Community Bankers of Michigan Regulatory Dispatch

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Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CFPB Issues Guidance to Address Abusive Conduct in Consumer Financial Markets

WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) issued a policy statement that explains the legal prohibition on abusive conduct in consumer financial markets and summarizes over a decade of precedent. The CFPB leads enforcement and supervision efforts to identify and end abusive conduct against consumers. In 2010, in response to the financial crisis, Congress passed the Consumer Financial Protection Act, and created the prohibition on abusive conduct. The Act tasks the CFPB, federal banking regulators, and states with the responsibility to enforce the prohibition, and puts the CFPB in charge of administering it. The policy statement will assist consumer financial protection enforcers in identifying wrongdoing and will help firms avoid committing abusive acts or practices.

“In response to the predatory mortgage lending practices that drove the financial crisis, Congress banned abusive conduct in consumer financial markets,” said CFPB Director Rohit Chopra. “The CFPB issued today’s guidance to provide an analytical framework to help federal and state agencies hold companies accountable when they violate the law and take advantage of families.”

The CFPB has long pursued lawbreakers for abusive conduct. Since the passage of the Consumer Financial Protection Act, the CFPB has brought 43 cases, and examiners have issued numerous citations, alleging abusive conduct. The claims have ranged from predatory student lending practices to charging consumers costly surprise overdraft fees. Today’s policy statement builds on the agency’s actions as well as summarizes for the market, in clear and simple terms, the meaning of the statutory prohibition on abusive conduct.

Policy statements provide background information about laws the CFPB administers and articulate how the CFPB will exercise its authorities, but they do not impose new legal requirements. In 1980 and 1983, respectively, the Federal Trade Commission issued policy statements on both the unfair and deceptive practices prohibitions. Similarly, today’s guidance summarizes precedent and establishes a framework to help federal and state enforcers identify when companies engage in abusive conduct.

In this policy statement, the CFPB sets forth how abusive conduct generally includes (1) obscuring important features of a product or service or (2) leveraging certain circumstances—including gaps in understanding, unequal bargaining power, or consumer reliance—to take unreasonable advantage. In particular, the statement describes how the use of dark patterns, set-up-to-fail business models like those observed before the mortgage crisis, profiteering off captive customers, and kickbacks and self-dealing can be abusive.

Read the [Statement of Policy Regarding Prohibition on Abusive Acts or Practices.]()

The policy statement will be published in the Federal Register, and the public will have until July 3, 2023, to submit their comments.

Comment: The CFPB introduces and explains that material interference, "can be shown when an act or omission is intended to impede consumers' ability to understand terms or conditions, has the natural consequence of impeding consumers' ability to understand, or actually impedes understanding." The CFPB builds off material interference and explains that banks are prohibited from taking unreasonable advantage of consumers in circumstances where there is: (1) gaps in consumer understanding; (2) unequal bargaining power or consumers' inability to protect their interests; and (3) consumer reliance.

CBM Insights

Q. How long is an ACH stop payment order good for?

A. ACH stop payment orders are complicated and there a number of questions that have to be asked, the most important one being 'Is this for a consumer account or a business account?'

For consumer accounts, Nacha Rule: Subsection 3.7.1.4 Effective Period of Stop Payment Orders states 'A stop payment order will remain in effect until the earlier of:

(a)the withdrawal of the stop payment order by the Receiver; or

(b) the return of the debit Entry, or, where a stop payment order applies to more than one debit Entry relating to a specific authorization involving a specific Originator, the return of all such debit Entries.'

For business accounts, Subsection 3.7.2.1 offers the following on the effective period for such stop orders:

At a minimum, a written stop payment order regarding any debit Entry initiated or to be initiated to a Non-Consumer Account will remain in effect until the earliest of:

a) The withdrawal of the stop payment order by the Receiver;
b) the return of the debit Entry; or
c) six months from the date of the stop payment order.

Items of Interest

Bank Management

	FRB G. 19 Consumer Credit (04/07/2023) - In February, consumer credit increased at a seasonally adjusted annual rate of 3.8 percent. Revolving credit increased at an annual rate of 5 percent, while nonrevolving credit increased at an annual rate of 3.4 percent. ***Comment: Consumer spending drives the economy, and stronger economic growth last quarter is expected to help to ease worries of a credit crunch, triggered by the recent collapse of the two regional banks, and keep the Fed focused on taming high inflation.***
	CSBS Community Bankers' Economic Outlook Continues Downward Slide (04/04/2023) - Washington, D.C. – Community bankers nationwide shared a dismal outlook on economic conditions in the latest Community Bank Sentiment Index (CBSI), released by the Conference of State Bank Supervisors (CSBS). The quarterly survey dropped to 83, falling two points from the previous quarter and to its lowest level since the survey began in 2019. Five of the seven components that comprise the CBSI decreased from the previous quarterly survey. Responding to two special questions, 94% of community bankers believe the U.S. economy is currently in a recession and rated the following as their top concerns for 2023: government regulation, inflation, cyberattacks and the cost/availability of labor. "The fragile health of the economy coupled with multiple interest rate increases have been a drag on the CBSI for the past year. Interestingly, government regulation is creeping up as the top concern," said CSBS Chief Economist Tom Siems. The CBSI surveys community bankers on seven economic components in the last month of each quarter. The CBSI captures what community bankers nationwide think about the future and is included in the Federal Reserve Economic Data, the online database maintained by the Federal Reserve Bank of St. Louis known informally as the FRED. An index reading of 100 indicates a neutral sentiment. Anything above 100 indicates a positive sentiment, and anything below 100 indicates a negative sentiment. At 82, the profitability component had the greatest quarterly decline for the second consecutive quarter, falling 18 points. At 22 points, the regulatory burden component remains the lowest, dropping four points from last quarter and remaining below 28 for nine straight quarters. Expectations that the Federal Reserve's monetary policy decisions will negatively impact market conditions continues to hold the overall index down but increased slightly to 39. While the outlook for future business conditions continues to weigh down the overall index, it rose from 37 points to 51. ***Comment: Concerns about profitability and the regulatory burden dragged down the overall survey. With rate hikes slowing, but not stopping, the release of the 1071 rule and a pending CRA rule, concerns about profitability and regulatory burden don't seem to be waning anytime soon.***
	FDIC Consumer Compliance Supervisory Highlights (04/05/2023) **-** WASHINGTON - The Federal Deposit Insurance Corporation (FDIC) issued the March 2023 edition of the Consumer Compliance Supervisory Highlights. The purpose of this publication is to enhance transparency regarding the FDIC's consumer compliance supervisory activities and to provide a high-level overview of consumer compliance issues identified in 2022 through the FDIC's supervision of state non-member banks and thrifts.

	This edition of Consumer Compliance Supervisory Highlights includes supervisory observations related to consumer protection laws, examples of practices that may be useful in mitigating risks, regulatory developments, and consumer compliance resources. The publication also provides an overview of consumer complaint trends. This information helps support efforts to manage consumer compliance responsibilities and stay abreast of regulatory topics. ***Comment: RESPA Section 8, Fair Lending, FCRA and service members are all covered topics in this latest release. Because the FDIC conducts consumer compliance examinations using a risk-focused methodology, the most frequently cited violations generally involve regulations that represent the greatest potential for consumer harm and ones that trip banks up most frequently. Use the table in the latest release to focus your own risk mitigation efforts.***
	CFPB Launches Small Business Lending (SBL) Help (04/05/2023) - The CFPB has issued the small business lending rule. You can read the rule on the CFPB website. To help financial institutions implement and comply with the small business lending rule, the CFPB is launching a dedicated regulatory and technical support program called SBL Help. SBL Help can provide oral and written assistance to financial institutions about their data collection and reporting obligations under the final rule. You can submit your questions to SBL Help here: https://sblhelp.consumerfinance.gov/. SBL Help is the latest resource from the CFPB to help financial institutions implement and comply with the small business lending final rule. As announced last week, the CFPB published a small business lending implementation and guidance webpage, which contains several regulatory implementation resources about the final rule, and a small business lending data webpage, which contains several technical resources about submitting small business lending data to the CFPB. The CFPB plans to publish additional resources to help financial institutions implement and comply with the small business lending final rule. The CFPB has published a video that introduces the types of implementation and compliance support it provides and the timeline these materials are typically released. You can watch the Introduction to Regulatory Implementation and Guidance video here: https://www.youtube.com/watch?v=cKc_BBxqOwM. ***Comment: The CFPB does a good job putting out tools to help banks comply, like their Small Entity Compliance Guides. The CBM created a web page with information, tools and resources to support your bank. If your report is due June 2026, that means you will start collecting data in January 2025, and the 18 months you have to prepare and incorporate changes to your systems and processes will fly by.***
	FDIC Consumer News – April 2023 (04/03/2023) - This is a great time to open your first bank account, too! Many teens think about how they can earn money so they can spend it, but it's important to learn how to manage it as well. The best place to start is with a bank account. Before you land that new job, you should establish a bank account to keep track of your new earnings and keep it safe. This one step will open the door for hands-on experience managing money and discussions with others on various aspects of financial management, which will help prepare for the future. ***Comment: Consider sharing these posts on your web site.***

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	No news to report this week.

Technology / Security

CISA Blog Protecting Your Information Post-Disaster (03/31/2023) - When disasters strike, like the recent swath of tornados in the Southeast, it often brings out the very best humanity has to offer. Whether its neighbors helping neighbors, community groups opening their doors to those in need, or government agencies partnering at all levels to help deliver aid and support, we are able to come together for a greater purpose.

There are those, however, who would rather capitalize on the trauma and confusion caused by these situations to scam and bilk businesses and individuals alike. Hackers and online criminals can and will send fraudulent emails offering assistance or even requesting donations under false pretenses. These messages can appear legitimate but will often include malicious links or attachments designed to steal information.

Although it can be difficult to tell what is and isn't an online scam, here are four tips everyone can follow both year-round and after a disaster to help ensure they aren't the next victim of an online scam:

- Think before you click: If a link or an attachment looks suspicious or comes from a source you don't recognize, don't click on it! Phishing emails are one of the most-used methods for hackers to gain access to your accounts or to upload malicious software. Also don't forget to report phishing attempts to your email service provider.

- Different accounts, different passwords: Remembering dozens of passwords can be a pain, but by using the same password across all your accounts, it makes it much easier for bad actors to gain access to your information. Make sure to use only complex passwords (10-15 characters with a mix of upper- and lowercase letters, numbers and special characters) and change them on a regular basis. If keeping track of that many passwords is challenging, trying using a password manager to store them.

- Enable multifactor authentication: Want an added level of protection in case your password is compromised? Turn on multifactor authentication (MFA)! Whether it's an email, text message or phone call, adding that one extra step will help control access to your accounts and will make it that much more difficult for scammers to steal your personal information.

- Update, update, update: Hackers and cyber criminals are always on the prowl for the latest vulnerability in the apps and operating systems running laptops, cellphones, tablets and servers.

That’s why it’s incredibly important to keep all software current with the latest security patches and updates. When dealing with a disaster situation, the last thing anyone wants to deal with is security updates on devices, so take the preventative step and simply enable automatic updates whenever possible.

In addition to using these four tips, small business owners need to take a few extra steps to minimize the cyber risks they may face after a disaster, such as providing cybersecurity awareness training to all employees or having an established incident response plan that is regularly reviewed and exercised. More helpful tips and guidance can be found on CISA’s Cyber Guidance for Small Businesses webpage.

As victims of a natural disaster or any other serious incident begin the process of assessing damage to their homes, businesses, schools and places of worship, their focus needs to be on recovery, not worrying about online scams. By following these four simple steps, they can keep their attention on where it truly matters—rebuilding their communities.

Comment: Share with your IT staff and consider posting to your web site and providing your small business customers.

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 RULE WITH REQUEST FOR PUBLIC COMMENT

02.01.2023 CFPB Credit Card Penalty Fees (Regulation Z) The Consumer Financial Protection Bureau (Bureau) proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are “reasonable and proportional” to the late payment as required under TILA. The proposal would (1) adjust the safe harbor dollar amount for late fees to $8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25 percent of the required payment. **Comments should be received on or before May 3, 2023.**