Community Bankers of Michigan Regulatory Dispatch

May 18, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

New Flood FAQs Released

Five federal regulatory agencies jointly issued revised questions and answers (Q&As) regarding federal flood insurance law and the agencies' implementing regulations. These Q&As replace those originally published by the agencies in 2009 and 2011 and consolidate Q&As proposed by the agencies in 2020 and 2021. The revised Q&As reflect significant changes to the flood insurance requirements made by federal law in recent years.

The Q&As cover a broad range of technical flood insurance topics, including the escrow of flood insurance premiums, the detached structure exemption to the flood insurance purchase requirement, force placement procedures, and private flood insurance.

In addition, the agencies reorganized the Q&As by topic to make it easier for users to find and review information related to flood insurance.

Interagency Questions and Answers Regarding Flood Insurance

Comment: Finally! Prior to this release, the FAQs had not been updated since 2011 despite the passage of both Biggert-Waters and the Affordability Act. These FAQs are extremely helpful in answering the thorny questions raised in flood insurance compliance.

CBM Insights

Q: During an internal review, we noticed that some but not all OD/NSF fee reversals made were netted out of the "Total for the period" and the "YTD totals" depending on how they were processed. Is that a problem?

A: The language in the commentary is permissive and does not specifically address your issue. What it explicitly says is that you do not have to adjust your statement period or year to date totals to reflect refunded fees. But if you refund fees from a different statement period, it should not be netted against fees for the current statement period but could be reflected in the year-to-date totals.

> *4. Waived fees. In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If an*

institution assesses and then waives and credits a fee within the same cycle, the institution may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the institution assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

Source link.

Lacking any particular guidance, it would seem 'netting' would best be handled as an all or nothing proposition.

Items of Interest

Bank Management

	CSBS to Congress: How State Financial Regulators Are Embracing RegTech (05/12/2022) - Washington, D.C. – New technology is not just rapidly transforming financial services, it also is creating the state financial system of the future, according to Conference of State Bank Supervisors' Chair Melanie Hall, who testified before the House Financial Services Committee Artificial Intelligence Task Force. "Technology has been an important part of the state system's evolution and will continue to play a critical role as financial transactions become faster and more complex," said Chair Hall, who also serves as the commissioner of Montana's Division of Banking and Financial Institutions. "CSBS is focused on finding new and improved ways for our data, technology and analytical products to help state regulators mitigate risk and protect consumers from bad actors." State regulators charter and supervise approximately 79% of all U.S. banks, representing more than $8.4 trillion in combined assets, as well as half of all small business lending and two-thirds of all agriculture lending in America. State regulators also are the primary licensing authority for nonbank financial services providers, including mortgage lenders, money transmitters and consumer lenders, through the Nationwide Multistate Licensing System. In her testimony, Hall shared how states are focused on building the regulatory system of the future through Networked Supervision, a strategy designed to create a streamlined state system through greater use of technology and enhanced state-to-state and state-to-federal partnerships. The results of Networked Supervision are already being realized through a number of developing platforms and initiatives, including the State Examination System, the Model Money Transmission Modernization Act and the Multistate Money Services Businesses Licensing Agreement.
	OCC Deputy Comptroller Testifies on Artificial Intelligence (05/13/2022) - WASHINGTON—Deputy Comptroller for Operational Risk Policy Kevin Greenfield testified during a hearing before the House Financial Services Committee Task Force on Artificial Intelligence (AI). He discussed the Office of the Comptroller of the Currency's (OCC) approach to responsible innovation and its supervisory expectations for banks' use of AI, including regulatory compliance. Greenfield also discussed the OCC's ongoing efforts to update the agency's technological framework to support its bank supervision mandate.

	Related Links [Oral Statement (PDF)] [Written Testimony (PDF)] ***Comment: Hsu (and the other federal regulators) have a real love/hate relationship with AI. They want to encourage innovation in delivery of financial services; however, they are concerned that AI algorithms can lead to discriminatory practices in appraisals and lending.***
	Atlanta Fed Underlying Inflation Dashboard (05/11/2022) - Monetary policymakers have historically used or monitored various measures of underlying inflation to gain context about longer-term trends. The Underlying Inflation Dashboard is a tool that provides information about these measures. The user can get a broader characterization of retail price pressures from this dashboard than by monitoring movements in core PCE alone. Want to see even more economic data? Our EconomyNow app will put GDPNow and all our data tools right in your hands. Download it today to see the latest data on inflation, growth, and the labor market. ***Comment: The EconomyNow app is very interesting and timely.***
	OCC Acting Comptroller Discusses Bank Mergers (05/09/2022) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed the need to update the framework used to analyze bank merger applications before the Brookings Institution. In his remarks, the Acting Comptroller discussed proposed mergers in the context of bank competition, financial stability, and facilitating the needs of communities. Related Links Remarks (PDF) ***Comment: In April, U.S. Sen. Sherrod Brown (D-OH), Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, sent a letter to Federal Reserve Chair Jay Powell and Acting Comptroller of the Currency Michael Hsu urging them to join the Federal Deposit Insurance Corporation (FDIC) in ensuring that bank mergers, if approved, serve American families, small businesses, and communities.***

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	FDIC Deposit Insurance Coverage Webinar – Free Nationwide Seminars for Bank Officers and Employees (05/09/2022) - The FDIC will host five live webinars on FDIC deposit insurance coverage for bank employees and bank officers between May 24, 2022, and December 1, 2022, via Microsoft (MS) Teams. Each seminar will last approximately 90 minutes followed by a Q&A session.

Three sessions titled *Comprehensive Deposit Insurance Seminar for Bankers* will offer a comprehensive overview of FDIC deposit insurance rules. The sessions are ideal for bank employees seeking a broad understanding of FDIC deposit insurance coverage rules.

Two sessions titled *New Rules for Revocable and Irrevocable Trust Accounts* will provide an in-depth discussion of the newly issued rules for trust accounts, which will be in effect April 1, 2024.

HOST:
Federal Deposit Insurance Corporation (FDIC)

WHAT:
The FDIC will host five seminars on FDIC deposit insurance coverage for bank officers and employees between May 24, 2022, and December 1, 2022.

- Three sessions on *Comprehensive Deposit Insurance Seminar for Bankers* will consist of a comprehensive overview of FDIC deposit insurance rules that will cover topics such as the general principles of coverage, ownership categories and requirements, and provide information on additional deposit insurance resources.

- Two sessions on *New Rules for Revocable and Irrevocable Trust Accounts* will cover the newly issued final rule for calculating coverage for all revocable and irrevocable trust accounts.

AUDIENCE:
Bank officers and employees

DATE:
Each seminar will last approximately 90 minutes, during which the FDIC will take your questions via live chat. All times are Eastern time.

- ***Comprehensive Deposit Insurance Seminar for Bankers***

  May 24 - 1:00 – 3:00 p.m. -Join the Live Event

  July 12 - 2:00 – 4:00 p.m. -Join the Live Event

  August 1 - 1:00 – 3:00 p.m. -Join the Live Event

- ***New Rules for Revocable and Irrevocable Trust Accounts***

  October 12 - 1:00 – 3:00 p.m. -Join the Live Event

  December 1 - 3:00 – 5:00 p.m. -Join the Live Event

HOW:
Each webinar is hosted via MS Teams Live Event.

Comment: The FDIC insurance rules are not as simple as one would assume. These are excellent, free training for your frontline staff in particular.

Human Resources

	EEOC The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees (05/2022) - Employers now have a wide variety of computer-based tools available to assist them in hiring workers, monitoring worker performance, determining pay or promotions, and establishing the terms and conditions of employment. Employers may utilize these tools to save time and effort, increase objectivity, or decrease bias. However, the use of these tools may disadvantage job applicants and employees with disabilities. When this occurs, employers may risk violating federal Equal Employment Opportunity ("EEO") laws that protect individuals with disabilities. The Questions and Answers in this document explain how employers' use of software that relies on algorithmic decision-making may violate existing requirements under Title I of the Americans with Disabilities Act ("ADA"). This technical assistance also provides practical tips to employers on how to comply with the ADA, and to job applicants and employees who think that their rights may have been violated. The Equal Employment Opportunity Commission ("EEOC" or "the Commission") enforces, and provides leadership and guidance on, the federal EEO laws prohibiting employment discrimination on the basis of race, color, national origin, religion, and sex (including pregnancy, sexual orientation, and gender identity), disability, age (over 40) and genetic information. This publication is part of an ongoing effort by the EEOC to educate employers, employees, and other stakeholders about the application of EEO laws when employers use employment software and applications, some of which incorporate algorithmic decision-making.

Lending

	FRB Senior Loan Officer Opinion Survey on Bank Lending Practices (05/09/2022) - The April 2022 Senior Loan Officer Opinion Survey on Bank Lending Practices addressed changes in the standards and terms on, and demand for, bank loans to businesses and households over the past three months, which generally correspond to the first quarter of 2022. Regarding loans to businesses, respondents to the survey reported, on balance, unchanged standards for commercial and industrial (C&I) loans to firms of all sizes, after having eased them over the previous four quarters, while demand strengthened over the first quarter. Meanwhile, banks reported unchanged standards and demand for most commercial real estate (CRE) loan categories except for those secured by multifamily residential properties, for which they eased standards and demand strengthened on net. Banks also responded to a set of special questions about changes in lending policies and demand for CRE loans over the past year. Banks reportedly eased some lending terms across all CRE loan categories, including the maximum loan size and maturity, the spread of loan rates over their cost of funds, the length of interest-only periods, and the market areas served. For loans to households, banks eased standards across most categories of residential real estate (RRE) loans and home equity lines of credit (HELOCs) over the first quarter, while also reporting weaker demand for all types of RRE loans but stronger demand for HELOCs

	on net. In addition, banks eased standards for card loans and auto loans, while demand reportedly strengthened for all consumer loan types over the first quarter.
	CFPB Issues Advisory Opinion on Coverage of Fair Lending Laws (05/09/2022) - Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) published an advisory opinion to affirm that the Equal Credit Opportunity Act (ECOA)—a landmark federal civil rights law protecting individuals and businesses against discrimination in accessing and using credit—bars lenders from discriminating against customers after they have received a loan, not just during the application process. "The CFPB is ramping up its efforts to issue guidance and advisory opinions to assist entities with understanding their obligations under the law," said CFPB Director Rohit Chopra. "Today's advisory opinion and accompanying analysis makes clear that anti-discrimination protections do not vanish once a customer obtains a loan." In 2020, the CFPB issued an Advisory Opinion policy. Advisory opinions are one of many types of guidance documents that the agency issues to provide market participants with information about the application of federal consumer financial laws. ECOA has helped people obtain credit on fair terms since 1974. Throughout its almost 50-year history, ECOA has protected people and businesses against discrimination when seeking, applying for, and using credit. ECOA bans credit discrimination on the basis of race, color, religion, national origin, sex, marital status, and age. It also protects those who are receiving money from any public assistance program or exercising their rights under certain consumer protection laws. The CFPB issued their advisory opinion and accompanying analysis to clarify that ECOA protects people from discrimination in all aspects of a credit arrangement. The advisory opinion is consistent with a recent legal brief filed by the CFPB, the Federal Trade Commission, the Federal Reserve Board of Governors, and the U.S. Department of Justice. Among other things, the advisory opinion states that ECOA: • Continues to protect borrowers after they have applied for and received credit: Lenders are prohibited from discriminating against borrowers with existing credit. For example, ECOA prohibits lenders from lowering the credit limit of certain borrowers' accounts or subjecting certain borrowers to more aggressive collections practices on a prohibited basis, such as race. • Requires lenders to provide "adverse action notices" to borrowers with existing credit: Adverse action notices explain why an unfavorable decision was made against a borrower. Credit applicants and borrowers receive these notices for reasons including that credit was denied, an existing account was terminated, or an account's terms were unfavorably changed. "Adverse action notices" discourage discrimination, and they help applicants and borrowers learn the reasons for creditors' decisions. Read the advisory opinion. ***Comment: Don't overlook fair lending precepts in your work-out programs. Be sure that they do not have elements that have discriminatory impact. But also remember that "adverse action" does not include a change in terms of an account that is expressly***

	agreed to by the borrower nor does it include any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account.

Technology / Security

	CISA NSA, FBI and International Cyber Authorities Issue Cybersecurity Advisory to Protect Managed Service Providers (MSP) and Customers (05/11/2022) - WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA), in partnership with the United Kingdom's National Cyber Security Centre (NCSC-UK), Australian Cyber Security Centre (ACSC), Canadian Centre for Cyber Security (CCCS), New Zealand National Cyber Security Centre (NZ NCSC), National Security Agency (NSA), and Federal Bureau of Investigation (FBI) released an advisory today with cybersecurity best practices for information and communications technology (ICT), focusing on enabling transparent discussions between managed service providers (MSPs) and their customers on securing sensitive data. CISA, NCSC-UK, ACSC, CCCS, NZ-NCSC, NSA, and FBI expect state-sponsored advanced persistent threat (APT) groups and other malicious cyber actors to increase their targeting of MSPs against both provider and customer networks. The advisory provides several actions that organizations can take to reduce their risk of becoming a victim to malicious cyber activity. Additionally, MSP customers should ensure their contractual arrangements specify that their MSP implements the measures and controls in this advisory, such as: • Prevent initial compromise by implementing mitigation resources to protect initial compromise attack methods from vulnerable devices, internet-facing services, brute force and password spraying, and phishing. • Enable monitoring and logging, including storage of most important logs for at least six months, and implement endpoint detection and network defense monitoring capabilities in addition to using application allowlisting/denylisting. • Secure remote access applications and enforce multifactor authentication (MFA) where possible to harden the infrastructure that enables access to networks and systems. • Develop and exercise incident response and recovery plans, which should include roles and responsibilities for all organizational stakeholders, including executives, technical leads, and procurement officers. • Understand and proactively manage supply chain risk across security, legal, and procurement groups, using risk assessments to identify and prioritize the allocation of resources.

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

05.05.2022 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.)**