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webinar to begin shortly

Fair Lending Compliance

Navigating Pitfalls, Understanding Regulatory Findings, and Best Practices for Ongoing Monitoring

March 6, 2025   12:00 – 1:00 PM EST
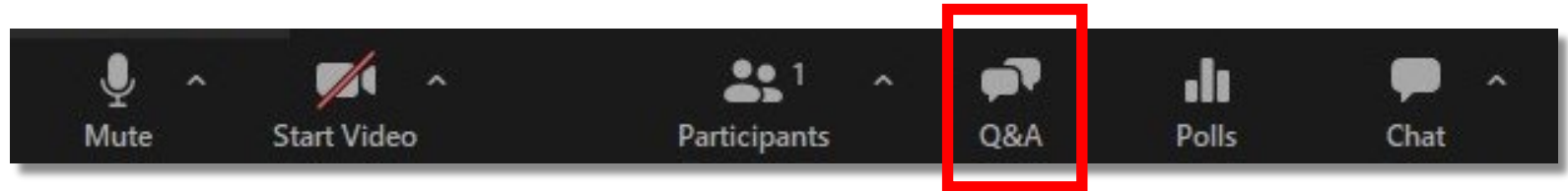
fair lending compliance

navigating pitfalls, understanding regulatory findings, and best practices for ongoing monitoring

before we begin

questions:

Submit questions via the Q&A box
Questions will be addressed at the end, or via email

cpe requirements:

Stay on for the duration of the webinar

Respond to all 4 polling questions
For technical difficulties with polling, please notify us via the Q&A box in Zoom

Complete and submit the survey following the webinar

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today's speakers

Drew Young, CRCM CBAP

Managing Director
Financial Services Group
Elliott Davis

drew.young@elliottdavis.com

As the BSA and regulatory compliance practice leader, Drew works exclusively with financial institutions to provide regulatory compliance services, including risk-based regulatory compliance review, Bank Secrecy Act review, fair lending analysis, consultation, audit and training. He has over fifteen years of experience and has worked with institutions across the United States ranging in asset size from $40 million to over $60 billion.

He also has extensive experience providing regulatory compliance and BSA/AML training via speaking engagements with the Virginia Association of Community Banks, Tennessee Bankers Association, Community Bankers Association of Georgia, North Carolina Bankers Association, Kentucky Bankers Association, and the Association of Credit Union Audit and Risk Professionals (ACUARP).

Dowse ("Brad") Rustin, CAMS CRCM

Chair
Financial Services Regulatory Practice
Nelson Mullins Riley & Scarborough

brad.rustin@nelsonmullins.com

Brad Rustin chairs the Nelson Mullin's Financial Services Regulatory Practice. He began his career as a litigator focusing on consumer financial services litigation and defense of regulatory claims against chartered and non-chartered financial institutions, finance entities, and money services business. Following in the wake of the fiscal crisis, he began working with financial institutions, state-licensed lenders, money transmitters, non-traditional lenders, check cashers, and mortgage brokers on issues of regulatory compliance.

Brad is a Certified Anti-Money Laundering Specialist (CAMS) by ACAMS and a Certified Regulatory Compliance Manager (CRCM) by the American Bankers Association. He also serves as an expert witness of matters relating to financial regulations and compliance.

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agenda:

1   **Key Regulatory Findings**

2   **Common Pitfalls**

3   **Strategies for Monitoring**

4   **Q&A**

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polling question #1

key regulatory findings

DOJ Referrals by Year (all)

25, 18, 17, 22, 12, 4, 9, 13, 7, 24, 37

2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
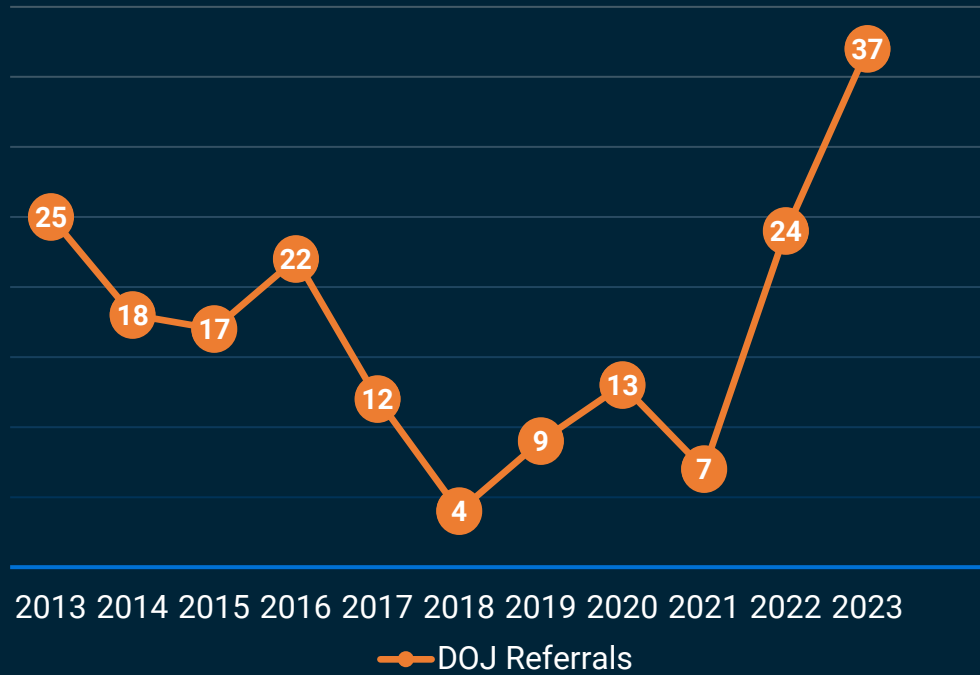
—●— DOJ Referrals

DOJ Referrals By Year (Race/National Origin)

10, 12, 13, 14, 3, 3, 5, 5, 5, 9, 25

2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023

—●— DOJ Referrals

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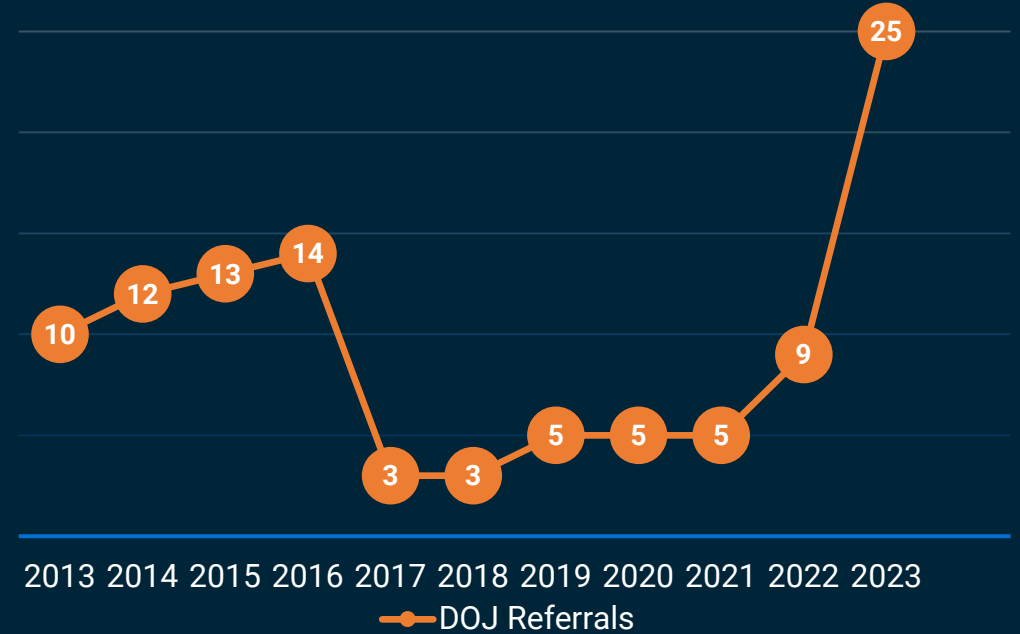
background: department of justice enforcement actions

- Recently the Department of Justice ("**DOJ**") opened a number of cases against banks related to discrimination against individuals on the basis of race or ethnicity.

- These cases are largely based on claims of "*redlining*" – a form of discrimination in which banks avoiding providing services to residents of certain areas based on race or ethnicity.

- Unlike Community Reinvestment Act ("**CRA**") assessments traditionally completed by the banks' prudential regulators, these new investigations look at protected minority groups – as opposed to lending in low-to-moderate income ("**LMI**") census tracts.

- The DOJ bases these claims under either the Equal Credit Opportunity Act ("**ECOA**") or the Fair Housing Act ("**FHA**").

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new doj data sources

- Starting a number of years ago, the DOJ developed software that automatically reviewed a bank's Home Mortgage Disclosure Act ("**HMDA**") Loan Application Register ("**LAR**").

- The DOJ uses this data, which maps loans to particular census tracts to review a bank's mortgage lending activities in majority minority census tracts.

- The DOJ will also compare this data to other "peer" institutions within the MSA – similar to how regulators conduct CRA assessments.

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trustmark national bank (2021)

- **Allegations:** The DOJ alleged that Trustmark failed to provide equal access to mortgage loans to residents in predominantly Black and Hispanic neighborhoods in Memphis, Tennessee.

  - Only 4 of 25 branches located in majority minority tracts.

  - Most of the bank's mortgage staff were in majority white tracts.

 - The bank did not track mortgage officer marketing and maintained no records to show outreach to minority tracts.

  - All marketing was generic, commercial advertising with none focused on minority communities.

  - The bank did not conduct a comprehensive fair lending assessment until 2018.

  - The bank did not consider race and ethnicity in branching decisions.

  - HMDA LAR data showed few loans to majority minority tracts.

  - Peers generated applications form majority minority census tracts at 3x to 4x that of Trustmark.

- **Outcome:** Trustmark settled for $9 million. The settlement included funds to increase credit access in these communities, establish a loan subsidy fund, and invest in community development.

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union savings bank and guardian savings bank (2021)

- **Allegations:** These Ohio-based banks were accused of avoiding services in majority Black neighborhoods in Cincinnati, Dayton, Columbus, and Indianapolis.

  - Branches were located predominantly in majority white census tracts, but not majority Black census tracts.

  - Mortgage lending in the majority white census tracts significantly exceeded lending in majority minority census tracts.

  - Peer institutions made loans in majority minority census tracts at 3x the rate of Union Savings Bank.

  - Applications to peer institutions from majority minority census tracts were 4x those received by Union Savings Bank.

  - The banks did not target significant marketing to majority Black census tracts and failed to mention or market government-backed mortgage programs.

  - No training included lending in majority minority census tracts and no incentives were given for lending in these areas.

- **Outcome:** The banks settled for $9 million, to be used for mortgage subsidies, advertising, and community outreach. They also committed to opening two branches in majority Black neighborhoods.

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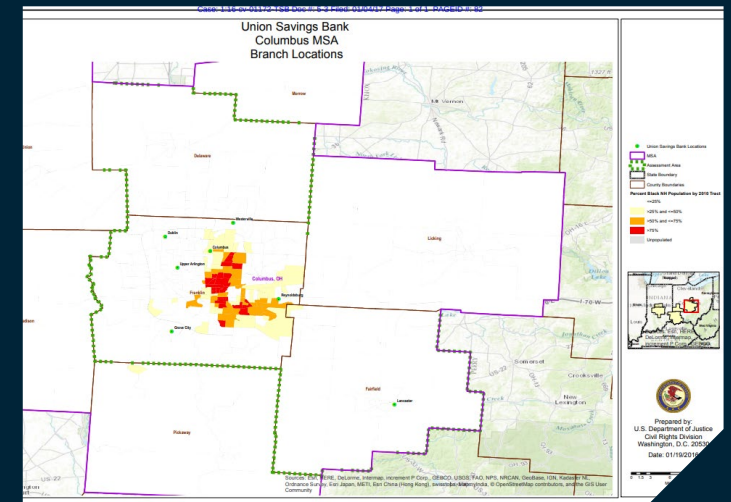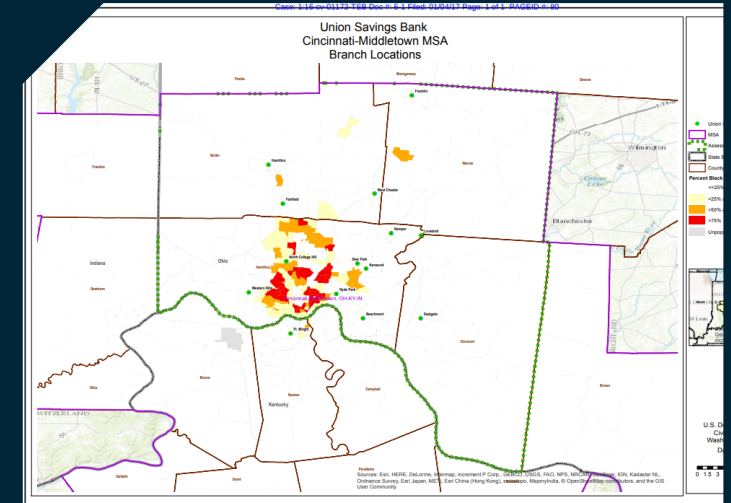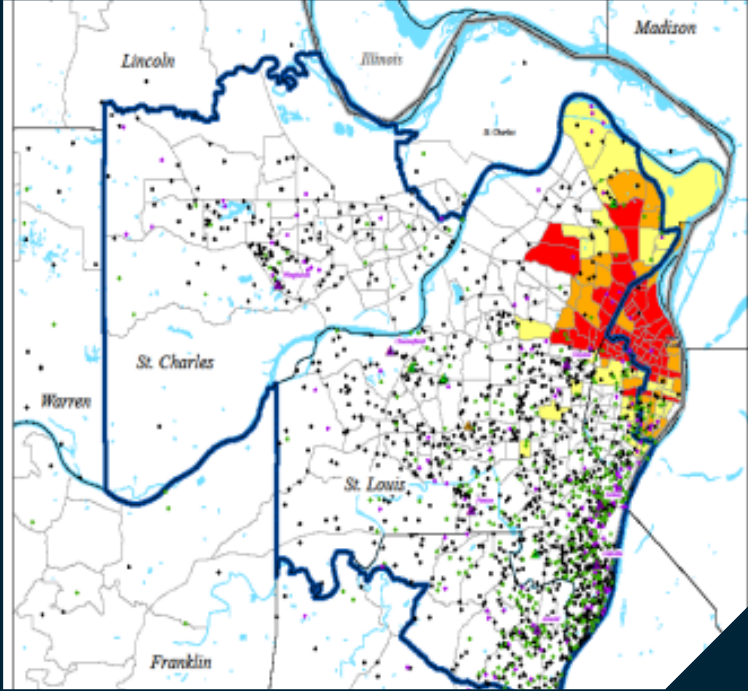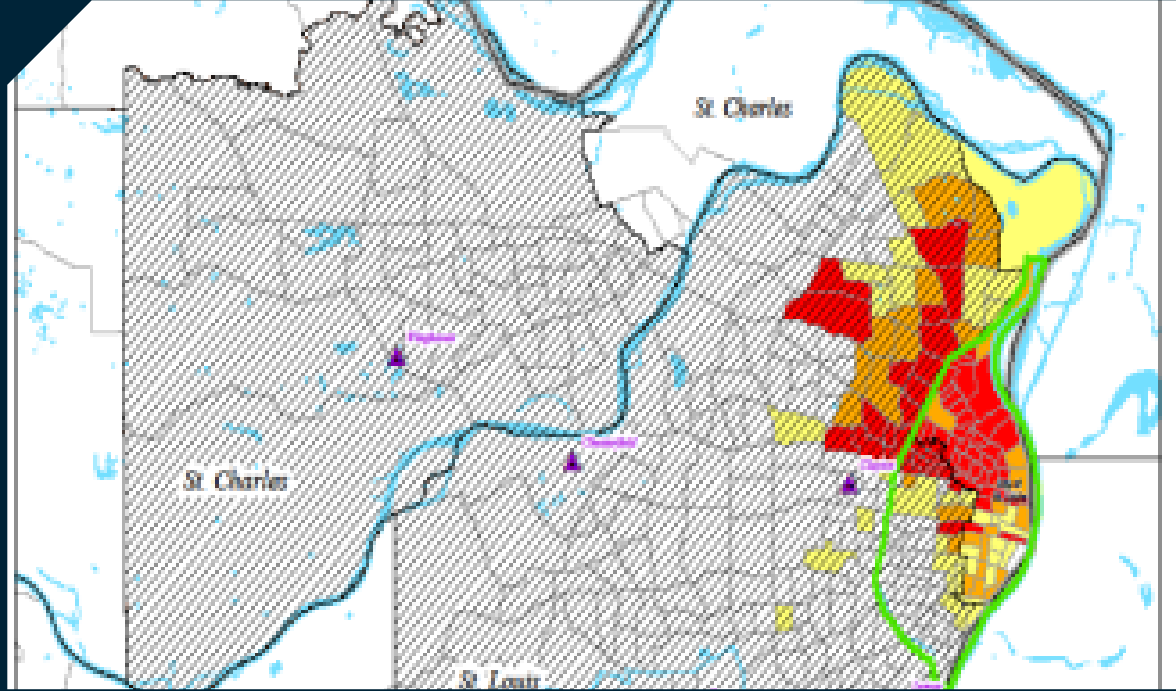
midwest bank centre case

polling question #2

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common pitfalls

fair lending risks of alternative data

Higher Fair Lending Risks →

Non-Traditional Credit
- Payday and title loan payment history
- Consumer installment loans payments history
- Rent-to-own payment history

Credit-Like Information
- Telecommunications payment history
- Utility payment history
- Rent payment history
- Judgments
- Liens
- Bankruptcies

Employment Information
- Regularity of payments
- Time at workplace
- Overall income
- Amount of overtime and bonuses

Financial Transaction History
- Prepaid card usage
- Money transfers and remittances
- Account transactions: debits and credit
- Direct deposit usage
- Bank account opening data

Non-Private Data
- Educational level
- Address and geographical data
- Occupational and employer data
- Assets and real property

Social Media
- Affiliations with existing customers
- Data provided in online profiles
- Information on usage and friend networks

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fair lending today & tomorrow

Interagency Statement on the Use of Alternative Data in Credit Underwriting

- The CFPB granted Upstart Network (who uses alternative data, including applicants' educational and occupational attainment, along with traditional data, and machine learning in credit underwriting and pricing decisions) a NAL in 2017, one of the conditions was that Upstart agreed to test its model against a more traditional model and share the results with the CFPB.

- The CFPB has announced they found an expansion of credit access reflected in the results provided across all tested race, ethnicity, and sex segments resulting in the tested model increasing acceptance rates by 23-29% and decreasing average APRs by 15-17%.

AI & Black Box Underwriting

- OCC Semiannual Risk Perspectives— OCC cautions that certain new technologies, such as AI and machine learning, may add complexity and limit transparency, increasing the potential for compliance risk. Demonstrating adequate review, examination, and investigation of AI-generated decisions and outcomes, especially with regard to fair lending and consumer compliance requirements related to credit decisions.

Focus on Small Business

- CFPB has been attempting to set up a HMDA –style data collection for small business loans for years

- Section 1071 data collection for small business loans (July 18, 2025) (Tier 1 Compliance Date – Institutions making 2,500 plus commercial loans)

- Paycheck Protection Program

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polling question #3

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strategies for monitoring

importance of monitoring for fair lending

- Importance of fair lending practices

- Overview of regulatory framework (FFIEC guidance)

key components to incorporate into your strategy

- Scope and objective

- Documentation and data analysis

- Review of policies and procedures

- Statistical analysis

- Underwriting practices

- Fair lending risk assessment

- Conclusion and recommendations

traditional methods of monitoring

- Pricing disparity and analysis

- HMDA data analysis

- Redlining analysis

- Matched pair testing

monitoring   analysis

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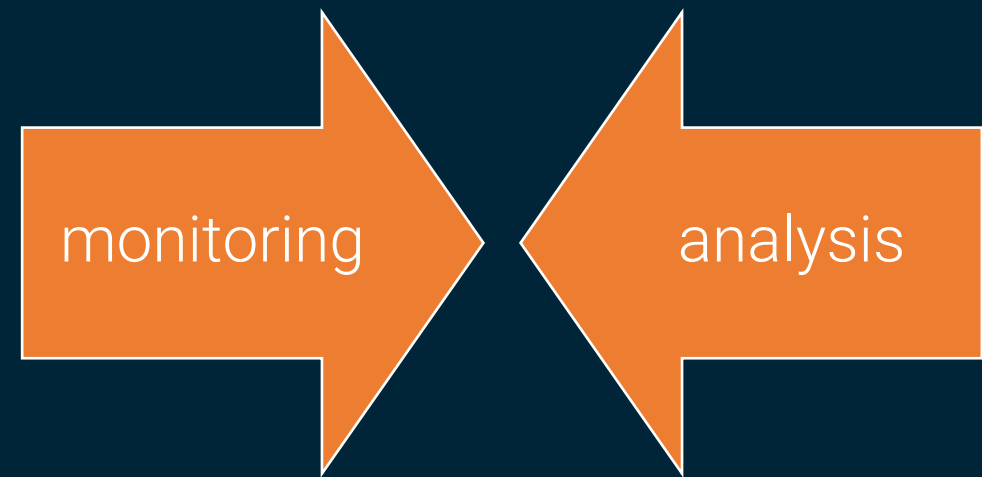
enhanced methods of monitoring

- Regression analysis

- Geographic proxies

- Surname analysis

Regression Analysis

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advantages and challenges of proxy methods

Advantages:

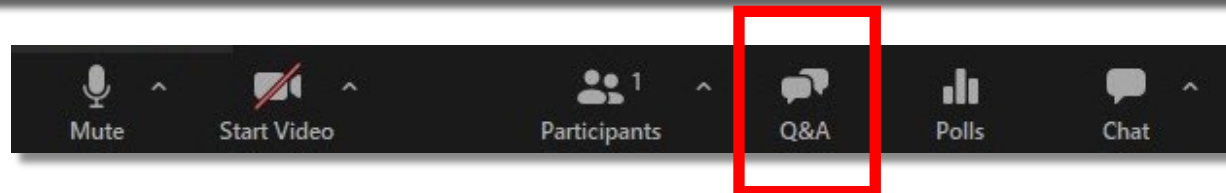- Cost-effectiveness
- Simplicity
- Scalability

Challenges:

- Data-limitations
- Statistical Complexity
- Interpretation of Results

polling question #4

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q&a

Submit questions via the Q&A box

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replay link:

A replay link will be emailed to you in the coming weeks. A copy of the slides presented today will also be made available at that time.

feedback welcomed:

We welcome and appreciate your feedback with the goal of always getting better.

upcoming events & insights:

Please visit elliottdavis.com/insights to view upcoming webinars, events, and additional insights.

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upcoming events

Navigating Credit Risk in Trucking: Opportunities and Challenges in a High-Gear Industry

Thursday | March 27, 2025 | 2:00pm EST

The trucking industry is the backbone of the economy, yet it faces unique financial and operational challenges that impact credit risk and lending decisions. In this joint presentation, led by Jason Price with Elliott Davis and Robby Phillips with TAG Truck Enterprises of Missouri, we'll explore key industry trends, economic pressures, and risk factors that lenders must consider when financing trucking businesses. With insights from an industry expert, we'll discuss strategies for identifying opportunities while mitigating risks in this dynamic sector.

Financial Services Group Quarterly Accounting and Report Update

Thursday | April 3, 2025 | 2:00pm EST

In this quarterly webinar, our Financial Services team will review the latest updates affecting the financial services industry, including those affecting business combinations, capital raising, and accounting for sales of mortgage service rights.

Host: Rob Stevens, Shareholder and Industry Leader, Financial Services
Presenters: Brent Binns, Senior Manager, Financial Services
Marquet Hansen, Senior Manager, Financial Services
Clay Harris, Manager, Financial Services

Register at: https://www.elliottdavis.com/events

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