATIONAL RISK FROM EXAMINATIONS

On March 20th, the OCC announced it will no longer examine its regulated institutions for reputational risk and is removing references to reputation risk from its Comptroller's Handbook booklets and guidance issuances.

Just a few days later, the FDIC also announced that it is working on a rule to also remove reputational risk from examinations.

Reputational risk is not necessarily a consumer compliance area that we typically cover in our newsletters, but it is noteworthy as it affects your examinations. Should you still care about your reputational risk? I don't think you need a free newsletter to tell you the answer to that.

Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule

The federal bank regulatory agencies recently announced, in light of pending litigation, their intent to issue a proposal to both rescind the Community Reinvestment Act (CRA) final rule issued in October 2023 and reinstate the CRA framework that existed prior to the October 2023 final rule. The agencies will continue to work together to promote a consistent regulatory approach on their implementation of the CRA.

What does this mean for you and your bank? At a minimum, pause. It says this is their "intent", but that doesn't mean it will or will not happen. We don't suggest tossing this out the window just yet, but I know we have all been waiting to see what would happen with the CRA. It looks as though we are finally getting closer to an answer. At this point, continue to standby.

YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER

VIDEO

PEER DATA

Check out our monthly fair lending short video first and then come back here for some additional thoughts.
[Peer Data | Tuscan Club University]

Peer data is such a wonderful thing. It shows you how your competitors are doing in your same markets, and it can help you figure out where you are falling behind. Peer data shows risk, but it also shows opportunities where you can reallocate resources.

Every fair lending review we do of a HMDA reporter, we look at the client's performance in their assessment areas and compare that performance with peer performance. We specifically look to see how they are performing to minority borrowers and higher minority areas, and we compare our client's performance to that peer data.

We once had a client who was three times behind their peers in a major market area when it came to minority lending. The good news was they already had branches present in this metro, so their infrastructure was set up to act quickly. Once we pointed out the deficiencies of their lending to minority borrowers in the metro, management got to work. They did more marketing and outreach, and management and the loan teams got more involved in the communities. Lenders looked for other ways to expand home loan lending.

After a year of dedication, do you know how their performance turned out? Not only were they no longer trailing peers by a significant margin, but they had become the leader in their metro in lending to minority borrowers. All of this was found through peer data, and this lender and their community are stronger for it.

Not a HMDA reporter or don't have access to peer data? Use census data. If you pull the census data from a county and find that 25 percent of the residents are Hispanic, what percent of your applications do you think should come from Hispanic applicants? How does 22 percent sound, or 27 percent, or even 19 percent? All are acceptable. But if 25 percent of your county are Hispanic residents and only 5 percent of your applications are from Hispanic applicants, you are trailing census demographic data by a ratio of 5 to 1.

You don't need peer data to tell you there are issues and work to be done. Not sure where to find Census data? The FFIEC has you covered. [Click on this link] to get data by metro area or by county. You can download it or copy it into an Excel spreadsheet and perform simple math to find the data you need. It's a bit of extra work, but it's for the low price of free.

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