LEGAL UPDATES

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Why the FDIC's Consumer Compliance Supervisory Highlights Should Be on Your Reading List

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Similar to the Consumer Financial Protection Bureau's Supervisory Highlights, the Federal Deposit Insurance Corporation (FDIC)'s Consumer Compliance Supervisory Highlights should be on your reading list. While the FDIC has published this guidance for years, the Consumer Compliance Supervisory Highlights has renewed import because of the increased number of FDIC consent orders involving bank-Fintech arrangements and the FDIC's new rules on FDIC signage, advertisement, and federal deposit insurance misrepresentations.

In March 2024, the FDIC published the Spring 2024 edition of its Consumer Compliance Supervisory Highlights. The guidance highlights consumer compliance issues identified by the FDIC through its supervision of state non-member banks in 2023. Among other things, the Consumer Compliance Supervisory Highlights summarizes the most frequently cited violations of federal consumer protection laws and the most significant consumer compliance issues identified during FDIC bank examinations. We provide an overview of these two sections below.

Most frequently cited violations

FDIC examiners cited supervised banks most frequently for violations of the following federal regulations (in order):

Truth-in-Lending Act/Regulation Z – The FDIC noted violations of various sections of Regulation Z including 12 C.F.R. § 1026.38(f)-(h) (related to mortgage transactions).

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Flood Disaster Protection Act – The FDIC noted violations where banks failed to place adequate flood insurance on loans at the time a covered loan was made, increased, extended, or renewed.

Electronic Fund Transfer Act/Regulation E – The FDIC highlighted violations of Regulation E related to investigating, determining, communicating, and correcting errors involving electronic fund transfers.

Truth-in-Savings Act/Regulation DD – The FDIC identified violations of various sections of Regulation DD, including the timing and content requirements for deposit account disclosures.

Section 5 of the Federal Trade Commission Act – In addition to other unfair or deceptive acts or practices, the FDIC shared that it frequently cited banks for NSF fee re-presentment practices that were not fully or clearly disclosed to customers.

The FDIC noted that its examinations are risk-focused so regulations with the greatest potential for consumer harm typically have the most cited violations.

Consumer compliance examination observations

Unsurprisingly, the FDIC observed that a number of consumer compliance supervisory matters described in the 2024 Supervisory Highlights "involve deficiencies in bank oversight of its third-party relationships." The FDIC characterized the following as "some of the more significant consumer compliance issues" that the FDIC identified during examinations:

Deposit Insurance Misrepresentations by Third Parties – FDIC examiners observed third parties representing or implying that uninsured financial products (including crypto-related assets) were FDIC-insured. The FDIC also noted misrepresentations by third parties regarding the extent or manner of deposit insurance coverage. When the third party had a relationship with a FDIC-insured bank, examiners identified weaknesses in the bank's compliance management system that contributed to the third party's violation of deposit insurance misrepresentation prohibitions.

Advertising Claims for Credit Builder Products – Examiners found that some credit-building products offered in bank-Fintech arrangements either (i) overstated the degree to which a product could improve a consumer's credit or (ii) misrepresented that a credit product with no credit-building features or functions that could improve a consumer's credit. Among other things, the Supervisory Highlights reminds banks to substantiate credit-building advertising claims and periodically review the supporting evidence underlying advertising claims. The FDIC suggested that banks be clear about

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the potential negative credit reporting with credit builder products and monitor consumer complaints.

Regulation E Dispute Investigations by Third Parties – The FDIC described a situation where a bank outsourced its electronic fund transfers dispute resolution process to a third party and also utilized a security program to validate online credit and debit card transactions. The third-party service provider automatically denied consumers' debit card disputes if the debit card transactions were processed using the security program. The third-party service provider did not investigate or follow the error resolution process required by Regulation E. The Supervisory Highlights noted that banks could mitigate this risk by, among other things, confirming the policies and procedures that a third party will follow when performing Regulation E error resolution functions on behalf of the bank.

Payments for Mortgage Broker Services – The FDIC recognized that while banks developed policies and procedures to ensure goods or facilities were actually furnished or services were actually performed for the compensation paid, banks failed to develop processes to ensure that payments to mortgage brokers are reasonably related to the value of the services provided. Particularly, the FDIC highlighted three scenarios where the compensation paid was not reasonable based on the services provided. In these instances, the mortgage broker stated it provided five services, but the services were (i) limited in nature and value, (ii) irregularly conducted or not conducted at all, or (iii) essentially variations of the same "counseling services." The FDIC makes clear in its Supervisory Highlights that managing risks related to mortgage broker relationships "is not merely a service-counting exercise."

Fair Lending Oversight of Third Parties – This discussion in the Supervisory Highlights focused on fair lending risks with automated underwriting and pricing models provided by third parties. Examiners criticized a bank's fair lending program that did not give the bank full access to complete and accurate credit transaction records from a third-party partner. On the same note, the FDIC said a bank did not provide adequate oversight of pricing and underwriting systems used by third parties in connection with originating loans, when the bank did not have access to all variables used in the pricing and underwriting models. The bank also lacked adequate oversight of these models where the bank did not have an opportunity to review or approve material changes to the model criteria.

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Compliance With Anti-Discrimination Laws – The FDIC made discrimination findings in bank examinations related to redlining, pricing for automobile financing, and other overt credit underwriting policies. The automobile financing matter related to dealer markups that were unmonitored by the bank. Besides redlining, the other credit underwriting practices at issue involved not considering credit applications from companies owned by Native American tribes or located on Native American reservations or from certain religious entities.

What this means to you

Heightened regulatory expectations by and new regulations from the FDIC place more significance on additional guidance published by the FDIC. The Consumer Compliance Supervisory Highlights provides insight into the FDIC's focus during bank consumer compliance examinations. For these reasons, the Consumer Compliance Supervisory Highlights should be on your reading list.

Contact us

If you have questions about the Supervisory Highlights, the new FDIC's signage, advertisements, and deposit insurance misrepresentations rules, or recent consent orders involving bank-Fintech arrangements, contact Susan Seaman, Shelby Lomax, or your Husch Blackwell attorney.

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