Community Bankers of Michigan Regulatory Dispatch

January 4, 2022

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

Lead Story

This is the first edition of our Regulatory Dispatch, which we will provide in place of Capital Comments going forward. Our goal is to provide timelier information for you to use.

2021: A Busy Year for Laws, Regulations, Examination Procedures, Interagency Statements.

2021 Proved to be a busy year based upon the effective dates for a number of final rules and other releases by the various regulatory agencies. Below is a brief summary of the final rules effecting important consumer compliance-related changes.

Regulation B (Equal Credit Opportunity Act) - The CFPB issued an interpretive rule to clarify that, with respect to any aspect of a credit transaction, the prohibition against sex discrimination in ECOA and implementing Regulation B encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations.

Regulation C (Home Mortgage Disclosure Act) - The final rule set the threshold for reporting data about open-end lines of credit at 200 open-end lines of credit effective January 1, 2022, which is the sunset date for the temporary threshold of 500 open-end lines of credit.

Regulation E (Electronic Funds Transfer Act) – New questions and answers pertain to compliance with the Electronic Fund Transfer Act (EFTA) and Regulation E were issued by the CFPB.

Regulation F (Fair Debt Collection Practices Act) – Two rules, both issued in 2020, became effective November 30, 2021. The first rule, issued in October 2020, addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. The second rule, issued in December 2020, clarifies the information debt collectors must provide to consumers at the beginning of collection communications. The rule also prohibits debt collectors from suing or threatening to sue consumers to collect time-barred debt.

Regulation Z (Truth in Lending Act) - The CFPB issued a final rule to amend the General QM loan definition in Regulation Z. Among other things, the final rule removes the General QM loan definition's 43 percent debt-to-income limit and replaces it with price-based thresholds.

Role of Supervisory Guidance - By codifying a 2018 Statement, with amendments, the final rule confirms that the agencies will continue to follow and respect the limits of administrative law in carrying out its supervisory responsibilities. The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public. Because it is incorporated into the final rule, the 2018 Statement, as amended, is binding on the agencies. The final rule adopts the rule as proposed without substantive changes.

For a list of all the final rules issued by the CFPB, click here.

CBM Insights

Q: As rates start to go up, we are thinking people may want to modify their ARM loan into a fixed rate loan and want to be prepared to handle this correctly. If that is handled via a loan modification, does it trigger new disclosures?

A: Under §1026.20, a refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer, with certain exceptions. A new transaction (a refinancing) subject to new disclosures results if the creditor either increases the rate based upon a variable rate feature not already disclosed or if the creditor adds a variable feature to the obligation.

Converting an ARM to a fixed rate loan would not trigger new disclosures (a refinancing) provided the original obligation is not satisfied and replaced, only modified. However, it would trigger a rate adjustment notice under §1026.20(c) if the subsequent interest rate adjustment results in a corresponding payment change. Notice the underlined passage below.

(c) Rate adjustments with a corresponding change in payment. The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (c), in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (c), those provisions apply to assignees and servicers as well as to creditors. <u>The disclosures required by</u>

this paragraph (c) also shall be provided for an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change.

Source link.

Items of Interest

The following items are worth noting for your bank. They are listed by topic, which will include Bank Management, Deposit Operations, Technology, Human Resources, and Lending.

Green: Item worth knowing about

Yellow: Deserves attention

Red: Requires immediate attention

Bank Management

	FDIC Chairman Jelena McWilliams Announces Her Resignation (12.31.2021) - After serving as the 21st Chairman of the Federal Deposit Insurance Corporation (FDIC) since June 2018, I intend to resign as Chairman effective February 4, 2022. When I immigrated to this country 30 years ago, I did so with a firm belief in the American system of government. During my tenure at the Federal Reserve Board of Governors, the United States Senate, and the FDIC, I have developed a deep appreciation for these venerable institutions and their traditions. It has been a tremendous honor to serve this nation, and I did not take a single day for granted. Throughout my public service, I have been constantly reminded how blessed we are to live in the United States of America. Serving the American people alongside the dedicated career professionals of the FDIC has been the highlight of my professional life. Throughout my tenure, the agency has focused on its fundamental mission to maintain and instill confidence in our banking system while at the same time promoting innovation, strengthening financial inclusion, improving transparency, and supporting community banks and minority depository institutions, including through the creation of the Mission Driven Bank Fund. Today, banks continue to maintain robust capital and liquidity levels to support lending and protect against potential losses. The unexpected shock of COVID-19 tested the resilience of our financial system beginning in March 2020, and the FDIC took swift actions to maintain stability and provide flexibility for banks and consumers. The core of our financial system not only weathered the storm, but was a tangible source of strength for the American economy. The committed staff of the FDIC deserve great credit for these results,

	and they have my profound gratitude. I am humbled by their dedication to the FDIC's mission and honored to have served with them. ***Comment: Community bankers are grateful for the work that Chairman McWilliams championed during her tenure at the FDIC and especially her steady hand of response in the early months of the pandemic. Along with replacing Chairman McWilliams, President Biden must also appointee nominees for two vacant FDIC director positions, including the one held on an interim basis by Gruenberg.***
	Fed **Underlying Inflation Dashboard Updated** **(12.23.2021) -** The following information is now available on the Federal Reserve Bank of Atlanta's website. We've updated our Underlying Inflation Dashboard with data from the US Bureau of Economic Analysis and the Federal Reserve Bank of Dallas. ***Comment: The twelve-month change in the November CPI was +6.8%, a 0.6 percentage point increase from the previous month.***
	Joint Community Bank Leverage Ratio Framework: Interagency Statement (12.21.2021) - The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) today issued an interagency statement on the optional community bank leverage ratio framework. The temporary relief measures affecting the framework will expire on December 31, 2021.1 Beginning on January 1, 2022, the community bank leverage ratio requirement will revert to greater than 9 percent as established under the 2019 final rule.2 The community bank leverage ratio framework includes a two-quarter grace period that allows a qualifying community bank3 to continue reporting under the framework and be considered "well capitalized" as long as its leverage ratio falls no more than 1 percentage point below the applicable community bank leverage ratio requirement. **Note for Community Banks** The community bank leverage ratio framework is optional. A qualifying community bank with less than $10 billion in total consolidated assets as of the report date and that meets other prudential criteria is eligible to opt into the framework. Highlights • The interagency statement serves as a reminder that a qualifying community bank that elects the community bank leverage ratio framework will be subject to a community bank leverage ratio requirement of greater than 9 percent when it submits its March 31, 2022, call report.

	• Starting on January 1, 2022, a qualifying community bank must report a leverage ratio greater than 8 percent to use the two-quarter grace period. The grace period allows a qualifying community bank additional time to build capital and manage its balance sheet to either remain in the framework or prepare to comply with the generally applicable risk-based and leverage capital requirements. • The interagency statement clarifies that a community bank would not be viewed negatively within the examination process due solely to its use of the grace period. ***Comment: Review this guidance carefully to determine whether your bank would qualify for the grace period. Then follow up.***
	FDIC Remarks by Chairman Jelena McWilliams at the Open Session of the Meeting of the Financial Stability Oversight Council (12.17.2021)
	Fed A Hopeless and Imperative Endeavor: Lessons from the Pandemic for Economic Forecasters - Governor Christopher J. Waller (12.17.2021)
	Fed G.17 Industrial Production (12.16.2021) - Industrial production rose 0.5 percent in November. The indexes for both manufacturing and mining increased 0.7 percent, while the index for utilities decreased 0.8 percent. At 102.3 percent of its 2017 average, total industrial production in November was 5.3 percent above its year-earlier level and at its highest reading since September 2019. Capacity utilization for the industrial sector increased 0.3 percentage point to 76.8 percent; even so, it was 2.8 percentage points below its long-run (1972–2020) average.

BSA / AML

	FinCEN Invites Nominations for Membership on the Bank Secrecy Act Advisory Group (BSAAG) (12.23.2021) - The Financial Crimes Enforcement Network (FinCEN) is inviting nominations for membership on the Bank Secrecy Act Advisory Group (BSAAG). BSAAG membership is open to financial institutions subject to the Bank Secrecy Act (BSA), trade groups with members that are subject to the BSA, and federal and non-federal regulators and law enforcement agencies that are located within the United States. Membership is granted to organizations, not to individuals. Organizational members will be selected to serve a three-year term. Please see the Federal Register Notice for important details about the nominations process.

Comment: According to FinCEN, BSAAG is the "means by which the Treasury receives advice on the reporting requirements of the Bank Secrecy Act, and informs private sector representatives on how the information they provide is used."

Deposit / Retail Operations

Fed Issues Update to Payments Study (12.22.2021) - The Federal Reserve on Wednesday issued an update to the Federal Reserve Payments Study (FRPS) to include findings from recent survey data. The findings highlight changes in card payments and increased adoption of innovative payment methods following the emergence of COVID-19.

For example, the recent data show that the number and value of both in-person and remote (e.g., online, over the phone) card payments grew in 2019, broadly in line with recent trends. The year 2020, by contrast, saw an unprecedented decline of 11.7 billion, or almost 13 percent, in the number of in-person card payments accompanied by a similarly unprecedented surge of 8.7 billion, or almost 24 percent, in the number of remote card payments.

Despite the resulting decline in the total number of card payments, the total value of card payments increased once again in 2020, suggesting consumers consolidated their card spending into fewer, higher-value purchases. Reflecting the shift away from in-person card payments toward remote card payments, the total value of remote card payments exceeded that of in-person card payments in 2020 for the first time. The increase in remote card payments in 2020 was driven primarily by a surge in e commerce, and quarterly data show that the greatest shift to remote card payments occurred in the second quarter of 2020.

In addition, the pace of adoption of new payment technologies increased in 2019 and 2020, with the share of in-person card payments initiated with contactless technologies increasing many times over. Card payments initiated with digital wallets, which securely store payments information on mobile devices or online, saw similar growth in recent years, including accelerated adoption in the second half of 2020. Finally, adoption of person-to-person payments between bank accounts also exhibited growth in 2020 with a surge in first-time use in the second quarter.

The FRPS is a collaborative effort of the Federal Reserve Bank of Atlanta and the Federal Reserve Board. Previous releases and data are available here.

Human Resources

	No news to report this week.

Lending

	CFPB Announces Asset-Size Threshold Adjustments Under HMDA (Regulation C) and TILA (Regulation Z) (12.24.2021) - The Bureau has issued two annual threshold adjustment final rules. First, the Bureau has announced the asset-size exemption thresholds for depository institutions under Regulation C. Second, the Bureau has announced the asset-size exemption thresholds for certain creditors under the escrow requirements and small creditor portfolio and balloon-payment qualified mortgage requirements, and the small creditor exemption from the prohibition against balloon-payment high-cost mortgages under Regulation Z. These adjustments are effective on January 1, 2022, consistent with relevant statutory or regulatory provisions. You can access the Regulation C notice at: http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-adjustment-asset-size-exemption-threshold/. You can access the Regulation Z notice at: http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-act-regulation-z-adjustment-asset-size-exemption-threshold/. ***Comment: Review these adjustments and take appropriate action to update your policies and procedures.***
	Joint Federal Bank Regulatory Agencies Release 2020 Small Business, Small Farm, and Community Development Lending Data (12.21.2021) - The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, members of the Federal Financial Institutions Examination Council (FFIEC), today released data on small business, small farm, and community development lending during 2020.

	The Community Reinvestment Act regulations require the agencies to annually disclose these data. The FFIEC also prepared aggregate disclosure statements of small business and small farm lending for all metropolitan statistical areas and non-metropolitan counties in the United States and its territories. The statements are available here. Attachment: [Fact Sheet on 2020 Data – With Table] ***Comment: The CRA requires banks with more than $1.305 billion in assets to report data in these areas.***
	FRB [Senior Credit Officer Opinion Survey on Dealer Financing Terms] (12.21.2021) - Senior Credit Officer Opinion Survey on Dealer Financing Terms Quarterly survey providing information about the availability and terms of credit in securities financing and over-the counter (OTC) derivatives markets
	OCC [Other Real Estate Owned: Updated Comptroller's Handbook Booklet and Rescissions] (12.20.2021) - The Office of the Comptroller of the Currency (OCC) today issued an updated "Other Real Estate Owned" booklet of the Comptroller's Handbook, which is prepared for use by OCC examiners in connection with the examination and supervision of national banks, federal savings associations, and federal branches and agencies of foreign banking organizations (collectively, banks). Updates are summarized in the "Table of Updates Since Publication" in the back of the booklet. Refer to the "Foreword" booklet of the Comptroller's Handbook for more information regarding the OCC's process for revising and updating booklets. Rescissions The updated booklet replaces the booklet of the same title issued in September 2020. Also rescinded is OCC Bulletin 2020-79, "Other Real Estate Owned: Updated Comptroller's Handbook Booklet." Note for Community Banks The "Other Real Estate Owned" booklet applies to the OCC's supervision of community banks. Highlights The updated booklet • clarifies the definition of physical possession as it pertains to OREO properties.

	• updates ownership obligations and actions as they pertain to the Fair Housing Act. • makes other changes for clarity.ela
	CFPB and **DOJ** Put Landlords and Mortgage Servicers on Notice About Servicemembers' and Veterans' Rights (12.10.2021) - WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) and U.S. Department of Justice (DOJ) issued two joint letters today regarding important legal housing protections for military families. One letter was sent to landlords and other housing providers regarding protections for military tenants. A second letter was sent to mortgage servicers regarding military borrowers who have already exited or will be exiting COVID-19 mortgage forbearance programs in the coming weeks and months. The letter to landlords and other housing providers reminds property owners of the important housing protections for military tenants, some of whom may have had to relocate or make other changes to their housing arrangements in response to the crisis. While military families enjoy the same legal protections and privileges afforded to all other homeowners and tenants, they also have additional housing protections under the Servicemembers Civil Relief Act (SCRA), which is enforceable by the DOJ and servicemembers themselves. The letter to mortgage servicers comes in response to complaints from military families and veterans on a range of potential mortgage servicing violations, including inaccurate credit reporting, misleading communications to borrowers, and required lump sum payments for reinstating their mortgage loans. These complaints are being reviewed for compliance by the CFPB with the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other applicable requirements. ***Comment: Review servicing procedures to assure that they are in full compliance with SCRA.***

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.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

12.08.2021 Beneficial Ownership Information Reporting Requirements - FinCEN is promulgating proposed regulations to require certain entities to file reports with FinCEN that identify two categories of individuals: The beneficial owners of the entity; and individuals who have filed an application with specified governmental authorities to form the entity or register it to do business. The proposed regulations would implement Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), and describe who must file a report, what information must be provided, and when a report is due. Requiring entities to submit beneficial ownership and company applicant information to FinCEN is intended to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity. Once finalized, these proposed regulations will affect a large number of entities doing business in the United States. This document also invites comments from the public regarding all aspects of the proposed regulations as well as comments in response to specific questions. **DATES: Written comments on this proposed rule may be submitted on or before February 7, 2022.**

09.01.2021 Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B) - The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment a proposed rule amending Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Consistent with section 1071, the Bureau is proposing to require covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities. The Bureau's proposal also addresses its approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the proposed rule's effective and compliance dates. **DATES: Comments must be received on or before January 6, 2022.**