YOUR MONTHLY COMPLIANCE NEWSLETTER

FINDINGS FROM OUR CONSULTING WORK

In this section of our newsletter, we often discuss common issues we have been finding in our audit work. This month, we want to talk about third-party reliance for Regulation E compliance.

Regulation E is the rules implementing the Electronic Fund Transfer Act. Essentially, you must process error disputes within certain timelines, notifications are required along the way, and there is potential provisional credit to navigate. While the regulation isn't overly complicated, it's not straightforward either. Strong programs have well written procedures and good training for staff to ensure compliance.

What we have seen a lot of lately is outsourcing this process to third parties. Just like with any other third-party risk, you can outsource the work, but not the compliance responsibility and liability. Too often we have seen third parties drop the ball by not processing disputes timely. You think the third party is doing the work, but they often get behind, and you may never know until you actually request documentation to prove they are meeting deadlines.

The point here really isn't as much Reg E compliance as it is outsourcing any compliance function without proper oversight. Ensure your vendors are doing the job you are paying them for and ask for proof of compliance to verify you are meeting regulatory requirements.

CONSUMER COMPLIANCE OUTLOOK IS NOW AVAILABLE

The 2025 third issue of the Federal Reserve's outlook on compliance is now available. This is a wonderful resource put out by the agency that discusses current and recent issues noted in the industry and their examinations. To read the current issue, you can find it HERE.

FEDERAL BANK REGULATORY AGENCIES RELEASE 2024 SMALL BUSINESS, SMALL FARM, AND COMMUNITY DEVELOPMENT LENDING DATA

With the 2024 data now out, for those of you larger organizations who look to this data for comparisons of your own performance, you can now access it. To find more information and the 2024 data, follow the FFIEC link HERE.

FDIC UPDATES ITS CONSUMER COMPLIANCE EXAMINATION SCHEDULE

The FDIC is extending time between compliance and CRA evaluations for strongly rated institutions who are primarily regulated by the FDIC. We read through the new examination schedules, and they are bit complicated to summarize here. Essentially, the compliance manual has been updated with the new schedules. You can find it HERE.

The old way of doing things was larger banks had compliance and CRA roughly every three years when smaller banks would see compliance every three years but CRA only every six years. Under the new proposed rules, the larger banks (>$3 billion) would not see much of a change with some of the smallest and strongest banks having a full examination as long as 78 months out. For those of you not in the mood to do that math in your head, that's every 6.5 years. There is some mid-point risk analysis conducted between examinations.

That's a long time to go between examinations. We're not one to try and predict the future, but we suggest not getting your hopes up or being too comfortable with this exam cycle. If/when the pendulum swings back on the political spectrum, the regulators will staff back up, and cycles will likely revert to where they once were. We are only three years from that possibility, so depending on when your last examination was, you may never fully realize the new cycle. You can find the FDIC's press release HERE.

As always, continue to devote resources to your program and manage your Compliance Management System as you normally do. Those smallest FDIC regulated banks who had their last exam skipped were chosen because of the strength of their programs.

CFPB TO FURLOUGH STAFF, TRANSFER LEGAL FUNCTIONS

ABA's banking journal released an article focusing on the future of the CFPB. The word is that by the end of this year, they plan to lay off most of the staff. They also are not asking for funds for 2026, which means when they run out of money, who knows what the future is.

The National Treasury Employees Union, one of the largest unions who represent federal employees, plans to file suit against the bureau. Who knows what the future holds and what this means for all of our laws and regulations. As Tory learned in the Air Force: standby to standby. You can read the full article HERE.

CFPB: FEDERAL LAW PREEMPTS STATE LAW ON CREDIT REPORTING

Federal law generally always takes precedent over state law, and for years, the Fair Credit Reporting Act was the federal law of the land. Under the Biden administration, the CFPB passed a rule banning the use of medial debt on credit reports, and they encouraged states to pass similar laws. Since that rule was struck down in court, we are back to the old federal rule that says you report medical information.

The tricky part now is that roughly 15 states have passed state laws restricting the reporting of medical information on credit bureau reports. However, since federal law precedes state law, the federal law is what should be followed. If you operate in one of the 15 states that has a law on the books, you may want to dig deeper into this change. HERE is ABA's article with more details, and HERE is the link to the federal register.

CFPB ISSUES PROPOSED AMENDMENTS TO THE 1071 RULE

We finally have seen our first glimpse of the new 1071 rule, and there are some notable changes. The shortened version is that fewer lenders will now be reporters, there will be fewer loans to report, we all have the same compliance data, and there is much less data to collect.

Adam Witmer over at Compliance Cohort did a wonderful job writing up a summary of the new changes. He also has a weekly compliance newsletter that you might be interested in signing up for. Adam typically covers additional topics outside of compliance you also may be interested in. To see Adam's great summary of the new rule, follow the link HERE. To find the new rule in the federal register, you can click HERE.

YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER

For the December fair lending newsletter, we are going to focus on regulatory change. As you may have seen in November, the CFPB came out with some notable changes that we want to briefly discuss. We don't often mention proposed rules or changes as they may never happen or be significantly different than the proposal, but a couple big updates to Regulation B are being proposed that have some major impact.

Disparate impact – the CFPB is proposing to essentially remove disparate impact liability from the regulation. Disparate impact is your policies or procedures disproportionately having a negative impact on a prohibited basis group. It's not necessarily intentional discrimination, and there are rules and caveats about less discriminatory alternatives.

While this proposal seems like a major change, and it is from the federal regulatory standpoint, it really changes little in the way you do business from our perspective. Yes, the federal regulators may no longer consider disparate impact, but you still have many other interested parties to worry about. Your state, special interest groups, and private litigation. Just in the last few months alone, we have seen three separate disparate impact cases, brought about by state governments, covering topics like rental units, student loan debt, and credit cards.

It's also critical to note that the executive branch, who is in charge of enforcing laws, does not write or change them. That means disparate impact, while potentially no longer part of Regulation B, is still included within the Equal Opportunity Act and Fair Housing Act. If we have a change in leadership in three years, the pendulum can swing right back, and we know the lookback period is up to five years for these issues. Don't let up, don't change, and continue to build. Take these next three years as a chance to improve, not scale back. Lastly, if you learn through your own reviews that your policy or procedure is harming segments of your customer base, wouldn't you want to know and make adjustments anyways without the federal government forcing you to?

The other notable change is to special purpose credit programs (SPCPs). This one is slightly more complicated, but it really comes down to the regulatory agency trying to eliminate these types of programs. Essentially, the proposed rule change restricts for-profit organizations from using race, color, national origin, or sex as a common characteristic for eligibility. That essentially shuts down the program for most of our readers. They would still be allowed for non-profit entities.

Some of our staff attended the annual CRA and Fair Lending Colloquium in Los Angeles in November, and of course, both of these were very hot topics. Many people had opinions in both directions. As of now, they are just proposed rule changes, but they could be actual rules much quicker than normal.

The CFPB has only put a 30-day comment period on these changes, much quicker than any other normal rule change. It's clear they don't want to allow anyone time to formulate rebuttals or opposition to the changes. If passed, these changes would go into effect early in 2026. Stay tuned as we learn more about these major fair lending changes. If you want to check out ABA's November article on the proposed changes to fair lending enforcement, you can find it HERE.

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