Community Bankers of Michigan Regulatory Dispatch

June 22, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC Halts Lookback Requirement on Multiple Re-Presentment NSF Fees

The FDIC has updated its Supervisory Guidance on Multiple Re-Presentment NSF Fees (FIL-40-2022) to clarify its supervisory approach for corrective action when a violation of law is identified.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:
Since the issuance of the Supervisory Guidance on Multiple Re-Presentment NSF Fees (FIL-40-2022), steps financial institutions have taken to remediate consumer harm associated with re-presentment fees have provided the FDIC with additional data about the amount of consumer harm associated with the issue at particular institutions and on-going and extensive challenges in accurately identifying harmed parties.

Based on this additional data and experience, the FDIC is updating and reissuing its Supervisory Guidance on Multiple Re-Presentment NSF Fees (FIL-40-2022) to reflect our current supervisory approach to not request an institution to conduct a lookback review absent a likelihood of substantial consumer harm.

Read the updated Supervisory Guidance on Multiple Re-Presentment NSF Fees for more information.

Comment: This is a big win for FDIC supervised community banks. In the updated guidance, the troublesome footnote requiring the lookback has been amended to read as follow: 'The FDIC has generally accepted a two-year lookback period for restitution in instances where institutions have been unable to reasonably access accurate ACH data for re-presented transactions. In addition, based on the ongoing and extensive challenges observed in accurately identifying re-presented transactions through core processing systems, the FDIC does not intend to request an institution to conduct a lookback review absent a likelihood of substantial consumer harm.' The translation of that is provided banks promptly revised disclosures for new and existing customers and adopted other 'risk mitigation practices' the FDIC would not require two-year a lookback review.

CBM Insights

Q. Five years ago, we made a loan to purchase a home to a father, his son and his son's spouse because the son and his spouse did not qualify on their own. The son and his spouse want to assume the loan and get a home equity loan to repay the father. What is the purpose of the loan? Is this HMDA reportable as an assumption? Can the son and his spouse get a home equity loan to buy-out the father?

A. That is not an assumption because there is no 'new borrower' – the father, son and his spouse are each obligated for the full amount. You are simply releasing one of the current borrowers from the obligation. That should be discussed with your own legal counsel.

1. Assumptions. Assumptions are extensions of credit under Regulation C. A loan assumption is a transaction in which a financial institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. Regulation C clarifies that assumptions include successor-in-interest transactions in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the property. Assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. Comment 2(d)-2.i.

Source link.

If the son and his spouse are obtaining a home equity loan to 'buy the father's interest' before the father is released from the debt could be a problem. If the father is an owner but the property is not his homestead, he would not be an eligible obligor and would constitute 'additional collateral.' Timing on releasing the father and originating the home equity loan would be an issue that should be discussed with your own legal counsel and the title company.

Items of Interest

Bank Management

OCC Acting Comptroller Discusses Tokenization, Artificial Intelligence (06/16/2023) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed the benefits and risks of tokenization and artificial intelligence (AI) in remarks at the American Bankers Association's Risk and Compliance Conference in San Antonio.

In his remarks, the Acting Comptroller discussed how risk and compliance can facilitate responsible innovation in AI and tokenization, and the distinctions between public, trustless blockchains and centralized, trusted blockchains.

FRB Publishes a Database of Financial Institutions with Access to, or Requests to Access, Federal Reserve Bank Master Accounts and Services (06/16/2023) - To promote transparency, the Federal Reserve Board published a database of financial institutions with access to, or requests to access, Federal Reserve Bank master accounts and services. The database is consistent with the requirements set forth in legislation enacted last year and will be updated on a quarterly basis.

A master account is an account in which a Reserve Bank receives deposits for a financial institution, such as a bank or credit union. The Reserve Banks provide financial services to financial institutions much like those that banks and credit unions provide to their customers. These services include collecting checks, electronically transferring funds, and distributing and receiving cash and coin.

The database has two components. The first component consists of financial institutions that currently have access to Reserve Bank master accounts and services. The second component consists of financial institutions that have requested access to master accounts and services after December 23, 2022, or had a request pending on that date, as well as the status of each request.

The database also is consistent with the Board's 2022 proposal for the Reserve Banks to disclose financial institutions with access to master accounts and services. Because the statutory requirement to disclose this information supersedes the Board's proposal, the Board will not adopt its proposal.

Comment: This implements a requirement from the National Defense Authorization Act, the mandated that the Fed must establish a searchable database of all the institutions with so-called master accounts — which serve as a single point of access for various services within the central bank — by the summer of 2023.

OCC Report Identifies Key Risks Facing Federal Banking System (06/14/2023) - The Office of the Comptroller of the Currency (OCC) reported the key issues facing the federal banking system in its Semiannual Risk Perspective for Spring 2023.

The OCC reported that the overall strength of the federal banking system is sound. The OCC has closely monitored the condition of the institutions it supervises throughout the market stress this spring and has engaged directly with its banks to ensure they are appropriately managing their risks and restoring confidence in the banking system.

The banking system faced increased volatility due to a liquidity crisis in the first quarter of 2023. Banks are focused on stabilizing liquidity and maintaining confidence in the banking system. Banks should remain diligent and maintain effective risk management practices over critical functions to continue to withstand current and future economic and financial challenges.

The OCC highlighted liquidity, operational, credit, and compliance risks, among the key risk themes in the report. Highlights from the report include:

•Liquidity levels have been strengthened in response to the failures of several banks and investment portfolio depreciation. Rising long-term rates caused significant depreciation in investment portfolios, focusing attention on banks' liquidity risk profiles.

•Credit risk remains moderate in aggregate, but signs of stress are increasing, for instance in certain segments of commercial real estate. Overall, credit markets and loan portfolios remain resilient, and problem loan levels remain manageable. The persistent drag from high inflation and rising interest rates, however, is causing credit conditions to deteriorate.

•Operational risk is elevated. Cyber threats persist. Digitalization of banking products and services is expanding, especially as banks increase use of third parties. This expansion presents both opportunities and risks.

•Compliance risk is elevated. Banks continue to operate in a dynamic environment in which compliance management systems are challenged to keep pace with changing products, services, and delivery channel offerings developed in response to customer needs and preferences.

Comment: Comparing to the December 2022 risk assessment, not a lot has changed. Operational, Compliance and Credit risk are all elevated. In the latest assessment, Liquidity risk gets a 'bullet point' in place of Interest rate risk. Acting Comptroller Hsu issued an accompanying statement on the key risks.

FDIC [Revisions to the Consolidated Reports of Condition and Income (Call Reports) and the FFIEC 002 Report]() (06/13/2023) – On June 13, 2023, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (collectively, the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published the attached final regulatory reporting changes in the Federal Register. These reporting changes proposed by the agencies on February 21, 2023 (see FIL-07-2023), would apply to all three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as applicable, and are subject to approval by the U.S. Office of Management and Budget.

In Part:
The agencies encourage you to review the proposed regulatory reporting revisions and comment on those aspects of interest to you. You may send comments on this reporting proposal to any or all of the agencies by the methods described in the attached Federal Register notice. Comments must be submitted by July 13, 2023.

Redlined copies of the FFIEC 031, FFIEC 041, and FFIEC 051 Call Report forms and the FFIEC 002 report form showing the proposed changes and the related draft reporting instructions will be available on the FFIEC's webpages for these reports, which can be accessed from the [FFIEC's Reporting Forms]() webpage.

Comment: Pass along to your operation staff responsible for compiling the Call report information.

OCC [Hosts Credit and Operational Risk Workshops in Minneapolis]() (06/12/2023) - The Office of the Comptroller of the Currency (OCC) will host two workshops July 18-19 in Minneapolis for directors, senior management, and other key executives of national community banks and federal savings associations.

The Credit Risk: Recognizing and Responding to Risk workshop on July 18 covers the roles of the board and management, credit risk within the loan portfolio, and how to stay informed of changes in credit risk.

The Operational Risk: Navigating Rapid Changes workshop on July 19 covers key risk management processes, oversight roles and governance responsibilities, fraud, risk-based audit programs, third-party vendor oversight, establishing a strong ethical culture, and regulatory expectations to address cyber threats.

The fee for each workshop is $99. Participants receive course materials, supervisory materials, and lunch.

To register online and view the schedule and locations of other workshops, visit the OCC's website. For additional questions about the workshops, please contact the OCC Bank Director Workshop Team at (202) 649-6490 or bankdirectorworkshop@occ.treas.gov.

Comment: These are excellent workshops for Directors of national banks.

CFPB [Laying the Foundation for Open Banking in the United States]() (06/12/2023) – New digital banking technologies have the power to expand and open market access for American consumers and emerging businesses. In a more competitive market, Americans will be able to earn higher rates on their savings, pay lower rates on their loans, and more efficiently manage their finances. But the new technologies, and the competition they can fuel, have not yet reached their full potential. Consumers continue to encounter all too familiar obstacles when trying to switch banks or apply for loans.

The CFPB is working to accelerate the shift to open banking through a new personal data rights rule intended to break down these obstacles, jumpstart competition, and protect financial privacy. To do this, the CFPB is formalizing an unused legal authority enacted by Congress in 2010. This authority gives consumers the right to control their personal financial data. These rights will become a practical reality after the CFPB implements a rule that sets expectations for the market. We expect to solicit comments on our formal proposal in a few months and finalize in 2024.

But the agency must not micromanage open banking. Fair standards developed by the market to leverage our rule will be critical to the creation and maintenance of an open banking system in which consumers can vote with their feet -- and exercise their data rights without being trapped by powerful incumbents and without losing control of their data.

Our proposal will recognize that the CFPB must resolve certain core issues because system participants are deadlocked or because existing approaches do not put consumers fully in the driver's seat. But many of the details in open banking will be handled through standard-setting outside of the agency. Properly pursued, such standards can allow open banking to evolve as new technologies emerge, new products develop, and new data security challenges arise.

To thrive, standard-setting organizations must not skew to the interests of the largest players in the market. They must reflect the full range of relevant interests — consumers and firms, incumbents and challengers, and large and small actors. In consumer finance, powerful firms have sometimes looked to manage emerging technologies through utilities, networks, or standard setting organizations skewed to their interests – or even owned by them.

Control of the open banking system by such players threatens competition and the consumer's control of their own financial affairs. While the CFPB intends for the market to play a significant role in developing and maintaining open banking standards, it will pay close attention to any attempts to limit consumers' exercise of their data rights, particularly where such attempts proceed from coordinated efforts by dominant firms.

As the CFPB expects fair standards to play a critical role in open banking, our proposed rule will seek to take appropriate account of that role. We continue to encourage those seeking to develop industry open banking standards in the United States to discuss their plans with the CFPB so that those standards appropriately allow consumers to exercise their personal financial data rights.

Comment: Open banking is the practice of enabling secure interoperability in the banking industry by allowing third-party payment service and other financial service providers to access banking transactions and other data from banks and financial institutions.

BSA / AML

No news to report this week.

Deposit / Retail Operations

FTC High School Grads: Protect Yourself From Scams (06/13/2023) – Congratulations — it's time to graduate! Whether you or someone you know is off to college in the fall, already has a job lined up, or is still figuring out next steps, there's a lot to do to prepare. The FTC's Financial Adulting 101 webinars and materials offer advice to help protect you or your favorite recent graduate from scams. Keep reading to learn more.

- **Join one of the FTC's Financial Adulting 101 webinars on June 20th and June 22nd.** You'll learn about credit basics, how to protect yourself from identity theft, and how to spot and avoid scams.

- **Check out Consumer.gov.** Looking for just the basics? You've come to the right place. Consumer.gov has information on how to rent your first apartment, buy your first car, check your credit history, and more.
- **Sign up for Consumer Alerts.** Find out about the latest scams — and how to avoid them.

As recent grads step into the next phase of life, they may come across things like job scams, phishing scams, or dishonest business practices. The FTC wants to know about it. Tell us at ReportFraud.ftc.gov.

Comment: Consider sharing the link on your website or in a statement.

Human Resources

No news to report this week.

Lending

No news to report this week.

Technology / Security

CISA U.S. and International Partners Release Comprehensive Cyber Advisory on LockBit Ransomware (06/14/2023) – "Working with our U.S. and international partners, CISA is focused on reducing the prevalence of ransomware intrusions and their impacts, which include applying lessons learned from prior ransomware incidents that have affected far too many organizations," said CISA Executive Assistant Director for Cybersecurity, Eric Goldstein. "This joint advisory on LockBit is another example of effective collaboration with our partners to provide timely and actionable resources to help all organizations understand and defend against this ransomware activity. As we look to the future, we must all work together to evolve to a model where ransomware actors are unable to use common tactics and techniques to compromise victims and work to ensure ransomware intrusions are detected and remediated before harm can occur."

"The FBI relentlessly pursues ransomware actors who continue to exploit vulnerable cyber ecosystems," said Bryan Vorndran, Assistant Director of the FBI's Cyber Division. "We are better positioned to combat this type of malicious activity through coordination and collaboration with our federal and international partners, which are key to better mitigating and preventing harm against the American public and our allies. The FBI encourages all organizations to review this CSA and implement the recommended mitigation measures to better defend against threat actors using LockBit. If you believe you are the victim of a cyber-crime, please contact your local FBI field office."

"LockBit is one of the most prolific and disruptive ransomware variants, having been used by cybercriminals against multiple sectors and organizations worldwide, including in Australia," said Abigail Bradshaw, Head of the Australian Cyber Security Centre (ACSC). "With ransomware variants constantly evolving, this advice can help organizations strengthen and defend their networks."

Comment: Share with your IT staff.

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

05.01.2023 CFPB Residential Property Assessed Clean Energy Financing (Regulation Z) - SUMMARY: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Consumer Financial Protection Bureau (CFPB or Bureau) to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. PACE financing is financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. In this notice of proposed rulemaking, the Bureau proposes to implement EGRRCPA section 307 and to amend Regulation Z to address how TILA applies to PACE transactions to account for the unique nature of PACE. **DATES: Comments must be received on or before July 26, 2023.**

06.08.2023 Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations- SUMMARY: The Board, CFPB, FDIC, NCUA, and OCC (together, the agencies) are issuing proposed guidance that would highlight risks associated with deficient residential real estate valuations and describe how financial institutions may incorporate reconsiderations of value (ROV) processes and controls into established risk management functions. The proposed guidance would also highlight examples of policies and procedures that a financial institution may choose to establish to help identify, address, and mitigate the risk of discrimination impacting residential real estate valuations.