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Interagency Guidance on Lending to Unauthorized Workers Raises New Fair Lending Compliance Concerns

Key Takeaways

- New OCC, FDIC and NCUA guidance states that lending to individuals not authorized to work in the United States may present elevated credit risk and should be addressed through prudent underwriting.
- The guidance follows recent Trump administration actions that signal a changed federal approach to evaluating credit applications from unauthorized workers.
- Financial institutions should review underwriting practices, compliance protocols and customer-facing forms to address the new guidance while managing fair lending risk.

On July 13, the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA) and the Federal Deposit Insurance Corporation (FDIC) issued interagency guidance on lending to individuals who are not legally authorized to work in the United States. The new guidance advises that "lending to individuals who are not legally authorized to work in the United States may present elevated credit risk because a borrower's ability to generate income, maintain employment and remain financially stable may be subject to greater uncertainty. As with all lending activities, financial institutions should identify, measure, monitor and control these risks through safe and sound underwriting practices that assess a borrower's willingness and capacity to repay according to the terms of the credit obligation."

The guidance suggests that lenders should take into account source of repayment, collateral considerations, documentation and verification of such documentation, portfolio and concentration considerations and consumer compliance risk when extending credit to unauthorized workers.

Interagency Guidance Aligns With Recent Federal Actions

The interagency guidance is consistent with prior Trump administration moves this year affecting unauthorized workers' access to credit. In January 2026, the Justice Department and Consumer Financial Protection Bureau (CFPB) withdrew the Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers. This action withdrew a 2023 Biden-era advisory cautioning that creditor policies related to an applicant's immigration or

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citizenship status could, in certain circumstances, run afoul of ECOA's and Regulation B's prohibition against discrimination on the basis of protected classes, including race and national origin.

Similarly, in June 2026, the CFPB issued a statement advising that when considering an applicant's ability to repay, repayment is contingent upon employment in the United States, and if the application file contains information indicating that the consumer may not be lawfully present in the United States, may lack work authorization or may otherwise be at risk of removal, prudent underwriting practices may dictate that the creditor consider those indications as part of its ability-to-repay analysis.

Fair Lending and Compliance Considerations

While the above factors would be applied to any applicant regardless of citizenship status, the interagency guidance suggests that applicants who are not authorized to work in the U.S. may raise special, even heightened, credit risk concerns. The challenge for institutions is how they address that heightened risk, and whether and how they go about requesting additional documentation from the applicant to satisfy their underwriting review.

These and other questions raised by the administration's changes in how credit is extended to undocumented workers in the United States will cause U.S. banks to review and reevaluate their credit policies, compliance protocols and customer-facing forms. While the administration's pronouncements may reflect bona fide supervisory concerns, they should be implemented in a manner that does not unnecessarily raise compliance risk.

For more information, contact Travis Nelson or your preferred Polsinelli attorney.