

# YOUR MONTHLY COMPLIANCE NEWSLETTER



## FINDINGS FROM OUR CONSULTING WORK

It may be the month of May, but let's start with a compliance must. We like to kick off each monthly newsletter with some common issues we find. This month, we are discussing a pain point in the electronic fund transfer (EFT) error resolution process: provisional credit debiting and disclosures.

EFT error resolution is simple in concept but can get complicated in practice. By the time you get to the final resolution notification, you've gone through an arduous process that likely included a lot of communication, logging dates, file maintenance, and a good dose of research. After all that, if

you determined that no error or a different error occurred, you are left with debiting provisional credit, which comes along with requirements that we find are commonly overlooked – the notification process.

Institutions have two options for handling the debiting of provisional credit. First, the institution may leave the provisional credit in the account for five business days and allow the consumer full use of the funds. Second, the institution may debit the provisional credit as long as it honors checks, draft, and similar instruments payable to

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## FDIC REVOKES RE-PRESENTMENT FINANCIAL INSTITUTION LETTER (FIL)

If you were at an FDIC-supervised institution from 2022-2024, you likely remember The Great Re-Presentation Fiasco. We won't re-open wounds here, but now the FDIC has chosen to rescind its 2023 FIL on the topic so that we can hopefully eventually call it old trauma. You can find details and the logic for revocation in [FIL-15-2026](#).



## FDIC & OCC REMOVE REPUTATIONAL RISK FROM SUPERVISORY PROGRAMS

In the ongoing reputational risk saga, the FDIC and the OCC jointly issued a [final rule](#) to codify the removal of reputation risk from their supervisory programs. Do financial institutions have to do anything different? No, not really. The final rule imposes no new requirements or obligations. It's clear every organization still should care about their reputational risk, but now you don't have to worry about it in an examination.

## CFPB FINAL RULE: DISPARATE IMPACT, DISCOURAGEMENT, & SPECIAL PURPOSE CREDIT PROGRAMS (SPCP)

It is here. The CFPB published their Final Rule amending provisions related to disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs.

On disparate impact, ambiguity will be removed from Reg B and its interpretations by replacing the terms “acts or practices” and “practices” with “oral or written statements” and “statements” in an effort to prevent the application of disparate-impact theory.

On discouragement, the CFPB concluded that encouraging one group of consumers to apply for credit does not discourage other groups of consumers and will update language to reflect that conclusion.

The changes to Special Purpose Credit Programs (SPCPs) are a bit more complex, but the overarching idea is that the prohibited bases cannot be used as eligibility criteria.

The final rule was issued on April 22, 2026, and can be found [HERE](#).

What does this mean for you, and how does this change your program? If you want

our honest opinion, and that's why many of you are here, the answer is nothing. Just because the regulators are no longer prioritizing these items does not mean that your liability goes away.

These updates are changing the rule, but it does not change the law. In addition, you have more parties to care about than just your primary federal regulator. With a law still in place, you still have private litigation, special interest groups, and likely state laws to contend with.

A few of our team members recently went to a fair lending conference, and the overall majority opinion in the room is that this changes nothing, other than you likely won't have to worry about it in a regulatory examination.

However, the special purpose credit programs are a bit different. Nobody we have spoken to in the industry seems to know whether or not you are allowed to have them anymore, so you will have to do your own internal risk analysis if you have one, but reviewing for disparate impact or discouragement in your marketing messages, continue to operate the same strong program as you always have.

## FINDINGS

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third parties and preauthorized transfers for five business days and does not impose a fee for those items during those five business days.

While this requirement isn't the most fun for institutions, it makes sense. Without this protection, if a customer decides to use the provisional credit like there's no way you're denying their claim, and they write a check for utilities that dips into their provisional credit near the end of your investigation or even a few days after the denial, they are going to be confused and upset when charged a fee for the bounced check.

Now it isn't enough to just follow one of these options, you have to tell the customer what you are doing as part of the written explanation of the results of the investigation. The problem is many organizations are not getting the notification part of the requirement right. If you go with the first option, you only have to notify them of the date and amount of the debiting. If you go with the second option, you additionally have to detail how you are treating the account balance, as prescribed in [Section 1005.11\(d\)\(2\)\(ii\)](#).

One final thought on this topic. If you are contracted with a third-party for EFT error resolutions,

remember you are still on the hook for these requirements. While you offloaded a lot of tedious work, unfortunately, we see third-party providers fumble the notification aspect of provisional credit too. Make sure you are reviewing a sample of final resolution notifications for language about the treatment of provisional credit. If they groan about you fighting for your customer's rights, tell them Tuscan Club sent you.



### ASK THE REGULATORS – FDIC, FED, & OCC

Tuesday, May 5, the FDIC, Fed, and OCC are holding a joint Ask the Regulators event to discuss proposed revisions to bank capital requirements. While this isn't related to consumer compliance, sharing the [LINK](#) to register with your risk management colleagues may get you brownie points.

## PERIODIC REGULATOR PUBLICATIONS

The end of Q1 is an exciting time for publications from bank regulators. The Federal Reserve Banks issued their Consumer Compliance Outlook, and the FDIC issued their 2026 FDIC Consumer Compliance Supervisory Highlights. If you're a regular reader of either publication, nothing in these two will surprise you, but they are always good reminders of regulatory hot topics.

The new Consumer Compliance Outlook focuses on common Flood Disaster Protection Act and Reg E Error Resolution violations, top consumer complaint topics and findings, and a summary of recent final and proposed rules. The latest Consumer Compliance Outlook can be found [HERE](#).

The new Consumer Compliance Supervisory Highlights discusses the top five most frequently cited regulations for violations. While this list rarely changes, Reg E jumped from number four in 2024 to number two in 2025. The publication also summarizes the most common products and issues involved in consumer complaints reviewed by the FDIC. Spoiler Alert: Credit cards have been the top product for five years with credit reporting errors as the most common issue. The latest Consumer Compliance Supervisory Highlights can be found [HERE](#).

# YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER



The focus of the May Fair Lending Newsletter is fair lending complaint identification. While a fair lending complaint is not inherently more important than other complaints related to consumer protection, we have seen first-hand that an entire fair lending review can be driven by a single fair lending complaint.

The first part of identification is collection. Complaints can get messy, and they can come from myriad sources. Not every complaint will come directly to your institution. Collection takes intentionality. There are third-party solutions that notify you every time your institution's name is found on a public webpage or review site, but solid

procedures can be just as effective. Simply identify common external complaint sources and monitor them periodically. Consider sources like local news websites, google or other online review platforms, reddit posts, and social media pages.

For complaints that come directly to the institution, maintain and train a process for routing complaints to the appropriate personnel. Everyone should know how to document and direct complaints received at the teller window, in an email, over the phone, and from a regulator (knock on wood).

The second part of identification is sorting.

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How can you be confident complaints that may relate to fair lending are receiving appropriate attention? If someone writes a yelp review saying, “They denied me my right to credit,” does that get flagged or escalated? What about, “They didn’t seem interested in my business,” or “Don’t bother applying for a loan here if you live in North City!” Okay, that last one was a bit obvious, but the first two aren’t without additional context.

If you are not confident in your sorting, here is one practical tip. Consider creating a list of terms that automatically trigger a second review, such as Black, Hispanic, accent, woman, old, young, church, disabled, neighborhood, etc. While a list of terms won’t find all complaints related to fair lending, it adds assurance you aren’t missing complaints that call out a protected class, which you don’t want to ignore. This tip can be very simple to implement. For instance, if you compile your complaints in a

spreadsheet, you can write a formula that searches your list of terms and flags any hits.

It is also critical to know the difference between a complaint and a comment or inquiry. We often see every customer contact with a bank logged as a complaint, when they may not truly be complaints. It’s great to collect all of that data but make sure you truly are identifying complaints and not just a customer calling up with say a Reg E error dispute.

One parting piece of advice. Embrace complaints. While you may not like them, they are your friend, or perhaps your frenemy. Either way, they present the perfect opportunity to catch compliance concerns early and bolster your fair lending risk assessment. They often serve as the last bit of feedback on your program, so ensure you use that to learn, grow, and strengthen your compliance management system.

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