Community Bankers of Michigan Regulatory Dispatch

February 16, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CFPB Reports Banks Fine-Tuning Overdraft Fees

As the CFPB has been focusing on this issue again, there has been a notable trend of banks announcing changes to their overdraft programs. These announced changes vary widely and include:

- eliminating NSF fees charged when transactions bounce;
- reducing the size of the overdraft fee;
- reducing the number of overdraft/NSF fees the bank can charge you each day;
- providing or increasing the amount your account can go negative before charging an overdraft fee;
- providing a grace period for you to bring the account back to positive before charging an overdraft fee; and
- eliminating "extended" or "sustained" overdraft fees charged when the account is not brought back to a positive balance after a certain period of time.

Comment: In December 2021, the CFPB released a report that said overdraft and non-sufficient fund penalties made up two-third of reported fee revenue. In that report, CFPB Director Rohit Chopra said, "We will be taking action to restore meaningful competition to this market." Perhaps banks are taking preemptive action to avoid criticism.

CBM Insights

Q: We have a customer that wants to dispute a check generated by a bill pay service. It was paid nearly 6 months ago and is well past the midnight deadline to return the check. Can we still return the check? What options do we have?

A: You can certainly try. If that item was a 'remotely created check' as defined under Regulation CC, the 'check' can be returned **with entry** thru the FRB '….no later than 90 days' after presentment.' After the

90-day Fed window closes, your bank would have to deal directly with the bank of first deposit under the ‘transfer and presentment warranties’ underlined below.

Once outside the 90-day Fed ‘window,’ the bank of first deposit can do one of three things:

1) Accept and pay under the claimed breach of the presentment warranty.
2) Refuse the claim under Regulation CC, Section 229.34(d) which states that as the paying bank your bank had the ability to refuse the claim under Texas Business and Commerce Code 4-406.
3) Ignore the claim and hope you go away.

§229.2(fff) - Remotely created check means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, “account” means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

§229.34(b) - Transfer and presentment warranties with respect to a remotely created check.

(1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (b)(1), “account” includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (b)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under UCC 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

Source link.

20.20 Warranty Claims Regarding Remotely Created Checks Transferred or Presented by the Reserve Bank

a) A bank may, in accordance with the following provisions, request an adjustment based on a claim against the Reserve Bank for the Reserve Bank’s alleged breach of the warranty associated with a remotely created check set forth in Section 229.34(b) of Regulation CC with respect to a check that the Reserve Bank transferred or presented to the bank.

b) An adjustment request under this subparagraph must be made no later than 90 days after the date on which the Reserve Bank transferred or presented the check that is subject to the request to the requesting bank.10

c) The requesting bank must submit:

1) a completed adjustment request in a format that we prescribe;

2) a legible copy of the front and back of the check; and

3) a statement in a format we prescribe from a person on whose account the check is drawn in which that person asserts under oath that issuance of the check was not authorized with regard to one or both of the following:

(i) the amount stated on the check,
(ii) (ii) the payee stated on the check.

It is the responsibility of the bank requesting the adjustment from us to provide the required documentation.

Source link.

Items of Interest

Bank Management

	CSBS The Jobs Market is in the Driver's Seat (02.09.2022) - "States of the Economy" is a monthly look at the economic picture across the country. In this episode CSBS Senior Economist Tom Siems and host Matt Longacre discuss what the latest inflation and jobs numbers, business confidence measures and more are telling us about the current trajectory of the U.S. economy. The chapters below require you to create a free *Buzzsprout* account in order to listen. **Chapters** • 0:23 - The Big Story of February - Jobs • 2:24 - What is the Fed Considering? • 3:16 - Good News From the Last Month • 5:10 - Bad News From the Last Month • 8:14 - What Regulators Should Look Out For ***Comment: By almost any measure, the labor market had an extraordinary 2021. An average of 537,000 jobs were created each month, although there was considerable volatility in the month-to-month readings, with 1.09 million added in July and 199,000 in December. The unemployment rate fell from 6.3% in January to 3.9% at year's end. The number of people filing first-time claims for weekly unemployment benefits fell below 200,000 and ended the year close to that threshold.***
	FDIC Acting Chairman Martin J. Gruenberg Announces FDIC Priorities for 2022 (02.07.2022) - WASHINGTON – Federal Deposit Insurance Corporation (FDIC) Acting Chairman Martin J. Gruenberg released this morning the following statement and summary of the FDIC's priorities for the coming year:

“The FDIC’s core mission is to maintain stability and public confidence in the U.S. financial system. The FDIC carries out this mission through its responsibilities for deposit insurance, banking supervision, and the orderly resolution of failed banks, including systemically important financial institutions. Banking supervision encompasses safety and soundness and consumer protection, both of which are essential to this important mission. While there are many pressing issues the FDIC will have to address this year, key priorities are: the Community Reinvestment Act; climate change; the Bank Merger Act; crypto-assets; and the Basel III capital rule. All of these priorities will require close collaboration among the federal banking agencies.

I also want to acknowledge the extraordinary dedication of the FDIC staff who will be critical to carrying forward the work on these priorities. In addition, I want to recognize Chairman Jelena McWilliams for her contributions to the FDIC, in particular for her commitment, which I share, to diversity and inclusion and minority depository institutions.”

Strengthen Community Reinvestment Act (CRA): The federal banking agencies – the Federal Reserve, the Comptroller of the Currency, and the FDIC – have been working on a major revision of the rule implementing CRA. CRA requires banks to meet the credit needs of all the communities they serve, including low- and moderate-income communities. The agencies plan to act jointly on a notice of proposed rulemaking in the near future that would strengthen and enhance CRA. Action on a revision of CRA will be the top priority of the FDIC.

Address Financial Risks Posed by Climate Change: Addressing the financial risks that climate change poses to banking organizations and the financial system will also be a top priority of the FDIC. This will include seeking public comment on guidance designed to help banks prudently manage these risks, establishing an FDIC interdivisional, interdisciplinary working group on climate-related financial risks, and joining the international Network of Central Banks and Supervisors for Greening the Financial System.

Review Bank Merger Process: The Bank Merger Act establishes the standards used by the federal banking agencies to consider bank merger applications. The process for considering bank mergers by the agencies has not been comprehensively reviewed in 25 years. In light of the significant implications of bank mergers for competition, safety and soundness, financial stability, and meeting the financial services needs of communities, a careful interagency review of the bank merger process is warranted.

Evaluate Crypto-Asset Risks: The rapid introduction of a variety of crypto-asset or digital asset products into the financial system could pose significant safety and soundness and financial system risks. It is imperative that the federal banking agencies carefully consider the risks posed by these products and determine the extent to which banking organizations can safely engage in crypto-asset-related activities. To the extent such activities can be conducted in a safe and sound manner, the agencies will need to provide robust guidance to the banking industry on the management of prudential and consumer protection risks raised by crypto-asset activities.

	Finalize Basel III Capital Rule: The Basel Committee on Banking Supervision reached a final agreement on modifications to the Basel III international regulatory framework. This final agreement would strengthen the regulatory framework for large banking organizations, including strengthening the capital requirements related to market risk, operational risk, and the risks associated with financial derivatives. Implementation of this final agreement will be a priority for the federal banking agencies in the coming year. ***Comment: These priorities do not come as any surprise. But they clearly reflect the consequences of changes in administrations.***
	OCC Announces Virtual Workshops for Community Bank Directors (02.07.2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) today announced its schedule of free, virtual workshops for boards of directors of national community banks and federal savings associations for the first half of 2022. The OCC examiner-led workshops provide practical training and guidance to directors of national community banks and federal savings associations in a virtual learning environment to support the safe and sound operation of community-based financial institutions. The workshops are: • Building Blocks: Keys to Success for Directors • Credit Risk: Directors Can Make a Difference • Operational Risk: Navigating Rapid Changes • Compliance Risk: What Directors Need to Know • Risk Governance: Improving Director Effectiveness To view the schedule of virtual workshops and register online, visit the OCC's website. For questions or other assistance about the workshops, please contact the OCC Bank Director Workshop Team at (202) 649-6490 or BankDirectorWorkshop@occ.treas.gov. ***Comment: Consider taking advantage of these for your directors—particularly any new ones.***

BSA / AML

	Joint Federal Agencies Launch Joint Effort to Alert Online Daters and Social Media Users of Romance Scams That Have Cost Americans Millions (02.07.2022) - WASHINGTON—Today, five federal agencies joined forces to remind the public about the ongoing dangers of romance scams. The Commodity Futures Trading Commission, the Consumer Financial Protection Bureau (CFPB), the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE), the U.S. Postal Inspection Service, and the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) have launched Dating or Defrauding?, a national awareness effort to alert the public to romance scams that target victims largely

	through dating apps or social media. The campaign is supported by USAGov/Outreach, a division of the U.S. General Services Administration's Technology Transformation Services. Romance scams are not new, but with the proliferation of online dating apps, social media, and even messaging apps, new types of scams are emerging that target new audiences and have drained victims of millions of dollars. According to the Federal Trade Commission (FTC), 2020 was a record year for romance scams. Consumer reports to the FTC indicate that the number of romance scam complaints continued to increase through 2021. A year-over-year comparison through the third quarter showed a 48 percent increase in reported romance frauds. The joint federal agencies' initiative shows the public how to recognize the scams before they give any money or assets and provides steps to take if they are victimized. Over the coming weeks, the interagency Dating or Defrauding? awareness campaign will reach the public via social media, local and national media outreach, and public-private partnerships to encourage them to be vigilant when making online love connections. This effort is spearheaded through the following federal agency offices: CFTC's Office of Customer Education and Outreach, CFPB's Office for Older Americans, DHS/ICE's Homeland Security Investigations, the U.S. Postal Inspection Service, and Treasury's FinCEN. ***Comment: Sadly, elderly consumers are often the target of these scams. Don't forget your duty to report financial abuse.***

Deposit / Retail Operations

	FTC Romance Scams In 2021: Fraudsters to The Left ff You, Fakers to The Right (02.10.2022) - Love happens year-round, not only on Valentine's Day. Unfortunately, romance scams are the same. So, along with sharing (or not) some chocolate, make Valentine's Day a time to share with people you care about some ways to spot and avoid romance scams. Because, according to a new FTC report, people sent $547 million to online romance scammers last year. While many of the people who told the FTC they were defrauded said they were contacted on a dating app, romance scammers found them on social media, too. In fact, more than a third of the people who lost money to an online romance scam said the contact started on Facebook or Instagram, often through an unexpected private message. Romance scammers typically spin complicated stories to convince people to send money. In 2021, people reported scammers asking them to send money for one (imaginary) health or financial crises after another. Other scammers pretended to be successful cryptocurrency investors and used romance to lure people into sending money for bogus investments. Scammers ask to get paid in ways that let them get money quickly and anonymously. In 2021, about one in four people used a gift card to send money to a romance scammer. The

	most money was reported lost — $139 million — through payments made in cryptocurrency. How can you avoid a romance scam? • If someone appears on your social media and rushes you to start a friendship or romance, slow down. • Don't send a reload, prepaid, or gift card; don't wire money; and don't send cryptocurrency to someone you met online. • If you suspect a romance scam, cut off contact. Tell the online app or social media platform right away, and then tell the FTC at ReportFraud.ftc.gov. ***Comment: FTC data show romance scams hit a record high of $547 million reported lost in 2021.***

Human Resources

	No news to report this week.

Lending

	CFPB If You're A Homeowner Struggling To Make Housing-Related Payments Due to The Pandemic, Help Is Available Or Coming Soon (02.11.2022) - If you are a homeowner and COVID-19 has made it difficult for you to pay your mortgage, utilities, property taxes, or other home expenses, financial assistance may already be available for you. The Homeowner Assistance Fund (HAF) was established by the American Rescue Plan Act to help homeowners financially impacted by COVID-19 with housing-related costs. This federal assistance program provides money to states, Tribes, territories, and the District of Columbia to assist homeowners with housing-related costs. HAF can provide financial assistance for mortgage payments (including past due payments), and, depending on the program, may also be used for homeowners insurance, utility bills, property taxes, homeowners association fees, certain home repairs, and other specified housing costs. The amount of funds available per household will depend on your situation and where you live. Some locations have started accepting applications, and more are on the way. In total, approximately $10 billion will be disbursed to programs across the country. How to apply for Homeowner Assistance Fund relief The HAF program available to you will depend on your area. Each state or territory developed its own program. Programs were also developed by Tribes (or their Tribally Designated Housing Entity), the Department of Hawaiian Home Lands, and the District of Columbia. You'll need to verify that you meet income requirements and may need to provide required documentation. You must confirm that you have experienced a financial

	hardship after January 21, 2020 and describe the nature of that hardship, such as a job loss, reduced income, or increased healthcare costs. Find Homeowner Assistance Fund programs in your area.
	OCC Acting Comptroller Issues Statement on Court Decision Regarding 'Madden' Rule (02.09.2022) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu issued the following statement regarding the decision issued by the District Court for the Northern District of California in the litigation challenging the Office of the Comptroller of the Currency (OCC) rule to clarify the permissible interest on transferred loans. Today, the district court affirmed the validity of the OCC's rule, which provides that when a national bank or state or federal savings association sells, assigns, or otherwise transfers a loan, the interest permissible before the transfer continues to be permissible after the transfer. This legal certainty should be used to the benefit of consumers and not be abused. I want to reiterate that predatory lending has no place in the federal banking system. The OCC is committed to strong supervision that expands financial inclusion and ensures banks are not used as a vehicle for "rent-a-charter" arrangements. Related Link OCC's Rule to Clarify Interest on Permissible Interest on Transferred Loans (PDF)
	FRB Consumer Credit G. 19 (02.07.2022) - December 2021; In 2021, consumer credit increased 5.9 percent, with revolving and nonrevolving credit increasing 6.6 percent and 5.7 percent, respectively. During the fourth quarter, consumer credit increased at a seasonally adjusted annual rate of 6.6 percent, while in December it increased at a seasonally adjusted annual rate of 5.1 percent.
	CFPB Publishes 2022 Reportable HMDA Data Reference Chart (02.07.2022) - The CFPB recently published Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2022. The chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C. To access this chart and other HMDA resources, visit: https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/. ***Comment: Generally speaking, the CFPB HMDA tools are very helpful.***

Technology / Security

	CISA, FBI, NSA And International Partners Issue Advisory on Ransomware Trends From 2021 (02.09.2022) - WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA), along with the Federal Bureau of Investigation (FBI), National Security Agency (NSA), Australian Cyber Security Centre (ACSC), and the United Kingdom's National Cyber Security Centre (NCSC-UK) issued a joint Cybersecurity Advisory outlining the growing international threat posed by ransomware over the past year. The advisory titled "2021 Trends Show Increased Globalized Threat of Ransomware" outlines top trends seen across three nations including: • Cybercriminals are increasingly gaining access to networks via phishing, stolen Remote Desktop Protocols (RDP) credentials or brute force, and exploiting software vulnerabilities. • The market for ransomware became increasingly "professional" and there has been an increase in cybercriminal services-for-hire. • More and more, ransomware groups are sharing victim information with each other, including access to victims' networks. • Cybercriminal are diversifying their approaches extorting money. • Ransomware groups are having an increasing impact thanks to approaches targeting the cloud, managed service providers, industrial processes and the software supply chain. • Ransomware groups are increasingly targeting organizations on holidays and weekends. Importantly, today's Cybersecurity Advisory also lays out mitigations to help network defenders reduce their risk of compromise, appropriate responses to ransomware attacks, and key resources from each respective cyber agency.

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

01.26.2022 Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services - The Consumer Financial Protection Bureau (Bureau or CFPB) is seeking comments from the public related to fees that are not subject to competitive processes that ensure fair pricing. The submissions to this request for information will serve to assist the CFPB and policymakers in exercising its enforcement, supervision, regulatory, and other authorities to create fairer, more transparent, and competitive consumer financial markets. **DATES: Comments must be received on or before March 31, 2022.**

01.25.2022 Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates - FinCEN is issuing this notice of proposed rulemaking to seek public comment on the proposed establishment of a limited-duration pilot program, subject to conditions set by FinCEN, to permit a financial institution with a suspicious activity report (SAR) reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risk, in accordance with Section 6212(a) of the Anti-Money Laundering Act of 2020 (AML Act). **DATES: Written comments on this proposed rule must be received on or before March 28, 2022.**