# Community Bankers of Michigan Regulatory Dispatch

# June 8, 2022

***Timely news and resources community bankers can use***

***to better stay on top of a rapidly changing world.***

## ICBA Discuss Regulation E With The CFPB

Last week, ICBA staff had a Zoom meeting with the CFPB to discuss Regulation E in general - and more specifically liability - when transactions involve a P2P (MPP) provider. Most of the discussion centered around liability and section §1005.14. As you may recall, in the **Spring 2022 Consumer Compliance Supervisor Highlights**, the FDIC said that "When an MPP entered into an agreement with a consumer, that agreement extended to the financial institution holding the consumer's account."

There were some important clarifications made by the CFPB during the meeting:

• For transactions that use the debit card network payment rails, section §1005.14 does not apply and the bank and the MPP provider have a duty to both investigate the error and limit the consumer's liability. Since both the MPP and the bank are parties to the network rules, the CFPB considers this to be an "agreement" between them.

• The commentary clearly states that the ACH rules do not constitute an "agreement" for purposes of §1005.14. Thus, for transactions that use the ACH payment network rails, section §1005.14 does apply and the bank and the MPP provider have a duty to investigate the error but the burden to limit the consumer's liability is with the MPP provider and not the bank.

By determining how the payment was presented, the bank may be able to limit liability under Regulation E for payments involving third-party MPP's that the bank does not have an 'agreement' with.

Using the 10/45/90 day limits under §1005.11(c) for resolving errors, most community banks will end up crediting the accountholder with hopes of recovering the funds by reversing any credit should the MPP also issue a credit to the accountholder if both the bank and the MPP have a duty to limit the liability of the consumer. If the transaction was presented using the debit card network payment rails, under §1005.11(c)(3), the bank likely has 90 days instead of 45 days to complete the investigation.

***Comment: Review your bank's procedures for handling unauthorized EFTs to make sure that it is handling P2P transactions appropriately.***

# Items of Interest

## Bank Management

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| | **FRB** Risk in the Crypto Markets - Governor Christopher J. Waller (06/03/2022) - *Thank you for the chance to be part of this interesting discussion. It's a pleasure to speak with such a good mix of academic, industry, and official-sector experts about a topic with real importance to the future of the financial system. I know my remarks are coming after a long day, and I plan to keep them short. My goal tonight is not to weigh in on whether and how crypto-asset markets should be regulated. Instead, I want to make some observations that I hope will help focus discussion of that question in the right place. The main issue in crypto-asset regulation isn't how to protect sophisticated crypto-investors; it's how to protect the rest of us.*<br><br>*By any measure, the last five years have been a stretch of incredible growth in crypto-asset markets. Every aspect of them has expanded, from protocols and platforms, to instruments and intermediaries. Public awareness and government attention have increased. Above all, crypto itself has evolved from a limited set of coins meant to provide an alternative means of payment to decentralized finance, or "DeFi," arrangements, meant to provide alternatives to a range of financial products and services.1 Innovation is happening fast, and many of the people and groups represented in this room have found new uses in finance for this technology.*<br><br>*By law or by practice, many crypto-related products and activities fall between the cracks of traditional legal and regulatory structures, outside the so-called "regulatory perimeter." In that environment, the normal backstops and safety nets of traditional finance do not necessarily or reliably apply. High volatility is the rule, not the exception; fraud and theft occur regularly, often at large scale. Your whole pot is always on the table; you take part at your own risk.*<br><br>***Comment: According to the latest FTC Consumer Protection Data Spotlight report, consumers lost more than $1 billion to fraud involving cryptocurrencies from January 2021 through March 2022. Surely, federal regulation of this volatile area is on the horizon.*** |
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| | **FRB** Beige Book (06/01/2022)<br><br>Overall Economic Activity:<br>All twelve Federal Reserve Districts have reported continued economic growth since the prior Beige Book period, with a majority indicating slight or modest growth; four Districts indicated moderate growth. Four Districts explicitly noted that the pace of growth had slowed since the prior period. Contacts in most Districts reported ongoing growth in manufacturing. Retail contacts noted some softening as consumers faced higher prices, and residential real estate contacts observed weakness as buyers faced high prices and rising interest rates. Contacts tended to cite labor market difficulties as their greatest challenge, followed by supply chain disruptions. Rising interest rates, general inflation, the Russian invasion of Ukraine, and disruptions from COVID-19 cases (especially in the Northeast) round out the key concerns impacting household and business plans. Eight Districts reported that expectations of future growth among their contacts had diminished; contacts in three Districts specifically expressed concerns about a recession. |

Labor Markets:
Most Districts reported that employment rose modestly or moderately in a labor market that all Districts described as tight. One District explicitly reported that the pace of job growth had slowed, but some firms in most of the coastal Districts noted hiring freezes or other signs that market tightness had begun to ease. However, worker shortages continued to force many firms to operate below capacity. In response, firms continued to deploy automation, offer greater job flexibility, and raise wages. In a majority of Districts, firms reported strong wage growth, whereas most others reported moderate growth. However, in a few Districts, firms noted that wage rate increases were leveling off or edging down. Moreover, while firms throughout the country generally anticipate wages to rise further over the next year, one District indicated that its firms' expected rate of wage growth has fallen for two consecutive quarters.

Prices:
Most Districts noted that their contacts had reported strong or robust price increases – especially for input prices. Two Districts noted that this rapid inflation was a continuation of trend; however, three Districts observed that price increases for their own goods or services had moderated somewhat – across the board (among Philadelphia firms) or for some segments (used cars in Boston and manufacturing in Richmond). About half of the Districts observed that many contacts maintained pricing power – passing costs on to clients and consumers, often with fuel surcharges. However, more than half of the Districts cited some customer pushback, such as smaller volume purchases or substitution of less expensive brands. Surveys in two Districts pegged year-ahead increases of their selling prices as ranging from 4 to 5 percent; moreover, one District noted that its firms' price expectations have edged down for two consecutive quarters.

**FRB** Responding to High Inflation, with Some Thoughts on a Soft Landing
Governor Christopher J. Waller (05/30/2022) - *Thank you, Professor Wieland, for the introduction, and thank you to the Institute for Monetary and Financial Stability for the opportunity to speak to you. I come here at a moment of great challenge for Germany and Europe, and a moment in which it has never been more evident that the interests of Europe and the United States are closely aligned. America stands with Europe in defending Ukraine because we all understand that an assault on democracy in Europe is a threat to democracy everywhere. We also face the common challenge of excessive inflation, which is no coincidence, since Germany and other countries are dealing with many of the same forces driving up inflation in the United States.*

*Fortunately, in response to this moment of common challenges and interests, Europe and the United States have strengthened our ties and I believe we are more unified today than we have been for decades. We see that in the deepening and possible broadening of our security commitments, and we also see it in the strong commitment that central banks in Europe and elsewhere have made to fight inflation.*

*In today's distinguished lecture I will deal with two distinct topics, both of which I believe will be of interest. First, I will provide my outlook for the U.S. economy and how the Federal Reserve plans to reduce inflation and achieve our 2 percent target. Then I will pivot to a more academic discussion of the labor market and the possibility of a soft landing in which taming inflation does not harm employment.*

To read the rest of the speech, click here.

***Comment: So far, it appears that the Fed is NOT predicting a recession. In a recent survey, however, just over 50% of community bankers doubt the Fed's ability to both tackle inflation and avoid a recession.***

## BSA / AML

**FinCEN** Issues Advance Notice of Proposed Rulemaking for No-Action Letter Process (06/03/2022) - WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on questions relating to the implementation of a no-action letter process at FinCEN. A no-action letter is generally understood to be a form of enforcement discretion where an agency states by letter that it will not take an enforcement action against the submitting party for the specific conduct presented to the agency.

"A no-action letter process has the potential to spur innovation and enhance overall effectiveness of the AML/CFT framework and the implementation of financial institutions' compliance programs," said FinCEN's Acting Director Himamauli Das. "We encourage public comment on how the implementation of a no-action letter process can best achieve these objectives reflected in the Anti-Money Laundering Act of 2020."

The ANPRM follows FinCEN's June 28, 2021, report to Congress (the "Report"). FinCEN's assessment, which formed the basis of the Report, included consultation with the Attorney General, the Federal functional regulators, State bank supervisors, State credit union supervisors, and other Federal agencies, as required by the Anti-Money Laundering Act of 2020.

The Report concluded that FinCEN should undertake a rulemaking to establish a no-action letter process to supplement the existing forms of regulatory guidance and relief that third parties may request from FinCEN. The Report noted several potential benefits of a no-action letter process, including encouraging a robust and productive dialogue with the public, promoting a culture of compliance, and enhancing transparency in the application and enforcement of the Bank Secrecy Act.

The addition of a no-action letter process at FinCEN could affect other forms of regulatory guidance and relief that FinCEN already offers, including administrative rulings and exceptive or exemptive relief. Accordingly, the ANPRM seeks public input on whether this process should be implemented, and if so, how a no-action letter process should interact with these other tools.

FinCEN strongly encourages all interested parties, including those that may want to participate in the no-action letter process, if implemented, to submit written comments.

Comments on the ANPRM should be submitted by August 5, 2022.

Financial Institution
Casinos
Depository Institutions
Insurance Industry
Money Services Businesses
Mortgage Co/Broker
Precious Metals/Jewelry Industry
Securities and Futures

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| | ***Comment: As required by the Anti-Money Laundering Act, in July 2021 FinCEN released a 14-page assessment regarding the feasibility of issuing these proposed "no-action" letters to banks.*** |

## Deposit / Retail Operations

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| | **FRB** Introducing FedNow Pioneers of Now (06/03/2022) - The recently launched Pioneers of Now series will highlight stories from financial institutions and service providers committed to the early adoption of the FedNow Service.<br><br>Our first featured pioneer is Malinda Rickel, chief operating officer at The Bankers' Bank. Read her advice and key takeaways about instant payments implementation in this new article.<br><br>***Comment: Take a 'guided learning journey' of FedNow by clicking here.*** |
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| | **FDIC** Summary of Deposits Survey and Filing for June 30, 2022 (06/01/2022) - The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. All institutions with branch offices are required to submit the survey; institutions with only a main office are exempt. All survey responses are required by July 31, 2022. No filing extensions will be granted.<br><br>Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.<br><br>Highlights:<br>• By June 30, 2022, institutions should review their current branch office information using the FDIC's BankFind website and submit changes through FDICconnect (FCX). Details on how to use FCX are provided in the SOD reporting instructions. Changes that cannot be submitted through FCX should be included in the SOD survey.<br>• Beginning July 1, 2022, institutions may submit their SOD survey. All survey responses are required by July 31, 2022. No extensions will be granted for submitting SOD data.<br>• Institutions must either complete the survey directly in the Central Data Repository (CDR) or use vendor software to prepare and submit their survey responses to the CDR. Software vendors available to assist with the SOD filing are listed under "Filing Procedures"in this FIL.<br>• Reporting instructions are available on the FDIC's Summary of Deposits website.<br>• No later than September 30, 2022, SOD survey results will be published on the FDIC's Deposit Market Share website. |
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| | **IRS** Warns Taxpayers of "Dirty Dozen" Tax Scams For 2022 (06/01/2022) - WASHINGTON — The Internal Revenue Service began its "Dirty Dozen" list for 2022, which includes potentially abusive arrangements that taxpayers should avoid. |

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| | The potentially abusive arrangements in this series focus on four transactions that are wrongfully promoted and will likely attract additional agency compliance efforts in the future. Those four abusive transactions involve charitable remainder annuity trusts, Maltese individual retirement arrangements, foreign captive insurance, and monetized installment sales.<br><br>"Taxpayers should stop and think twice before including these questionable arrangements on their tax returns," said IRS Commissioner Chuck Rettig. "Taxpayers are legally responsible for what's on their return, not a promoter making promises and charging high fees. Taxpayers can help stop these arrangements by relying on reputable tax professionals they know they can trust."<br><br>The four potentially abusive transactions on the list are the first four entries in this year's Dirty Dozen series. In coming days, the IRS will focus on eight additional scams, with some focused on the average taxpayer and others focused on more complex arrangements that promoters market to higher-income individuals.<br><br>"A key job of the IRS is to identify emerging threats to compliance and inform the public so taxpayers are not victimized, and tax practitioners can provide their clients the best advice possible," Rettig said.<br><br>"The IRS views the four transactions listed here as potentially abusive, and they are very much on our enforcement radar screen."<br><br>The IRS reminds taxpayers to watch out for and avoid advertised schemes, many of which are now promoted online, that promise tax savings that are too good to be true and will likely cause taxpayers to legally compromise themselves.<br><br>Taxpayers, tax professionals and financial institutions must be especially vigilant and watch out for all sorts of scams from simple emails and calls to highly questionable but enticing online advertisements.<br><br>***Comment: Consider using these materials as part of your bank's financial literacy program.*** |

### Human Resources

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| | No news to report this week. |

### Lending

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| | No news to report this week. |

### Technology / Security

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| | 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**

**06.06.2022** FinCEN No Action Letter Process - FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on questions relating to the implementation of a no-action letter process at FinCEN. Given that the addition of a no-action letter process at FinCEN may affect or overlap with other forms of regulatory guidance and relief that FinCEN already offers, including administrative rulings and exceptive or exemptive relief, this ANPRM, among other things, seeks public input on whether a no-action letter process should be implemented and, if so, how the no-action letter process should interact with those other forms of relief. **DATES: Written comments on this ANPRM must be received on or before August 5, 2022.**

**05.05.2022** Joint Agency Community Reinvestment Act - The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. **DATE: Comments must be received on or before August 5, 2022.**

**03.25.2022** FDIC Request for Information on Bank Merger Act - The Federal Deposit Insurance Corporation sent for publication in the Federal Register a Request for Information (RFI) seeking information and comments regarding the application of the laws, practices, rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to merger transactions involving one or more insured depository institution, including the merger between an insured depository institution and a noninsured institution. **Dates: Comments are due May 31, 2022.**

**03.22.2021** Rules to Enhance and Standardize Climate-Related Disclosures for Investors - The Securities and Exchange Commission today proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposing release will be published on SEC.gov and in the Federal Register. **DATES: Comments should be received on or before June 17, 2022 (the comment period was extended on Monday, May 9th.)**