Community Bankers of Michigan Regulatory Dispatch

February 14, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Federal Bank Regulatory Agencies Seek Comment on Interagency Effort to Reduce Regulatory Burden

The federal bank regulatory agencies today announced their first of a series of requests for comment to reduce regulatory burden. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 requires the Federal Financial Institutions Examination Council and federal bank regulatory agencies to review their regulations every 10 years to identify any outdated or otherwise unnecessary regulatory requirements for their supervised institutions. To facilitate this review, the agencies divided their regulations into 12 categories and are first soliciting comments on their regulations in three categories: Applications and Reporting, Powers and Activities, and International Operations. Comments on the relevant regulations will be accepted for 90 days after publication in the Federal Register.

Over the next two years, the agencies will request comment on the regulations in the remaining categories, asking the public to identify regulations they believe are outdated, unnecessary, or unduly burdensome.

The agencies also plan to hold outreach meetings where interested parties may comment on applicable regulatory requirements directly to the agencies. Information about the outreach meetings will be publicized as details are finalized.

Related Links:

- Federal Register Notice
- Economic Growth and Regulatory Paperwork Reduction Act website

Comment: Interested parties have 90 days from publication in the Federal Register to comment on the relevant regulations.

CBM Insights

Q: What constitutes a renewal, an extension, and a modification?

A: Terminology is often inconsistent in the banking world, and sometimes different terms are applied to the same process.

A ‘renewal’ is typically when a loan is due, and that due date is extended. Meaning a ‘renewal’ and an ‘extension’ are the same thing.

That ‘renewal’ or ‘extension’ can be accomplished via a refinance of the existing note (the existing note is satisfied and replaced) or the modification of the existing note (the existing note is NOT satisfied and replaced.)

A ‘refinance’ is by definition a new note that replaces, satisfies or extinguishes the original loan contract. A ‘refinance’ requires all new disclosures.

A modification is not subject to TRID disclosures unless it becomes a refinance under §1026.20. Disclosure requirements including TILA RESPA Integrated Disclosures are part and parcel of Regulation Z – 12 CFR §1026 – as such modifications are exempt from disclosure requirements under §1026.20 unless they are refinancings. Note that the right of recission could be an issue if additional funds are advanced no matter how that is accomplished.

Below is the Official Staff Commentary from §1026.20(a)(1).

20(a) Refinancings

1. Definition. A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. Exceptions. A transaction is subject to §1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. Variable-rate. i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

iii. If either of the events in paragraph 20(a)-3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under §1026.19(b) also must be given at that time.

Source link.

Items of Interest

Bank Management

CSBS FDIC Should Withdraw Fatally Flawed Corporate Governance Mandates (02/08/2024) – The FDIC's proposed corporate governance guidelines for certain state-chartered banks are so fatally flawed that they should be withdrawn, state financial regulators said in a comment letter filed by the Conference of State Bank Supervisors (CSBS).

"With little justification and no analysis, the FDIC proposal tramples on the historic role of the states in corporate governance," said CSBS President and CEO Brandon Milhorn. "The FDIC guidelines would micromanage how a bank's board functions, imposing a tangle of organizational requirements and procedural checklists."

Approximately 60 of the nation's more than 3,600 state-chartered banks would be explicitly subject to the guidelines, which would apply to FDIC-supervised, state-chartered banks with more than $10 billion in assets. The FDIC, however, could also extend the guidelines to smaller banks if it deems them to be "highly complex or present a heightened risk." For state-chartered banks that are not members of the Federal Reserve System, the FDIC shares supervisory responsibility with state regulators.

The proposed guidelines would conflict with state corporate governance laws, introduce overly complex and unnecessary board independence requirements, and confuse the roles and responsibilities of directors and management. The requirements also would create an unlevel playing field for covered banks, as institutions supervised by the Federal Reserve and Office of the Comptroller of the Currency would not be subject to similarly strict mandates.

Comment: The mandates would significantly alter the role of the board, apply only to state non-member banks, and impose yet another 'cost' to operating the bank.

BSA / AML

FinCEN Proposes Rule to Combat Money Laundering and Promote Transparency in Residential Real Estate (02/07/2024) – The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking to combat and deter money laundering in the U.S. residential real estate sector by increasing transparency. The proposed rule would require certain professionals involved in real estate closings and settlements to report information to FinCEN about non-financed transfers of residential real estate to legal entities or trusts. FinCEN's proposal is tailored to target residential real estate transfers considered to be high-risk for money laundering, while minimizing potential business burden, and it would not require reporting of transfers made to individuals.

Comment: This is not really an issue for community banks. The obligation to file Real Estate Reports would generally apply to settlement agents, title insurance agents, escrow agents, and attorneys.

Deposit / Retail Operations

FTC Think You Know What the Top Scam of 2023 Was? Take a Guess (02/09/2024) – The Data Book tells us that people lost $10 billion to scams in 2023. That's $1 billion more than 2022 and the highest ever in reported losses to the FTC – even though the number of reports (2.6 million) was about the same as last year. One in four people reported losing money to scams, with a median loss of $500 per person. And email was the #1 contact method for scammers this year, especially when scammers pretended to be a business or government agency to steal money.

	Here are other takeaways for 2023: • Imposter scams. Imposter scams remained the top fraud category, with reported losses of $2.7 billion. These scams include people pretending to be your bank's fraud department, the government, a relative in distress, a well-known business, or a technical support expert. • Investment scams. While investment-related scams were the fourth most-reported fraud category, losses in this category grew. People reported median losses of $7.7K – up from $5K in 2022. • Social media scams. Scams starting on social media accounted for the highest total losses at $1.4 billion – an increase of 250 million from 2022. But scams that started by a phone call caused the highest per-person loss ($1,480 average loss). • Payment methods. How did scammers prefer that people pay? With bank transfers and payments, which accounted for the highest losses ($1.86 billion). Cryptocurrency is a close second ($1.41 billion reported in losses). • Losses by age. Of people who reported their age, younger adults (20-29) reported losing money more often than older adults (70+). However, when older adults lost money, they lost the most. ***Comment: It is always interesting to read and try to understand the various fraud topologies. The better-informed banks and accountholders are about potential fraud, the less likely either will become victims. Find ways to share with your accountholders.***
	FTC Consumer News - February 2024 Edition (02/05/2024) – Don't Get Schooled, Get Educated on Student Loans. Do your homework on repayment plans. College and graduate degrees can provide you with career options and even higher income in many cases, but these degrees can be costly. If you need to borrow money for school, carefully research and study your options; keep the loan amount as low as you can; and have a clear repayment plan. Here is some guidance and a few strategies to consider. Read the full article for more information and resources available to you. ***Comment: Find ways to share with your accountholders.***

Human Resources

	No news to report this week.

Lending

	FRB G.19 Consumer Credit (02/07/2024) In 2023, consumer credit increased 2.4 percent, with revolving and nonrevolving credit increasing 8.4 percent and 0.4 percent, respectively. During the fourth quarter, consumer credit increased at a seasonally adjusted annual rate of 2.6 percent, while in December it increased at a seasonally adjusted annual rate of 0.4 percent. ***Comment: "Credit card and auto loan transitions into delinquency are still rising above pre-pandemic levels," said Wilbert van der Klaauw, economic research advisor at the New York Fed. "This signals increased financial stress, especially among younger and lower-income households."***
	FRB Senior Loan Officer Opinion Survey on Bank Lending Practices (02/05/2024) – Survey of up to eighty large domestic banks and twenty-four U.S. branches and agencies of foreign banks. The Federal Reserve generally conducts the survey quarterly, timing it so that results are available for the January/February, April/May, August, and October/November meetings of the Federal Open Market Committee. The Federal

	Reserve occasionally conducts one or two additional surveys during the year. Questions cover changes in the standards and terms of the banks' lending and the state of business and household demand for loans. The survey often includes questions on one or two other topics of current interest. ***Comment: From one analyst – "Historically, the SLOOS has showed a close correlation between senior loan officer's opinions and actual loan growth. With a smaller net percentage of banks tightening standards and a higher share expecting stronger loan demand, loan growth is poised to strengthen in 2024."***

Technology / Security

	No news to report this week.

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED RULES WITH REQUEST FOR PUBLIC COMMENT

01.29.2024 **FinCEN** Comment Request; Beneficial Ownership Information Requests SUMMARY: FinCEN invites all interested parties to comment on the proposed information collection associated with requests made to FinCEN, by certain persons, for beneficial ownership information, consistent with the requirements of the Beneficial Ownership Information Access and Safeguards final rule. The details included in the information collection are listed below. This request for comment is made pursuant to the Paperwork Reduction Act of 1995. **DATES: Written comments must be received on or before April 1, 2024.**

01.24.2024 **CFPB** Fees for Instantaneously Declined Transactions SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to prohibit covered financial institutions from charging fees, such as nonsufficient funds fees, when consumers initiate payment transactions that are instantaneously declined. Charging such fees would constitute an abusive practice under the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices. **DATES: Comments must be received on or before March 25, 2024.**

01.17.2024 **CFPB** Overdraft Lending: Very Large Financial Institutions SUMMARY: The Consumer Financial Protection Bureau (CFPB) proposes to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions, thereby ensuring that extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers applicable costs and losses. The proposal would allow consumers to better comparison shop across credit products and provide substantive protections that apply to other consumer credit. **DATES: Comments must be received on or before April 1, 2024.**

10.25.2023 **FRB** Requests Comment on a Proposal to Lower the Maximum Interchange Fee That a Large Debit Card Issuer Can Receive For a Debit Card Transaction SUMMARY: Regulation II implements a provision of the Dodd-Frank Act that requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Under the current rule, for a debit card transaction that does not qualify for a statutory exemption, the interchange fee can be no more than the sum of a base component of 21 cents, an ad valorem component of 5 basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of 1 cent if the issuer meets certain fraud-prevention-standards. The Board developed the current interchange fee cap in 2011 using data voluntarily reported

to the Board by large debit card issuers concerning transactions performed in 2009. Since that time, data collected by the Board every other year on a mandatory basis from large debit card issuers show that certain costs incurred by these issuers have declined significantly; however, the interchange fee cap has remained the same. For this reason, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers. Further, the Board proposes to update the interchange fee cap every other year going forward by directly linking the interchange fee cap to data from the Board's biennial survey of large debit card issuers. Initially, under the proposal, the base component would be 14.4 cents, the ad valorem component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board also proposes a set of technical revisions to Regulation II. **DATES: Comments must be received on or before May 12, 2024. (Extended from February 12, 2024)**