Regulatory Dispatch

Timely news and resources community bankers can use

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CFPB Issues 1071 Small Entity Compliance Guide

This guide includes a detailed summary of the final rule's requirements. Except when specifically needed to explain the final rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply. The content of this guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide's cover page.

Comment: The CFPB does a good job on their 'Small Entity Compliance Guides.' This guide is 'must reading' for those responsible for collecting and reporting data under the rule.

Community Banker Q&A

Q. If we are going to issue a revised Closing Disclosure, would it affect the HMDA LAR information? Also, going forward, as a best practice, would it be safer to use the final Closing Disclosure for HMDA or the Promissory Note, which is the binding contract?

A. The commentary to §1003.4(a)(17) addresses that. The timing of when the 'corrected disclosure' is issued in relation to the 'reporting period' determines if those revised loan cost are reported on the HMDA LAR.

…snip

3. Corrected disclosures. If the amount of total loan costs changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(17)(i) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Source link.

As noted above, the bank complies with the reporting requirements in HMDA if it reports information in compliance with Regulation Z, meaning the Closing Disclosure, and not the note.

Items of Interest

Bank Management

	FRB The Evolving Nature of Banking, Bank Culture, and Bank Runs Governor Michelle W. Bowman (05/12/2023) - *I will begin by offering a few thoughts on U.S. monetary policy. At our most recent meeting last week, in light of the ongoing unacceptably high inflation, the Federal Open Market Committee (FOMC) increased the target range for the federal funds rate by 25 basis points. With this increase, the FOMC has raised the federal funds rate by 5 percentage points since March of last year. These increases, combined with the runoff of our balance sheet, are having the desired effect of tightening financial conditions. In my view, our policy stance is now restrictive, but whether it is sufficiently restrictive to bring inflation down remains uncertain. Some signs of slowing in aggregate demand, lower numbers of job openings and more modest gross domestic product (GDP) growth indicate that we have moved into restrictive territory. But inflation remains much too high, and measures of core inflation have remained persistently elevated, with declining unemployment and ongoing wage growth. And, as senior loan officers signaled beginning last summer, credit has continued to tighten.2 I expect this trend will continue given increased bank funding costs and reduced levels of liquidity.* *While the U.S. banking and financial system remains sound and resilient, the recent failures of three U.S. banks with unique risk profiles have added to the uncertainty surrounding the economic outlook. This uncertainty is further complicated by stock price movements among regional banks.* *Should inflation remain high and the labor market remain tight, additional monetary policy tightening will likely be appropriate to attain a sufficiently restrictive stance of monetary policy to lower inflation over time. I also expect that our policy rate will need to remain sufficiently restrictive for some time to bring inflation down and create conditions that will support a sustainably strong labor market. Of course, the economic outlook is uncertain and our policy actions are not on a preset course. I will consider the incoming economic and financial data during the intermeeting period and its implications for the economic outlook in determining my view of the appropriate stance of monetary policy. I will look for signs of consistent evidence that inflation is on a downward path when considering future rate increases and at what point we will have achieved a sufficiently restrictive stance for the policy rate. In my view, the most recent CPI and employment reports have not provided consistent evidence that inflation is on a downward path, and I will continue to closely monitor the incoming data as I consider the appropriate stance of monetary policy going into our June meeting.* ***Comment: Gov. Bowman always provides valuable insights into the Fed's thought process.***

FDIC Board of Directors Issues a Proposed Rule on Special Assessment Pursuant to Systemic Risk Determination (05/11/2023) - WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) Board of Directors today approved a notice of proposed rulemaking, which would implement a special assessment to recover the cost associated with protecting uninsured depositors following the closures of Silicon Valley Bank and Signature Bank. The Federal Deposit Insurance Act (FDI Act) requires the FDIC to take this action in connection with the systemic risk determination announced on March 12, 2023.

"The proposal applies the special assessment to the types of banking organizations that benefitted most from the protection of uninsured depositors, while ensuring equitable, transparent, and consistent treatment based on amounts of uninsured deposits," said FDIC Chairman Martin J. Gruenberg. "The proposal also promotes maintenance of liquidity, which will allow institutions to continue to meet the credit needs of the U.S. economy."

The FDI Act requires the FDIC to recover any losses to the DIF as a result of protecting uninsured depositors through a special assessment. In addition, the law provides the FDIC authority to consider "the types of entities that benefit from any action taken or assistance provided." Currently, the FDIC estimates that of the total cost of the failures of Silicon Valley Bank and Signature Bank, approximately $15.8 billion was attributable to the protection of uninsured depositors.

In general, large banks with large amounts of uninsured deposits benefitted the most from the systemic risk determination. As proposed, it is estimated that a total of 113 banking organizations would be subject to the special assessment. Banking organizations with total assets over $50 billion would pay more than 95 percent of the special assessment. No banking organizations with total assets under $5 billion would be subject to the special assessment.

The FDIC is proposing to collect the special assessment at an annual rate of approximately 12.5 basis points over eight quarterly assessment periods; however, the special assessment rate is subject to change prior to any final rule depending on any adjustments to the loss estimate, mergers or failures, or amendments to reported estimates of uninsured deposits.

Assuming that the effects on capital and income of the entire amount of the special assessment would occur in one quarter only, it is estimated to result in an average one-quarter reduction in income of 17.5 percent.

Under the proposal, the base for the special assessment would be equal to an insured depository institution's (IDI's) estimated uninsured deposits reported as of December 31, 2022, adjusted to exclude the first $5 billion, applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs.

The FDIC is proposing to collect the special assessment beginning with the first quarterly assessment period of 2024 (i.e., January 1 through March 31, 2024, with an invoice payment date of June 28, 2024), and would continue to collect special assessments for an anticipated total of eight quarterly assessment periods.

The proposed rule provides opportunity for public comment for 60 days following publication in the Federal Register.

Comment: Bottom line is that by basing the assessment on banks with uninsured deposits totaling more than $5 billion, the FDIC has exempted the vast majority of community banks.

OCC Acting Comptroller Issues Statement in Support of FDIC Notice of Proposed Rulemaking on Special Assessments (05/11/2023) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu issued a statement in support of the Federal Deposit Insurance Corporation (FDIC) notice of proposed rulemaking on special assessments. The special assessment is intended to recover the losses to the Deposit Insurance Fund incurred by protecting the uninsured depositors of Silicon Valley Bank and Signature Bank following the U.S. government's systemic risk determination in March 2023.

FRB Climate Change and Financial Stability Governor Christopher J. Waller (05/11/2023) - *In what follows, I want to be careful not to conflate my views on climate change itself with my views on how we should deal with financial risks associated with climate change. I believe the scientific community has rigorously established that our climate is changing. But my role is not to be a climate policymaker. Consistent with the Fed's mandates, I must focus on financial risks, and the questions I'm exploring today are about whether the financial risks associated with climate change are different enough from other financial stability risks to merit special treatment. But before getting to those questions, I'd like to briefly explain how we think about financial stability at the Federal Reserve.*

Financial stability is at the core of the Federal Reserve and our mission. The Federal Reserve was created in 1913, following the Banking Panic of 1907, with the goal of promoting financial stability and avoiding banking panics. Responsibilities have evolved over the years. In the aftermath of the 2007-09 financial crisis, Congress assigned the Fed additional responsibilities related to promoting financial stability, and the Board of Governors significantly increased the resources dedicated to that purpose. Events in recent years, including the pandemic, emerging geopolitical risks, and recent stress in the banking sector have only highlighted the important role central banks have in understanding and addressing financial stability risks. The Federal Reserve's goal in financial stability is to help ensure that financial institutions and financial markets remain able to provide critical services to households and businesses so that they can continue to support a well-functioning economy through the business cycle.

Comment: This jumps out – "Climate change is real, but I do not believe it poses a serious risk to the safety and soundness of large banks or the financial stability of the United States," Waller said.

BSA / AML

Deposit / Retail Operations

CFPB Issues Guidance to Rein in Creation of Fake Accounts to Harvest Fees (05/10/2023) - WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) issued a new circular affirming that a bank may violate federal law if it unilaterally reopens a deposit account to process transactions after a consumer has already closed it. The CFPB has observed in complaints that even after a consumer completes all the required steps to close an account, their bank has "reopened" the closed account and assessed overdraft and nonsufficient funds fees. Consumers have reported to the CFPB that financial institutions have also charged account maintenance fees upon reopening, even if the consumer was not required to pay account maintenance fees prior to account closure.

"When a bank unilaterally chooses to open an account in someone's name after they have already closed it, this is a fake account," said CFPB Director Rohit Chopra. "The CFPB is acting on all fronts to halt the harvesting of illegal junk fees."

Closing a bank account can take significant time and effort by the consumer to complete, and the bank may require a consumer to provide a certain period of advance notice prior to closing the account to allow for the financial institution to process any pending debits or deposits. Consumers often must also settle any negative balances in their deposit account before being able to close it. Upon closure of the deposit account, the consumer may no longer have access to their account information or receive notifications of account activity.

Today's circular confirms that banks may risk violating the Consumer Financial Protection Act's prohibition on unfair acts or practices by unilaterally reopening closed accounts. Consumers may incur overdraft, nonsufficient funds, or monthly maintenance fees when a closed account is reopened by the bank. This practice may also enable third parties to access a consumer's funds without consent. If reopening the account overdraws the account, banks may also furnish negative information to consumer reporting companies if consumers do not settle negative balances quickly. Consumers often cannot reasonably avoid the risk of substantial injury caused by this practice because they cannot control a third party's attempt to debit or deposit money, the process and timing of account closure, or the terms of deposit account agreements.

The CFPB previously ordered USAA Federal Savings Bank to pay more than $15 million in consumer remediation and penalties for, among other things, violating the Consumer Financial Protection Act by reopening deposit accounts consumers had previously closed without seeking prior authorization or providing adequate notice. Today's circular highlights for regulators that an institution's unilateral reopening of a deposit account that a consumer previously closed can constitute an unfair act or practice under the Consumer Financial Protection Act.

Read the Consumer Financial Protection Circular, Reopening deposit accounts that consumers previously closed.

	Comment: When an account is closed - either by the bank (assuming that was communicated to the accountholder) or the accountholder - closed means closed. Don't reopen those accounts.

Human Resources

Lending

<table><tr><td></td><td>FRB The April 2023 Senior Loan Officer Opinion Survey on Bank Lending Practices
(05/08/2023) - The April 2023 Senior Loan Officer Opinion Survey on Bank Lending Practices (SLOOS) 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 2023.1

Regarding loans to businesses, survey respondents reported, on balance, tighter standards and weaker demand for commercial and industrial (C&I) loans to large and middle-market firms as well as small firms over the first quarter.2 Meanwhile, banks reported tighter standards and weaker demand for all commercial real estate (CRE) loan categories.

For loans to households, banks reported that lending standards tightened across all categories of residential real estate (RRE) loans other than government-sponsored enterprise (GSE)-eligible and government residential mortgages, which remained basically unchanged. Meanwhile, demand weakened for all RRE loan categories. In addition, banks reported tighter standards and weaker demand for home equity lines of credit (HELOCs). Standards tightened for all consumer loan categories; demand weakened for auto and other consumer loans, while it remained basically unchanged for credit cards.

The April SLOOS included three sets of special questions, which inquired about banks' changes in lending policies for CRE loans over the past year; about the reasons why banks changed standards for all loan categories over the first quarter; and about banks' expectations for changes in lending standards over the remainder of 2023 and reasons for these changes.

In response to the first set of special questions, banks, on balance, reported tightening lending policies for all categories of CRE loans over the past year, with the most frequently reported changes pertaining to wider spreads of loan rates over banks' cost of funds and lower loan-to-value ratios.

Regarding the second set of special questions about reasons for changing standards on all loan categories in the first quarter, banks cited a less favorable or more uncertain economic outlook, reduced tolerance for risk, deterioration in collateral values, and concerns about banks' funding costs and liquidity positions.</td></tr></table>

Finally, regarding the last set of special questions about banks' outlook for lending standards over the remainder of 2023, banks reported expecting to tighten standards across all loan categories. Banks most frequently cited an expected deterioration in the credit quality of their loan portfolios and in customers' collateral values, a reduction in risk tolerance, and concerns about bank funding costs, bank liquidity position, and deposit outflows as reasons for expecting to tighten lending standards over the rest of 2023.

As in past releases, survey results are tabulated for two domestic bank size categories: large banks and other banks. Banks in the large category have $50 billion or more in domestic assets as of December 31, 2022; banks in the other category have under $50 billion in domestic assets. This release includes additional comments in the text that further disaggregate large banks into the largest banks and mid-sized banks. The largest banks are defined as those with total domestic assets of $250 billion or more as of December 31, 2022, and mid-sized banks as those with assets between $50 billion and $250 billion. In general, the tightening in standards for business loans was more frequently reported across the mid-sized banks than either the largest banks or other banks, both for the first quarter and in expectation for the rest of 2023. As reasons for tightening standards on all loan categories, both in the first quarter and over the rest of the year, other and mid-sized banks reported concerns about their liquidity positions, deposit outflows, and funding costs more frequently than the largest banks.

Comment: Banks in the U.S. in the first quarter continued to tighten the availability of credit amid tumbling demand for loans, particularly within commercial real estate, according to the survey. The Dallas Fed Banking Conditions Survey reported a sharp increase in credit terms in March.

Technology / Security

CISA Microsoft Releases May 2023 Security Updates (05/08/2023) - 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 May 2023 Security Update Guide and Deployment Information and apply the necessary updates.

Comment: Microsoft products are ubiquitous. Share 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

05.01.2023 CFPB Residential Property Assessed Clean Energy Financing (Regulation Z) - SUMMARY: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Consumer Financial Protection Bureau (CFPB or Bureau) to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. PACE financing is financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. In this notice of proposed rulemaking, the Bureau proposes to implement EGRRCPA section 307 and to amend Regulation Z to address how TILA applies to PACE transactions to account for the unique nature of PACE. **DATES: Comments must be received on or before July 26, 2023.**