



Community Bankers of Michigan Regulatory Dispatch

February 8, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS State Regulator Priorities in 2023

State regulators have an important mandate that requires them to protect consumers, ensure the safety and soundness of their institutions and promote economic growth. This podcast discusses the priorities of state regulators in 2023, focusing on legislation, state-federal partnerships and Networked Supervision.

Guests:

Jim Cooper - President and CEO, CSBS

Karen Lawson - Executive Vice President of Policy and Supervision, CSBS

Comment: State regulators have three goals in the supervision of banks – protect consumers, ensure the safety and soundness of the state banking system and foster economic growth. This podcast outlines the CSBS’s legislative priorities for 2023 aimed at supporting those goals.

Items of Interest

Bank Management

FRB [Consumer Compliance Outlook Latest Issue is Now Available](#) (01/31/2023) - The latest issue of Consumer Compliance Outlook is now available for download. This issue includes the following articles and features:

- Overview of Special Purpose Credit Programs Under the Equal Credit Opportunity Act
- Federal Reserve Consumer Affairs Letter for 2022 and 2021
- News from Washington: Regulatory Updates
- On the Docket: Recent Federal Court Opinions
- Regulatory Calendar
- [Entire Issue \(pdf download\)](#)

We welcome your suggestions for topics for articles or webinars, or any other feedback you wish to provide, at outlook@phil.frb.org.

Finally, the bottom of this email provides a link to "manage your preferences," which allows you to update your subscription information, including your email and mailing addresses.

Comment: Most of this issue is dedicated to Special Purpose Credit Programs under ECOA. A carefully crafted SPCP, under an ECOA carve out, allows a creditor to 'consider' prohibited-basis information in credit transactions to meet special social needs or to help an economically disadvantaged class of persons.

BSA / AML

FinCEN [Prepared Remarks of FinCEN Acting Deputy Director During the ID Policy Forum \(02/01/2023\)](#) -

Good morning. My name is Jimmy Kirby, and I'm the Acting Deputy Director of the Financial Crimes Enforcement Network (FinCEN).

It's a real pleasure to address all of you—private sector and fellow public sector attendees and speakers—to discuss this important issue of proving who you are in a digital world.

I would like to explain how this Identity, Authentication, and the Road Ahead event and its focus on digital identity, a building block for reliable financial services, fits into the broader FinCEN picture.

We're focused on a range of important topics at FinCEN, including:

1. Emerging threats;
2. Responsible innovation; and
3. Expanding partnerships and feedback loops.

The Importance of Digital Identity to FinCEN's Mission

I'll take each of those themes in turn, but, before diving into them, I want to take a moment to lay some groundwork and emphasize the importance of digital identity.

At FinCEN, we are pragmatically focused on our mission to protect the U.S. financial system from illicit finance threats.

Identity is fundamental to the effectiveness of every financial institution's AML/CFT program regardless of whether customers are using traditional depository financial institutions, money services businesses, or emerging digital asset products. Many of FinCEN's regulations and authorities are designed to help financial institutions and law enforcement identify customers and the nature of their activity.

They include the foundational AML Program rules; various reporting requirements like the Suspicious Activity Reports (SARs) and Currency Transaction Reports; as well as recordkeeping requirements like the Customer Identification Program (CIP) Rule and Customer Due Diligence (CDD) Rule. Identity is also at the heart of other, more targeted, FinCEN authorities, such as Geographic Targeting Orders (GTOs)—most notably FinCEN's GTOs in the real estate sector focused on cash purchasers.

To get financial services right, we need to get identity right. It is vital to building trust in the system. Getting identity "right" means implementing identity solutions that preserve privacy and security, promote financial inclusion, and protect the integrity of the financial system.

Comment: Anytime FinCEN mentions 'emerging threats,' those remarks are worth paying attention too.

Deposit / Retail Operations

FTC [Visit ftc.gov/languages](https://www.ftc.gov/languages) For **Fraud and Scam Advice in 12 Languages** (02/03/2023) - Fraud affects every community, and it's not unusual for scammers to run their scam in the language you speak at home. Now, the FTC has information in a dozen languages to help you spot and avoid those scams at [ftc.gov/languages](https://www.ftc.gov/languages). You'll find info in Amharic, Arabic, Chinese (Simplified and Traditional), French, Hmong, Korean, Russian, Somali, Tagalog, Vietnamese, and Ukrainian. So, what will you find there?

Comment: If you have a vulnerable population separated by a language barrier, think about sharing these resources in their native tongue.

FDIC [Announces 45-Day Extension of Comment Period for Proposed Changes to its Regulation Regarding the FDIC Official Sign, Advertising Statement, and Misrepresentations of Deposit Insurance](#) (01/30/2023) - WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) announced a 45-day extension to the public comment period for proposed changes to its regulations relating to the FDIC's official sign, the FDIC's official advertising statement, misrepresentations of deposit insurance coverage, and misuse of the FDIC's name or logo. Comments must be received by the FDIC no later than April 7, 2023.

On December 13, 2022, the FDIC announced a Notice of Proposed Rulemaking (NPR) to modernize part 328 of its regulations and provided for a 60-day comment period following formal publication in the Federal Register (87 FR 78017), which occurred on December 21, 2022. After receiving requests to extend the comment period, the FDIC determined that a 45-day extension of the comment period is appropriate and will provide additional opportunity for the public to prepare comments and address the matters raised by the NPR.

The proposed regulation would modernize the rules governing the use of the official FDIC sign and insured depository institutions' (IDIs') advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of FDIC deposit insurance coverage by addressing specific scenarios where consumers may be misled about whether their funds are protected by deposit insurance. The changes would enable consumers to better understand when they are doing business with an IDI and when their funds are covered by the FDIC's deposit insurance.

Human Resources

No news to report this week.

Lending

FDIC [Supervisory Approach Regarding Changes to HMDA's Closed-End Mortgage Loan Volume Reporting Threshold](#) (02/03/2023) - The Federal Deposit Insurance Corporation (FDIC) is issuing this Financial Institution Letter to inform supervised institutions of recent changes regarding the Home Mortgage Disclosure Act (HMDA) reporting threshold for closed-end mortgage loans and the FDIC's supervisory approach for enforcing related requirements. For FDIC-supervised institutions that meet Regulation C's coverage requirements, the threshold for reporting data on closed-end mortgage loans is now 25 loans in each of the two preceding calendar years. In addition, for closed-end mortgage data collected in the years 2022, 2021, or 2020, the FDIC does not intend to initiate enforcement actions or cite HMDA violations for certain failures to report such loan data, as described in detail below.

	<p>Statement of Applicability: This Financial Institution Letter (FIL) applies to all FDIC-supervised institutions.</p> <p><i>Comment: A clarification expected from the FDIC conforming to the CFPB's technical amendment issued in December 2022.</i></p>
	<p>CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees (02/01/2023) - WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) proposed a rule to curb excessive credit card late fees that cost American families about \$12 billion each year. Major credit card issuers continue to profit off late fees that are protected by an expansive immunity provision. Credit card companies have also relied on this provision to hike fees with inflation, even if they face no additional collection costs. The proposed rule would help ensure that over-the-top late fee amounts are illegal. Based on the CFPB's estimates, the proposal could reduce late fees by as much as \$9 billion per year.</p> <p>“Over a decade ago, Congress banned excessive credit card late fees, but companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee,” said CFPB Director Rohit Chopra. “Today’s proposed rule seeks to save families billions of dollars and ensure the credit card market is fair and competitive.”</p> <p>When someone misses a payment due date, even if they paid a few hours after the deadline, the cardholder may be hit with an exorbitant late fee that far exceeds the credit card company’s costs to collect late payments. These excessive late fees may not be needed to deter late payments, nor be justified based on the consumer’s conduct in paying late. These late fees also may be on top of other consequences of paying late, such as a lost grace period on paying interest or a lower credit score, depending on how long the missed payment lasts.</p> <p><i>Comment: Under the CFPB's proposed rule, late fees would be capped at \$8. Credit card companies could charge more if they could prove that it was necessary to cover the costs of collecting the late payment, but the bureau said it had preliminarily found that the revenue generated by late fees was five times higher than related collection costs.</i></p>

Technology / Security

	<p>CISA Cisco Releases Security Advisories for Multiple Products (02/02/2023) - Cisco released security updates for vulnerabilities affecting multiple products. A remote attacker could exploit these vulnerabilities to take control of an affected system.</p> <p>CISA encourages users and administrators to review the Cisco Security Advisories page and apply the necessary updates.</p> <p><i>Comment: Cisco is a major technology partner of community banks. It's worth sharing these advisories with your IT staff.</i></p>
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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

12.16.2022 [FinCEN Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities](#)

FinCEN is promulgating proposed regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). The proposed regulations would implement the strict protocols on security and confidentiality required by the CTA to protect sensitive personally identifiable information (PII) reported to FinCEN. The NPRM explains the circumstances in which specified recipients would have access to BOI and outlines data protection protocols and oversight mechanisms applicable to each recipient category. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security. FinCEN is also proposing regulations to specify when and how reporting companies can use FinCEN identifiers to report the BOI of entities. **DATES: Written comments on this proposed rule may be submitted on or before February 14, 2023.**

01.05.2023 [FTC Non-Compete Clause Rulemaking](#) About one in five American workers—approximately 30 million people—are bound by a non-compete clause and are thus restricted from pursuing better employment opportunities. A non-compete clause is a contractual term between an employer and a worker that blocks the worker from working for a competing employer, or starting a competing business, typically within a certain geographic area and period of time after the worker’s employment ends. Because non-compete clauses prevent workers from leaving jobs and decrease competition for workers, they lower wages for both workers who are subject to them as well as workers who are not. Non-compete clauses also prevent new businesses from forming, stifling entrepreneurship, and prevent novel innovation which would otherwise occur when workers are able to broadly share their ideas. The Federal Trade Commission proposes preventing employers from entering into non-compete clauses with workers and requiring employers to rescind existing non-compete clauses. The Commission estimates that the proposed rule would increase American workers’ earnings between \$250 billion and \$296 billion per year. The Commission is asking for the public’s opinion on its proposal to declare that non-compete clauses are an unfair method of competition, and on the possible alternatives to this rule that the Commission has proposed. **The comment period is open through Mar 10, 2023.**

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. **DATES: Comments should be received on or before April 3, 2023, or 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER, whichever is later.**