

YOUR MONTHLY COMPLIANCE NEWSLETTER



TORY'S TEDX TALK IS LIVE! – AND IT'S HAD OVER 1 MILLION VIEWS!

We don't often e-mail you between newsletters, but we wanted to spread the word once Tory's TEDx Talk went live. We did e-mail everyone about two weeks ago when the talk went live. For those of you that haven't had a chance to watch it, we really hope you find a few minutes to check it out.

In the talk, Tory talks about the history of lending discrimination and how it has impacted our nation. Our goal is to end illegal discrimination in

lending, and we need everyone to have a good understanding of the problem to make real progress.

We know if you make loans, you want to do it fairly. Please take a few minutes to check out the talk and share it with others. Together we can make a real difference, and every community will be stronger for it.

<https://www.youtube.com/watch?v=ZvyL64g2cNM&t=7s>

CFPB ASKS COURT TO VACATE SECTION 1033 DATA SHARING RULE

In early June, the ABA reported that the CFPB is asking to repeal the Section 1033 rule, citing the rule's "numerous legal infirmities." This does not mean that the rule is going away, but it is something to keep our eyes on. You can find the ABA Banking Journal article [HERE](#).



CFPB EXTENDS THE 1071 SMALL BUSINESS RULE REPORTING

We finally have some directions on 1071. The CFPB has officially released guidance, and the new interim final rule is effective July 18th, 2025. This pushes back everyone's compliance date. While there are new official compliance dates, those will also likely get pushed back even further if the rule is rewritten. To find the new compliance dates and learn more, you can check out the rule [HERE](#). If you scroll down just a bit on the webpage, you will find a table with the new compliance dates.

Findings from our Consulting Work

Each month, we like to share some common findings, insights for your consideration, or useful tips from the field. With nearly 100 compliance-related review projects completed annually, we see a broad spectrum of issues and learn a lot along the way. We try and share that knowledge and experience with you.

This month, we want to focus on funds availability holds. The Expedited Funds Availability Act, implemented by Regulation CC, is one of Tory's favorite regulations from the standpoint that there is a good balance between consumer protection and depository institution protection.

Back in the days of Frank Abagnale (the Tom Hanks movie "Catch me if you can"), checks used to be mailed all across the country and processed through multiple banks. Frank used to use that to his advantage, cash checks, and be long gone before the bank ever knew the check was bad. In today's world, checks are processed sometimes instantly.

Regulation CC protects the consumer in saying that you cannot hold checks deposited for weeks. It's literally in the name – "Expedited" Funds Availability. However, there are times when you would want to hold longer than the short funds availability schedule required by regulation. That is when you place an exception hold. In these cases, you can often hold some or all of the funds up to seven business days or longer on new accounts.

See FINDINGS page 3

CHANGES IN FAIR LENDING LANDSCAPE

I'm sure many of you have seen recent guidance come out about fair lending. We have seen talk that discrimination needs to be intentional before fair lending issues are pursued. That quite possibly may be true on the federal level, but there are a lot more players in the game to worry about than just the federal government. Lenders still need to be aware of state laws and civil suits from special interest groups and individuals.

The whole notion that fair lending violations or issues must be intentionally discriminatory really misses the point. People unintentionally commit

crimes all the time, but that doesn't mean they haven't broken the law. Tory has been part of more than 100 fair lending audits, and nearly all of the discriminatory issues he has discovered have been unintentional. In fact, when you look at all public fair lending cases, nearly all are unintentional. That doesn't mean those cases do not have a significant negative impact, shouldn't be resolved, or are free of risk and potential liability.

There is also a lot of talk about the current administration not pursuing disparate impact liability.

See CHANGES page 3

FINDINGS

Continued from page 2

We have seen many banks that do not place holds on checks, and this adds a risk of loss to the bank. Too often, a hold is not placed, a check is bad, and the bank takes the loss. This regulation helps consumers by not allowing you to hold funds forever, but it protects you too against loss in cases where risk is high.

The most common regulatory violation we see in this process is missing the small details of the regulation. Often the amounts or hold timelines are wrong. A favorite of people placing holds is to list multiple hold reasons, sort of like you would list multiple denial reasons on an adverse action notice. If someone is a habitual over drafter, and the checks are for large amounts, they will cite both exception hold reasons. This only sets you up for failure. For someone with excessive overdrafts, you can hold the full amount. However, large dollar holds require earlier availability on some funds. You can't meet both requirements at the same time, and that's what creates the problem.

Our advice is to only ever use one exception hold reason, and choose the most restrictive reason. This will ensure you are not in an impossible position where you have to comply with different rules simultaneously.

Lastly, most people placing holds are upfront deposit staff like tellers. Where is most of the turnover in financial institutions? Tellers. With all of the little nuances in the regulatory requirements, you need to train your staff well. If there is lots of turnover, that means lots of training. That's why good written procedures are critical. They help supplement the process when turnover is high.

CHANGES

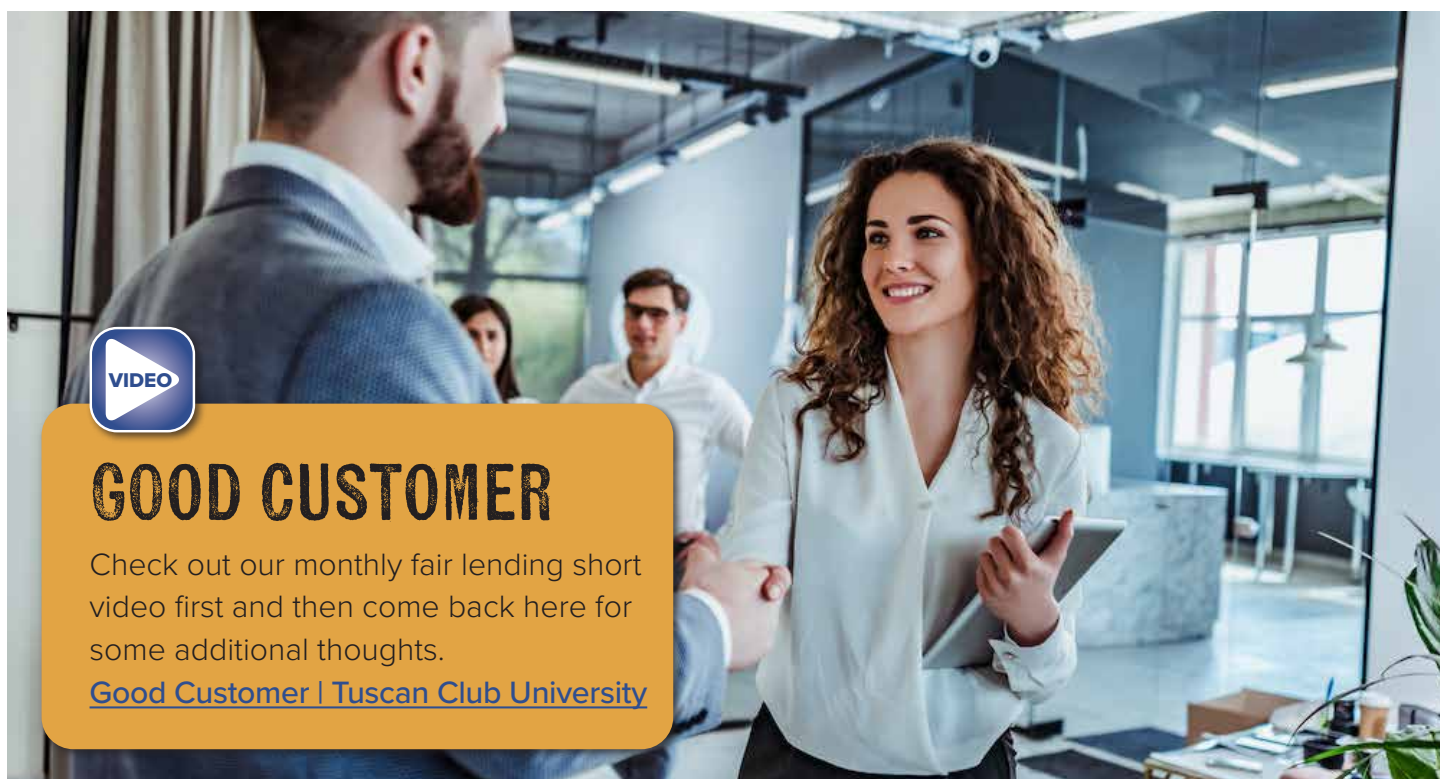
Continued from page 2

Tory attended the Fair Lending Forum in May, and this topic was discussed at length. The consensus from the experts in the room was this: every Republican administration over the last 30 years has taken this same approach to disparate impact liability. They will not pursue it. The only difference is that the current administration wanted to make a public declaration of it. Furthermore, several redlining cases have come about in Republican administrations over that same timeline, none of which needed disparate impact liability to prove redlining.

The takeaway is don't let up. While the current administration and federal government may be going easy on fair lending and redlining issues, this is only temporary. Congress writes laws, and the judicial branch interprets laws. The executive branch does not do either. The pendulum always swings back, so now is your time to build a stronger fair lending program. Not to mention, there can be a 5-year lookback on your data, so all the decisions your organization makes now will live on past the current administration.

One other interesting thought learned at the Forum is the mass exodus of employees from the federal government is sending a lot of highly skilled and motivated individuals into the states. In other words, state regulators are picking up some great talent in fair lending, and those individuals will have a major impact on future state regulatory oversight. While it feels like a temporary shift in federal fair lending focus, and it likely is, states are only getting stronger. With an administration change in three years, it's highly possible that the CFPB and DOJ will staff right back up, and now we will have strong federal AND state oversight. Just something else to ponder as you navigate your program over the next several years.

YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER



GOOD CUSTOMER

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

[Good Customer | Tuscan Club University](#)

The topic of this month's fair lending newsletter is the concept of the "good customer".

Let's be honest with ourselves – this has appeared in loan files for a lot longer than most of us have been in lending. Loan officers often put comments in loan files that say, "so and so is a good customer". When does that become a problem?

It becomes a problem when the concept of "good customer" is used as a reason to make loan decisions or to make an exception to policy. A lender uses it as a reason to make a credit decision.

Essentially, you have legal and illegal forms of discrimination. Legal forms of discrimination are your underwriting factors – loan-to-value or debt-to-income ratios, credit scores, credit history, etc. When you have clearly defined legal forms of

discrimination in place, you can be confident you will make fair and consistent loan decisions on legal factors.

When you introduce underwriting criterion like good customer that, let's be honest, means nothing, you have lots of uncertainty on that loan, and you lose the protection of your good underwriting practices. Now you risk trends emerging that "good customers" always seem to fall into a certain prohibited basis group category, and that's when fair lending risk emerges.

We are not a fan of ever putting the phrase good customer into loan files or notes, but certainly not as a reason to make a loan decision or override policy. Be specific on why someone is approved for a loan or a policy exception. Spoiler alert – good customer is not specific.

Introducing Our Totally Updated And Enhanced

FAIR LENDING SCHOOL 2.0

GET CERTIFIED AS A **FAIR LENDING EXPERT (FLE)**



Fair Lending School 2.0 has been completely updated!

- All new videos
- New risk assessment module added
- 2 more hours of content
- Reorganized manual
- Updated content and examples
- All new training experience – same price

Learn:

- Loan Lifecycle Process and Fair Lending Risks
- How to Monitor and Audit Your Own Program
- Real-World Case Studies and Examples
- Step-by-Step Procedures

Benefits:

- Professionally Produced Videos – 100% Online
- No Travel = Zero Time Away From Your Institution
- Completely Self-Paced
- The Best Fair Lending Training Available
- **12** Continuing Education Credits – Including CRCM Credit

Cost:

Course: \$1,295
Certification: \$300

Our Fair Lending School was authored by a team of commissioned examiners.



TUSCAN CLUB
— UNIVERSITY —

Visit **tcuniversity.us** to get started today.

Earn CRCM and FLE Certification Credit

FAIR LENDING EXPERT GROUP (FLEX)

Expand your knowledge and expertise in Fair Lending



- Open to all compliance, fair lending, and audit professionals
- We have banks, credit unions, and mortgage companies from across the United States
- We meet quarterly for 2 hours
- One Annual fee gets all of your people in the group (Pricing starts at \$800/organization)
- 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