DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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NATIONAL CREDIT CARD PROGRAM ENTERS INTO CONSENT ORDER WITH CFPB FOR ALLEGED DISCRIMINATORY PRACTICES IN U.S. TERRITORIES

The Consumer Financial Protection Bureau (CFPB) entered into a consent order with a national credit card bank for alleged discriminatory policies and practices affecting residents of Puerto Rico, U.S. Virgin Islands, Guam and the Northern Mariana Islands and American Samoa (U.S. Territories).

As compared to the credit card products available and practices used in the U.S. states, the CFPB alleged that with respect to residents of the U.S. Territories the bank (i) offered limited products with less favorable terms (*e.g.*, annual fees, higher APRs), (ii) imposed more stringent underwriting criteria and servicing standards for account benefits, such as approving purchase transactions over a pre-set limit and (iii) engaged in unfavorable collection practices, including limiting the availability of hardship programs and settlement offers. The consent order also alleged that the bank excluded residents of certain U.S. Territories that expressed a Spanish language preference from certain favorable debt collection offers. Since the U.S. Territories have higher concentrations of (i) individuals of Hispanic, Latino or Asian Pacific Islanders origin and (ii) African Americans, as compared to the same ethnic and racial minorities in the U.S. states, the CFPB alleged that the bank discriminated on a prohibited basis in violation of the Equal Credit Opportunity Act (ECOA).

According to the consent order, the bank self-reported its policies and practices to the CFPB, discontinued such practices, and proactively worked with the CFPB to remediate the effect of its practices. The CFPB did not assess a civil money penalty against the bank in connection with the consent order.

This is not the first time a financial institution has faced scrutiny from limiting the availability of its products or services to protected groups. In the early 1990s, the Chevy Chase Federal Saving Bank entered into a settlement with the Department of Justice (DOJ) for allegedly violating the ECOA and the Fair Housing Act by not marketing its mortgage lending business in certain African Americans neighborhoods. The DOJ's complaint alleged that Chevy Chase underwrote approximately 97% of its mortgage loans during a 16-year period in predominantly white areas.

The consent order described Puerto Rico and the U.S. Virgin Islands as "historically underserved credit markets." As financial institutions look for avenues to serve historically underserved or underbanked communities, including through partnerships with fintechs, they should be sensitive to the fair lending implications of providing different products or account benefits to different populations, including non-English speaking consumers. Difficulties with getting special materials to market should not impede making offers generally available and cross-organization conformity should be ensured. We can assist in assessing the potential legal effects of marketing plans. ❑

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