



# **Compliance Update**

---

June 29, 2022

Jay Spruill, III

Woods Rogers PLC

# Compliance Update

## Financial Exploitation of the Elderly

- Growing Problem
- 2022 Virginia General Assembly
  - H.B. 95, H.B. 496/S.B. 687, and H.B. 497/S.B. 124
- Existing Law – Va. Code §63.1-1606.L

# Compliance Update

## Equal Credit Opportunity – Regulation B – CFBP Advisory Opinion 5/9/22

- A. Application of ECOA and Regulation B to Existing Credit Customers
- B. Compliance Risk
- C. Definitions
  1. “Applicant” includes “any person who requests or who has received an extension of credit from the creditor.
  2. “Existing account holder” refers to an applicant who has applied for and received an extension of credit. “Existing account” or “existing credit arrangement” refers to an extension of credit previously made by a creditor other than an extension of credit that is closed or inactive.
  3. “Adverse action” includes “[a] termination of an account or an unfavorable change in an account that does not affect all or substantially of a class of the creditor’s accounts.

# Compliance Update

---

Equal Credit Opportunity – Regulation B – CFBP Advisory Opinion 5/9/22

- Adverse Action Notice
- Private Right of Action

# Compliance Update

---

## Bank of America's Garnishment Practices – CFPB Consent Order \$10 million penalty

### Background

- The bank's practice was to process a garnishment order under the laws of the state where the garnishment was issued rather than the state where the depositor resided. As a result, depositors were not afforded exemptions and other creditor protections under the appropriate state law (i.e., the state of a depositor's residence). In addition, the bank required depositors to waive the bank's liability for any garnishment-related protections in its deposit agreement and misrepresented to depositors that they could not go to court to prevent wrongful garnishments. The CFPB found that the bank had engaged in unfair and deceptive acts and practices.

# Compliance Update

---

## Bank of America's Garnishment Practices – CFPB Consent Order \$10 million penalty

### Lessons

- Ensure that a court has jurisdiction before recognizing a garnishment or other creditor process.
- Assuming the court has jurisdiction, ensure that the proper state law is applied.
- Avoid waivers and other provisions in account agreements that are not permitted under the law.
- Avoid misrepresentations as to the rights of customers and/or the credit union.

# Compliance Update

---

## Recent Supreme Court Decision – Check Collection & POD Payee

### Background

An elderly aunt lived with her niece and received hospice care while she lived there. The aunt had an account at BB&T and MCNB. With the niece's assistance, the aunt initiated an electronic request for a check to transfer \$245,271 from the aunt's MCNB account to her BB&T account. A check made payable to BB&T was created and presented to MCNB. The niece was a POD payee on the BB&T account. MCNB determined not to honor the check but failed to return the check by its midnight deadline. The aunt died shortly thereafter. The niece, as the POD payee who became the owner of the BB&T account upon the aunt's death, filed suit against MCNB for retaining the check beyond the midnight deadline. The Virginia Supreme Court ruled the niece lacked standing to bring the suit since she had no interest in the BB&T account when the check was presented.

# Compliance Update

---

## Recent Supreme Court Decision – Check Collection & POD Payee

### Lessons

- POD payees have no rights before the account owner's death
- Do not honor POD payee instructions before the account owner's death.
- Understand the potential liability in handling POD accounts and joint accounts with survivorship and take appropriate care in handling signature card beneficiary and survivorship designations.



# Compliance Update

---

## 2022 Virginia General Assembly Session – Other Legislation of Interest

- A. HB 209 and SB 329 – Activity Authorized for State Chartered Credit Unions  
Based on Federal Authority
- B. HB 268 / SB 326 – Priority of Shares
- C. HB 263 – Banks; Virtual Currency Custody Servicers
- D. HB 1153 / SB 303 – Mortgage Brokers; Dual Compensation

# League Compliance Hotline

## 800.552.4529

---

Jay Spruill  
Banking and Financial Services  
Business and Corporate Attorney  
[jspruill@woodsrogers.com](mailto:jspruill@woodsrogers.com)  
804.343.5031

