

Regulatory Dispatch

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FinCEN Beneficial Ownership [Information Reporting](#)

A final rule implementing the beneficial ownership information reporting requirements of the Corporate Transparency Act (CTA) was issued in September 2022. These regulations go into effect on January 1, 2024. Beneficial ownership information will not be accepted prior to January 1, 2024.

The Corporate Transparency Act (CTA) establishes uniform beneficial ownership information 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. The CTA authorizes FinCEN to collect that information and disclose it to authorized government authorities and financial institutions, subject to effective safeguards and controls. The CTA and its implementing regulations will provide essential information to law enforcement, national security agencies, and others to help prevent criminals, terrorists, proliferators, and corrupt oligarchs from hiding illicit money or other property in the United States. The CTA is part of the Anti-Money Laundering Act of 2020 (AML Act). More information on the AML Act can be found on the AML Act page.

Comment: This is all good information, but it is missing the last piece of the CTA puzzle. An NPRM revising the existing Customer Due Diligence (CDD) Rule is expected in December 2023. Given the current differences between how the CDD Rule and the CTA define “beneficial owner,” as well as differences involving exempted entities and serious questions regarding how banks can or should access BOI under the CTA in order to comply with the CDD Rule, that will be a very important NPRM.

Community Banker Q&A

Q. Our customer is claiming unauthorized electronic transactions on their August statement. When discussing with the customer, she said she lost the card in May but had not had time to report it lost or stolen. What is their liability?

A. The bank has the burden of proof that the transfer is authorized. There are three conditions for imposing liability on the consumer: (1) the access device must be an accepted device, (2) the bank must have provided the means through which the consumer is identified (signature, photograph, electronic confirmation, etc.), and the bank must have made liability disclosures

(establishing the liability limitations, the telephone number and address for notification in case of loss or theft of access card, and the bank's business days) in accordance with §1005.7.

If the bank has met these three conditions, it may impose liability on the consumer. If the card is lost or stolen, the maximum liability is \$50 **unless** (1) the consumer fails to notify the bank within 2 business days of the loss/theft, in which case the maximum liability is \$500; and (2) the consumer fails to notify the bank within 60 calendar days of transmittal by the institution of an unauthorized transfer notice, in which case the consumer bears all liability for further transfers from that day in accordance with §1005.6.

In this situation, she failed to timely notify the bank the card was lost or stolen upon her discovery of that fact (in May,) making her maximum liability \$500.

Those time periods can be extended if there are mitigating circumstances such as 'extended travel or hospitalization.' Those are the two examples provided for in §1005.6 without additional guidance or commentary offered. These are typically called 'pattern of fact' issues that are key to a particular situation.

Items of Interest

Bank Management

[FDIC Technical Assistance Video Program](#) (08/08/2023) - As part of the FDIC's Community Bank Outreach Program, the FDIC is proud to offer the Technical Assistance Video Program. The purpose of this program is to provide videos that convey fundamental information pertaining to various aspects of the examination process and areas of supervisory focus. These resources are intended for community bank directors, officers, and employees.

The FDIC recently updated the Technical Assistance Video Program webpage. Video topics include:

- Overview of the FDIC and the Examination Process: This video provides an overview of the FDIC, the FDIC's mission, and how the FDIC conducts various examinations.
- Information for New Board Members: This video provides information for new bank board members and an overview of their responsibilities.
- Corporate Governance: This video highlights the importance of corporate governance and describes the roles of individual directors and the board as a whole.
- Interest Rate Risk: This video set includes an overview of interest rate risk; how it is measured, monitored, and controlled; and the board's oversight role. The set also includes several short technical videos on various aspects of interest rate risk measurement and management.

	<ul style="list-style-type: none"> • Current Expected Credit Losses: This video provides an overview of the Current Expected Credit Losses methodology, compares it to the incurred loss methodology, and delineates board and management responsibilities. • <p>These videos are available on the FDIC's Technical Assistance Video Program webpage and on the FDIC's YouTube channel.</p> <p>Additional supervisory information and resources are available on the Banker Resource Center website.</p> <p><i>Comment: These videos provide very helpful information for board members. Given the current state of affairs, the Interest Rate Risk and Current Expected Credit Losses videos in particular are approximately 30 minutes long and could be shown during a board meeting. Be sure to document your board educational efforts in board minutes.</i></p>
	<p>FDIC Consumer News - August 2023 Edition (08/07/2023) - Credit Cards for Young Adults - How to avoid costly mistakes.</p> <p>When you are just starting out on your own, credit cards offer a convenient way to make purchases and build a credit history. It is easy to make costly mistakes, however, and damage your credit record. Here are tips for responsibly managing credit cards.</p> <p><i>Comment: Always worth sharing links to editions of 'Consumer News' on your bank's website.</i></p>
	<p>FRB Welcoming Remarks - Governor Michelle W. Bowman At "Fed Listens: Community Listening Session" hosted by the Federal Reserve Bank of Atlanta, Atlanta, Georgia (08/08/2023) - As many of you know, since March of last year the FOMC has significantly increased the federal funds rate, which is our primary monetary policy tool. The goal is to raise interest rates throughout the economy to bring demand into better balance with supply and reduce upward pricing pressures.</p> <p><i>We have made progress in lowering inflation over the past year, but inflation is still significantly above the FOMC's two percent target, and the labor market continues to be tight, with job openings still far exceeding the number of available workers. Economic activity has grown at a moderate pace, and even as banks have been tightening their lending standards in response to higher interest rates and funding costs, lending to businesses and households has continued to expand.</i></p> <p><i>Given these developments, I supported raising the federal funds rate at our July meeting, and I expect that additional increases will likely be needed to lower inflation to the FOMC's goal. Of course, monetary policy is not on a pre-set path, and I will be closely monitoring the incoming data and their implications for the economic outlook. I will be looking for evidence that inflation is on a consistent and meaningful downward path as I consider whether further increases in the federal funds rate will be needed, and how long the federal funds rate will need to remain at a sufficiently restrictive level.</i></p>

I know that high inflation has been a hardship, especially for lower- and middle-income families, who spend the majority of their income on necessities. Returning inflation to two percent will help American families focus on important decisions other than inflation. Addressing high inflation will ensure that it is no longer a factor for spending and investment decisions and will help put the U.S. economy on a course of ongoing economic growth and rising standards of living. But I also know that higher interest rates have made it more difficult for many to get a loan, to buy a home or a car, and for businesses to invest and expand. I am interested to hear the ways in which inflation and higher interest rates are affecting the day-to-day lives of our participants today.

Comment: Back in June, Gov. Bowman indicated that "additional policy rate increases" will be needed to control inflation she feels has essentially flatlined at a high level since late last year. It does not seem that her position has changed, albeit she is looking at more moderate increases.

BSA / AML

FinCEN [Requests Comments on Renewal of the OMB Control Number for Bank Secrecy Act Requirements in Connection with Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Reports of Foreign Bank and Financial Accounts](#) (FBAR) (08/10/2023) - On August 10, 2023, the Financial Crimes Enforcement Network (FinCEN) published in the Federal Register a 60-day notice to renew the Office of Management and Budget (OMB) control number assigned to existing Bank Secrecy Act regulations at 31 CFR 1010.350, 1010.306, and 1010.420. Specifically, the regulations require each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The notice is required to give the public an opportunity to comment on existing regulatory requirements and burden estimates. The notice requests feedback from industry on or before October 10, 2023. FinCEN encourages the public to review this notice and provide comment.

Federal Register Notice: <https://www.federalregister.gov/documents/2023/08/10/2023-17092/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>

Deposit / Retail Operations

FTC [Asked to Wire Money? Cut the Cord](#) (08/07/2023) – If someone asked you to mail them \$200 in cash, would you do it? Probably not. Wiring money is just like sending cash in the mail. Once it's gone, you probably won't get it back — which explains why scammers tell you to pay that way. You'd think twice before mailing your hard-earned money — do the same thing before you wire money. Here's what to know.

	<p><i>Comment: Wire fraud is growing. Customers need to be educated on the fact that, as the FTC points out, sending a wire is much the same as handing over cash. Banks should have reasonable procedures to verify the accountholder is in fact authorizing the wire transfer and is aware that recovery is doubtful. Talk with your customers about wire fraud. Make sure bank employees stay up to date on the latest fraud trends and vulnerabilities. Help customers understand risks associated with popular fraud schemes like “business email compromise” and spoofed invoices that surreptitiously redirect otherwise legitimate payments.</i></p>
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Human Resources

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Lending

	<p>FRB Upcoming Ask the Fed® Regional CRE Series Continues with National Update (08/10/2023) - The Federal Reserve is committed to providing you with relevant information on issues of the day and the changing regulatory landscape. We are pleased to announce the following webinar:</p> <p>NEW –Commercial Real Estate (CRE): National Update and Regional Series The 2023 CRE series continues with a national overview and Mountain region of the United States as seen below. Subject Matter Expert & Senior Policy Advisor, Brian Bailey, CCIM, CRE will discuss trends and emerging risks in the CRE and CRE Finance industries from a supervisory perspective.</p> <ul style="list-style-type: none"> National Update: Tuesday, August 29 at 2:00p.m.- 3:00p.m. ET Mountain region: Wednesday, September 27 at 2:00p.m.- 3:00p.m. ET
	<p>OCC Loan Purchase Activities: Legal Lending Limit Guidance (08/08/2023) - The Office of the Comptroller of the Currency (OCC) is issuing this bulletin to provide banks¹ with guidance regarding the applicability of the legal lending limit (LLL) to purchased loans.</p> <p>Note for Community Banks This bulletin applies to community banks’ purchases of loans.</p> <p>Highlights This bulletin</p> <ul style="list-style-type: none"> provides background information on loan purchase activities and the LLL. provides guidance on the applicability of the LLL to purchased loans and types of recourse arrangements. <p>Background</p>

	<p>Loan purchase activities are long-standing banking practices that serve the legitimate business needs of the buying and selling institutions and the public interest. The extensive network of loan-broker channels and increased involvement of nonbank lenders have resulted in growth in the availability of loans for purchase.²</p> <p>Unless an exception applies, all loans and extensions of credit made by banks are subject to the LLL, which provides limitations on the total amount of loans and extensions of credit to any one borrower.³ Whether a loan that a bank purchases is attributable to the seller under the LLL regulation depends on specific facts and circumstances. Consequently, bank management would typically consider more information than it would for in-house originations when determining compliance with the LLL regulation for purchased loans.</p> <p>Guidance</p> <p>Aggregate exposures attributable to a single seller must be within the bank's LLL. Loans are attributable to a seller under 12 CFR 32.2(q)(1)(iii) if the bank has direct or indirect recourse to the seller. Direct or indirect recourse can be explicit or implied. Explicit recourse is generally provided under contractual arrangement or other written agreement between the bank and the seller. Implied recourse is established through the bank's course of dealing⁴ or conduct with a seller even if the contract or written agreement with the provider does not contain explicit recourse. The following are examples of explicit and implied recourse scenarios:</p> <ul style="list-style-type: none"> ▪ Explicit recourse: Examples include a requirement or contractual obligation to substitute or repurchase defaulted loans or refill a reserve account, even if no substitutions, repurchases, or replenishments of the reserve account have occurred to date. ▪ Implied recourse: Examples include when the seller has routinely substituted or repurchased loans or refilled or replenished a reserve account even when the contract does not require those actions. <p>If the bank does not have explicit or implied recourse to the seller, the loans are generally not attributable to the seller under 12 CFR 32.2(q)(1)(iii). In such cases, the purchased loans would generally be attributable under the LLL regulation to only the named borrowers on the loans, unless the direct benefit or common enterprise tests under 12 CFR 32.5 are met or other provisions under the LLL regulation warrant attribution to another party.⁵</p> <p><i>Comment: Review your sale agreements and your practices to ensure that you don't have problems with either explicit or implied recourse.</i></p>
	<p>FRB G.19 Consumer Credit (08/07/2023) - June 2023 - Consumer credit increased at a seasonally adjusted annual rate of 4 percent during the second quarter. Revolving credit increased at an annual rate of 7.1 percent, while nonrevolving credit increased at an annual rate of 3 percent. In June, consumer credit increased at an annual rate of 4.3 percent.</p>

Comment: "Credit card balances saw brisk growth in the second quarter," said Joelle Scally, Regional Economic Principal within the Household and Public Policy Research Division at the New York Fed. "And while delinquency rates have edged up, they appear to have normalized to pre-pandemic levels."

Technology / Security

CISA [Microsoft Releases August 2023 Security Updates](#) (08/08/2023) - Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker can exploit some of these vulnerabilities to take control of an affected system.

CISA encourages users and administrators to review Microsoft's August 2023 Security Update Guide and apply the necessary updates.

Comment: A release from Microsoft is worth paying attention to. Be sure your IT department is aware of these releases.

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

06.21.2023 [Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations](#)- SUMMARY: The OCC, Board, FDIC, NCUA, CFPB, and FHFA (collectively, the agencies) invite comment on a proposed rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws. **DATES: Comments must be received by August 21, 2023.**