

YOUR MONTHLY COMPLIANCE NEWSLETTER



FINDINGS FROM OUR AUDIT WORK

As a team, it is our joint intent to share common issues we find in our consulting work. This month, we are discussing the requirements and best practices for documenting the intent to apply for joint credit.

The Equal Credit Opportunity Act's implementing regulation makes documenting joint intent seem simple, but we know all too well that complying is hardly as simple in practice. We will go through regulatory requirements and touch complications along

the way; but first, we need to understand why joint intent matters.

Try following this string of thought. The sixth prohibited basis prescribed by the ECOA is marital status. To create valid legal documents and to pledge jointly owned collateral, there are instances in which information about a spouse and a few spousal signatures are required. However, just because a spouse's signature is required

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SUSPICIOUS ACTIVITY REPORTS & CUSTOMER COMMUNICATION

Jointly, FinCEN and the federal financial institution regulators released a statement on permissible communication when an institution files a Suspicious Activity Report (SAR), found [here](#). The statement clarifies that institutions may discuss potentially fraudulent, other suspicious transactions, or the intent to close an account as long as the communication does not disclose the existence of a SAR.



FAQS ON VERIFIABLE DIGITAL CREDENTIALS

FinCEN and the federal financial institution regulations also jointly updated the FAQs related to the Customer Identification Program (CIP) rule and verifiable digital credentials (VDCs), found [here](#). In summary, the updates clarify that a government-issued VDC may be, but is not required to be, relied upon for the verification of a customer's identity if it contains the information required by the CIP rule.

18-MONTH CYCLE

The 21st Century ROAD to Housing Act amended the Federal Deposit Insurance Act in July to expand the asset threshold for an 18-month exam cycle from \$3 billion to \$6 billion. The FDIC, FRB, and OCC issued an interim final rule, found [here](#), interpreting the law to set clear parameters for what institutions will qualify for the longer exam cycle. If your institution sits in the new asset range, the interim final rule may be worth reading. Or you can just wait around until you get communication asking to schedule your next exam.

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doesn't necessarily mean they want to apply for credit. Thus, to ensure creditworthiness is evaluated without bias for marital status and spouses are only subject to intended or required legal obligations, creditors must document whether a spouse intends to jointly apply for credit or is only providing information to meet other legal requirements. Oh yeah, and without evidence of joint intent, if an institution needs to act on a debt, such as starting collections, the person thought to be a co-applicant may not be obligated to satisfy the debt. We have seen it happen before.

Now, the regulation provides clear requirements. The key to compliance is in the first sentence of the official interpretation, "A person's intent to be a joint applicant must be evidenced at the time of application." The key word is "evidenced," for which a loose interpretation can cause trouble.

If you only have paper applications, this is super simple. You include the model language "We intend to apply for joint credit," on the application with two blank spaces for applicant initials

or signatures and make sure the applicants complete that section. Where we find issues is when institutions have online credit applications that can be completed by the applicants themselves or by an employee, which is most institutions.

For online applications, if you have a checkbox that says something like, "Check this box if this is an application for joint credit with another person," can you rely on the applicants' selection? Sure. Are there ways to build more confidence in the selection? Absolutely. Three quick ideas are posing joint intent as a question with a required yes or no answer, including an electronic signature next to the checkbox, or having a procedure for someone to validate the intent again on paper. Operational feasibility always matters, and we are of the opinion that the simple checkbox is sufficient as long as the applicants are completing the online application themselves.

In situations where employees work directly with applicants to complete an online form for them, a higher standard will help protect you, the lender. Without affirmation documented directly from the applicants, it

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would be difficult to defend that the standard of “evidenced” was met. Most commonly, we see institutions remedy the situation by using an electronic signed pad to obtain initials for the joint intent statement or printing off a separate joint intent form to receive a wet signature.

Another word of caution with joint intent is that the method used for evidence must be distinct from the way applicants affirm the accuracy of information provided. In other words, a signature at the end of an application cannot be considered evidence of joint intent. A small change in phrasing or procedure can save a lot of trouble in the future.

Lastly, it is the intent to “apply” jointly, not to “close” jointly. In other words, you must get joint intent at the time of application. Too many times, we see joint intent collected at the closing table. For many loan types such as real estate, that could be weeks later. That’s not evidence at the time of application. That would be checking a compliance box at closing, and then it’s too late.

YOUR MONTHLY FAIR LENDING CORNER NEWSLETTER



There's no better topic for the Fair Lending Newsletter to lead us into the spooky season than pricing discretion. We have seen many different loan pricing strategies and authorities in our fair lending reviews, and few things send chills down our spines more than broad authority to deviate from rate sheets.

There are five factors that determine how risk is presented by pricing discretion: the specificity of the rate selection system, the situations in which deviations are permitted, the amount of discretion allowed, supporting documentation requirements, and tracking and analysis. By weighing the risk of each factor, institutions can allow flexibility and efficiencies in their pricing process without risk

getting out of hand.

Let's tackle the first factor, which is arguably the most critical. Is your rate selection system clear, concise, and free from guess work? Whether you have automated pricing or a rate sheet, if anyone off the street can identify the rate that should be assigned to a loan if given the appropriate risk-based criteria, you have the perfect foundation. On the other hand, if a rate selection system merely provides a range of rates that can be selected for each product, you likely want to focus your work there before worrying about the other four factors.

Let's assume there is a rate selection system

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with perfect clarity and detail. The second factor is defining when deviations from the assigned rate are permitted. Can a loan officer deviate by 50 basis points for any reason or no reason at all? It is undeniable that there is efficiency in empowering staff to make decisions without red tape, but there must be a limit. We often see programs where deviations from the assigned rate are only allowed to match competition up to a certain discount. If the situations that allow for discretion are limited and well-defined, a larger amount of discretion may be warranted.

Speaking of the amount of discretion, our rule of thumb works decently on its own but should be fine-tuned to balance with the other four factors. Generally, when discretion is limited to 25 basis points or less, it is barely noticeable in loan data. When discretion gets around 50 basis points, there are typically noticeable disparities in average interest rates. If 100 basis points of discretion or more are allowed, there will more than likely be at least one product that has an elevated rate disparity that can't be accounted for by risk-based criteria.

Elevated rate disparities lead us to our last two factors. What if an institution allows broad and large levels of discretion to meet growth goals

or be competitive in certain markets? When documentation requirements to support pricing discretion are in place, decisions are likely to be made more fairly and are easy to audit. If Jon has to support why he gave Jessica a 50-basis point discount, he must write down some reason. Next, when deviations from pricing guidance are tracked and analyzed, decision makers can know who is using their discretion and how often they are using it. The program gets bonus points if tracking includes enough information to analyze deviations on the bases of sex and ethnicity. Documentation requirements, tracking, and analysis are controls that can help management make informed decisions about when discretion is allowed and how much discretion is within the institution's risk tolerance.

Those of you who have gone through our fair lending school or heard Tory talk about pricing discretion know some of our crazy stories about pricing disparities and speed with which those disparities can vanish when pricing discretion is well controlled.

If you follow these basic principles, you can really cut down your pricing risk. Strong policies and procedures, consistently followed, is the best way to start building your fair lending program.

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