Community Bankers of Michigan Regulatory Dispatch

September 27, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Consumer Compliance Outlook – Spotlight on Representment

We are pleased to announce Consumer Compliance Outlook will occasionally publish Compliance Spotlights or Compliance Alerts to our subscribers to share regulatory information. A Spotlight is a short article focusing on a specific compliance topic, while an Alert is a short article highlighting a recent regulatory change.

In this inaugural Spotlight, we discuss the Federal Reserve's supervisory observations on representment fees.

Comment: This 'Spotlight' is brief (2 pages) and yet does a good job outlining the risks related to representment fees. Let's hope these new 'Spotlights' continue to be an informative tool for communicating regulatory expectations.

CBM Insights

Q. If we have a customer with a $10,000 check for deposit and they are requesting to put half in the DDA and half into their Money Market or Savings, how would the hold be placed since Regulation CC doesn't pertain to Money Market and Saving accounts?

A. Regulation CC is based upon the check (or aggregate of checks) deposited in a single day. It is not based upon how the customer deposits that check or checks. The depositor does not get to game the 'availability' of deposits by splitting the deposits into various accounts – some subject to the rule and some not subject to the rule.

You can aggregate the customer's accounts and the deposits made to those accounts and make funds available from the aggregate check deposit(s) available under your normal schedule. Notice the passages underlined below (added for reference) that refer to 'deposited funds,' 'the amount of funds deposited' or 'aggregate amount of checks.'

Regulation CC (12 CFR part 229) implements the EFA Act and the Check Clearing for the 21st Century Act (Check 21 Act). [1] *Subpart B of Regulation CC implements the requirements set forth in the EFA Act regarding the availability schedules within which banks* [2] *must make funds available for withdrawal, exceptions to those schedules, disclosure of funds availability policies, and payment of interest. The EFA Act and subpart B of Regulation CC contain specified dollar amounts, including: (1) The minimum amount of deposited funds that banks must make available for withdrawal by opening of business on the next day for certain check deposits ("minimum amount");* [3] *(2) the amount a bank must make available when using the EFA Act's permissive adjustment to the funds-availability rules for withdrawals by cash or other means ("cash withdrawal amount");* [4] *(3) the amount of funds deposited by certain checks in a new account that are subject to next-day availability ("new-account amount");* [5] *(4) the threshold for using an exception to the funds-availability schedules if the aggregate amount of checks on any one banking day exceed the threshold amount ("large-deposit threshold");* [6] *(5) the threshold for* *determining whether an account has been repeatedly overdrawn ("repeatedly overdrawn threshold");* [7] *and (6) the civil liability amounts for failing to comply with the EFA Act's requirements.*[8]

Source link.

Items of Interest

Bank Management

	FRB Generative AI, Productivity, the Labor Market, and Choice Behavior - Governor Lisa D. Cook (09/21/2023) - *As I was in 2018, I am excited to speak to you at the National Bureau of Economic Research (NBER) artificial intelligence (AI) conference, in a city that is a world-class center of AI research and business start-ups, to discuss AI and its prospective effects on productivity and the labor market. Outside of those of us who have spent many years researching the economics of innovation, it seems that AI is having a moment. The surge in excitement and trepidation about AI is palpable. Google searches for "AI" have tripled worldwide since 2022, fueled by the buzz about ChatGPT. Of course, this group saw it coming as early as 2017, when the first NBER AI conference was held here in Toronto, and many of you saw it coming much earlier than that.* *I will focus my remarks on generative AI, which creates new content largely in response to natural language prompts. As this audience knows, image and text classification—discriminative AI—has been in use for many years and is remarkably effective. I have used it to identify demographic characteristics of entrepreneurs in my own research. In contrast, effective generative AI is a very recent development and seems to be a leap forward into something new. Applications of generative AI range from the prosaic, like reducing the monotony of writing routine memos, to the wonderous, like protein structure prediction and drug discovery.* *Of course, experts emphasize that at their core, all forms of AI are an exercise in prediction, and technically that is true. To the layperson, though, a chatbot that is nearly good enough to pass the Turing test is substantially different from the U.S. Postal Service using AI to read your handwriting. Some of the uses of generative AI may be unsettling. For example, concerns about the ability of generative AI to impersonate individuals to harm their reputation or violate their privacy exist and are growing. Moreover, observers have noted that AI models sometimes harbor, if not amplify, the biases found in their training data, leading to malign effects on decisions about mortgage approvals, insurance rates, medical diagnoses, and even pretrial detention. And discrimination is not just an equity issue—it also holds down economic growth, as I show in my own work.* ***Comment: Earlier AI and automation technologies have primarily impacted occupations with a large proportion of routine tasks, such as machine operators and administrative assistants. In contrast, generative AI tools have the potential to impact various non-routine task occupations including banking. A March Goldman Sachs report found over 300 million jobs around the world could be disrupted by AI, and the global consulting firm McKinsey estimated at least 12 million Americans would change to another field of work by 2030.***
	FRB Issues FOMC Statement (09/20/2023) - Recent indicators suggest that economic activity has been expanding at a solid pace. Job gains have slowed in recent months but remain strong, and the unemployment rate has remained low. Inflation remains elevated. The U.S. banking system is sound and resilient. Tighter credit conditions for households and businesses are likely to weigh on economic activity, hiring, and inflation. The extent of these effects remains uncertain. The Committee remains highly attentive to inflation risks.

	The Committee seeks to achieve maximum employment and inflation at the rate of 2 percent over the longer run. In support of these goals, the Committee decided to maintain the target range for the federal funds rate at 5-1/4 to 5-1/2 percent. The Committee will continue to assess additional information and its implications for monetary policy. In determining the extent of additional policy firming that may be appropriate to return inflation to 2 percent over time, the Committee will take into account the cumulative tightening of monetary policy, the lags with which monetary policy affects economic activity and inflation, and economic and financial developments. In addition, the Committee will continue reducing its holdings of Treasury securities and agency debt and agency mortgage-backed securities, as described in its previously announced plans. The Committee is strongly committed to returning inflation to its 2 percent objective. In assessing the appropriate stance of monetary policy, the Committee will continue to monitor the implications of incoming information for the economic outlook. The Committee would be prepared to adjust the stance of monetary policy as appropriate if risks emerge that could impede the attainment of the Committee's goals. The Committee's assessments will take into account a wide range of information, including readings on labor market conditions, inflation pressures and inflation expectations, and financial and international developments. ***Comment: Bottom line - Federal Reserve officials voted to hold interest rates steady – for now- at a 22-year high and revealed a divide over whether they should raise them once more this year, with hints at another increase by year end.***

BSA / AML

	FinCEN Issues Compliance Guide to Help Small Businesses Report Beneficial Ownership Information (09/21/2023) - The Financial Crimes Enforcement Network (FinCEN) published a Small Entity Compliance Guide to assist the small business community in complying with the beneficial ownership information (BOI) reporting rule. Starting in 2024, many entities created in, or registered to do business in, the United States will be required to report to FinCEN information about their beneficial owners—the individuals who ultimately own or control a company. The Guide is intended to help businesses learn about and comply with the new reporting requirements. FinCEN is also issuing revised and new FAQs about the BOI reporting requirements that incorporate content from the Guide. Additional translated versions of the Guide and the FAQs will be posted to FinCEN's website soon. ***Comment: This guide does not create any new requirements. It provides an accessible and detailed summary of how reporting companies will report information directly to FinCEN effective January 1, 2024. Companies currently in existence have time to determine if the BOI reporting rule applies, because it does not take effect until January 1, 2025, for companies created or registered on or before December 31, 2024.***

Deposit / Retail Operations

	FTC September is National Preparedness Month: Make a Plan Now (09/20/2023) - Extreme weather and natural disasters can occur with little warning. Communities spared in the past have suffered devastating losses this year, and many are still recovering. National Preparedness Month is a great time to get ready for whatever may come your way. ***Comment: Consider sharing with your customers.***

Human Resources

	No news to report this week.

Lending

	CFPB Kicks Off Rulemaking to Remove Medical Bills from Credit Reports (09/21/2023) - The CFPB announced it is beginning a rulemaking process to remove medical bills from Americans' credit reports. The CFPB outlined proposals under consideration that would help families financially recover from medical crises, stop debt collectors from coercing people into paying bills they may not even owe, and ensure that creditors are not relying on data that is often plagued with inaccuracies and mistakes. A 2022 report found that roughly 20% of Americans report having medical debt, but previous research by the CFPB has shown that medical billing data on a credit report is less predictive of future repayment than reporting on traditional credit obligations. Mistakes and inaccuracies in medical billing are common and can be compounded by problems such as disputes over insurance payments or complex billing practices. ***Comment: According to the new rulemaking, if finalized, they would remove medical bills from consumers' credit reports, stop creditors from relying on medical bills when making underwriting decisions and "stop coercive debt collection practices. "The CFPB describes the latter practice by saying "debt collectors would no longer be able to use the credit reporting system as leverage to pressure consumers into paying questionable debts."***
	CFPB Announces Threshold Adjustments Under TILA (Regulation Z) (09/21/2023) - 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 January 1, 2024, consistent with relevant statutory or regulatory provisions. ***Comment: This is a routine adjustment of thresholds. Be sure to update your systems by January 1, 2024.***
	CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence (09/19/2023) - The Consumer Financial Protection Bureau (CFPB) issued guidance about certain legal requirements that lenders must adhere to when using artificial intelligence and other complex models. The guidance describes how lenders must use specific and accurate reasons when taking adverse actions against consumers. This means that creditors cannot simply use CFPB sample adverse action forms and checklists if they do not reflect the actual reason for the denial of credit or a change of credit conditions. This requirement is especially important with the growth of advanced algorithms and personal consumer data in credit underwriting. Explaining the reasons for adverse actions help improve consumers' chances for future credit and protect consumers from illegal discrimination. "Technology marketed as artificial intelligence is expanding the data used for lending decisions, and also growing the list of potential reasons for why credit is denied," said CFPB Director Rohit Chopra. "Creditors must be able to specifically explain their reasons for denial. There is no special exemption for artificial intelligence."

	In today's marketplace, creditors are increasingly using complex algorithms, marketed as artificial intelligence, and other predictive decision-making technologies in their underwriting models. Creditors often feed these complex algorithms with large datasets, sometimes including data that may be harvested from consumer surveillance. As a result, a consumer may be denied credit for reasons they may not consider particularly relevant to their finances. Despite the potentially expansive list of reasons for adverse credit actions, some creditors may inappropriately rely on a checklist of reasons provided in CFPB sample forms. However, the Equal Credit Opportunity Act does not allow creditors to simply conduct check-the-box exercises when delivering notices of adverse action if doing so fails to accurately inform consumers why adverse actions were taken. In fact, the CFPB confirmed in a circular from last year that the Equal Credit Opportunity Act requires creditors to explain the specific reasons for taking adverse actions. This requirement remains even if those companies use complex algorithms and black-box credit models that make it difficult to identify those reasons. Today's guidance expands on last year's circular by explaining that sample adverse action checklists should not be considered exhaustive, nor do they automatically cover a creditor's legal requirements. ***Comment: According to the Circular, while the sample forms provide examples of commonly considered reasons for taking adverse action, the Circular notes that they may not be appropriate for all creditors. The CFPB believes that reliance on the checklist of reasons provided in the sample forms would satisfy a creditor's adverse action notification requirements only if the reasons disclosed are specific and indicate the principal reason(s) for the adverse action taken.***

Technology / Security

	FBI and CISA Release Advisory on Snatch Ransomware (09/20/2023) - The Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) released joint Cybersecurity Advisory (CSA) #StopRansomware: Snatch Ransomware, which provides indicators of compromise (IOCs) and tactics, techniques, and procedures (TTPs) associated with the Snatch ransomware variant. FBI investigations identified these IOCs and TTPs as recently as June 1, 2023. Snatch threat actors operate a ransomware-as-a-service (RaaS) model and change their tactics according to current cybercriminal trends and successes of other ransomware operations. FBI and CISA encourage organizations review the joint CSA for recommended steps and best practices to reduce the likelihood and impact of Snatch ransomware incidents. For general ransomware guidance, visit StopRansomware.gov, which provides resources, including the updated Joint #StopRansomware Guide. To report incidents and anomalous activity, contact a local FBI field office or CISA, either through the agency's Incident Reporting System or the 24/7 Operations Center at report@cisa.gov or (888) 282-0870. ***Comment: One of the hallmark features of Snatch ransomware is its ability to evade detection by rebooting infected devices into Safe Mode, a technique that allows it to operate undetected by antivirus or endpoint protection software.***

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