



Community Bankers of Michigan Regulatory Dispatch

March 29, 2023

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

FinCEN Issues Initial Beneficial Ownership Information Reporting Guidance

The Financial Crimes Enforcement Network (FinCEN) published its first set of guidance materials to aid the public, and in particular the small business community, in understanding upcoming beneficial ownership information (BOI) reporting requirements taking effect on January 1, 2024. The new regulations require many corporations, limited liability companies, and other entities created in or registered to do business in the United States to report information about their beneficial owners—the persons who ultimately own or control the company—to FinCEN.

The following materials are now available on FinCEN’s beneficial ownership information reporting webpage, www.fincen.gov/boi:

FAQs: <https://www.fincen.gov/boi-faqs>

Key Filing Dates: https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Filing_Dates-Published03.24.23_508C.pdf

Key Questions:

https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Key_Questions_Published_508C.pdf

An Introductory Video: <https://youtu.be/nx48tPUBRK0>

A More Detailed Informational Video: <https://youtu.be/qP5V9k3ypl0>

Comment: The Corporate Transparency Act (CTA) established uniform BOI reporting requirements for certain types of corporations, limited liability companies, and other similar entities created in or registered to do business in the United States. On September 29, 2022, FinCEN issued its final rule implementing the beneficial ownership information reporting requirements of the Corporate Transparency Act. The effective date of the Rule is January 1, 2024.

CBM Insights

Q. We have a couple of questions about FDIC insurance. First, how does the FDIC determine insurance coverage for revocable trust accounts? Second, is the POD designation required in the account title for FDIC Insurance?

A. First question, below is from the FDIC's *Financial Institution Employee's Guide to Deposit Insurance* and starts on page 42.

II. Insurance Limit: In general, the owner of a revocable trust account is insured up to \$250,000 per each primary beneficiary. The exact amount of coverage depends on the number of beneficiaries. When the number of beneficiaries is five or fewer, the calculation of coverage is simple: the number of owners multiplied by the number of beneficiaries multiplied by \$250,000. If the product is greater than the aggregate balance of the accounts, the funds will be fully insured. If the product is less than the aggregate balance of the accounts, the excess will be uninsured. When the number of beneficiaries is greater than five, and the aggregate balance of the accounts exceeds five times \$250,000 (i.e., \$1,250,000), the calculation of coverage is more complicated. First, in accordance with the terms of the trust agreement, the funds are allocated to the various beneficiaries. Second, the insurance limit (the SMDIA) is applied separately to each beneficiary's interest. To the extent that any beneficiary's interest exceeds the SMDIA, the excess will be uninsured. At a minimum, however, the accounts (with more than five beneficiaries) will be fully insured up to five times \$250,000 (i.e., \$1,250,000).

Source [link](#).

Second question, Yes, a revocable trust account must be evidenced in the "title" of the account BUT that "title" includes the electronic records of the bank. Notice the underlined passages below again from the FDIC's *Financial Institution Employee's Guide to Deposit Insurance*.

1. Trust Relationship Must be Reflected in the Account Title

Deposit insurance regulations mandate that the testamentary intent of a revocable trust account be manifested in the "title" of the account. In other words, the "title" must reflect that upon the revocable trust owner's death the account funds shall belong to one or more beneficiaries. For informal revocable trusts, this titling requirement can be satisfied by using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor (e.g., "ITF," "ATF" or "POD"). For formal revocable trusts, the accounts can be titled in the name of the trust or by simply having the word "trust" in the title.

For purposes of meeting this requirement, the term "title" includes the electronic deposit account records of the IDI. For informal revocable trusts, the FDIC will recognize an account as a revocable trust account if the IDI's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account. In other words, IDIs can meet the titling requirement by using an electronic code signifying the deposit as a POD account.

2. Beneficiaries Must be Identified in the IDI Records

FDIC regulations require that the specific names of the beneficiaries must be reflected in the IDI's account records. This does not mean that the beneficiary names must be reflected in the account name or caption; provided that the name is in the IDI's records, i.e., on the signature card or account agreement, this requirement is deemed satisfied. This requirement applies solely to informal revocable trust accounts. It does not apply to formal living trust accounts, where the beneficiaries are identified in the trust agreement.

Source [link](#).

Items of Interest

Bank Management

2nd Circuit [CFPB Independent Funding Constitutional](#) (03/23/2023) - The Consumer Financial Protection Bureau's independent funding through the Federal Reserve is constitutional, the Second Circuit ruled ahead of a US Supreme Court review on the issue.

The unanimous ruling from a three-judge panel of the US Court of Appeals for the Second Circuit stems from a New York debt collection law firm's attempt to escape the CFPB's 2017 civil subpoena. A lower court ruled in the CFPB's favor in August 2020.

Comment: "Because the CFPB's funding structure was authorized by Congress and bound by specific statutory provisions, we find that the CFPB's funding structure does not offend the Appropriations Clause," the appeals court ruled. In October of last year, the 5th Circuit Court of Appeals ruled just the opposite, finding that because the CFPB is not funded through the appropriations process, its funding is unconstitutional. "As a threshold matter, we cannot find any support for the Fifth Circuit's conclusion in Supreme Court precedent," the 2nd Circuit said. "To the contrary, the Court has consistently interpreted the Appropriations Clause to mean simply that "the payment of money from the Treasury must be authorized by a statute.""

BSA / AML

No news to report this week.

Deposit / Retail Operations

No news to report this week.

Human Resources

No news to report this week.

Lending

CFPB [The 2022 HMDA Modified LARs Are Now Available](#) (03/23/2023) - The Home Mortgage Disclosure Act (HMDA) Modified Loan Application Register (LAR) data for 2022 are now available on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform for approximately 4,394 HMDA filers. The published data contain loan-level information filed by financial institutions and modified to protect consumer privacy.

To increase public accessibility, the annual loan-level LAR data for each HMDA filer are now available online. Previously, users could obtain LAR data only by making requests to specific institutions for their annual data. To allow for easier public access to all LAR data, the Consumer Financial Protection Bureau's (CFPB) [2015 HMDA rule](#) made the data for each HMDA filer available electronically on the FFIEC's HMDA Platform. This year, in addition to institution-specific modified LAR files, users can download one combined file that contains all institutions' modified LAR data.

Later this year, the 2022 HMDA data will be available in other forms to provide users insights into the data. These forms will include a nationwide loan-level dataset with all publicly available data for all HMDA reporters; aggregate and disclosure reports with summary information by geography and lender; and access to the 2022 data through the HMDA Data Browser to allow users to create custom datasets, reports, and data maps. The CFPB will later also publish a Data Point article highlighting key trends in the annual data.

HMDA users may find the CFPB's [Beginner's Guide to Accessing and Using HMDA Data](#) useful for background on HMDA and tech tips for understanding and analyzing the data.

The 2022 HMDA Loan Application Register data can be found on the FFIEC's HMDA platform: <https://ffiec.cfpb.gov/data-publication/modified-lar>.

Comment: Effective Jan. 1, 2018, the rules allow HMDA reporting banks to forego placing physical copies of HMDA disclosure statements in the public file starting with the 2017 reporting year. In place of the physical copy, reporting banks need only include a statement in the file that their HMDA data may be obtained from the CFPB website.

[CFPB Orders Repeat Offender Portfolio Recovery Associates to Pay More Than \\$24 Million for Continued Illegal Debt Collection Practices and Consumer Reporting Violations](#) (03/23/2023) - The Consumer Financial Protection Bureau (CFPB) took action against Portfolio Recovery Associates, one of the largest debt collectors in the nation, for violating a 2015 CFPB order and engaging in other violations of law. The CFPB filed a proposed order that, if entered by the court, would require Portfolio Recovery Associates to pay more than \$12 million to consumers harmed by its illegal debt collection practices, in addition to a \$12 million penalty that would be deposited into the CFPB's victims relief fund. Portfolio Recovery Associates violated the 2015 order by collecting on unsubstantiated debt, collecting on debt without providing required documentation and disclosures to consumers, suing or threatening legal action against consumers without offering or possessing required documentation, and suing to collect on debt outside the statute of limitations. Portfolio Recovery Associates also failed to properly investigate and resolve consumer disputes about the company's credit reporting. Today's action is one of many actions the CFPB has recently taken to hold repeat offenders accountable.

"After getting caught red-handed in 2015, Portfolio Recovery Associates continued violating the law through intimidation, deception, and illegal debt collection tactics and lawsuits," said CFPB Director Rohit Chopra. "CFPB orders are not suggestions, and companies cannot ignore them simply because they are large or dominant in the market."

Comment: A reminder that the CFPB has authority to take powerful steps to stop debt collection harassment and abuse. Play fair!

Technology / Security

[CISA and NSA Release Enduring Security Framework Guidance on Identity and Access Management](#) (03/21/2023) - As part of the Enduring Security Framework (ESF), the Cybersecurity and Infrastructure Security Agency (CISA) and the National Security Agency (NSA) has released [Identity and Access Management Recommended Best Practices Guide for Administrators](#). These recommended best practices provide system administrators with actionable recommendations to better secure their systems from threats to Identity and Access Management (IAM).

IAM—a framework of business processes, policies, and technologies that facilitate the management of digital identities—ensures that users only gain access to data when they have the appropriate credentials. This paper provides recommended best practices and mitigations to counter threats to IAM related to:

- identity governance
- environmental hardening
- identity federation/single sign-on
- multifactor authentication
- IAM auditing and monitoring

This guidance was developed and published by a CISA- and NSA-led working panel with ESF, a public-private cross-sector partnership that aims to address risks that threaten critical infrastructure and national security systems.

Please share your thoughts. We recently updated our anonymous [Product Feedback Survey](#) and we'd welcome your feedback.

Comment: Share this 'Best Practices Guide' 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

12.21.2022 [FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Log](#) The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. **DATES: Originally set for February 21, the comment deadline is extended to April 7, 2023.**

01.05.2023 [FTC Non-Compete Clause Rulemaking](#) About one in five American workers—approximately 30 million people—are bound by a non-compete clause and are thus restricted from pursuing better employment opportunities. A non-compete clause is a contractual term between an employer and a worker that blocks the worker from working for a competing employer, or starting a competing business, typically within a certain geographic area and period of time after the worker's employment ends. Because non-compete clauses prevent workers from leaving jobs and decrease competition for workers, they lower wages for both workers who are subject to them as well as workers who are not. Non-compete clauses also prevent new businesses from forming, stifling entrepreneurship, and prevent novel innovation which would otherwise occur when workers are able to broadly share their ideas. The Federal Trade Commission proposes preventing employers from entering into non-compete clauses with workers and requiring employers to rescind existing non-compete clauses. The Commission estimates that the proposed rule would increase American workers' earnings between \$250 billion and \$296 billion per year. The Commission is asking for the public's opinion on its proposal to declare that non-compete clauses are an unfair method of competition, and on the possible alternatives to this rule that the Commission has proposed. **The comment period is extended through April 19, 2023.**

02.01.2023 [CFPB Credit Card Penalty Fees](#) (Regulation Z) The Consumer Financial Protection Bureau (Bureau) proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are “reasonable and proportional” to the late payment as required under TILA. The proposal would (1) adjust the safe harbor dollar amount for late fees to \$8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25 percent of the required payment. **DATES: Comments should be received on or before April 3, 2023, or 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER, whichever is later.**