

Regulatory Compliance Updates & Hot Topics

September 2024

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Introduction



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Agenda


- ✔ Junk Fees and Mortgage Closing Costs
- ✔ Overdrafts: Opt-In Process
- ✔ Fair Lending and Appraisal Bias
- ✔ BSA/AML/OFAC
- ✔ What We're Seeing



Junk Fees and Mortgage Closing Costs

Junk Fees and Mortgage Closing Costs

- What are “junk fees?” The CFPB defines them as “unavoidable, surprise, excessive, or unnecessary charges imposed for fake or even worthless services. Even when a service is legitimate, junk fees often far exceed the actual cost, because the company figures out how to sidestep meaningful competition.”
 - Fees for Not Having Enough Money
 - Late Fees
 - Fees to Pay Your Bill
 - Prepaid Card Fees
 - Illegally Charged or Obscured Fees
 - *Mortgage Closing Costs?*

An illustration of a smartphone displaying a list of junk fees. The phone screen shows a red notification banner at the top that says "ACCOUNT OVERDRAW" with a white exclamation mark icon. Below the banner is a list of items and their costs: "JUNK FEE.....\$35", "GROCERIES\$78", "JUNK FEE.....\$35", "GAS.....\$78", "JUNK FEE.....\$35", "UTILITY BILL.....\$80", "CABLE.....\$200", "CELL PHONE.....\$55", and "VET BILL.....\$215". To the right of the phone is a pink piggy bank with a sad expression. The background is dark blue with the word "FEE" repeated in large, light blue letters.

ACCOUNT OVERDRAW	
JUNK FEE.....	\$35
GROCERIES	\$78
JUNK FEE.....	\$35
GAS.....	\$78
JUNK FEE.....	\$35
UTILITY BILL.....	\$80
CABLE.....	\$200
CELL PHONE.....	\$55
VET BILL.....	\$215



Overdrafts: Opt-In Process

Regulatory Requirements

Electronic Fund Transfers – Regulation E: 12 CFR 1005.17

- (a) Definition: *a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account*
- **(b) Opt-In Requirement**
- (c) Timing
- **(d) Content and Format**
- (e) Joint Relationships
- **(f) Continuing Right to opt in or to revoke the opt-in**
- **(g) Duration and Revocation of Opt-In**

Truth in Savings Act 12 CFR 707.11

- (a) Disclosure of Total Fees on Periodic Statement
- (b) Advertising Disclosures for Overdraft Services
- (c) Disclosure of Account Balances

Section 5 of the Federal Trade Commission Act (FTC Act)

- Prohibits unfair or deceptive acts or practices.
- Applies to all persons engaging in commerce.

Opt-In Requirements under Reg E - Summary

Regulation E: 12 CFR 1005.17

• (b) Opt-In Requirement

- A financial institution (FI) shall not assess a fee for paying an ATM or one-time debit card transaction unless the FI:
 - Provides the consumer with a notice in writing describing the institution's overdraft service
 - Provides the consumer a reasonable opportunity to opt-in
 - Obtains the consumer's opt-in
 - Provides the consumer with a written confirmation of opt-in including statement of right to revoke opt-in

• (d) Content and Format

- The notice describing the institution's overdraft service must be substantially similar to the A-9 Form:
 - Overdraft service
 - Fees imposed
 - Limits on fees charged
 - Disclosure of opt-in right
 - Alternative plans for covering overdrafts
 - Permitted modifications and additional content

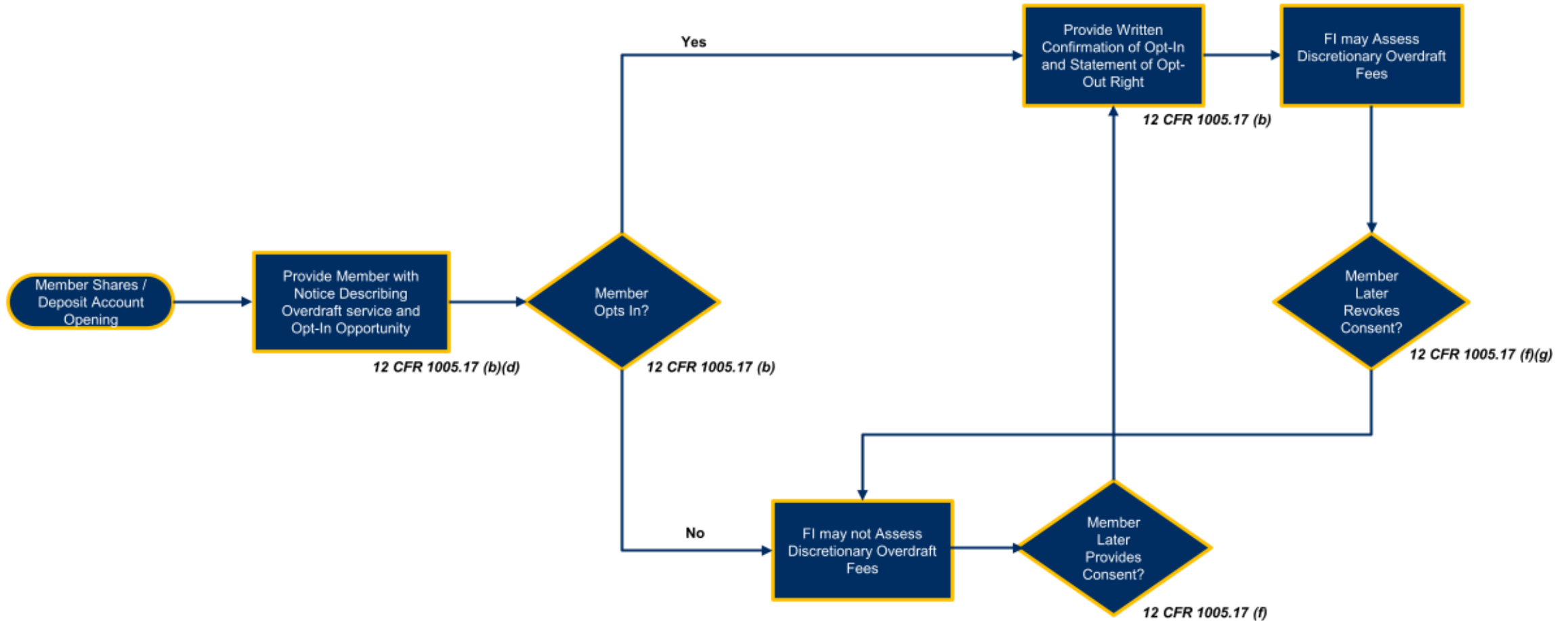
• (f) Continuing Right to opt in or to revoke the opt-in

- A consumer may opt-in or opt-out at any time in the manner made available to the consumer for providing consent.
- An FI must implement a consumer's opt-out as soon as reasonably practicable.

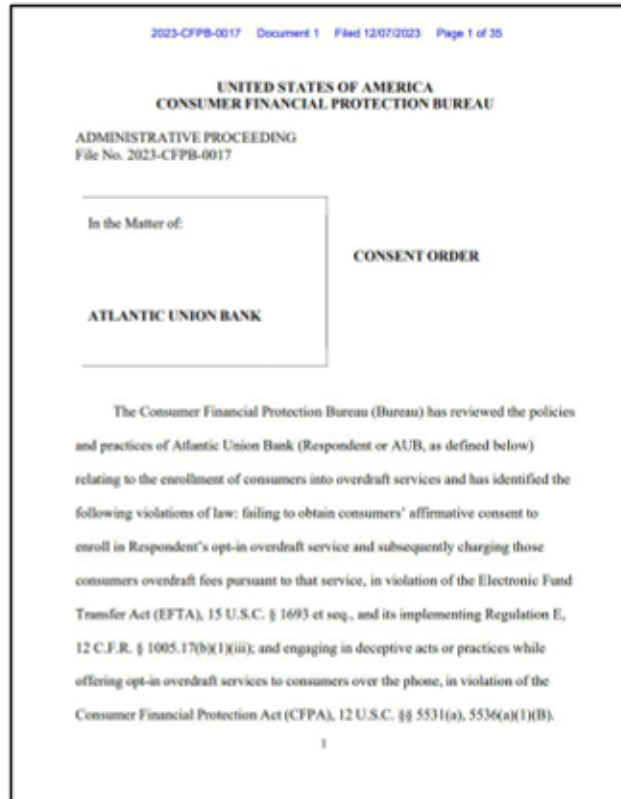
• (g) Duration and Revocation of Opt-In

- A consumer's opt-in is effective until revoked by the consumer, or unless the FI terminates the service.

Opt-In Requirements under Reg E – Example Process Flow



Recent Enforcement Actions – CFPB Bank Consent Order (2023)



The Consumer Financial Protection Bureau has reviewed the policies and practices of Atlantic Union Bank relating to the enrollment of consumers into overdraft services and has identified the following violations of law:

failing to obtain consumers' affirmative consent to enroll in Respondent's opt-in overdraft service and subsequently charging those consumers overdraft fees pursuant to that service; and

engaging in deceptive acts or practices while offering opt-in overdraft services to consumers over the phone

Recent Enforcement Actions – CFPB Bank Consent Order (2023)

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UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2023-CFPB-0017

In the Matter of:

ATLANTIC UNION BANK

CONSENT ORDER

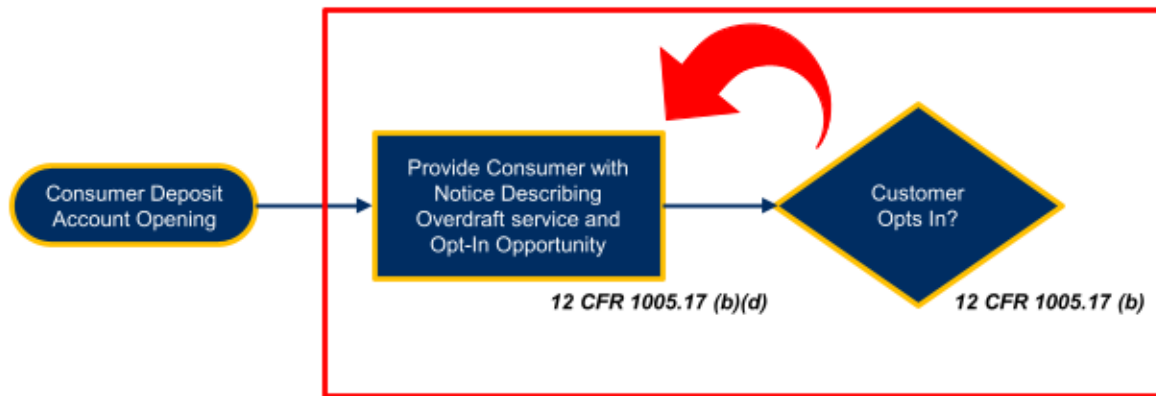
The Consumer Financial Protection Bureau (Bureau) has reviewed the policies and practices of Atlantic Union Bank (Respondent or AUB, as defined below) relating to the enrollment of consumers into overdraft services and has identified the following violations of law: failing to obtain consumers' affirmative consent to enroll in Respondent's opt-in overdraft service and subsequently charging those consumers overdraft fees pursuant to that service, in violation of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693 et seq., and its implementing Regulation E, 12 C.F.R. § 1005.17(b)(1)(iii); and engaging in deceptive acts or practices while offering opt-in overdraft services to consumers over the phone, in violation of the Consumer Financial Protection Act (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

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failing to obtain consumers' affirmative consent to enroll in Respondent's opt-in overdraft service and subsequently charging those consumers overdraft fees pursuant to that service

- Oral presentation of opt-in ODP options to new deposit customers and request for customers to orally indicate whether they want to opt-in / enroll
- Documentation of customer's opt-in response in the account opening system
- Presentation of the A-9 form containing "What You Need to Know about Overdrafts" and checked box reflecting customer's oral enrollment preference

CFPB Bank Consent Order Opt-In Process – In Branch



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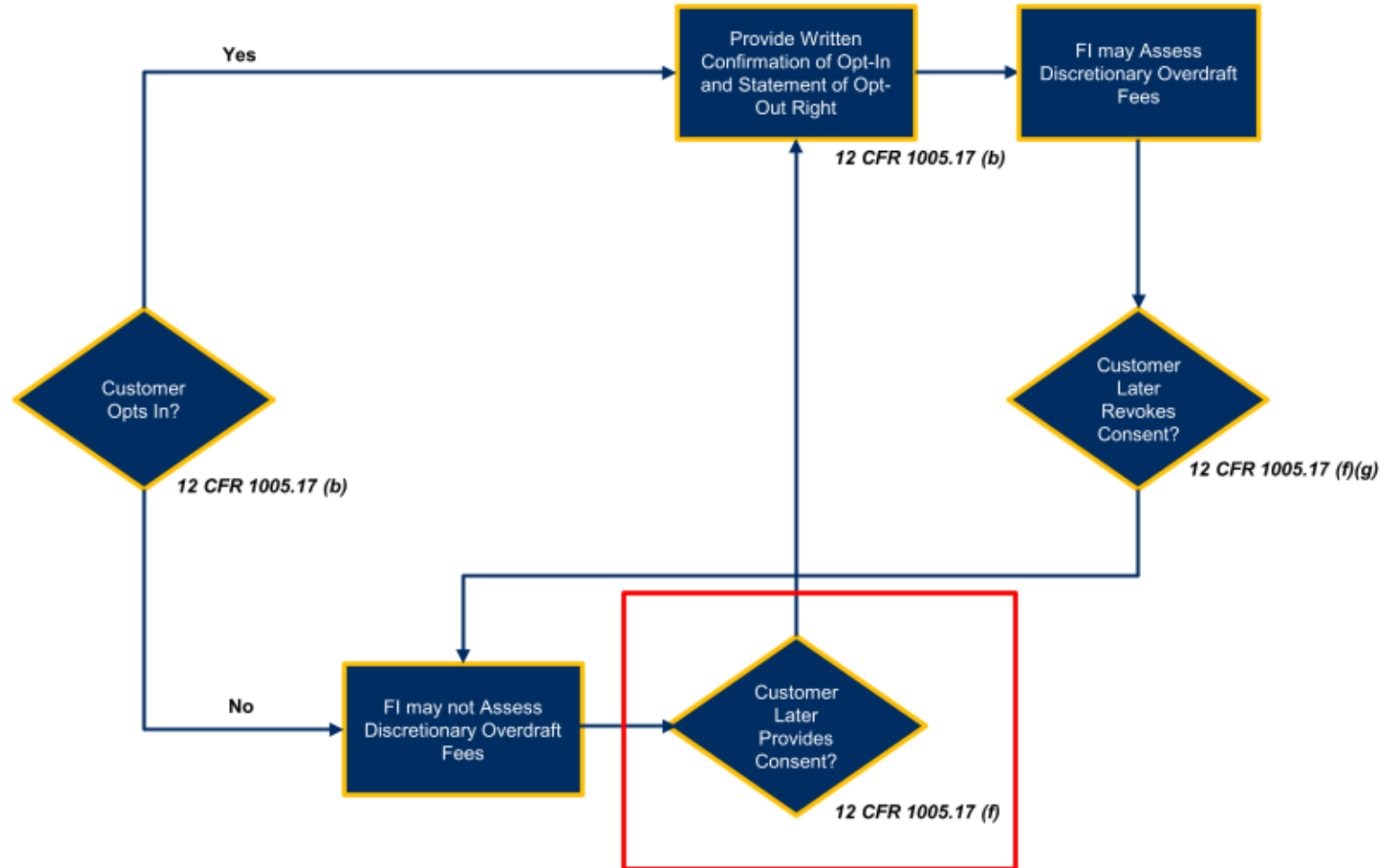
engaging in deceptive acts or practices while offering opt-in overdraft services to consumers over the phone

- Lack of defined scripts to read to customers about fees and features of ODP before opt-in
- No communication of distinction between standard ODP (non-Reg E) and opt-in ODD:
 - Opt-in would provide emergency funds when needed
 - Opt-In would prevent returned item fees
 - Opt-in would cover debit transactions and checks
- Omission of key information such as fees

CFPB Bank Consent Order Opt-In Process – Phone

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Atlantic Union Bank – Financial Impact

\$5,000,000 Redress to Affected Consumers

\$1,200,000 Civil Money Penalty



\$6,200,000 **Total Financial Impact**



Fair Lending and Appraisal Bias



Equal Credit Opportunity Act

- Prohibits discrimination within the credit transaction. This includes marketing, application intake, underwriting, decisioning, servicing, and loss mitigation.
- Lenders cannot discriminate based on: race/ color, religion, national origin, sex, marital status, age, receipt of income derived from public assistance program(s), or exercising rights under Consumer Credit Protection Act.

- Fair Housing Act

- Prohibits discrimination within real-estate related transactions.
- Individuals cannot be discriminated against based on race, color, national origin, religion, sex, familial status, and disability during activity related to access to, rental of, or purchase of housing.
- 42 U.S. Code Section 3605 includes an appraisal exemption that has been clarified by the Department of Justice. Specifically that lenders and appraisers may be held liable for discrimination occurring within the appraisal process.

Recent Developments

- Statement of interest filed by Department of Justice in 2022, and CFPB in 2023 related to a lawsuit filed by a couple residing in Baltimore, MD. As the couple was seeking a refinance, they received an appraisal for \$995,000. A second appraisal then valued the home at \$1,482,500.
- Defendants argued that Fair Housing Act does not apply to residential appraisers, and plaintiffs failed to allege facts indicating that bias occurred. This is only one of many lawsuits alleging discrimination by appraiser or lender.
- In June 2021, the Property Appraisal and Valuation Equity (PAVE) interagency task force was established to address racial bias within real estate and appraisal valuations.
- PAVE intends to establish methods in which useful data (HMDA, complaints, etc.) can be shared across different organizations. The intent would be to potentially identify or analyze appraisal bias with this data.



Industry Actions

- Limited guidance is available outside of ECOA and Fair Housing Act rules and regulations.
- HUD suggested best practices for financial institutions during the 2022 Fair Lending Interagency Webinar. These best practices included updating of Fair Lending Policies and Procedures, Training for Personnel, and Monitoring of Appraisal Activities.
- Transparency to Consumers is necessary so the applicant may understand how an appraisal may be contested. This may include disclosing the lender policies and procedures for contesting an appraisal, and the steps the consumer should take to challenge the valuation.
- Financial institution policies and procedures should address how Reconsideration of Value (ROV) requests are to be received and processed.
- Enhance Complaint Policy to include appraisal bias related complaints.





Data Challenges

- Financial institutions are expected to maintain oversight and evaluate their third-party service providers regarding Appraisal Bias concerns.
- Data may be limited for the financial institution to understand if there is potential for bias.
- Federal Housing Finance Agency has established a State and County dashboard with appraisal statistics that can be utilized to evaluate valuations provided by a third-party.

What's Next?



BSA/AML/OFAC

Fintech Partnerships

- Fintech, short for financial technology, refers to companies that leverage technology to provide innovative financial products and services.
- Fintech companies often operate in areas such as digital payments, online lending, robo-advisory services, blockchain technology, and mobile banking.
- Fintechs aims to enhance efficiency, accessibility, and convenience in the financial industry by leveraging technology to disrupt traditional financial processes and deliver new solutions to consumers and businesses.
- Fintechs can partner with financial institutions via digital transformation, product innovation and other areas.



The financial crime risks of a Fintech partnership

<p>Employees do not understand operations and red flags associated with fintech user's activities</p>	<p>Existing transaction monitoring system cannot effectively monitor the fintech user's activities</p>	<p>Contract does not adequately outline the <i>Bank Secrecy Act</i> (BSA)/AML/Office of Foreign Assets Control (OFAC) responsibilities of each party</p>	<p>Insufficient monitoring of BSA/AML/OFAC controls of the fintech partner</p>
<p>Activity reporting processes between the financial institution and fintech are unclear</p>	<p>Processes not established for screening fintech user base against sanctions lists and 314(a) lists</p>	<p>Fintech partner does not have an established BSA/AML/OFAC program</p>	<p>BSA team is not consulted or involved in the third-party risk management evaluation of the fintech partner</p>

BSA/AML/OFAC program considerations

Customer identification program (CIP)

- Establishing responsibilities of fintech vs. financial institution
- Implementing QC and oversight processes

Customer due diligence

- Onboarding and acceptance
- Fintech AML requirements
- Contractual obligations

Customer risk rating (CRR)

- Fintech and end users
- Assessing how end users can be incorporated into automated CRR model

Enhanced due diligence

- Periodically evaluating fintech's BSA/AML/OFAC compliance
- Understanding higher-risk end users

OFAC, special measures, and 314(a) list screening

- Establishing responsibilities for screening and clearing potential matches
- Implementing QC and oversight processes

Suspicious activity identification, monitoring, investigation, and reporting

- Incorporating end users into automated monitoring system
- Establishing method for referral from fintech to bank

Training

- Fintech business operations
- Red flags specific to the fintech

Elder Abuse Scams

FinCEN recently issued an analysis on Elder Financial Exploitation

Points of Focus

- Elder Financial Exploitation (EFE) is the illegal or improper use of an older adult's funds, property or assets.
- During the period of June 15, 2022, and June 15, 2023, FinCEN received 155,415 filings reporting more than \$27 billion in Elder Financial Exploitation (EFE) related suspicious activity.
- EFE consists of two categories: elder scams and elder theft
 - Elder scams involve the transfer of money to the preparator with the promises of goods, services or financial benefits that do not exist.
 - Elder theft involves the wrongful taking, appropriation, obtaining, retention or use of money or other property by any means (e.g. coercion, isolation, manipulation).

FinCEN Key Findings

- **Financial Institutions filed more elder scam-related BSA filings than elder theft-related BSA filings.**
- **Most elder scams referenced Account Takeover (ATO).**
- **Perpetrators mostly rely on unsophisticated means that minimize direct contact with FIs to steal funds.**
- **Adult children were the most frequent perpetrators of elder theft.**



What We're Seeing



Top Findings – What are We Seeing?

- **Regulation E – Dispute Handling**
 - Consumer Liability – Disclosure language
 - Use of third parties in the investigation process
 - NACHA vs. Reg E Rules
 - Investigation Support – Documentation Retention
- **Compliance Management System (CMS)**
 - Complaint Handling
 - Department Structure (1st and 2nd line overlap)
- **Regulation B – Equal Credit Opportunity Act**
 - Definition of a completed application – Commercial Lending
 - Regulatory timelines
- **Overdrafts**
 - Discretionary Waiver Decisioning
 - Lookback for prior consumer harm
- **Fair Credit Reporting Act**
 - Credit Dispute Handling and Bureau reporting– coding and timing
- **Fair Lending**
 - Lack of or Insufficient Analysis



Questions





**LEARN
MORE**

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