August 2022 FREE COMPLIANCE NEWSLETTER

CFPB ISSUES INTERPRETIVE RULE ON STATES' ABILITY TO IMPLEMENT FAIR CREDIT REPORTING LAWS

The CFPB issued an interpretive rule affirming states' abilities to protect their residents through their own fair credit reporting laws. With limited preemption exceptions, states have the flexibility to preserve fair and competitive credit reporting markets by enacting state-level laws that are stricter than the federal Fair Credit Reporting Act (FCRA).

According to the CFPB, the FCRA does not stop states from enacting laws to tackle credit reporting problems related to medical debt, tenant screening, and other consumer risks. The agency also stated that Congress made clear that the FCRA preempts only narrow categories of state laws. With this, the CFPB's interpretive rule clarifies that:

- **States retain broad authority to protect people from harm due to credit reporting issues.** As an example, a state could prohibit a credit reporting company from including information about a person's medical debt for a certain period of time after the debt was incurred.
- **State laws are not preempted unless they conflict with the FCRA or fall within narrow preemption categories enumerated within the statute.** Nothing in the FCRA generally preempts state laws relating to the content or information contained in credit reports. For example, it does not preempt state laws governing whether eviction information or rental arrears appear in the content of credit reports.

The agency's announcement is part of the CFPB's work to support the role of states to protect consumers and honest businesses. You can read the CFPB's full release here.

FINCEN'S ADVISORY ON UPDATED DEFICIENT COUNTRIES

FinCEN issued a press release to inform U.S. financial institutions that the Financial Action Task Force (FATF), an intergovernmental body that establishes international standards to combat money laundering, counter the financing of terrorism, and combat weapons of mass destruction proliferation financing (AML/CFT/CPF), has issued public statements updating its lists of jurisdictions with strategic AML/CFT/CPF deficiencies following its plenary meeting this month. U.S. financial institutions should consider the FATF's stance toward these jurisdictions when reviewing their obligations and risk-based policies, procedures, and practices.

Remaining on the list are Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, United Arab Emirates, and Yemen. Malta was removed from the list while Gibraltar was added to the list. Iran and Democratic People's Republic of Korea remain as High-Risk Jurisdictions.

You can read FinCEN's release here.

JOINT AGENCIES STATEMENT ON THE RISK-BASED APPROACH TO CUSTOMER RELATIONSHIPS AND CONDUCTING CUSTOMER DUE DILIGENCE (CDD)

The FDIC, the Federal Reserve Board, FinCEN, the NCUA, and the OCC issued a joint statement to remind banks of the risk-based approach to assessing customer relationships and conducting CDD. The agencies clarify that the statement does not alter existing BSA/AML legal or regulatory requirements, nor does it establish new supervisory expectations.

Through the joint statement, the agencies aim to:

- Reinforce a longstanding position that no customer type presents a single level of uniform risk or a particular risk profile related to money laundering, terrorist financing, or other illicit financial activity.
- Remind banks that they must apply a risk-based approach to CDD when developing the risk profiles of their customers.
- Remind banks that they are neither prohibited nor discouraged from providing banking services to customers of any specific class or type.
- Encourage banks to manage customer relationships and mitigate risks based on customer relationships, rather than decline to provide banking services to entire categories of customers.

The FDIC's press release can be found here. The join statement can be found here.

AGENCIES ISSUE LIST OF 2022 DISTRESSED OR UNDERSERVED NON-METRO MIDDLE-INCOME GEOGRAPHIES

The Federal Agencies have released the 2022 list of distressed or underserved nonmetropolitan middle-income geographies. These are geographic areas where revitalization or stabilization activities are eligible to receive Community Reinvestment Act (CRA) consideration under the community development definition.

You can find the FFIEC press release here.

CFPB ISSUES ADVISORY TO PROTECT PRIVACY WHEN COMPANIES COMPILE PERSONAL DATA

The Bureau issued an Advisory Opinion to highlight the Fair Credit Reporting Act's permissible purpose requirements.

This Advisory Opinion explains that the FCRA's permissible purpose requirements are consumer specific. It highlights that, under certain permissible purpose provisions, a consumer reporting agency may not provide a consumer report to a user unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. It also discusses certain industry practices, such as poor matching procedures and disclaimers, as they relate to these FCRA requirements.

For users of consumer reports, the Advisory Opinion also explains that the FCRA strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose. You can read the opinion here.

THE FDIC ISSUES UPDATES ON BROKERED DEPOSITS

The FDIC issued a statement, adding a new Question and Answer (Q&A), and updating public information on the Banker Resource Center Brokered Deposits Page, to remind FDIC-insured depository institutions (IDIs) that deposits swept from broker dealers with a primary purpose exception to unaffiliated IDIs must be reported as brokered if there are any additional third parties involved that qualify as a deposit broker.

You can find the FDIC's press release here.

CFPB, DOJ ORDER TRIDENT MORTGAGE COMPANY TO PAY MORE THAN $22 MILLION FOR DELIBERATE DISCRIMINATION AGAINST MINORITY FAMILIES

For the first time, a non-bank mortgage lender was hit with redlining penalties, and they are quite severe. The CFPB and DOJ allege Trident redlined majority-minority neighborhoods through its marketing, sales, and hiring actions. Specifically, Trident's actions discouraged prospective applicants from applying for mortgage and refinance loans in the greater Philadelphia area's majority-minority neighborhoods. If entered by the court, the settlement, among other things, would require Trident to pay a $4 million civil penalty to the CFPB to use for the CFPB's victims' relief fund.

The complaint itself is quite disturbing to read and discusses a culture of racist e-mails, messages about certain neighborhoods, and internal discussions by the company's employees. You can see find the official complaint here and the press release here.

CFPB RELEASES DEBT COLLECTION RULE FAQS

While the Fair Debt Collection Practices Act only applies when you collect debt on the behalf of others, recent changes to the Act and UDAAP interpretations have lead industry compliance experts to caution the industry that while the Act may not apply directly, not complying with the provisions in the Act could lead to UDAAP violations. To us, that means you should be following the basic provisions. Many of the requirements in the Act are common sense, but there are some specifics you should be aware of. You can find the Q&As here. We recommend taking a bit of time to read through them to ensure your institution is in compliance with the spirit of the law.

CFPB FINES U.S. BANK $37.5 MILLION FOR ILLEGALLY EXPLOITING PERSONAL DATA TO OPEN SHAM ACCOUNTS FOR UNSUSPECTING CUSTOMERS

It looks like another major bank in the US has been hit with creating an unattainable sales culture for frontline employees. While the fines were significantly less, the story behind it is very similar to Wells Fargo's troubles just a few short years ago. While this does not seem to be a community banking problem, having an aggressive sales culture can lead to these types of problems. You can read more on this latest case against US Bank here.