



Community Bankers of Michigan Regulatory Dispatch

January 18, 2023

*Timely news and resources community bankers can use
to better stay on top of a rapidly changing world.*

CFPB Elder Fraud Webinar Series

Join the Consumer Financial Protection Bureau (CFPB) on five Wednesdays in February and March 2023 for webinars on approaches to combatting elder financial exploitation.

The series will be moderated by Jenefer Duane from the CFPB's Office for Older Americans and veteran elder abuse prosecutor, Paul Greenwood.

[Register now!](#) Attend one or all sessions. The series includes:

- **New Resources for Elder Fraud Prevention and Response Networks | February 1, 2:00 – 3:00 ET.** Elder financial exploitation threatens the financial security of millions of older Americans annually. Learn about newly updated CFPB resources for elder fraud prevention and response networks – including an expanded CFPB report on the network collaboration and a streamlined online [Network Development Guide](#).
- **Promising Practices from Successful Elder Fraud Prevention and Response Networks**
 - **Part 1, featuring network leaders in Michigan and South Carolina | February 8, 2:00-3:30 ET.** Learn about strategies for funding elder justice networks, how networks can provide training across disciplines, and more. A special guest presentation will highlight funding available from the Department of Justice for elder justice networks.
 - **Part 2, featuring network leaders in Hawaii and Florida | February 15, 2:00-3:30 ET.** Learn how state-level elder justice networks can effectively support locally based sub-networks, how networks can coordinate with the payments industry to spot and respond to exploitation, and more.
- **Recovering from Elder Financial Exploitation | February 22, 2:00 – 3:00 ET.** Learn about the [Recovering from Elder Financial Exploitation report](#), a financial recovery framework explaining how and when older adults get money back after financial exploitation. Topics include identifying, reporting, and investigating elder fraud and returning funds to victims.
- **Money Smart for Older Adults | March 1, 2:00 – 3:30 ET.** Learn how to use [Money Smart for Older Adults](#) instructor-led curriculum and resources. A joint program of CFPB and the Federal Deposit Insurance Corporation (FDIC), Money Smart for Older Adults can be adapted in a variety of ways.

Comment: Roughly 20 percent of older Americans fall prey to financial exploitation totaling \$3 billion annually or an average of \$120,000 per elderly victim, according to a 2021 study from the AARP Public Policy Institute.

CBM Insights

Q. Currently we provide Credit Denial Notice and ECOA Notice at the time of application for commercial loans. Both disclosures are on our commercial loan application. Is that permitted?

A. That is a problem unless the applicant gets to keep a copy of the application- which they rarely do. The general rules at §1002.4, with some exceptions, is that the ‘disclosures and information’ required under Regulation B must be provided in a form the applicant can retain.

(1) General rule. A creditor that provides in writing any disclosures or information required by this part must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 1002.5 and 1002.13, in a form the applicant may retain.

Source [link](#).

Unless the applicant keeps a copy of the application, or the notice is on a page that can be removed, the applicant does not have the ECOA notice required by §1002.9(b)(1) in a form that they can ‘retain.’

Items of Interest

Bank Management

	<p>OCC Registration Open for OCC Symposium on Bank Mergers (01/12/2023) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) announced registration is open for its symposium on bank mergers February 10, 2023, at its headquarters in Washington, D.C.</p> <p>The symposium will include panel discussions among thought leaders, academics, community groups, and the banking industry on bank mergers and is open to the public for in-person or virtual attendance.</p> <p>The symposium will feature opening remarks from Acting Comptroller of the Currency Michael J. Hsu and moderated panel discussions on the effects of bank mergers in the context of competition, financial stability, and convenience and needs. The symposium will also include the presentation and discussion of academic research papers for an economics-focused panel on competition.</p> <p>Registration is required for in-person or virtual attendance at the symposium. Registration for in-person attendance will close January 25, 2023, or when full, whichever occurs first. For security reasons, attendees will be subject to screening and must present a valid government-issued identification to enter the building. Registration for virtual attendance will close February 3, 2023.</p> <p>The agenda for the Bank Merger Symposium and information about how to register is accessible here.</p> <p>Related Links Bank Merger Symposium Agenda (PDF)</p>
	<p>CFPB Proposes Rule to Establish Public Registry of Terms and Conditions in Form Contracts That Claim to Waive or Limit Consumer Rights and Protections (01/11/2023) - The Consumer Financial Protection Bureau (CFPB) proposed a rule to establish a public registry of supervised nonbanks’ terms and conditions in “take it or leave it” form contracts that claim to waive or limit consumer rights and</p>

protections, like bankruptcy rights, liability amounts, or complaint rights. In some cases, terms and conditions in non-negotiable form contracts mislead consumers into believing the terms or conditions are legally enforceable. Under the proposed rule, nonbanks subject to the CFPB's supervisory jurisdiction would need to submit information on terms and conditions in form contracts they use that seek to waive or limit individuals' rights and other legal protections. That information would be posted in a registry that will be open to the public, including to other consumer financial protection enforcers.

FRB [Brief Remarks on the Economy and Bank Supervision Governor Michelle W. Bowman](#) (01/10/23) - *Monetary Policy - Let me begin by discussing the Fed's efforts to lower inflation. Inflation is much too high, and I am focused on bringing it down toward our 2 percent goal. Inflation affects everyone, but it is especially harmful to lower- and middle-income Americans, who spend a greater share of their income on necessities like food and housing. Stable prices are the bedrock of a healthy economy and are necessary to support a labor market that works for all Americans.*

Over the past year, I have supported the FOMC's policy actions to address high inflation, and I am committed to taking further actions to bring inflation back down to our goal. Since last March, the FOMC has been tightening monetary policy through a combination of increasing the federal funds rate by 4-1/4 percentage points and reducing our balance sheet holdings.

In recent months, we've seen a decline in some measures of inflation but we have a lot more work to do, so I expect the FOMC will continue raising interest rates to tighten monetary policy, as we stated after our December meeting. My views on the appropriate size of future rate increases and on the ultimate level of the federal funds rate will continue to be guided by the incoming data and its implications for the outlook for inflation and economic activity.

CSBS [Community Bankers Have Bleak Economic Outlook](#) (01/10/2023) - Community bankers are starting the year with a negative economic outlook and largely believe the nation is in a recession, according to the most recent quarterly [Community Bank Sentiment](#) Index (CBSI), released by the Conference of State Bank Supervisors (CSBS).

The CBSI fell six points to 85 in the fourth quarter of 2022, with community bankers noting particular concern about regulatory burden, monetary policy and future business conditions. While community banker sentiment was pessimistic throughout the year, the CBSI is back to near its lowest recorded level of 84 in the second quarter of 2022.

"The nation's community bankers have a gloomy economic outlook and expect a tough year ahead. And because they have a good sense of consumer and business confidence at the local level, community bankers might be the best leading indicator for assessing future economic conditions," said CSBS Chief Economist Tom Siems.

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.

An overwhelming majority, 96% of respondents, said they believe the U.S. economy is in a recession and cited inflation, government regulation, labor challenges and cyberattacks as their top concerns for the year ahead.

Six of the seven components that comprise the CBSI fell from the previous quarter. Expectations that the Federal Reserve's monetary policy decisions will negatively impact market conditions continues to hold

the overall index down, decreasing two points to 33. The outlook for future business conditions also continues to weigh down the overall index, falling five points to 37.

The regulatory burden component remains the lowest among the seven components at 26 points, rising five points from last quarter but remaining below 28 for eight straight quarters.

At 99, the profitability component had the greatest quarterly decline, falling 22 points, and returned near its level of 101 recorded in Q2 2022.

Comment: CSBS Chief Economist Tom Siems discusses findings from the most recent CSBS Community Bank Sentiment Index in the podcast [‘Simply Stated.’](#)

BSA / AML

FinCEN [Issues Notice of Proposed Rulemaking Regarding Access to Beneficial Ownership Information and Related Safeguards](#) (01/15/2023) - The Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking (NPRM) that would implement provisions of the Corporate Transparency Act (CTA) that govern the access to and protection of beneficial ownership information. This NPRM proposes regulations that would govern the circumstances under which such information may be disclosed to Federal agencies; state, local, tribal, and foreign governments; and financial institutions, and how it must be protected.

The proposed regulations specify how government officials would access beneficial ownership information in order to support law enforcement, national security, and intelligence activities. They also describe how certain financial institutions and their regulators would access such information in order to fulfill customer due diligence requirements and conduct supervision. The proposed rule also sets forth high standards for protecting this sensitive information consistent with the goals and requirements of the CTA. The NPRM also proposes amendments to the final reporting rule to specify when reporting companies may report FinCEN identifiers associated with entities.

“The beneficial ownership information reporting rule finalized earlier this year is a major step forward in unmasking shell companies and protecting the U.S. financial system from abuse by money launderers, drug traffickers, sanctioned oligarchs, and other criminals,” said FinCEN Acting Director Himamauli Das. “In this next step, the proposed rule would provide the highest standards of security and confidentiality while ensuring that the new beneficial ownership database is highly useful to law enforcement agencies in its efforts to combat financial crime. As we drive toward full implementation of the Corporate Transparency Act, we move closer to exposing criminals, corrupt actors, and anyone trying to hide ill-gotten gains in the United States.”

This NPRM follows the final reporting rule that FinCEN issued on September 30, 2022, requiring most corporations, limited liability companies, and other similar entities created in or registered to do business in the United States to report information about their beneficial owners to FinCEN. In accordance with the CTA’s requirements, FinCEN’s proposal limits access to beneficial ownership information to Federal agencies engaged in national security, intelligence, or law enforcement activities; state, local, and Tribal law enforcement agencies with court authorization; financial institutions with customer due diligence requirements and regulators supervising them for compliance with such requirements; foreign law enforcement agencies, prosecutors, judges, and other agencies that meet specific criteria; and Treasury officers and employees under certain circumstances. FinCEN further proposes to subject each category of authorized recipients to security and confidentiality protocols that align with the scope of the access and use provisions.

FinCEN strongly encourages all interested parties to submit comments on its proposals. Written comments on the NPRM should be submitted within 60 days following publication in the Federal Register.

[NPRM Fact Sheet](#)

Comment: Based on the Access NPRM, banks would be required to submit requests for BOI to FinCEN in the form and manner FinCEN shall prescribe. FinCEN intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized users through specific instructions and guidance as it continues developing the beneficial ownership IT system. The Access NPRM also expands on the reasons for rejecting requests to access BOI and provides that FinCEN would be permitted to deny requests from both agencies and any other authorized recipient, including banks.

FinCEN [Issues Alert on Human Smuggling Along the Southwest Border of the United States](#) (01/13/2023) - WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued an alert to better support financial institutions in detecting financial activity related to human smuggling along the southwest border of the United States. The alert provides trends, typologies, and red flag indicators to help financial institutions better identify and report suspicious transactions potentially related to such activity.

“Illicit actors, including transnational criminal organizations, engage in human smuggling activity at the U.S. southwest border to reap illicit financial gains, and they do so without regard for the well-being or physical safety of those involved,” said FinCEN Acting Director Himamauli Das. “Financial institutions need to know that their vigilance and prompt Bank Secrecy Act reporting matters—it aids investigations tied to human smuggling and transnational organized crime and can ultimately save lives.”

Human smuggling is one of the eight “Anti-Money Laundering and Countering the Financing of Terrorism National Priorities” identified by FinCEN, in coordination with its interagency partners, pursuant to the Anti-Money Laundering Act of 2020. Illicit actors seeking to make a profit by smuggling migrants across the southwest border have exploited the increasing volume of migration activity. Recent events involving the death of migrants attempting to cross into the United States illustrate the dangers associated with human smuggling and how smuggling networks exploit human beings for profit. According to the U.S. Department of Homeland Security’s Homeland Security Operational Analysis Center, human smuggling along the southwest border of the United States generates an estimated \$2 billion to \$6 billion in yearly revenue for these illicit actors. In support of ongoing initiatives by the U.S. Government to combat human smuggling, today’s alert builds upon FinCEN’s 2020 and 2014 human smuggling and human trafficking advisories, while providing information specifically related to human smuggling occurring along the southwest border of the United States.

Financial institutions with questions about the content of this alert should contact the FinCEN Regulatory Support Section at frc@fincen.gov.

Comment: While this alert focuses on the southern border, it is information we all need to be aware of throughout the U.S.

Deposit / Retail Operations

FTC [Don’t Answer Another Online Quiz Question Until You Read This](#) (01/11/2023) - What do the model of your first car, your favorite hobby, and the high school you attended have in common? If you said they’re questions commonly used for online account security and online quizzes, you’re correct! Before you take a quiz to find out which Marvel character you are, ask yourself: Do I know who’s gathering this information about me — or what they plan to do with it?

Comment: The bad actors are seeking nuggets of information they can later use to either steal an individual's identity or to fabricate an entirely new identity. Consumer materials from the FTC are good for posting on the bank's web site to help educate customers.

Human Resources

No news to report this week.

Lending

OCC [Fair Lending: Revised Comptroller's Handbook Booklet and Rescissions](#) (01/12/2023) - The Office of the Comptroller of the Currency (OCC) issued version 1.0 of the "Fair Lending" booklet of the Comptroller's Handbook. This booklet provides information and examination procedures to assist OCC examiners in assessing fair lending risk and evaluating compliance with the Fair Housing Act, Equal Credit Opportunity Act, and Regulation B, the consumer protection regulation that implements the Equal Credit Opportunity Act.

Rescissions

The revised booklet replaces the booklet of the same title issued in January 2010. Also rescinded is OCC Bulletin 2010-4, "Compliance Policy: Fair Lending – Revised Booklet," which transmitted the prior version of this booklet.

Note for Community Banks

The "Fair Lending" booklet applies to the OCC's supervision of community banks.

Highlights

The revised booklet

- reflects changes to laws and regulations since this booklet was last published.
- reflects the current OCC approach to fair lending examinations.
- includes new and clarified details on examination scenarios.
- includes clarified and expanded risk factors for a variety of examination types.
- includes clarifying edits regarding supervisory guidance, sound risk management practices, and applicable legal standards.
- revises certain content for clarity.

Comment: Whether your bank is a national bank or not, the OCC materials lend insight into the regulatory thought process. In December 2022, Grovetta Gardineer, Senior Deputy Comptroller for Bank Supervision Policy at the Office of the Comptroller of the Currency, [discussed](#) the OCC's current fair lending initiatives. Her remarks were intended to convey the message that the OCC is "laser focused on fair lending" and considers fair lending compliance to be an important component of safety and soundness.

CFPB [Servicemember Reports About Identity Theft are Increasing](#) (01/12/2023) - Identity theft can quickly reverse a good credit report, filling it with unknown, maxed-out credit card accounts or collections accounts for mystery debt. It can spell trouble for anyone, but for servicemembers, this negative information on their credit report can lead to loss of a security clearance or even discharge.

Complaint data from the CFPB shows that military consumers – including active duty servicemembers, veterans, and military family members – are increasingly reporting debts attributed to identity theft.

	<p>Between 2014 and 2022, military consumer complaints to the CFPB about debts attributed to identity theft increased nearly fivefold.</p> <p>The CFPB also found that, while consumer reporting companies are required to promptly address identity theft, it's often a complicated and lengthy process. When credit report inaccuracies are unresolved, the problem can quickly cascade into other challenges for active duty servicemembers.</p> <p><i>Comment: The Fair Credit Reporting Act (FCRA) provides three types of alerts a servicemember can use to protect their credit file from potential fraud or identity theft.</i></p>
	<p>FRB Consumer Credit – G. 19 (01/09/2023) - In November, consumer credit increased at a seasonally adjusted annual rate of 7.1 percent. Revolving credit increased at an annual rate of 16.9 percent, while nonrevolving credit increased at an annual rate of 3.9 percent.</p> <p><i>Comment: SHRM recently financial woes are continuing to impact employees as well, with scores of workers tapping into their retirement accounts and many more worried about their expenses and savings. More than a quarter of employees have used their retirement accounts to pay for short-term expenses in the past year, research reveals.</i></p>

Technology / Security

	No news to report this week.
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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. **Comments will be due 60 days after the Federal Register publishes the proposed rule. The public comment period will be open soon.**