

# Regulatory Dispatch

*Timely news and resources community bankers can use*

*to better stay on top of a rapidly changing world.*

## The Latest Issue of [Consumer Compliance Outlook](#) is Now Available

The Second/Third issue 2023 of *Consumer Compliance Outlook* (CCO) is now available on the CCO website. This issue includes the following articles and features:

- [Top Federal Reserve Compliance Violations in 2022: Data Collection and Reporting Requirements of the Home Mortgage Disclosure Act](#)
- [Compliance Risk Assessments](#)
- [Compliance Spotlight: Supervisory Observations on Representment Fees](#)
- [In Case you Missed It...List of Popular CCO Articles](#)
- [Regulatory Calendar](#)
- [Download the complete issue \(pdf\)](#)

***Comment: This edition is particularly good and has something for everyone. Bank staff involved in HMDA collect and reporting should note the 2022 exam finding. Compliance staff can learn from the section on risk assessments, and both operations and compliance staff can learn from observations on representment fees. And the list of popular CCO articles goes back to 2008 and is a valuable – and time saving – resource.***

## Community Banker Q&A

Q. We read in an online forum that if we force place insurance and add it to the note, that is a M.I.R.E. event and triggers the need for a new SFHDF (unless we can rely upon a previous one), new notice, escrow, etc. Is that correct?

A: There was some reference to internal agency document (FDIC) in 2015 or 2016 that concluded that force placement was a M.I.R.E. event. However, the 2022 Interagency FAQs clarified the issue in FORCE PLACEMENT #10, below. (Underline added for emphasis.)

...snip

*FORCE PLACEMENT 10. Does capitalizing the flood insurance premium into the outstanding principal balance constitute a triggering event - an "increase" that would trigger the applicability of flood insurance regulatory requirements?*

*The Act and the Regulation require a lender to notify the borrower that the borrower should obtain adequate flood insurance when the lender determines that a building or a mobile home*

*located or to be located in an SFHA is not covered by any or adequate flood insurance. If the borrower fails to obtain adequate flood insurance within 45 days, then the lender must purchase insurance on the borrower's behalf. The lender may charge the borrower for the premiums and fees incurred by the lender in purchasing the force-placed flood insurance.*

*Among the various methods that a lender might use to charge a borrower for force-placed flood insurance are: (1) capitalizing the premium and fees into the outstanding principal balance; (2) adding the premium and fees to a separate account; (3) advancing funds from the escrow account to pay for the premiums and fees of the force-placed flood insurance; or (4) billing the borrower directly for the premiums and fees of the force-placed flood insurance policy. The treatment of force-placed flood insurance premiums and fees depends on the method the lender chooses for charging the borrower.*

*Premium and fees capitalized into outstanding principal balance*

*If the lender's loan contract with the borrower includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt to be secured by the building or mobile home, such an advancement would be considered part of the loan. As such, the capitalization of the flood insurance premiums and fees into the outstanding principal balance is not considered an "increase" in the loan amount, and thus would not be considered a triggering event. If, however, there is no explicit provision permitting this type of advancement of funds in the loan contract, the capitalization of flood insurance premiums and fees into the borrower's outstanding principal balance would be considered an "increase" in the loan amount, and, therefore is considered a triggering event because no advancement of funds was contemplated as part of the loan. See also Q&A Force Placement 8.*

*Premium and fees added to an account*

*If the lender accounts for and tracks the amount owed on the force-placed flood insurance premium and fees in a separate account, this approach does not result in an increase in the loan balance and, therefore, is not considered a triggering event.*

*Premium and fees advanced from the borrower's escrow account*

*If the lender's loan contract with the borrower permits the lender to advance the premiums and fees for the force-placed flood insurance from the borrower's escrow account, this approach does not increase the outstanding principal balance and is not considered a triggering event.*

*Premium and fees billed directly to borrower*

*If the lender bills the borrower directly for the cost of the force-placed flood insurance, this approach does not increase the outstanding principal balance and is not considered a triggering event.*

Source [link](#).

Most banks have the necessary contract language permitting the lender or servicer to advance funds to pay for flood insurance premiums, but that is worth reviewing with your own legal counsel.

If your bank elects' option #2, 'Premium and fees added to an account,' that basically creates an unsecured loan for the amount of the premium.

## Items of Interest

### Bank Management

**HousingWire** [At last: Softer labor data sends mortgage rates lower](#) (11/03/2023) – The jobs report which should move mortgage rates lower, demonstrates why it's time for the Federal Reserve to land the plane. The labor market doesn't show wages spiraling out of control as it did in the 1970s because the inflation data doesn't look like anything in the 1970s.

We had a solid job openings print this week and jobless claims are still near historic lows. Today's labor data isn't the cleanest report with labor strikes in different sectors and we did get significant negative revisions. But, job growth is returning to its average pace. Remember, if we didn't have COVID-19 and job growth stayed on trend with population growth from February of 2020, we easily should have between 157 million – 159 million total people employed, and today we are at 156,930,000.

From BLS: Total nonfarm payroll employment increased by 150,000 in October, and the unemployment rate changed little at 3.9 percent, the U.S. Bureau of Labor Statistics reported today. Job gains occurred in health care, government, and social assistance. Employment declined in manufacturing due to strike activity.

### BSA / AML

**FinCEN** [Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies](#) (11/03/2023) – WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) is informing U.S. financial institutions that the Financial Action Task Force (FATF), an intergovernmental body that establishes international standards for anti-money laundering, countering the financing of terrorism, and countering the financing of proliferation of weapons of mass destruction (AML/CFT/CPF), issued a public statement at the conclusion of its plenary meeting last month, and, among other issues, adopted a report on how terrorist groups like Hamas use crowdfunding techniques to raise money for their attacks.[1] Additionally, the FATF continues to reiterate that all jurisdictions should be vigilant to current and emerging risks from the circumvention of measures taken against the Russian Federation in order to protect the international financial system.[2] The FATF noted that the Russian Federation's war of aggression against Ukraine continues to run counter to FATF's principles, and, thus, the suspension of the membership of the Russian Federation continues to stand.

	<p>The FATF also updated its lists of jurisdictions with strategic AML/CFT/CPF deficiencies.[3] U.S. financial institutions should consider the FATF's stance toward these jurisdictions when reviewing their obligations and risk-based policies, procedures, and practices.[4]</p> <p>On October 27, 2023, the FATF added Bulgaria to its list of Jurisdictions Under Increased Monitoring and removed Albania, the Cayman Islands, Jordan, and Panama from that list.</p> <p>The FATF's list of High-Risk Jurisdictions Subject to a Call for Action remains the same, with Iran and the Democratic People's Republic of Korea (DPRK) still subject to the FATF's countermeasures. Burma remains on the list of High-Risk Jurisdictions Subject to a Call for Action and is still subject to enhanced due diligence, not counter-measures.[5]</p> <p>As part of the FATF's listing and monitoring process to ensure compliance with its international standards, the FATF issued two statements: (1) Jurisdictions Under Increased Monitoring, which publicly identifies jurisdictions with strategic deficiencies in their AML/CFT/CPF regimes that have committed to, or are actively working with, the FATF to address those deficiencies in accordance with an agreed upon timeline; and (2) High-Risk Jurisdictions Subject to a Call for Action, which publicly identifies jurisdictions with significant strategic deficiencies in their AML/CFT/CPF regimes and calls on all FATF members to apply enhanced due diligence, and, in the most serious cases, apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing risks emanating from the identified countries.</p> <p><b><i>Comment: "The United States welcomes the FATF's work to combat terrorist financing, strengthen asset recovery, protect non-profit organizations from misuse, and address the illicit finance risks associated with citizenship and residency by investment programs," said Secretary of the Treasury Janet L. Yellen. "These steps are critical to denying terrorist organizations access to funds, safeguarding the global financial system, and enhancing collective efforts to address financial crime."</i></b></p>
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## Deposit / Retail Operations

	<p><b><u>CFPB Issues Fast Facts Regarding Personal Financial Data Rights Proposed Rule</u></b> (11/01/2023) – The Consumer Financial Protection Bureau (CFPB) is proposing to establish 12 CFR part 1033, to implement section 1033 of the Consumer Financial Protection Act of 2010 (CFPA). The proposed rule would require depository and nondepository entities to make available to consumers and authorized third parties certain data relating to consumers' transactions and accounts; establish obligations for third parties accessing a consumer's data, including important privacy protections for that data; provide basic standards for data access; and promote fair, open, and inclusive industry standards.</p> <p><b><i>Comment: As we reported last week, the CFPB issued a proposed rule (NPRM), called the "Personal Financial Data Rights" rule, to implement Section 1033 of Title X of the Dodd-Frank Act. In connection with that NPRM, the Bureau released a 'Fast Facts' summary of</i></b></p>
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	<p><i>the proposed rule on November 1. 'Fast Facts' is designed to provide an executive summary of the topics covered in the proposed rule. The first thing that jumps out in the NPRM and the summary is that a data provider will be required to create a “developer interface” through which it receives and responds to requests for covered data, and to protect that developer interface with an information security program that satisfies the applicable rules issued pursuant to the Gramm-Leach-Bliley Act. The CFPB is expected to issue its final rule implementing Section 1033 in the fall of 2024. Reminder that comments on the CFPB’s proposed rule are due on or before Dec. 29, 2023 and that IBAT will be submitting a comment letter.</i></p>
	<p><b>Interagency <a href="#">Telephone Consumer Protection Act: Revised Interagency Examination Procedures and Rescissions</a></b> (11/01/2023) – The Office of the Comptroller of the Currency (OCC) published the revised interagency examination procedures for the Telephone Consumer Protection Act (TCPA). The OCC, Federal Deposit Insurance Corporation, and the National Credit Union Administration have revised the interagency examination procedures to reflect amendments to the TCPA that became effective on October 25, 2021.<sup>1</sup></p> <p>Rescissions</p> <p>With the publication of the revised interagency examination procedures, the OCC has rescinded the “Telephone Consumer Protection Act and Junk Fax Protection Act” section of the “Other Consumer Protection Laws and Regulations” booklet of the Comptroller’s Handbook. OCC examiners will rely on the interagency procedures.</p> <p>Note for Community Banks</p> <p>This bulletin applies to all community banks.<sup>2</sup></p> <p>Highlights</p> <p>The revised interagency examination procedures address</p> <ul style="list-style-type: none"> <li>• provisions governing how customers can revoke consent under the TCPA.</li> <li>• special exemptions from the customer consent provisions of the TCPA for banks using automated communications to notify customers of potential account fraud.</li> <li>• safe harbors for callers that check a reassigned number database maintained by the Federal Communications Commission.</li> </ul> <p><i><b>Comment: Worth noting that TCPA does not define “prior express consent.” For example, unless a consumer instructs otherwise, a bank can obtain “prior express consent” for pre-recorded or autodialed non-marketing calls when the consumer provides his or her telephone number to the bank within the context of a transaction. However, the full scope of the consent depends on the facts of the transaction and the interaction with the consumer.</b></i></p>
	<p><b>FTC <a href="#">Scammers are impersonating FTC Inspector General Andrew Katsaros</a></b> (10/30/2023) – Scammers are using the names of FTC employees, including the FTC’s Inspector General, to</p>

trick people into sending money or giving up their personal information. Here's what you need to know.

***Comment: Worth alerting your bank customers about this latest fraud attempt.***

## Human Resources

**SHRM** [Here Are the 401\(k\) Contribution Limits for 2024](#) (11/02/2023) – Employees will be able to sock away more money into their 401(k)s next year.

Starting in 2024, employees can contribute up to \$23,000 into their 401(k), 403(b), most 457 plans or the Thrift Savings Plan for federal employees, the IRS announced Nov. 1. That's a \$500 jump from the 2023 limits.

The catch-up contribution limit for employees ages 50 and older who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan will remain at \$7,500, the same amount in 2023.

***Comment: Last year, the [SECURE 2.0 Act](#) substantially changed retirement account rules. Some of these changes have already taken effect and caused confusion.***

## Lending

**FDIC** [Iowa Trust & Savings Bank, Emmetsburg, Iowa, Assumes All of the Deposits of Citizens Bank, Sac City, Iowa](#) (11/03/2023) – WASHINGTON — Citizens Bank, Sac City, Iowa, was closed by the Iowa Division of Banking, which appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. To protect depositors, the FDIC entered into a Purchase and Assumption Agreement with Iowa Trust & Savings Bank, Emmetsburg, Iowa, to assume all of the deposits of Citizens Bank.

The two branches of Citizens Bank will reopen as branches of Iowa Trust & Savings Bank on Monday during normal business hours. This evening and over the weekend, depositors of Citizens Bank can access their money by writing checks or using ATM or debit cards. Checks drawn on the bank will continue to be processed. Loan customers should continue to make their payments as usual.

Depositors of Citizens Bank will become depositors of Iowa Trust & Savings Bank, so customers do not need to change their banking relationship in order to retain their deposit insurance coverage. Customers of Citizens Bank should continue to use their existing branch until they receive notice from Iowa Trust & Savings Bank that it has completed systems changes to allow its branch offices to process their accounts as well.

As of September 30, 2023, Citizens Bank had approximately \$66 million in total assets and \$59 million in total deposits. In addition to assuming all of the deposits, Iowa Trust & Savings Bank agreed to purchase essentially all of the failed bank's assets.

	<p>Customers with questions about the transaction should call the FDIC toll-free at 1-866-314-1744. The phone number will be operational this evening until 9:00 p.m. Central Time (CT); on Saturday from 9:00 a.m. to 6:00 p.m. CT; on Sunday from noon to 6:00 p.m. CT; on Monday from 8:00 a.m. to 8:00 p.m. CT; and thereafter from 9:00 a.m. to 5:00 p.m. CT. Interested parties can also visit the FDIC’s website.</p> <p>The FDIC estimates that the cost to the Deposit Insurance Fund (DIF) will be \$14.8 million. Compared to other alternatives, Iowa Trust &amp; Savings Bank’s acquisition was the least costly resolution for the DIF, an insurance fund created by Congress in 1933 and managed by the FDIC to protect the deposits at the nation’s banks. Citizens Bank is the fifth bank to fail in the nation this year. The last failure in Iowa was Polk County Bank, Johnston, Iowa, on November 18, 2011.</p> <p><b><i>Comment: While we typically would not cover the failure of an Iowa bank, this one poses a cautionary tale of overexposure to a particular sector or business. The release from the Iowa Division of Banking states examiners “identified significant loan losses that had not previously been identified by the bank” while conducting an examination of the bank. Agency officials said Citizens Bank had a “concentration of out-of-territory and out-of-state loans to one industry” and then suffered heavy losses from some of those loans.</i></b></p>
	<p><b>CFPB <a href="#">Issues New Report on State Community Reinvestment Laws</a> (11/02/2023)</b> – The CFPB published a new analysis on state Community Reinvestment Act laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities.</p> <p>The report examined the laws of seven states (Connecticut, Illinois, Massachusetts, New York, Rhode Island, Washington, West Virginia) and the District of Columbia, and found that many of those states adopted laws similar to the federal Community Reinvestment Act in decades following the 1977 passage of the landmark federal anti-redlining law.</p> <p>While the federal Community Reinvestment Act law applies strictly to banks, state reinvestment laws can apply to a wide range of financial institutions, including nonbank mortgage companies. Banks now originate and hold a much smaller share of outstanding mortgage debt than they did when the legislation was originally enacted. In 1977, banks held 74% of outstanding mortgage debt. As of 2021, nonbank mortgage companies originated 64% of conventional home purchase mortgage loans, compared to the 25% originated by banks.</p>
	<p><b>OCC <a href="#">CRA Performance Evaluations: October 2023</a> (11/02/2023)</b> – The Office of the Comptroller of the Currency (OCC) released a list of Community Reinvestment Act (CRA) performance evaluations that became public during the period of October 1, 2023, through October 31, 2023. The list contains only national banks, federal savings associations, and insured federal branches of foreign banks that have received ratings. The possible ratings are outstanding, satisfactory, needs to improve, and substantial noncompliance.</p>

	<i>Comment: Congratulations to First Lockhart National Bank and to Woodforest National Bank for your 'Outstanding' ratings!</i>
	XXX XXX (11/XX/2023) – XXX  <i>Comment: XXX</i>

## Technology / Security

	XXX XXX (11/XX/2023) – XXX  <i>Comment: XXX</i>
	XXX XXX (11/XX/2023) – XXX  <i>Comment: XXX</i>

## 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 RULES WITH REQUEST FOR PUBLIC COMMENT

- 10.25.2023**     **FRB** [Requests Comment on a Proposal to Lower the Maximum Interchange Fee That a Large Debit Card Issuer Can Receive For a Debit Card Transaction](#) SUMMARY: Regulation II implements a provision of the Dodd-Frank Act that requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Under the current rule, for a debit card transaction that does not qualify for a statutory exemption, the interchange fee can be no more than the sum of a base component of 21 cents, an ad valorem component of 5 basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of 1 cent if the issuer meets certain fraud-prevention- standards. The Board developed the current interchange fee cap in 2011 using data voluntarily reported to the Board by large debit card issuers concerning transactions performed in 2009. Since that time, data collected by the Board every other year on a mandatory basis from large debit card issuers show that certain costs incurred by these issuers have declined significantly; however, the interchange fee cap has remained the same. For this reason, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers. Further, the Board proposes to update the interchange fee cap every other year going forward by directly linking the interchange fee cap to data from the Board’s biennial survey of large debit card issuers.

Initially, under the proposal, the base component would be 14.4 cents, the ad valorem component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board also proposes a set of technical revisions to Regulation II. **DATES: Comments must be received on or before [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].**

- 10.19.2023**      **CFPB** [Required Rulemaking on Personal Financial Data Rights \(1033\)](#) - SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to establish 12 CFR part 1033, to implement section 1033 of the Consumer Financial Protection Act of 2010 (CFPA). The proposed rule would require depository and nondepository entities to make available to consumers and authorized third parties certain data relating to consumers' transactions and accounts; establish obligations for third parties accessing a consumer's data, including important privacy protections for that data; provide basic standards for data access; and promote fair, open, and inclusive industry standards. **DATES: Comments must be received on or before December 29, 2023.**
- 10.11.2023**      **FTC** [Trade Regulation Rule on Unfair or Deceptive Fees](#) - SUMMARY: The Federal Trade Commission commences a rulemaking to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The Commission finds these unfair or deceptive practices relating to fees to be prevalent based on prior enforcement, the comments it received in response to an Advance Notice of Proposed Rulemaking, and other information discussed in this proposal. The Commission now solicits written comment, data, and arguments concerning the utility and scope of the trade regulation rule proposed in this Notice of Proposed Rulemaking to prevent the identified unfair or deceptive practices. **DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**
- 10.11.2023**      **FDIC** [Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \\$10 Billion or More](#) - SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on proposed corporate governance and risk management guidelines (Guidelines) that would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of \$10 billion or more on or after the effective date of the final Guidelines. These proposed Guidelines would be issued as Appendix C to FDIC's standards for safety and soundness regulations in part 364, pursuant to Section 39 of the FDI Act, and would be enforceable under Section 39. The FDIC also proposes to make corresponding amendments to parts 308 and 364 of its regulations to implement the proposed Guidelines. **DATES: Comments on the proposed Guidelines must be received by December 11, 2023.**