



Community Bankers of Michigan Regulatory Dispatch

January 29, 2025

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC Statement from Acting Chairman Travis Hill

WASHINGTON – On January 20, 2025, Travis Hill became Acting Chairman of the Federal Deposit Insurance Corporation (FDIC). Acting Chairman Hill issued the following statement:

“It is my honor and privilege to serve as Acting Chairman of the FDIC. While the FDIC faces a broad range of issues, and as always will fulfill our mandate to promote a safe, sound, and resilient banking system, below is a list of matters I expect the FDIC to focus on in the coming weeks and months.”

- Conduct a wholesale review of regulations, guidance, and manuals to ensure our rules and approach promote a vibrant, growing economy.
- Adopt a more open-minded approach to innovation and technology adoption, including (1) a more transparent approach to fintech partnerships and to digital assets and tokenization, and (2) engagement to address growing technology costs for community banks.
- Improve the bank merger approval process and replace the 2024 Statement of Policy to ensure that merger transactions that satisfy the Bank Merger Act are approved in a timely way.
- Withdraw problematic proposals from the past three years, such as proposals on brokered deposits and corporate governance.
- Improve the supervisory process to focus more on core financial risks and less on process, and reevaluate the supervisory appeals process.
- Enhance our readiness and preparedness for resolving large financial institutions, incorporating lessons from the far-too-costly failures of 2023, including the need to be much more proactive and nimble and to improve the bidding process.
- Pursue adjustments to our capital and liquidity rules to appropriately balance driving economic growth with ensuring safety and soundness and resilience to shocks.
- Encourage more de novo activity so there is a healthy pipeline of new entrants in the banking sector.
- Work to ensure law-abiding customers have, and do not lose, access to bank accounts and banking services.
- Modernize implementation of the Bank Secrecy Act.
- Study deposit behavior to develop a more sophisticated understanding of the relative stability of different types of deposits and depositors.
- Reevaluate our disclosure practices, and expand transparency in areas that do not impact safety and soundness or financial stability.

- Ensure the FDIC remains within our statutory mandates, and stops coloring outside the lines.
- Pursue internal efficiencies to ensure we are serving as responsible stewards of the Deposit Insurance Fund.
- Reestablish a strong workforce culture, where misconduct is not tolerated and those who engage in misconduct are held accountable.

Comment: Hill, who became vice chair of the FDIC in 2023, also plans for a “more open-minded approach to innovation and technology adoption,” including “more transparent approach to fintech partnerships.” The recent actions by the FDIC came with an incredible number of employee hours and paperwork that as one analyst said “...clogs up the system and stops the economy from continuing to have that very healthy flywheel. So, we’re really looking forward to that.”

CBM Insights

Q: Are there any prohibitions in the regulations that would prevent us from applying an escrow surplus to the borrower’s loan payment? He is two months late on his regular mortgage payment. And are we still required to perform the Annual Escrow Analysis and send that to the borrower if the loan is past due?

A: An escrow account is essentially a fiduciary account meaning it belongs to the borrower. The borrower would have to agree to apply the surplus to the loan.

HUD addresses the issue of escrow accounts, refunds and default in [FAQs About RESPA for Industry](#). See below for an excerpt:

Question #39: If the borrower's escrow account includes a surplus greater than \$50 which HUD's rules require be refunded, may the servicer credit the surplus directly to the principal, rather than refund the surplus to the borrower?

Answer: No. However, the servicer may inform the borrower in the information accompanying the return of the surplus that the borrower may elect to use the refund to reduce principal or have it credited against the next year's escrow payments.

Question #40: If there is a surplus in the escrow account and the borrower is in default, may the servicer retain the surplus as payment towards the amount in default?

Answer: HUD's escrow rules are inapplicable to loans that are in default, which is defined under the RESPA rules as current payments which are more than 30 days delinquent. The parties should consult the mortgage documents or state law to resolve whether escrow funds are available for this purpose.

Additionally, look at RESPA [§1024.17\(f\)\(2\)](#):

(2) Surpluses. (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$50). If the surplus is less than 50 dollars (\$50), the servicer may refund such amount to the borrower or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

Regarding the Annual Escrow Statement, see [§1024.17\(i\)\(2\)](#):

(2) No annual statements in the case of default, foreclosure, or bankruptcy. This paragraph (i)(2) contains an exemption from the provisions of § 1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 1024.17(i). This exemption also applies in situations where the servicer has brought

an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

You have the option of providing the Annual Escrow Statement in a timely fashion according to the rule, or providing when the account becomes “current” which could be more difficult to track and produce.

Bank Management

	<p>White House Regulatory Freeze Pending Review (01/20/2025) – By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order all executive departments and agencies to take the following steps:</p> <p>(1) Do not propose or issue any rule in any manner, including by sending a rule to the Office of the Federal Register (the “OFR”), until a department or agency head appointed or designated by the President after noon on January 20, 2025, reviews and approves the rule. The department or agency head may delegate this power of review and approval to any other person so appointed or designated by the President, consistent with applicable law. The Director or Acting Director of the Office of Management and Budget (the “OMB Director”) may exempt any rule that he deems necessary to address emergency situations or other urgent circumstances, including rules subject to statutory or judicial deadlines that require prompt action.</p> <p>(2) Immediately withdraw any rules that have been sent to the OFR but not published in the Federal Register, so that they can be reviewed and approved as described in paragraph 1, subject to the exceptions described in paragraph 1.</p> <p>(3) Consistent with applicable law and subject to the exceptions described in paragraph 1, consider postponing for 60 days from the date of this memorandum the effective date for any rules that have been published in the Federal Register, or any rules that have been issued in any manner but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise. During this 60-day period, where appropriate and consistent with applicable law, consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the rules postponed under this memorandum, and consider reevaluating pending petitions involving such rules. As appropriate and consistent with applicable law, and where necessary to continue to review these questions of fact, law, and policy, consider further delaying, or publishing for notice and comment, proposed rules further delaying such rules beyond the 60-day period.</p> <p>(4) Following the postponement described in paragraph 3, no further action needs to be taken for those rules that raise no substantial questions of fact, law, or policy. For those rules that raise substantial questions of fact, law, or policy, agencies should notify and take further appropriate action in consultation with the OMB Director.</p> <p>(5) Comply in all circumstances with any applicable Executive Orders concerning regulatory management.</p> <p>As used in this memorandum, “rule” has the definition set forth in section 551(4), title 5, United States Code. It also includes any “regulatory action,” as defined in section 3(e) of Executive Order 12866 of September 30, 1993, as amended, and any “guidance document” as defined in section 2(b) of Executive Order 13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), when that order was in effect. Thus, the requirements of this memorandum apply not only to “rules” as defined in section 551(4) of title 5, but also to any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the</p>
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promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking. They shall also apply to any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.

The OMB Director shall oversee the implementation of this memorandum, and any communications regarding any matters pertaining to this review should be addressed to the OMB Director. The OMB Director is also authorized to establish a process to review pending collections of information under the Paperwork Reduction Act of 1995, as codified in chapter 35, title 44, United States Code, and to take actions that the OMB Director deems appropriate based on that review, consistent with applicable law.

Should actions be identified that were undertaken before noon on January 20, 2025, that frustrate the purpose underlying this memorandum, I may modify or extend this memorandum, to require that department and agency heads consider taking steps to address those actions.

The OMB Director is authorized and directed to publish this memorandum in the Federal Register.

This memorandum shall be implemented consistent with applicable law.

Comment: This certainly would have added confusion for community bankers. As of January 29, 2025, the spending freeze was revoked amid mounting legal action.

CFPB [Compendium of Recent Guidance](#) (01/14/2025) – The guidance documents reflect the considered judgment, reasoning, knowledge, and expertise of the CFPB. The United States Supreme Court recently stated that “[i]n an agency case as in any other, ... even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same— ‘the reading the court would have reached’ if no agency were involved.” *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.11 (1984)). At the same time, the Court indicated that “courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes.” *Id.* at 2262. In that spirit, our hope is that these CFPB guidance documents implementing the federal consumer financial laws prove useful to courts in their interpretation of those laws, as well as to the various enforcers of them. Indeed, in many instances, courts have agreed with interpretations articulated in CFPB guidance documents. We believe that the interpretations set forth in these documents reflect the best reading of the federal consumer financial laws and that the reasoning provided therein will therefore prove to be durable.

Comment: ‘For some states, private plaintiffs, and courts, the compendium will serve as a reference point, but its weight will depend on how much deference judges choose to grant. For enforcers, the guidance offers a roadmap—though one that could soon be revised. And for businesses, it is a reminder to stay nimble. Compliance today may look very different from compliance a year from now.’ – Venable LLP

BSA / AML

No news to report this week.

Deposit / Retail Operations

FTC [Scam Alert: QR Code on an Unexpected Package](#) (01/23/2025) – An unexpected package from an unknown sender arrives in your name. You open it and find a note that says it's a gift, but it doesn't say who sent it. The note also says to scan a QR code to find out who sent it — or to get instructions on how to return it. Did someone really send you a gift? Or is it an attempt to steal your personal information?

Comment: Find ways to educate your customers about various scams.

Human Resources

No news to report this week.

Lending

CFPB [Report Finds Cash-Out Mortgage Refinance Borrowers Improve Credit Scores](#) (01/21/2025) – WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) published a report about financial outcomes for cash-out refinance mortgage borrowers. Cash-out borrowers had an initial sharp improvement in credit scores, followed by a gradually worsening of their scores. Scores in general, however, stayed above their pre-refinance levels. The report confirms that borrowers often do use the money from a cash-out refinance to pay down other debts, particularly credit card and auto loan debt. The report looked at borrowers between 2014 and 2021.

Home equity is the third-most common financial asset for families, and a significant source of savings for homeowners. A cash-out refinance lets homeowners tap into their equity to pay off other debts or fund needed home repairs, for example. At the same time, paying non-mortgage debts with mortgage debt can increase the risk of foreclosure.

The CFPB's report includes the following key findings:

- Borrowers gave “pay off other bills or debts” as the most common reason for cash-out refinancing: Each year, from 2014 to 2019, more than 50% of cash-out borrowers responding to the National Survey of Mortgage Originations selected “paying off other bills or debts.” For 2020 and 2021, more than 40% selected that reason. “Home repairs or new construction” was the second-most common reason cited each year.
- Cash-out borrowers often have different debt profiles than other homeowners: Before the mortgage transaction, mean credit card balances were approximately \$4,000 higher among cash-out borrowers, while mean student loan balances were approximately \$4,000 lower. Mean auto loan balances were similar in magnitude for both groups of borrowers.
- Cash-out borrowers had sharp improvements in their debt load and credit scores at the time of refinancing: Cash-out borrowers had large drops in credit card and auto loan balances at the time of refinancing, but did not generally experience large drops in their student loan balances. Similarly, cash-out borrowers had sharp increases in their credit scores in the quarter after refinance. Credit card balances and use rates trended back toward pre-refinance levels in the year following the refinance, but they did not in that time increase to the pre-refinance level. Credit scores likewise decreased in the year following refinancing but remained above pre-refinance levels.

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.

- 12.09.2024 **CFPB** [Fair Credit Reporting Act \(Regulation V\); Identity Theft and Coerced Debt](#) SUMMARY: The Consumer Financial Protection Bureau (CFPB) is seeking information in advance of preparing a proposed rule to address concerns related to information furnished to credit bureaus and other consumer reporting agencies concerning coerced debt. More specifically, this advance notice of proposed rulemaking solicits information on amending the definitions of “identity theft” and “identity theft report” in Regulation V, which implements the Fair Credit Reporting Act, as well as other related amendments to Regulation V, to include information stemming from transactions that occurred without the consumer’s effective consent. **DATES: Comments must be received by March 7, 2025.**
- 01.10.2025 **CFPB** [Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms](#) SUMMARY: In light of interest by electronic fund transfer system market participants to offer new types of products to transfer funds and make purchases through accounts established primarily for personal, family, or household purposes, the Consumer Financial Protection Bureau (CFPB) is proposing this interpretive rule to assist companies, investors, and other market participants evaluating existing statutory and regulatory requirements governing electronic fund transfers (EFTs). **DATES: Comments must be received by March 31, 2025.**
- 01.10.2025 **CFPB** [Request for Information Regarding the Collection, Use, and Monetization of Consumer Payment and Other Personal Financial Data](#) SUMMARY: The Consumer Financial Protection Bureau (CFPB) is seeking comments from the public to better understand how companies that offer or provide consumer financial products or services collect, use, share, and protect consumers’ personal financial data, such as data harvested from consumer payments. The submissions in response to this request for information will serve to assist the CFPB and policymakers in further understanding the current state of the business practices at these companies and the concerns of consumers as the CFPB exercises its enforcement, supervision, regulatory, and other authorities. **DATES: Comments must be received on or before April 11, 2025.**
- 01.13.2025 **CFPB** [Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services \(Regulation AA\)](#) SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to prohibit certain contractual provisions in agreements for consumer financial products or services. The proposal would prohibit covered persons from including in their contracts any provisions purporting to waive substantive consumer legal rights and protections (or their remedies) granted by State or Federal law. The proposal would also prohibit contract terms that limit free expression, including with threats of account closure, fines, or breach of contract claims, as well as other contract terms. The proposal would also codify certain longstanding prohibitions under the Federal Trade Commission’s (FTC) Credit Practices Rule. **DATES: Comments must be received on or before April 1, 2025.**