



Community Bankers of Michigan Regulatory Dispatch

January 4, 2023

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

CFPB Issues Technical Amendment – HMDA Closed-End Reporting Threshold

In April 2020, the Consumer Financial Protection Bureau issued a final rule (2020 HMDA Rule) to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans. The 2020 HMDA Rule increased the closed-end mortgage loan reporting threshold from 25 loans to 100 loans in each of the two preceding calendar years, effective July 1, 2020. On September 23, 2022, the United States District Court for the District of Columbia vacated the 2020 HMDA Rule as to the increased loan-volume reporting threshold for closed-end mortgage loans. As a result of the September 23, 2022 order, the threshold for reporting data about closed-end mortgage loans is 25, the threshold established by the 2015 HMDA Rule. **Accordingly, this technical amendment updates the Code of Federal Regulations to reflect the closed-end mortgage loan reporting threshold of 25 mortgage loans in each of the two preceding calendar years.**

Comment: In the 2022 ruling, the court noted that “while higher volume exemption thresholds ‘might not significantly impact the value of HMDA data for analysis at the national level,’ they ‘would have a material negative impact on the availability of data about patterns and trends at the local level,’ which data was ‘essential to achieve HMDA’s purposes.’” Based upon the court findings, this ‘amendment’ is not unexpected. It’s worth noting that while the number of banks who will become HMDA reports because of the lower threshold is material, the number of actual loans reported on by those banks is not material.

Items of Interest

Bank Management

FDIC [Consolidated Reports of Condition and Income for Fourth Quarter 2022](#) (12.22.2022)
The materials (linked above) pertain to the Consolidated Reports of Condition and Income (Call Report) for the December 31, 2022, report date and provide guidance on certain reporting issues. This [Financial Institution Letter](#) and the [Supplemental Instructions](#) should be shared with the individual responsible for preparing the Call Report at your institution. Please plan to complete as early as possible the preparation, editing, and review of your institution’s Call Report data and the submission of these data to the agencies’ Central Data Repository (CDR). Starting your preparation early will help you identify and resolve

	<p>any edit exceptions before the submission deadline. If you later find that certain information needs to be revised, please make the appropriate changes to your Call Report data and promptly submit the revised data file to the CDR.</p> <p>Statement of Applicability: This Financial Institution Letter (FIL) applies to all FDIC-insured financial institutions.</p> <p>Distribution: FDIC-Insured Financial Institutions</p> <p><i>Comment: Be sure to share with the individuals that prepare your bank's Call Report data.</i></p>
	<p>FRB Issues Technical Updates to its Policy Governing The Provision of Intraday Credit in Accounts at Federal Reserve Banks (12.21.2022) - The Federal Reserve Board issued technical updates to its policy governing the provision of intraday credit in accounts at the Federal Reserve Banks.</p> <p>In particular, the updates include a new rule establishing settlement times for debits and credits to institutions' Federal Reserve accounts for certain transactions. The updates streamline the settlement process and shorten the time needed for debits and credits to settle. More information about the relevant transactions can be found here.</p> <p>The updates are effective on January 30, 2023.</p>
	<p>CSBS Statement on FDIC Board Appointees (12.20.2022) - CSBS President and CEO Jim Cooper Statement on New FDIC Board Appointees: "On behalf of state bank regulators, I congratulate Martin Gruenberg, Travis Hill and Jonathan McKernan on their appointment to the FDIC Board. Now that the board is complete, I invite all five members to meet with state regulators on ways we can strengthen our partnership and shared interests.</p> <p>State regulators charter and supervise 79% of all U.S. banks. They have the unique experience of being close to the citizens, institutions, and the needs of their local economies in the states in which they serve.</p> <p>We look forward to working with the FDIC Board to ensure and promote the diversity and balance inherent in the nation's dual banking system."</p> <p><i>Comment: It is disappointing that not a single member of the FDIC Board will meet the requirement for state bank supervisory experience. We should expect better representation.</i></p>

BSA / AML

	<p>FinCEN Issues Notice of Proposed Rulemaking Regarding Access to Beneficial Ownership Information and Related Safeguards (12.15.2022) - WASHINGTON—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</p>
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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: The NPRM specifies how recipients of BOI (like a bank) would need to protect against unauthorized disclosure. The proposed protocols would generally require BOI recipients to have standards and procedures for storing the information in a secure system to which only authorized personnel have access and only for authorized purposes. Audit requirements would apply when prudent or mandated by the CTA, as would requirements to certify compliance with the statute and proposed regulations.

Deposit / Retail Operations

[FDIC Issues A Proposed Rule To Modernize the Use of the FDIC Official Sign and Advertising Statement and to Clarify its Regulations Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo](#) (12.13.2022) -

WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) Board of Directors issued for public comment a proposed rule to amend part 328 of its regulations to modernize the rules governing use of the official FDIC sign and advertising statements and clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage.

“The FDIC last made major amendments to the official sign and advertising statement rules in 2006,” said Acting Chairman Gruenberg. “The revisions are intended to extend the certainty and confidence provided by the FDIC official sign found at bank branch teller windows to digital channels, such as bank websites and mobile applications, through which depositors are increasingly handling their banking needs.”

FDIC Logo

Among other things, the rule would modernize requirements for display of the FDIC official sign. The proposed changes would also require the use of signs that differentiate insured deposits from non-deposit products across banking channels and disclose to consumers that certain financial products are not insured by the FDIC, are not deposits, and may lose value.

In addition, the proposed rule would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where persons or entities provide information to consumers that may be misleading and confuse consumers as to whether they are doing business with a bank and whether their funds are protected by deposit insurance. For example, the proposed rule would clarify that FDIC-associated terms or images may not be used in marketing and advertising materials to imply or represent that any uninsured financial product is insured or guaranteed by the FDIC.

As Acting Chairman Gruenberg noted, “Next year, 2023, will mark the 90th anniversary of the FDIC. This timely proposal would bring the certainty, safety, and confidence historically provided by the FDIC sign and FDIC insurance to today's varied banking channels, including digital banking.”

Attachments:

[Proposed Rules on FDIC Official Sign and Advertising; and Misrepresentation and Misuse of FDIC's name and Logo](#)

Comment: Update your policies and procedures accordingly. One point of note that is that 'insured depository institutions' (IDIs) and their fintech/crypto partners should focus on is the requirement that an insured bank maintain policies and procedures that include provisions for monitoring and evaluating activities of third parties that offer IDI products or services to others.

Human Resources

No news to report this week.

Lending

CFPB Announces Asset-Size Threshold Adjustments Under HMDA (Regulation C), TILA (Regulation Z), and Federal Civil Penalties Inflation Adjustment Act (12.28.2022) - The Bureau has issued three 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.

Third, the Bureau has announced the annual adjustments for inflation to the Bureau's civil penalty amounts, as required by the Federal Civil Penalties Inflation Adjustment Act, as amended.

The HMDA and TILA escrow adjustments are effective on January 1, 2023, consistent with relevant statutory or regulatory provisions. The civil penalty adjustments are effective on January 15, 2023.

You can access the Regulation C notice at: 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: www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-act-regulation-z-adjustment-asset-size-exemption-threshold/.

You can access the civil penalty notice at: www.consumerfinance.gov/rules-policy/final-rules/civil-penalty-inflation-annual-adjustments/.

Comment: Normal, annual adjustments under the regulations. Share with your compliance staff and update policies and procedures accordingly.

CFPB Announces Threshold Adjustments Under TILA (Regulation Z) Impacting HOEPA Loans and Qualified Mortgages (12.23.2022) - The Consumer Financial Protection Bureau has issued a final rule amending the official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to calculate annually the dollar amounts for several provisions in Regulation Z. This final rule reviews dollar amounts for certain provisions implementing TILA and amendments to TILA impacting HOEPA loans and qualified mortgages.

These adjustments are applicable beginning January 1, 2023, consistent with relevant statutory or regulatory provisions.

You can access the notice at: <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoeпа/>.

Comment: Normal, annual adjustments under the regulations. Share with your compliance staff and update policies and procedures accordingly.

FRB [Senior Credit Officer Opinion Survey on Dealer Financing Terms](#) (12.22.2022) - The Senior Credit Officer Opinion Survey on Dealer Financing Terms (SCOOS) is a quarterly survey providing information about the availability and terms of credit in securities financing and over-the counter (OTC) derivatives markets. The SCOOS is modeled after the long-established Senior Loan Officer Opinion Survey on Bank Lending Practices, which provides qualitative information about changes in supply and demand for loans to households and businesses at commercial banks. The SCOOS collects qualitative information on credit terms and conditions in securities financing and OTC derivatives markets, which are important conduits for leverage in the financial system. The survey panel for the SCOOS began by including 20 dealers and over time has been expanded. These firms account for almost all of the dealer activity in dollar-denominated securities financing and OTC derivatives markets. The survey is directed to senior credit officers responsible for maintaining a consolidated perspective on the management of credit risks.

Joint [Agencies Release Annual Asset-Size Thresholds Under Community Reinvestment Act Regulations](#) (12.19.2022) - The Federal Reserve Board and the Federal Deposit Insurance Corporation announced the 2023 updated asset-size thresholds used to define “small bank” and “intermediate small bank” under their Community Reinvestment Act (CRA) regulations.

Annual adjustments to these asset-size thresholds are based on the average change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), which is a measure of inflation.

As a result of the 8.60 percent increase in the CPI–W for the period ending in November 2022, the definitions of small and intermediate small banks for CRA examinations will change as follows:

- Small bank means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.503 billion.
- Intermediate small bank means a small institution with assets of at least \$376 million as of December 31 of both of the prior two calendar years and less than \$1.503 billion as of December 31 of either of the prior two calendar years.

The CRA regulations establish the framework and criteria by which the relevant agencies assess a financial institution’s record of helping to meet the credit needs of its community, including low– and moderate–income neighborhoods, consistent with safe and sound operations. Financial institutions are evaluated under different CRA examination procedures based upon their asset–size classification. For example, banks meeting the small and intermediate small bank asset–size thresholds are not subject to the reporting requirements applicable to large banks unless they choose to be evaluated as a large bank.

These asset–size thresholds are effective January 1, 2023. A list of the current and historical asset–size thresholds is available [here](#).

Attachments:
[Joint final rule](#)

	<p><i>Comment: Normal, annual adjustments under the regulations. Share with your compliance staff and update policies and procedures accordingly.</i></p>
	<p><u>FRB Adopts Final Rule That Implements Adjustable Interest Rate (LIBOR) Act by Identifying Benchmark Rates Based on SOFR (Secured Overnight Financing Rate) That Will Replace LIBOR in Certain Financial Contracts After June 30, 2023</u> (12.16.2022) - The Federal Reserve Board adopted a final rule that implements the Adjustable Interest Rate (LIBOR) Act by identifying benchmark rates based on SOFR (Secured Overnight Financing Rate) that will replace LIBOR in certain financial contracts after June 30, 2023. The final rule is substantially similar to the proposal with certain clarifying changes made in response to comments.</p> <p>LIBOR, formerly known as the London Interbank Offered Rate, was the dominant benchmark rate used in financial contracts for decades. However, it was fragile and subject to manipulation, and U.S. dollar LIBOR panels will end after June 30, 2023.</p> <p>Congress enacted the LIBOR Act to provide a uniform, nationwide solution for so-called tough legacy contracts that do not have clear and practicable provisions for replacing LIBOR after June 30, 2023. As required by the law, the final rule identifies replacement benchmark rates based on SOFR to replace overnight, one-month, three-month, six-month, and 12-month LIBOR in contracts subject to the Act. These contracts include U.S. contracts that do not mature before LIBOR ends and that lack adequate "fallback" provisions that would replace LIBOR with a practicable replacement benchmark rate.</p> <p>In response to comments, the final rule restates safe harbor protections contained in the LIBOR Act for selection or use of the replacement benchmark rate selected by the Board, and clarifies who would be considered a "determining person" able to choose to use the replacement benchmark rate selected by the Board for use for certain LIBOR contracts. Consistent with the LIBOR Act, the final rule also ensures that LIBOR contracts adopting a benchmark rate selected by the Board will not be interrupted or terminated following LIBOR's replacement.</p> <p>The final rule will be effective 30 days after publication in the Federal Register.</p> <p>For media inquiries, please email media@frb.gov or call (202) 452-2955.</p> <p>Note: On December 16, 2022, the headline for this release was updated to correct the date when LIBOR will be replaced in certain contracts. The rule will be effective 30 days after publication in the Federal Register.</p> <p><i>Comment: The most significant date is the first London banking day after June 30, 2023, which is the "LIBOR replacement date" referred to in the Act and the Rule. The Act and the Rule apply only to contracts governed by U.S. law (including the law of any U.S. state) that use U.S. dollar LIBOR of overnight, one-month, three-month, six-month, and 12-month tenors.</i></p>
	<p><u>Joint Fair Debt Collection Practices Act: Revised Interagency Examination Procedures and Rescissions</u> (12.15.2022) - The Federal Financial Institutions Examination Council's (FFIEC) Task Force on Consumer Compliance adopted the revised examination procedures for the Fair Debt Collection Practices Act (FDCPA) and its implementing regulation, Regulation F. The revised interagency examination procedures incorporate the Consumer Financial</p>

Protection Bureau’s 2020 and 2021 Fair Debt Collection Final Rules¹ that went into effect on November 30, 2021.

Rescission:

The Office of the Comptroller of the Currency (OCC) is rescinding the “Fair Debt Collection Practices Act” section of the “Other Consumer Protection Laws and Regulations” booklet of the Comptroller's Handbook. OCC examiners will rely on the interagency procedures.

Note for Community Banks:

This bulletin applies to community banks.

Highlights:

The revised interagency examination procedures address

- determinations of whether a bank is a debt collector under the FDCPA and Regulation F.
- prohibitions on certain communications with consumers in connection with debt collection.
- requirements for a reasonable and simple method that consumers can use to opt out of additional communications and attempts to communicate.
- prohibited practices of a debt collector to not harass, oppress, or abuse any person in connection with the collection of a debt.

Comment: Anytime the agencies update their exam procedures, it’s worth understanding the change in procedures and to update policies and procedures accordingly. Often the procedural changes are nuanced but can result in significant outcomes.

FFIEC [Federal Bank Regulatory Agencies Release 2021 Small Business, Small Farm, and Community Development Lending Data](#) (12/15/2022) - The federal bank regulatory agencies, as members of the Federal Financial Institutions Examination Council (FFIEC), released data on small business, small farm, and community development lending during 2021.

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 of the metropolitan statistical areas and non–metropolitan counties in the United States and its territories. The statements are available here.

Attachments:

[Fact Sheet on 2021 Data – With Tables](#)

CFPB [Issues Updated HELOC Brochure](#) (12.16.2022) - The Bureau has issued an update to the “What you should know about home equity lines of credit” brochure (HELOC Brochure). The new edition of the HELOC Brochure is updated to align with the Bureau’s educational efforts, to be more concise, and to improve readability and usability. The updated brochure is available in both English and Spanish.

You can access the HELOC Brochure Federal Register notice here:

www.federalregister.gov/documents/2022/12/16/2022-27324/notice-of-availability-of-revised-consumer-information-publication.

You can access the English and Spanish versions here:

www.consumerfinance.gov/learnmore.

Comment: Update your disclosures / materials accordingly.

OCC [Reports Improvement in Overall Mortgage Performance](#) (12.15.2022) -

WASHINGTON—The Office of the Comptroller of the Currency (OCC) reported that the performance of first-lien mortgages in the federal banking system improved during the third quarter of 2022.

The OCC Mortgage Metrics Report, Third Quarter 2022 showed that 97.2 percent of mortgages included in the report were current and performing at the end of the quarter, compared to 95.6 percent a year earlier.

The percentage of seriously delinquent mortgages – mortgages that are 60 or more days past due and all mortgages held by bankrupt borrowers whose payments are 30 or more days past due – was 1.3 percent in the third quarter of 2022, compared to 1.5 percent in the prior quarter and 3.1 percent a year ago.

Servicers initiated 9,835 new foreclosures in the third quarter of 2022, a decrease from the prior quarter, but a higher volume than a year earlier. The new foreclosure volume in the third quarter of 2022 is lower than pre-COVID-19 pandemic foreclosure volumes.

Servicers completed 16,160 modifications during the third quarter of 2022, a 42.5 percent decrease from the previous quarter. Of the 16,160 modifications completed during the quarter, 11,696, or 72.4 percent, reduced the loan's pre-modification monthly payment, and 15,037 or 93.1 percent, were "combination modifications"—modifications that included multiple actions affecting the affordability and sustainability of the loan, such as an interest rate reduction and a term extension.

The first-lien mortgages included in the OCC's quarterly report comprise 22 percent of all residential mortgage debt outstanding in the United States or approximately 12 million loans totaling \$2.7 trillion in principal balances.

This report provides information on mortgage performance through September 30, 2022, and is available on the OCC's website, www.occ.gov.

Related Link

[OCC Mortgage Metrics Report, Third Quarter 2022 \(PDF\)](#)

Technology / Security

CISA [Apple / Microsoft Issue Security Updates](#) (12.22.2022) - Apple has released security updates to address vulnerabilities in multiple products. An attacker could exploit some of these vulnerabilities to take control of an affected device.

CISA encourages users and administrators to review the [Apple security updates](#) page for the following products and apply the necessary updates as soon as possible:

Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker can exploit some of these vulnerabilities to take control of an affected system.

CISA encourages users and administrators to review Microsoft's [December 2022 Security Update Guide](#) and Deployment Information and apply the necessary updates.

Comment: Share with your IT staff accordingly to they can ensure all protections are in place.

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

11.07.2022 FRB [Guidelines for Evaluating Account and Services Requests](#) - The Board of Governors of the Federal Reserve System (Board) is issuing a request for comment on proposed amendments to its Guidelines for Evaluating Account and Services Requests (Account Access Guidelines or Guidelines) that would require the Federal Reserve Banks (Reserve Banks) to publish a periodic list of depository institutions with access to Reserve Bank accounts and/or financial services. **DATE: Comments must be received on or before January 17, 2023.**

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.**