

OKLAHOMA BANKER

The newspaper of the Oklahoma banking industry

August 2023

Hill happenings

OBA President and CEO Adrian Beverage uses the August pause to assess what's been rumbling around in Washington, D.C.

PAGE 3

Your advocate

OBA Chair Bryan Cain explains why the OBA is every banker's advocate, both in Oklahoma City and in our nation's capital.

PAGE 6

Federal judge halts Section 1071 implementation

A Texas federal judge issued an order on July 31 for an injunction against the Consumer Financial Protection Bureau's Section 1071 final rule.

The injunction, which came at the request of the American Bankers Association, the Texas Bankers Association

and McAllen, Texas-based Rio Bank, is ONLY for member banks of the ABA and/or TBA.

Although both trade associations asked for the injunction to apply to ALL lenders, the judge did not accept the request.

See SECTION 1071 on Page 2

SEE ALSO:

OBA President and CEO Adrian Beverage's column on federal issues.

Page 2

Oklahoma Bankers Hall of Fame accepting nominations for 2023

The Oklahoma Bankers Hall of Fame is now accepting nominations for the upcoming 2023 class; additionally, the process of selecting inductees has been updated.

First, for those interested in nominating a banker, here are some downloadable forms on OBA.com – please return all nominations to Adrian Beverage (adrian@oba.com) by Aug. 31.

Second, there is a new process for selecting the inductees to each class. After discussion with leadership at the Oklahoma Hall of Fame about its processes, and learning about other methods from other organizations, the induction procedure for the Oklahoma Bankers Hall of Fame has been updated.

After all nominations have been received, the list of nominees will be published. See HALL OF FAME on Page 2

Wild blue yonder



Free fallin' — Summer isn't just for school kids, as bankers know how to have fun, as well. The group of Barry Anderson (F&M Bank, Edmond) Troy Appling (The Bankers Bank, Oklahoma City), Doug Fuller (Quail Creek Bank, Oklahoma City) and Clayton Lodes (First National Bank & Trust Co., Ardmore) took to the skies for their first-ever skydive. The excursion came about during a strategic planning event with The Bankers Bank board of directors, as the board discussed risk appetite for lending, which segued from risky loans to risky adventures. Next thing you know, the quartet were headed to the Oklahoma Skydiving Center in Cushing on July 14. Above Appling is seen with his instructor during the free fall and landing. Below, from left, are Anderson, Fuller, Appling and Lodes.



INSIDE

#BankersOfOklahoma	17	Legal Briefs	12-16
Banking Briefs	2	Oklahoma Bankers	10
Events Calendar	9	Resource Directory	22
Education	4-5		

Section 1071

From Page 1

The order blocking enforcement of the Section 1071 rule will be in place while the U.S. Supreme Court hears a challenge to the constitutionality of the CFPB's funding structure. The challenge is scheduled to be argued later this year, with a decision expected sometime in the first half of 2024. At that point, new compliance deadlines would be issued for ABA and TBA members.

"We believe the injunction is a recognition of the complexity of the 1071 final rule and the significant

costs and burdens it places on our members, particularly community banks, which provide much of the country's small business lending," ABA, TBA and Rio Bank said in a statement. "While we sought an injunction covering all institutions covered by the rulemaking, this ruling spares TBA and ABA members across the country from being forced to incur unrecoverable expenses while the Supreme Court is considering whether the CFPB has the authority to promulgate the 1071 final rule at all."

Hall of Fame

From Page 1

been received by OBA President and CEO Adrian Beverage, he will forward those nominees to the OBA chair (currently, Bryan Cain), who will convene a committee of 11 individuals in September to select the inductees. These 11 individuals will be made up of the OBA's Executive Committee, who will join a banker selected by the OBA chair from each of the OBA's six geographical groups, as well as a member of the OBA Emerging Leaders Division. The specific committee members will be completely anonymous to everyone outside of the current OBA chair.

These committee members will select the final inductees from the group of nominees given. They will also discuss any possible posthumous inductees who may have not been nominated.

Once the inductees have been selected, the OBA chair will inform Beverage and notification and preparations will be made by the OBA staff for the induction ceremony, which will be held this year on Dec. 7 at the Oklahoma History Center in Oklahoma City.

Following the 2023 selections, the current selection committee will disband and a new committee will be picked the following year by the next OBA chair. Aside from the OBA chair and executive committee, the selection committee will remain anonymous with only the other committee members from that specific year knowing their identities.

You can download nomination instructions and forms on the front page of OBA.com

■ BANKING BRIEFS

2023 OBA Annual Washington Visit scheduled

Just a quick "save-the-date message" for our bankers: The OBA's Annual Washington Visit has been scheduled for Sept. 24-26, and the hotel will be The Mayflower.

We're pushing for 100 bankers to make the trip with us this year to D.C. You can also download the registration and information form on the front page of OBA.com.

If you have any questions, contact Megan McGuire at the OBA.

OBA Emerging Leaders Academy accepting applications

Take note the OBA 2023-24 Emerging Leaders Academy is currently accepting applications.

We're looking for the best and brightest bankers who seek to sharpen their leadership skills. The Academy will help you reach new heights with powerful speakers offering information leaders need for effectively maneuvering in today's business climate. Each session helps participants become true leaders by understanding those around you through non-traditional methods.

The OBA extends an invitation to any employee of a bank that is a member of the OBA to apply. A panel of bankers will review the applicants and choose those accepted into the Academy (maximum 30 bankers).

Visit OBA.com to apply! Also, for more information, please contact Megan McGuire at (405) 424-5252 or megan@oba.com.

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Our Staff

At The Bankers Bank, there is nothing more important than the relationships we have built.

What an amazing community of bankers we have! Because we work closely together toward common goals, our shareholders have optimized the positive impact they bring to their hometowns.



■ EXECUTIVE NEWS

August recess leaves time to ponder Hill happenings

We've finally reached Aug. 1 and it means two things: The kids are about ready to go back to school and Congress is headed home for the month.

We've finally reached the August recess; this is when legislators have the opportunity to spend an entire month back in their districts. We'll be seeing a lot of town halls over the next couple of weeks as they criss-cross their districts, meeting with as many constituents as possible.

There has been a lot going on in Washington the last couple of months, and I think now is a perfect time to see where everything stands and what we are working on.

While there are several pieces of legislation floating around, I wanted to bring you up to speed on several lawsuits you should be interested in. One suit involves the Consumer Financial Protection Bureau, and two involve the FDIC.

In late April, the Texas Bankers Association, along with Rio Bank in McAllen, Texas, filed suit against the CFPB. Several weeks after the lawsuit was filed, the American Bankers Association joined alongside. The lawsuit is directed at the CFPB's final rule of Section 1071 of the Dodd-Frank Act, which amended the Equal Credit Opportunity Act that would require commercial lenders to collect data from loan applications. The statutory amendment sought to facilitate



Adrian Beverage

OBA PRESIDENT & CEO
adrian@oba.com

the enforcement of fair-lending laws that would require lenders to determine if the business is women-owned, minority-owned or a small business, and to compile 13 data points about the business. Below are several of the key points of the lawsuit:

- It argues the final rule is invalid because the CFPB's funding structure is unconstitutional, relying heavily on the Fifth Circuit's Community Financial decision.
- The final rule is arbitrary and capricious because it didn't consider comments relevant to the statute's purpose.
- The lawsuit asserts that the final rule exceeds the statutory scope of section 1071 because it expanded the 13 data points listed in the statute to 81 items in the final rule.

On Monday, July 31, a district court granted the plaintiffs' motion for a preliminary injunction, sparing TBA and

ABA members from having to devote time and resources complying with the rulemaking until the Supreme Court resolves a case regarding the constitutionality of the CFPB's funding structure.

On July 20, the Minnesota Bankers Association and Lake Central Bank filed suit against the FDIC.

The lawsuit concerns one of the most contentious regulatory compliance issues banks have faced recently; the FDIC's Unfair or Deceptive Acts position regarding NSF fees on re-presented checks.

The lawsuit is not focused on the subject matter of the FDIC's UDAP rule. Instead, it focuses on procedural issues. Specifically, the lawsuit claims the FDIC did not have authority to amend existing bank disclosure regulations and didn't have authority to issue a substantive UDAP rule.

Even if the FDIC had the authority to take those steps, the lawsuit claims the agency failed to follow the mandatory rulemaking process in the Administrative Procedure Act, which is the federal law that ensures that government agencies operate in a fair and transparent way.

The OBA and other state associations are working closely with the MBA on this suit. The MBA is gathering information on how other state associations can be supportive of its action. The OBA

will strongly consider all options once we receive the information.

On the legislative front there are several issues that we are working on, and we'll continue pushing certain issues and playing defense on others.

ACRE (H.R. 3139) — The Access to Credit for our Rural Economy Act will help rural America by making it easier for farmers, ranchers and rural homeowners to access low-cost credit. We have been working on this bill for years and we are starting to see some good momentum.

ACRE will do the following:

- Lower the cost of making a loan backed by agricultural real estate, thereby increasing community bank participation in the rural real-estate market.
- Enhance competition between lenders for agricultural and rural housing loans, lowering the cost of credit for rural borrowers.
- Help expand access to local credit in rural America by enabling more community banks to make agricultural real estate and rural home loans.

ACRE excludes from gross income the interest received by a qualified lender on all loans secured by farm real estate and aquaculture facilities.

Continued on Page 7

OKLAHOMA BANKER

Copyright© Oklahoma Bankers Association, 2023
Volume 113/Number 7 (ISSN 0030-1647)

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Oklahoma Banker is published monthly by the Oklahoma Bankers Association, 643 N.E. 41st, Oklahoma City, OK 73105. Phone: 405-424-5252; Toll-free number: 866-424-5252; FAX: 405-424-4518. A \$45 subscription is included in membership fees. Non-member subscriptions are available. Paid subscriptions may be obtained by submitting payment and application to the editorial office. Single copy price is \$3.50. Periodical postage paid at Oklahoma City, Okla.

POSTMASTER: Send address changes to Oklahoma Banker, 643 N.E. 41st, Oklahoma City, OK 73105. News items and editorials from members of the Oklahoma Bankers Association are invited.

The editor reserves the right to reject any advertising or editorial copy deemed unsuitable for publication for any reason. Copy deadline is eight business days before publication date.

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■ EDUCATION UPDATE

In-person seminars back in action in August

In case you thought summer skipped us, it didn't. I like a few "hot" days, but I'm about done with it. I hope you are staying cool and well-hydrated!

We've enjoyed a bit of a live seminar break, but now it's back to business. We have a mix of in-person programs and webinars this month. Here's a look:

Building New Business Procedures – Beneficial Ownership Changes

Aug. 15 — webinar

Walk through all the business types, talk about new exemptions, and who must verify as registered with the new BOSS database.

What you'll learn:

- Who is covered by beneficial ownership in 2024?
- Who is exempt from beneficial ownership?
- Developing new job aids and checklists for business customers.

BSA officers, operations, compliance, training and branch staff should all plan to attend this informative webinar taught by Deborah Crawford. Deborah is the president of Gettechnical Inc., and specializes in the deposit side of the financial institution. She has 35-plus years of combined teaching and banking experience.

Everything You Need to Know About Reg CC: Holds, Funds Availability, Disclosures & More

Aug. 16 — webinar

Hold that check! But wait, how long



Janis Reeser
DIRECTOR OF EDUCATION
janis@oba.com

can that check be held? What reasons can be given to the accountholder for placing the hold? Can a hold be placed on a business account? All these questions and more will be answered in this webinar!

Program highlights:

- Detail the components of the fund's availability disclosure.
- Understand the six exception holds types.
- Explain when a case-by-case hold may be utilized.
- Calculate holds using example situations.
- Implement a monitoring process to quickly evaluate the accuracy of a hold.
- Utilize provided tools to enhance your current Reg CC procedures.

This informative session is designed for frontline personnel, new account personnel, deposit operations personnel, branch managers, compliance officers and internal auditors, and will be taught by Dawn Kincaid. Dawn has 19 years of experience and most recently served as the senior vice president of operations for a central-Ohio-based community bank.

Best-Ever Compliance Checklists for Consumer Loans

Aug. 16 — webinar

These colorful and easy-to-use checklists are designed to chronologically lead lenders and processors through the various lending compliance requirements.

Topics covered:

- Truth in Lending (Reg Z).
- RESPA.
- HMDA.
- Equal Credit Opportunity Act (Reg B).
- Flood insurance.
- Appraisals and evaluations.

Taught by Anne Lolley, this webinar is intended for lenders, loan processors, compliance officers and loan review personnel, who will all benefit from these checklists. Anne has been simplifying compliance issues for bankers for over 40 years and currently works with Bank Consulting Services. Her expertise at simplifying the complex and creating user-friendly reference manuals has made her a popular instructor.

2023 Audit Seminar

Aug. 17 — Oklahoma City

Presented by FORVIS, this seminar will focus on the key aspects of a strong internal audit program, internal audit in a modern financial institution and current events in the banking industry.

Also discussed will be internal audit's role in CECL monitoring and interest rate risk management as well as best practices for model and third-party risk management.

This seminar is designed for internal audit professionals working in the banking industry. Speakers from the Oklahoma City FORVIS office include Geron Morgan, George Simon, Bryan Neal, Mark Spitzmiller, Lori Jackson and Trista Wilson.

Garnishments of Federal Benefit Payments: What a Banker Needs to Know

Aug. 17 — webinar

This webinar provides participants with the federal rules that are applicable when processing garnishments on deposit accounts receiving federal benefit payments.

What you'll learn:

- Requirements for processing garnishments and state tax levies under the rule.
- The detailed steps financial institutions need to take when processing garnishment and levy requests.
- Examples of how the rules impact garnishment.
- Model language and sample forms when providing notice pursuant to the rules.

Compliance officers, legal counsel and financial institution personnel who process garnishment will get the help they need from this informative webinar taught by Terri D. Thomas, J.D. Terri is the director of the Kansas Bankers Association Legal Department and has worked with financial institutions for over 39 years in various capacities. Most notably, she served for 14 years as in-house counsel and trust officer for Bank of America and its Kansas predecessors.

Continued on next page

2023 BANKING SCHOOLS

Compliance School
Aug. 21-25

Consumer Lending School
Oct. 2-6

Operations School
Nov. 13-17

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■ EDUCATION UPDATE (CONTINUED FROM PREVIOUS PAGE)

Ransomware, Phishing and Email Compromise: Is Your Incident Response Plan Ready?

Aug. 22 — webinar

Phishing, business email compromise and ransomware are some of the biggest concerns and examination focus for 2023. Having an incident response plan is not a suggestion, it is a requirement. Security breaches are real and inevitable, not to mention increasing every day. Does your plan provide a framework for an effective and timely response?

Program highlights:

- Is there a regulatory requirement for having a plan?
- What guidance, alerts and bulletins are there surrounding incident response?
- Roles and responsibilities, who is responsible?
- Do you need a plan if IT is outsourced?

This webinar is intended for senior management, audit, compliance, risk management, IT and anyone interested in developing the IRP, and will be taught by Susan Orr. Susan is a leading financial services consultant with vast regulatory, risk management and security best practice knowledge and expertise. Susan is dedicated to assisting financial institutions in implementing appropriate policies and controls to protect confidential information and comply with regulatory mandates and best practices.

10 Common Errors on the UTMA

Aug. 22 — webinar

This webinar will try to eliminate the myths and errors banks make with the Uniform Transfer to Minors Act.

What you'll learn:

- Account set up/who can gain access.
- What happens when the child reaches the age of majority.
- What happens if the custodian or minor dies.
- What is the estate of a minor.
- What can the funds be used for.
- How to end the relationship and custodial arrangement.

Taught by Deborah Crawford, this webinar is intended for anyone involved in new accounts, including personal bankers, bank trainers and those who set up and manage account relationships.

Diversity & Inclusion in Our Workplace

Aug. 24 — webinar

One in five workers have experienced discrimination or unfair treatment at work. In today's workplace environment, organizations need to face a reality gap and realize more work needs to be done in this area.

Topics covered:

- Generational differences and providing all of them inclusion.
- Where you are with diversity awareness.
- The value of diversity in the organization.
- Tools and resources that will aid you in taking D & I to a new level.
- How focusing on inclusion is directly related to employee engagement.

Human resources, management, supervisors, trainers and anyone responsible for leading and engaging will all benefit from this informative webinar taught by Vicki Kraai. Vicki is CEO of InterAction Training, a company passionate about professional development training and education. Vicki has 25-plus years of community bank experience and has a passion for developing people for success in the financial services industry.

Preparing for a Loan Review Before the Regulators Arrive

Aug. 24 — webinar

This webinar will prepare the bank for an upcoming safety and soundness examination focusing on overall credit administration, so that correction of deficiencies can be achieved before the regulators arrive.

Topics covered:

- Requirements for writing an effective credit memorandum.
- Review financial statement analysis techniques, ratio analysis and cash flow analysis.
- Review effective methods of performing an internal loan review.
- Review the importance of having an effective loan risk rating system.

Taught by Jeffery W. Johnson, this webinar is intended for loan review personnel, commercial lenders, credit officers and loan trainers. Jeffery has a lengthy career in credit administration, loan review, and training and development. He teaches across the country on a variety of lending-related topics.

2023 New Accounts Documentation and Compliance

Aug. 29 — Tulsa

Aug. 30 — Oklahoma City

This one-day program is the most comprehensive seminar on deposit accounts in the state. The presentation answers many of the complicated questions customers and employees ask. The 200-plus-page detailed manual, included in the registration and customized to Oklahoma state law, has become known as an invaluable resource for bankers across the state.

Covered topics:

- Business accounts:
 - › Proper account title/customer identification requirements.
 - › Business account documentation.
 - › FinCEN – new customer due diligence rules.
 - › Resolutions – purpose and proper completion.
 - › Access to the account at death of a business owner.
- Consumer accounts.
 - › Single-party and multiple-party ownership.
 - › Key questions to determine formal trust status.

Operations officers, compliance officers, experienced new account representatives, new accounts supervisors, branch managers, trainers and auditors will benefit from this informative seminar taught by Suzette Jones, CFP.

What to Do When Your Customer Dies

Aug. 29 — webinar

Often, when a bank learns a deposit or loan customer has died, confusion about what to do next seems to be the result. This webinar will walk you through the best practices when dealing with a customer's death – both on the deposit side and the loan side.

Highlights:

- Documents required upon the death of an individual.
- Actions to be taken on deposit accounts owned by the decedent.
- How to handle death as a default on a loan.
- Mortgage servicing rules impact consumer mortgage loans after death.

New account representatives, personal bankers, customer service representatives, lenders and loan operations personnel will all gain knowledge from this course taught by Terri D. Thomas, J.D.

Posting with Confidence: Social Media Compliance

Aug. 30 – webinar

Social media posts are a great way to communicate with existing customers and gain new ones as well, but what can be posted? What disclosures must be provided? How to respond to a consumer complaint received via social media?

This session will answer those questions and more, as well as provide tools to help craft the institution's social media policy.

What you'll learn:

- Defining social media to assess which platforms best fit the goals.
- Using posts for more than just advertising products.
- Detailed review of the compliance regulations to consider when posting.
- Recommended policies for employee use of social media sites.
- Tips when utilizing third-parties to manage your social media.

This informational session is designed for marketing officers, IT, compliance officers and anyone responsible for managing the social media posts and program, and is being taught by Dawn Kincaid.

2023 Supervisor Bootcamp

Sept. 6 — Tulsa

Sept. 7 — Oklahoma City

As a leader, you must have the attitude, aptitude, skill set, confidence, persistence and commitment to excel in this multi-tasking, challenging role. This training will help take your expertise to a new level as you learn how to collaborate and coach your employees to excel on the job.

Key covered topics:

- Excelling at leading, supervising and coaching.
- Equip yourself to build a productive team.
- Creating a collaborating work environment.

Taught by Vicki Kraai, anyone in the institution with supervisory oversight would benefit from this informative workshop. Seasoned supervisors and managers will find a wealth of practical, useful information in this fast-paced workshop.

• • •

Early September webinars include:

- Sept. 5 — FedNow 101: What to Know.
- Sept. 6 — Writing Effective SAR Narratives.
- Sept. 7 — Handling ACH Exceptions.

• • •

I look forward to seeing you soon.

■ FROM THE CHAIR

OBA's advocacy efforts gets bankers' voices heard

Why OBA?

How about "advocacy"!

There is no "advocacy" without the advocates.

When we go to Washington, we are advocating for our industry: banking. Not just "banking", however, but "community banking" as a whole.

So, what does that mean? We are advocating for our communities as well as the fact every member of that community is dependent upon that local economy.

They are dependent upon the ability to transact business, to finance their truck, to obtain a small business loan or a donation from your bank for support of a school program.

My fellow bankers, you are amazing, I know your passion, it's easy to see. I feel privileged to be part of the mission work called community banking. It's where success is not always measured in dollars, but the impact you are making in your community and in the lives that you touch for the better.



Bryan Cain
OBA CHAIR
bcain@banksovereign.com

Nearly all of you are on at least one board of a civic club, school, foundation, economic development committee, etc., and each of you donate time to give back to the mission of banking.

What you are advocating for is the economic engines that keep things running in your prospective communities.

You loan money for someone's first car, first home, give away college scholarships, you donate to nonprofits, you teach financial literacy – I could go on and on and on about all the things you do.

The truth is that you are the catalyst

for the American Dream. That's right, you are advocating for the catalyst for the American Dream.

But we just call it "community banking"!

Ask yourself if you think those in opposition of or opposing banking are advocating their cause?

So, ask yourself why you are not going to Washington D.C., with – we hope – more than 100 of your fellow bankers?

What's the cost of not attending, not making your voice heard and not advocating for community banking?

What's the cost to your employees for another wave of regulatory burden?

What's the cost to your bank when politicians stand up and say we shouldn't be able to charge for services because they are so-called "junk fees"?

What's the cost to customers' dreams when they have limited access to financial services?

And lastly, what happens to your

communities when the economic engines you manage lose the ability to make an impact?

This is why we advocate ... this is "Why OBA?" ... and this is why we need you to go with us in September to Washington, D.C.!

Sign up today to speak with FDIC Chairman Marty Gruenberg, Director of the Consumer Financial Protection Bureau Rohit Chopra, Comptroller of the Currency Michael Hsu, Federal Reserve Board Governor Michelle Bowman, members of the U.S. Treasury staff and members of Oklahoma's federal congressional delegation.

It's time to make our voices heard.

Think about it this way: If you don't have a seat at the table, then you're on the menu!

Finally, I wanted to pass along a special thanks to Oklahoma State Banking Commissioner Mick Thompson for attending our many OBA events and advocating for our community banks!



LOCATION

Highly Visible from I-40 - 126,200 cars/day
Just minutes to Will Rogers World Airport and CBD
Meridian Ave. boasts new commercial growth and 18,200 cars/day
Central Location convenient to Yukon, Mustang & entire OKC Metro

BUILDING

Landmark Building with Prominent Signage
Beautiful Bank Lobby
3-Drive Through Lanes and ATM Lane
Signalized Intersection
Great Skyline View of Downtown OKC
Retail Bank & Executive Office Space
Potential Naming Rights Available

AVAILABLE BANK LOCATION

Meridian Bank Tower
909 S. Meridian Ave, OKC, OK 73108



Contact Mark White, CCIM
(405) 605-5885
markw@compassproperty.net

Interest Rate Risk and Investment Strategies Seminar

October 18-20 2023 | Oklahoma City, OK
The Skirvin Hotel

In 2020, the global COVID pandemic set into motion a series of historically unprecedented economic policies that upended markets and financial institutions, as well as the global economy itself. Massive amounts of liquidity and stimulus by policymakers enabled a fast recovery, but financial institutions found themselves awash in excess liquidity needing to be put to work at historic lows in yield. This seminar will examine the challenges now faced by CEOs, CFOs, and investment officers who must navigate the next phase of these uncharted waters. Join us for an in-depth discussion of the following topics:

- **Economic and Market Update** — Review of current economic conditions and the outlook for growth, inflation, and interest rates
- **The Fed's Next Moves** — Update on the rate outlook and likely next steps for Federal Reserve monetary policy
- **Interest Rate Risk** — How to ensure you are prepared for uncertain balance sheet challenges and a constantly changing regulatory focus
- **Liquidity Risk Management** — Tools and best practices for managing liquidity risk
- **Investment Portfolio Strategies** — Adapting your strategy and finding the best relative value for the rate environment
- **MBS/CMO Market** — Balancing prepayment and extension risk in a changing environment for mortgage securities
- **Municipal Market Update** — Thoughts and strategies on managing municipal credit risk and finding the best relative value

AGENDA

Wednesday, October 18
Twin Hills
Golf 1:00 pm

Thursday, October 19
Breakfast 7:30 am
Seminar 8:30 am
Lunch 12:00 pm
Adjourn 4:00 pm
Cocktails/Dinner 6:00 pm (come and go)

Friday, October 20
Breakfast 7:30 am
Seminar 8:30 am
Conclusion 12:00 pm



The Skirvin Hotel
One Park Avenue
Oklahoma City, OK 73102
405.272.3040

WHO SHOULD ATTEND

Financial institutions' CEOs, CFOs, investment officers, board members, and those who are directly or indirectly responsible for financial management functions will benefit from this seminar. **There is no cost for this seminar.**

ACCOMMODATIONS

A block of rooms is available at The Skirvin Hotel. Identify yourself as a Baker Seminar attendee (or group code TBG3) when calling **+1 (800) HILTONS**. The special room rate will be available until **September 16, 2023** or until the room block is sold out. Hotel price: \$159 + fees/tax. For your convenience, register for the seminar online at **GoBaker.com/oklahoma-seminar**. Call Skoshi Heron at 888.990.0010 for more information.



11 hours of Economics and Finance CPE credits will be earned for your attendance.

The BakerGroup

EXECUTIVE NEWS (CONTINUED FROM PAGE 3)

Additionally, ACRE would exclude from gross income the interest received by a qualified lender on home mortgage loans of \$750,000 or less in rural communities of no more than 2,500 people.

This tax exemption for interest income on agricultural loans has been an effective tool to support rural lending by government-sponsored enterprises, and ACRE would simply expand that tax treatment to all federally insured banks, thereby increasing loan supply and decreasing costs for borrowers.

Credit Card Competition Act (S.1838) — This piece of legislation is commonly referred to as Durbin 2.0. It would have the same chilling effects on credit cards the original Durbin amendment had on debit cards.

There was a strong attempt from the proponents of this bill in late July to get it attached to the National Defense Authorization Act — fortunately members of the Senate didn't move forward.

We will see this bill again soon. I wanted to make sure you are aware of the implications it would have on your bank and your customers. We'll need your help again soon to contact members of the Oklahoma delegation and ask them to oppose this bill.

The Credit Card Competition Act would expand government-imposed routing mandates to the credit card market. Proponents of the legislation say it will inject more competition into the market; however, it'll do anything but. Imposing government mandates on credit card routing, as this legislation will do, could have negative impacts for community banks and consumers alike.

This bill is being pushed by the biggest grocery stores, big box and online retailers, and is opposed by travel experts. It could spell the end of card rewards programs.

When was the last time you booked a flight using rewards points? Or saved on gas? If you're like millions of Americans, you probably take advantage of credit cards rewards. Those rewards are supported by the banks and card networks who supply them. This legislation could mean the end of those rewards, as the funding that enables those popular programs would be eliminated.

Debit card rewards went away when a similar law went into effect for those cards and the same will happen for credit if the Credit Card Competition Act is passed.

The misguided legislation will harm banks of all sizes and consum-

ers. Community banks focus first and foremost on serving their community and their customers. For many community banks, one convenient option they provide to customers is credit card services. If routing mandates like the Credit Card Competition Act are imposed, community banks may lose the ability to support credit card offerings for their customers.

The key component of this legislation is it will allow the government to mandate which networks can be used for routing credit cards. Rather than allow banks to choose networks based on security and soundness, they will be forced to use a network the government chooses.

Bank and card companies work hard to ensure the networks they use are the most secure; cheaper, alternative networks being pushed by mega-retailers may not have the same priority.

Currently, every time you use your debit card, the original Durbin Amendment comes into play. It contained provisions intended to limit the amount of interchange revenue banks can receive on debit card transactions.

These interchange fees are most banks' largest source of non-interest, non-fee income and is the revenue stream offsetting the cost of offering a checking account.

Rather than save consumers money as promised, merchants pocketed the savings they reaped from the government price cap, while community banks lost a revenue source to support important consumer benefits like free checking and debit rewards. Community banks have also lost substantial revenue due to the cap on interchange fees. This limits investments small community banks can make in staying competitive in a fast-moving payments landscape and their ability to provide the best financial products to meet customers' needs.

We will have plenty to deal with Congress returns to Washington in a couple of weeks.

With that in mind, I want to make sure you know about our upcoming Washington Visit. Our Annual Visit is Sept. 24-26. We will meet with all your regulators and members of the Oklahoma delegation. It's a great trip and we are hoping to have 100 bankers join us this year.

Should you have any questions regarding the Washington Visit or anything else please don't hesitate to contact me.

How community banks can win future battles for deposits

By **Bob Koehler**

Chief Innovation Officer at SRM
(Strategic Resource Management)

Many banks are under liquidity pressure because of difficulties in increasing and retaining deposits in a climate of rising interest rates.

Compared to former years, when banks were drowning with deposits and scrambling to find the best uses for that liquidity, the current scenario is vastly different. Banks that are federally insured were able to increase deposits during the first three quarters of 2022, but there is now more pressure on them to keep those deposits. To deal with the liquidity problem, some banks could have to sell stocks at a possible loss.

Due to recent rate increases, many banks must now decide whether to raise the amount they would charge for a deposit relationship or risk losing customers to rivals. Losing a deposit relationship also means giving up the ability to refer a person or company to a loan or other fee-based service.

To maintain deposits on the balance sheet, institutions should consider using the following tactics.

Use data and analytics

Deposits from individuals and companies are a vital, affordable source of capital for loans. Deposits, including CDs with mid-term commitments, used to give depositors investment income, eliminating the frequent “rate shopping” motivations for all but the highest sums.

With each rate increase, depositors anticipate receiving a higher return on their investment. Enticing rate offers are now appearing on social media, a channel that barely existed the last time there was fierce competition. In other words, customers are fully informed of their options. Therefore, banks need to advertise with this new media, reminding customers they are a viable option.

To compete more successfully, banks should extend the greatest offers for customers who have the capacity to engage across various items over the extended horizon. Banks should be able to identify these opportunities and remain competitive using the internal and external data that is already available.

All financial institutions should monitor the market to understand competitors’ moves, but segmentation could be a difference-maker in standing out. Banks

need to develop strategies based on niches such as medical professionals, demographics, spending patterns, etc. and tailor products along those lines. Groups like homeowners associations, for instance, often have large deposit accounts.

Extend the focus

It’s crucial to also keep in mind business accounts of all kinds frequently have bigger balances while trying to draw and keep the most deposit amounts. Since there is a good likelihood some of their retail members run part-time small companies or participate in the “gig economy,” banks should examine their portfolio of these customers, as some of them will probably have mom-and-pop businesses and/or “side hustles.”

Additionally, banks need to assess their current lending partnerships for potential deposit offerings. Deposit accounts can also be produced by designing specific business accounts with important demographics in mind, focusing on features, prices, rewards and other bells and whistles. Numerous prosperous small enterprises will expand into midsize corporations with even larger balance sheets.

Training is instrumental

The finest brand ambassadors are frontline employees, therefore it’s critical that they receive the correct training, including developing active listening skills so they can see opportunities quickly, ask the right questions, and reply with pertinent, customized offers.

It’s likely a significant portion of banks’ frontline staff has never been in this type of environment so it’s crucial they’re partnered with seasoned members for training.

The capacity of banks to hold onto and even increase deposits will be a differentiator as balances are under pressure, especially when demand for loans recovers. Banks should rest comfortable knowing that securing inexpensive deposits will help them fend off margin pressure.

Bob Koehler is chief innovation officer at SRM, based in Memphis, Tennessee. He brings more than two decades of hands-on experience in project management and consulting related to vendor sourcing for community banks. To learn more about SRM’s expertise in deposits origination and vendor sourcing reach out to Richard Whiddon (rwhiddon@srmcorp.com or 901-692-4860).

Municipal finances persevere during recessions

By **Dana Sparkman**

Senior Vice President/Municipal Analyst, The Baker Group

As we move through 2023, the possibility of a recession is at the forefront of most investors’ minds.

Fortunately, most municipalities are in a good starting place for a downturn. Tax revenue has soared recently, and federal aid has also helped to boost the balance sheet of state and local governments. Many issuers have reported record high budget surpluses and/or all-time high reserve levels.

Municipal bond defaults have been low at only 0.04% in 2022, down by over 21% from 2021 levels according to Bloomberg data. Further, municipalities generally have weathered economic downturns very well, largely due to resilient tax revenues.

Most local governments rely heavily on ad valorem, or property, tax revenue. Property tax revenue rarely declines on a broad basis, but when it does, it tends to lag the economy. Federal Reserve Economic Data reveals that while median home sales prices fell by over 6% in 2008 and 2009, property tax revenue increased at the same time, was flat in 2010, and fell by only about 1% in 2011 before it continued a positive trajectory.

This is the only time total property tax revenue has declined since at least 1992. Given the recent boom in home prices, it is unlikely that assessed valuations would decline if we encountered a mild recession in 2023.

Sales tax revenues, the second largest source of tax revenue for both state and local governments, also declined for the only time since 1992, during the Great Recession: 5.6% in 2009 and 2.3% in 2010. Sales tax rev-

enue experienced a slowing of the growth rate, but not a decline, during the 2001 and 2020 recessions.

However, income tax revenues, a major revenue source for state governments but not usually local governments, are highly correlated with economic activity. In two of the last three recessions, aggregate income tax revenues declined significantly: 11.3% in 2002 and 17.6% in 2009. Despite these declines, state revenues recovered quickly and have since grown tremendously.

On the other hand, economic downturns can worsen existing credit issues and impair elastic revenue streams. Moody’s reports the frequency of municipal bond defaults increased during and after the Great Recession, with an average of five new issuer defaults per year during 2008-2017 compared to an average of two new defaults per year over the past 50 years. According to Moody’s, there were 38 defaults from 2008-2017, excluding Puerto Rico. From 2018-2021, there has been only one default of a Moody’s-rated issuer.

However, when expanding the view to include both rated and non-rated issuers, there were 57 issuers that defaulted in 2021 and 52 issuers in 2022 according to Bloomberg. This demonstrates the additional risk associated with non-rated municipal bonds.

In fact, healthcare and development bonds together have accounted for more than 70% of all municipal bond defaults each year since 2018. Issuers without tax support in the healthcare sector have had a volatile few years since the beginning of the pandemic. Margins have been pressured further by inflation and high labor costs amid a nursing shortage.

Credit quality of development districts can vary widely depending on location and primary revenue sources. In some areas, commercial real estate values are depressed as the “work-from-home,” or hybrid work models, weaken demand for office space. Also, bonds issued by Tax Increment Financing districts or other development districts may be repaid from a narrow, economically sensitive revenue stream.

For example, TIF bonds are usually secured by a tax on an increase in the assessed valuation of that district following a project or improvement. If the value of that area remains flat or declines, revenues may not be sufficient to repay the bonds as planned. In other cases, development bonds may be secured by a tax derived from sales in a specific area, which could be disproportionately affected by an economic downturn depending on the types of businesses in the district.

While past performance is no guarantee of future results, most municipalities are well-prepared for a downturn and may not even see much, if any, decline in tax revenues. However, idiosyncratic risks remain particularly within the healthcare and development sectors, and other weak credits may be further impaired by a recession.

Investors should cautiously monitor holdings of these types of bonds, particularly if they are non-rated and don’t carry any additional bondholder protection.

Dana Sparkman, CFA, is senior vice president/municipal analyst in The Baker Group’s Financial Strategies Group. She manages a municipal credit database that covers more than 150,000 municipal bonds, providing clients with specific credit metrics essential in assessing municipal credit. Contact: 405-415-7223, dana@GoBaker.com.



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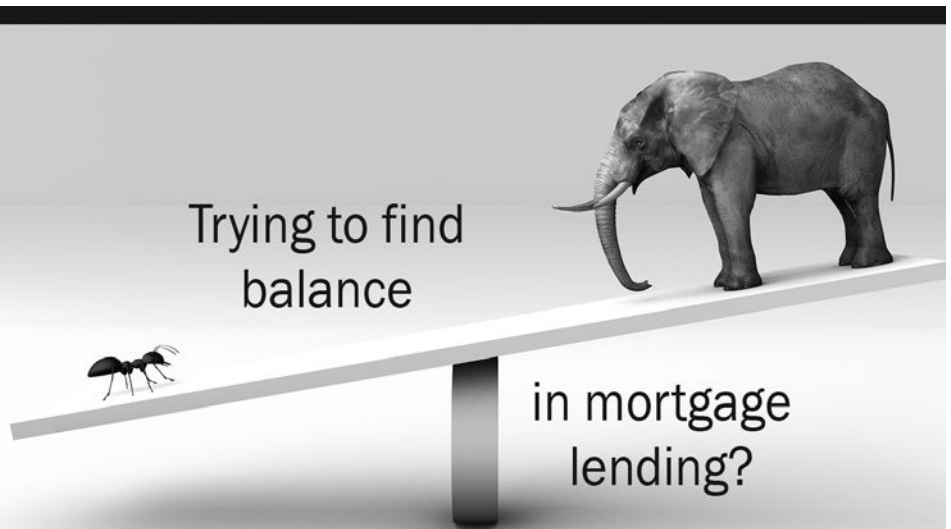
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August 2023

- 15 Building New Business Procedures - Beneficial Ownership Changes, webinar
- 16 Everything You Need To Know About Reg CC Holds, Funds Availability, Disclosures & More, webinar
- 16 Best-Ever Compliance Checklists for Consumer Loans, webinar
- 17 Audit Seminar, Oklahoma City
- 17 Garnishments of Federal Benefit Payments: What a Banker Needs to Know, webinar
- 21-25 2023 OBA Compliance School, Oklahoma City
- 22 10 Common Errors on the UTMA, webinar
- 29 2023 New Accounts Seminar, Tulsa
- 30 2023 New Accounts Seminar, Oklahoma City



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Bray



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Stafford



Sullivent

First Bank & Trust Co., Duncan

Patsy Evans was promoted to vice president. Evans has been in the financial industry for over 47 years, all of which have been with First Bank & Trust Co. She currently holds the position of loan administration officer and assistant cashier.

Danell Bray was promoted to vice president. Bray has been with First Bank & Trust Co. for 24 of her 26 years in the financial industry. After earning her bachelor's degree, Bray went on to get her master's degree at Southeastern Oklahoma State University, while working full-time as a financial service officer.

Becky Sullivent was promoted to vice president. Sullivent has been in the financial industry, and with First Bank & Trust Co., for 19 years. She started with the bank as a teller, and six months later, employing her previous 11 years of call center experience, moved to the bank's own call center department. She has served as call center supervisor and was recently promoted to call center manager.

Summer Byrd was promoted to assistant vice president. Byrd has been a representative of First Bank & Trust Co. for nine years, her entire financial industry career. Holding a few different positions and gaining experience, Byrd has made herself an asset to the company as the current credit administrator assistant.

Armstrong Bank, Muskogee

Aston Hudson was elected to serve as chairman of the board of directors. As a fifth-generation family member, Hudson will lead Armstrong Bank and its 29 locations across Oklahoma and Arkansas in this new role. Prior to banking, Hudson graduated from the United States Military Academy then furthered her education by earning a master's in engineering management degree from Missouri Science and Technology. Hudson served as an engineer officer in the U.S. Army for more than eight years, holding various positions of leadership from platoon leader to company commander

of a combat engineer company and serving a 13-month deployment to Afghanistan. After her departure from the army, Hudson graduated from the University of Oklahoma College of Law and passed the bar exam shortly thereafter. Hudson most recently served the bank as executive vice president, corporate administration, and prior to that, as the bank's chief legal counsel.

Kirkpatrick Bank, Oklahoma City

Trenton Stafford was added to its board of directors. Stafford began his banking career upon graduation from Oklahoma State University in 1998, where he earned a dual degree in finance and commercial bank management. In addition to his role as Colorado market president, he also serves as chief lending officer.

Valliance Bank, Oklahoma City

Cara McClain was named president of Valliance Bank McKinney, Texas. McClain

brings a diverse banking background, as well as over 25 years of banking experience to the McKinney team. For the past four years, McClain served as president of the private bank at Valliance McKinney. Prior to joining Valliance, McClain served as a senior vice president, commercial lending relationship officer for First United Bank in McKinney, where she specialized in serving professionals, healthcare, and medical clients. McClain holds a bachelor's from the University of Tennessee, and is a graduate of the Southeastern School of Banking at Vanderbilt University.

Arvest Bank, Fayetteville, Arkansas

Kendra Cain was hired as chief compliance officer for Arvest Wealth Management. She replaces Tom Harps, who recently announced his retirement after serving nearly 17 years as chief compliance officer at Arvest Wealth Management. She has more than 20 years of industry experience and received her bachelor's degree from the University of Louisiana at Lafayette.

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Legal Briefs

AUGUST 2023

IN THIS ISSUE:

- HMDA Analysis
- Personal Responsibility
- Forms Update

HMDA Analysis

If your bank is a reporter under the Home Mortgage Disclosure Act (HMDA), you may well have some work to do if you have not already done some or all of this. On June 29, 2023, the Federal Financial Institutions Examination Council (FFIEC) announced the availability of data on 2022 mortgage lending transactions reported under HMDA. This HMDA data is the largest source of publicly available data on mortgage lending in the United States. If your bank is reporting, your data is here. Other banks in your geographic areas who report also have data here. Banks outside your area which may be similar to yours, yes, that data is here too. It is all available and can more easily than ever before be analyzed. This article is a discussion on why — and a little bit of how — to analyze your data and that of your peer banks.

Years ago, the system was far less automated than we have today. When the HMDA data came out it was sent to central repositories. In my case it was held as reference material in the local public library which happened to be a few blocks from the main branch I was working out of. It was set up by Metropolitan Statistical Area (MSA) and was a treasure trove if you knew what you wanted to do with it.

When teaching compliance management, I often say compliance is not a cost center as it is often described, but a resource because it touches so many areas in the bank. In this case you are touching on loan production, and you can compare your bank's production against that of your peers. Management likes to know how the competition is doing and you can compare apples to apples, at least as far as HMDA reportable loans are concerned.

Your Marketing area can use this data to see what type of applicants for HMDA loans it is attracting and where these applicants may be from as well as where they want to move to. Consider the ways you can use this data. You can easily build a picture of who your applicants are and where they live. That means you also know the areas they are not living in, and this is what can help Marketing redirect advertising campaigns if those are areas you need or want to market to. This information is data gold for Marketing and management as well, and you have it all available right now.

You can plot where the mortgage loans (so long as they are HMDA reportable, so not everything, but a lot) are not just for your bank, but for all those peer lenders in your area as well. And you can reach farther if desired. One of my banks was a military bank. We had borrowers literally all over the world and, while it was less common than say a car loan, we did some mortgage financing all over the country. Other military banks may be doing the same. It is often difficult to get a lot of data about your peer banks when they happen to be across the country from you, but as a military bank, they were our peers, and it was important to understand how my numbers compared to theirs. We recognized that there were different markets and quite different conditions,

yet when it came to the Community Reinvestment Act (CRA) this was a comparison you wanted to be aware of. Were our numbers close to our peers or far different — and in either case why? When you compare your loan volumes to your peers, and when you understand the different lending strategies of these other lenders, it helps set benchmarks and goals as well as to understand your own loan patterns.

Again, when you know to whom you are lending, you also know those to whom you are not lending. Are your numbers good or bad when you look, for example, at racial demographics? When you ask in the loan committee meeting why (as a hypothetical) there were so few loans to Blacks and the response is there are few Black applicants applying, it sets off questions such as:

- Are we marketing to areas of a majority minority?
- Are we trying to reach this demographic in targeted ads? Why or why not?
- What percent of our applicants were Black?
- What percent of our Black applicants were approved, denied, withdrawn, or closed for other reasons?
- And if there is a level of complacency with those figures, next compare yourself to those peer banks' lending in the same area, to the same would-be home buyers.

When it comes to fair lending justifications of your bank's actions, read fair lending enforcement actions, and learn how regulators and the Department of Justice (DOJ) attorneys compare the results of your bank to peer

banks. As one example, consider when the Consumer Financial Protection Bureau (CFPB) and the DOJ took action against Trident Mortgage Company LP (Trident) under the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), and Regulation B, as well as the Consumer Financial Protection Act of 2010 (CFPA) (also referred to as Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)) to remedy discrimination in Trident's mortgage lending. There were many problems with Trident, and we covered many of the problems in last April's edition of the Legal Briefs. Here is a snippet from that edition to emphasize the points of this HMDA analysis.

Trident received 80 percent of its mortgage applications for properties located in that MSA its defined as its market area. But the actual loan distribution pattern showed a disproportionate number in the majority-white areas. As a foundation there was the selection of office locations and limited outreach and marketing which led to these lending patterns which are confirmed by HMDA data. One must ask, "was this a choice?" When comparing HMDA data, Trident significantly underperformed its peer lenders in generating home mortgage applications from majority-minority neighborhoods and the disparity between the rate of applications generated by Trident and by its peer lenders from majority-minority neighborhoods and high-minority neighborhoods was both statistically significant.

Of the nearly 31,000 applications on the HMDA reports from 2015 through 2019, 12 percent came from majority-minority areas. Peer lenders generated 21.5 percent of their 135,000 applications. The disparity was seen year after year. In high-minority neighborhoods, Trident showed 4.1 percent of its applications as coming from high-minority areas, compared to 10.8 percent of its peer lenders.

Trident significantly underperformed its peer lenders in making home loans in majority-minority neighborhoods as well. The complaint notes that, "... of the 22,960 HMDA-reportable loans Trident made for single family dwellings from 2015 through 2019 in the Philadelphia MSA, 11.7% came from residents of majority-minority areas. By contrast, Trident's peers made 16.2% of their 50,060 loans from these same majority-minority neighborhoods." And only 3.7 percent of Trident's loans were made in high-mi-

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nority areas, while peer lenders made 6.9 percent of their loans in these same areas.

Enforcement actions are a good “go by” for the type of analysis done when lending is questionable. CRA Public Evaluations are another resource not only for key analytics, but also for comments as to what was good, bad and ugly. Remember that HMDA analysis is a basis for fair lending examinations which are a foundation for your next CRA exam. When you can identify weaknesses in your numbers, you can proactively impose corrective actions, and this demonstrates to examiners reviewing your bank’s lending activity and your compliance program that you are aware of and managing the processes.

The data available will help show whether your lenders and therefore your bank are serving the housing needs of the communities you serve as your market area. It includes information that helps management make recommendations to the board on decisions and policies and draws attention to your lending patterns that could be discriminatory. Your bank, as a HMDA filer, recorded up to 110 different data points for each HMDA applicable mortgage application received on a Loan Application Register (LAR). What you have in your bank is your complete LAR. In March, the FFIEC provided your bank with a modified, or sanitized, LAR. The modified LAR data provides information from the most current HMDA submission that was required to be submitted essentially a month earlier, by

March 1, of each year. This modified LAR is available to the public, and to your bank and your peer banks who are also evaluating your bank’s performance. Section 1003.5(c) of Regulation C requires that you post, “a written notice that clearly conveys that the institution’s loan/application register, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau’s Web site at www.consumerfinance.gov/hmda.” The publicly released data excludes or modifies several data points reported by all the institutions submitting LAR data, such as the universal loan identifier, the date the application was received or the date shown on the application form, the address of the property, the credit score or scores relied on in making the credit decision, and any applicant or borrower ethnicity free-form text field. In theory this makes it difficult to review entries and identify a particular applicant and therefore data about that applicant which is protected by privacy laws. Others have pointed out faults in this system as deeds are public documents and with a little work a knowledgeable person can connect many dots. Connecting those dots is not the point of this article, but rather what you can do with the LAR data to analyze the mortgage lending picture your lenders are painting and how you compare to peer banks.

So, where would you find HMDA data now that the old central repositories are automated? HMDA data is available at <https://ffiec.cfbp.gov/>. You can also find a HMDA Data Browser at <https://ffiec.cfbp.gov/>

data-browser/ which will help you filter any and all of the LARs that were submitted. In June 2022 the CFPB published, “A Beginner’s Guide to Accessing and Using Home Mortgage Disclosure Act Data” which you can find online here, https://files.consumerfinance.gov/f/documents/cfbp_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf. In addition to background HMDA information, this is a step-by-step guide on how to filter the data to extract just what you want to know. In computer coding there is an old adage, garbage in – garbage out,” meaning you can get out what you put in. Your LAR has that “up to 110 data points” mentioned already. Data for your peers is modified information but as said earlier, it is still especially useful to management, Marketing, those working on your bank’s strategic plan, everyone analyzing fair lending and certainly Compliance. A sound recap and analysis of the data available will be a compliance value-added exercise to the bank for the information you need to know anyway.

Review the Beginner’s Guide mentioned just above as it takes a user through the steps to apply the filters and it has additional instructions with graphics to help you use Excel and Pivot Tables to get the most out of your analysis. In total this is a 29-page PDF that will help ignite your analytical curiosity and provide needed information to your bank. Compare your results, especially those government monitoring demographics, to the breakdown for your market areas. That is, if your area is X percent white, Y percent Black and Z percent Asian, how do your



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Continued from previous page

applications correlate to those numbers, and your approved loans, and do not forget the denials and withdrawn applications. Based on the HMDA data tables available annually from the CFPB and ideas of key data points gleaned from enforcement actions and CRA Performance Evaluations, choose the data you want to focus on.

While you can do peer comparisons only annually, you can track your bank's progress using quarterly updates to further refine corrective actions. Then determine how your numbers compare to peers. Does this analysis indicate strengths, weaknesses, and areas upon which you can improve? The lending data you arrive at should influence or confirm what you are doing with marketing activities, lending policies, and exceptions being made, and may shed light on complaints.

Here are some high-level observations about the 2022 HMDA data that are of interest.

- The 2022 LAR data includes information on 14.3 million home loan applications.

- 11.5 million applications (82 percent) were for closed-end credit, while 2.5 million (18 percent) were for open-end products.

- As to the aggregate demographics of the borrowers' race and ethnicity, the portion of closed-end home purchase loans made to Black borrowers rose from 7.9 percent in 2021 to 8.1 percent in 2022. The portion made to Hispanic borrowers decreased slightly from 9.2 percent to 9.1 percent, and those made to Asian borrowers increased from 7.1 percent to 7.6 percent.

- In 2022, Black and Hispanic applicants experienced denial rates for home purchase loans of 16.4 percent and 11.1 percent respectively, while the denial rates for Asian and non-Hispanic White applicants were 9.2 percent and 5.8 percent, respectively.

After management has had an opportunity to study the data, your board of directors should receive a high-level summary of where you are and where the data will be taking you. This is an opportunity to influence the confidence they have in your abilities and the resources available for your compliance management program.

Personal Responsibility

If you have taught regulatory requirements before, you likely mentioned the potential penalties for noncompliance. As an example, Reg B has penalties for noncompliance in § 1002.16(b) that include Actual damages in individual or class actions - without a limit, and Punitive damages in individual or class actions, where liability for punitive damages is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1 percent of the lender's net worth in class actions.

By the time an instructor gets to this part of the presentation the listener's eyes are glazing over and they hear Charlie Brown's teacher saying, "never has happened, don't worry, the bank gets penalized not the employee or officer." But that is not always the case, and it is often wise to remind everyone of that, from the newest teller to that longest-standing director on the board. Everyone in the bank is responsible for ethical behavior and compliance. And while everyone has

a boss they report to, I remind officers of a bank that they work for the bank, and not necessarily for their boss. This is especially important for those in the role of auditor and those responsible for compliant and ethical performance evaluations. Just as in the military, we follow instructions, but we also trust that no "illegal" orders will be given.

It may have seemed harmless initially, but let's look back at Wells Fargo for a moment. A few years ago, Wells Fargo's troubles really came to the forefront when the bank was accused of, among other things, opening accounts for consumers without those consumers' requests or consents. At the center was a push to meet lofty sales goals. In September 2016, the bank agreed to pay a \$185 million fine and return \$5 million in fees wrongly charged to customers. The problem originated with bank employees allegedly opening more than two million deposit and credit card accounts without customers' permission. Wells Fargo's ex-CEO John Stumpf apologized during a congressional hearing in which he accepted the blame saying, "I accept full responsibility for all unethical sales practices." In the long term, however, 5,300 Wells Fargo employees lost their jobs because of the practices employed.

A personal observation of mine was that because the employees created the accounts without authorization and moved deposits to and from the accounts to activate them, I could have seen a case for identity theft and fraud against those employees. Thankfully, I never heard of that happening and the root of the problem was not the employees' actions, but the push to meet goals and the potential that "illegal orders" were given or at least insinuated. Here are three examples of how unethical sales practices sprang from minor unethical compromises.

1. A new accounts representative is under pressure to meet sales goals and pushes a customer to add a credit card, even though the rep knows it's not in the customer's best interest and was not requested.

2. As the month progresses, the rep is short of the goal and asks friends and family to open new accounts. These accounts served one purpose - to inflate account production numbers. In reality, the bank staff spent time programming these new accounts which were closed shortly thereafter, and the cost was greater than the income that was never produced.

3. With the account production goal still out of reach, the rep opens accounts without asking customers and transfers a small amount of money. These accounts are also closed shortly after opening and the money is transferred back. Customers may question what happened but when they see the funds transferred back, why frustrate themselves by calling the bank to complain and inquire as to what happened?

But to be clear, Wells Fargo was not alone, they were just the first big bank to gain national coverage for unethical and illegal practices surrounding creating deposit and credit accounts that were not requested by the consumer's whose names they carried. Fifth Third was accused of this and In March 2020 the CFPB initiated a suit against that bank. The complaint alleged that Fifth Third's cross-selling practices, which included sales goals and an incentive-compensation program, caused Fifth Third's employees to open new consumer accounts for existing customers without their knowledge or consent.

The CFPB alleged that such conduct in certain respects was unfair and abusive (yes, a UDA(A)P issue) and that issuing unauthorized credit cards and opening deposit accounts without required disclosures violated Reg Z and Reg DD.

Fast forward to July 2023, when the OCC and CFPB ordered Bank of America to pay \$100M in consumer redress and \$150M in fines for and an out-of-control incentive program that resulted in unauthorized account openings, credit reports, etc., which is a basic rehash of the problems at Wells Fargo and Fifth Third. These were not the only issues, as the Bank of America action also cites junk fees relating to multiple presentments of NSF items and for mismanagement of credit card systems. As it typically happens, many regulatory and ethical violations are part of a snowball that grows as the investigation continues and additional violations are uncovered or found to have evolved, such as the failure to make disclosures on an account that was fraudulently opened anyway.

Let's look closer at one case of a former executive involved in the Wells Fargo case. Carrie Tolstedt was an executive, or THE executive, accused of overseeing programs that resulted in the millions of fraudulent customer accounts at Wells. In March 2023, she agreed to plead guilty to criminal charges which could impose actual prison time. In her agreement with the court, she will serve a 16-month prison sentence for obstructing regulators' investigations into abusive sales practices that culminated in the bank paying what has turned into billions of dollars in fines. Tolstedt also agreed to pay a \$17 million fine in a separate settlement with the OCC that also bans her from working again in the banking industry. BankersOnline covered this in its Top Story at <https://www.bankersonline.com/topstory/173048>.

Tolstedt was not alone in the list of executives who fell as a result of the new account production goals that were virtually unattainable. These goals were emphasized with a slogan of "eight is great." That was, each customer should have eight separate accounts at the bank. Why eight? It was said that was selected because it rhymed with "great."

Take a moment to look at your product offerings and try to determine what sales techniques you could use to accomplish this. Now reconsider it as if your job is on the line as it was for the 5,300 former employees who talked of supervisors screaming at them to meet the goals. They were told if they could not meet their goal, they would be working at McDonald's. Those missing goals would have what was essentially an after-school detention and were often tasked with "call sessions" on Saturdays. Presumably, these sessions were to make calls and hone sales skills. Employees in many cases either reverted to unethical and illegal techniques or were embarrassed in front of their peers, demoted, or fired. In the three-step process to meet goals, consider that some new accounts reps were able to meet goals. Now the pressure was up because others had to employ the same tactics. And that culture fed on itself and has caused huge fines to be imposed as well as direct personal responsibility. Goals should be realistic, and rules should be well known and to police the rules, controls must be in place.

Continued from previous page

Forms Update

We are in the heat of summer as this edition of Legal Briefs goes to the presses, but it is a perfect time to get a pesky change out of the way. Often this might be something to do at year end, but as some banks prepare for 1071 changes, and the normal year-end tasks followed by HMDA submissions will all be coming about at the same time, why wait? These changes impact Reg B's Adverse Action Notices, some Fair Credit Reporting Act disclosures, and a bit of Reg E. There were several others, but we will cover in detail what impacts our banks.

If you use preprinted forms that will change, you will want to use up any supply and not reorder any bulk that may not be used by the mandatory compliance date. You will want to get the new addresses on your next order. And if you need to have a forms vendor program the changes, well, they will be busy at year-end and beginning of 2024 too, so just get this out of the way so you can enjoy summer.

Change management is what I'm speaking of and notices – disclosure changes. On March 20, 2023, the CFPB published a Final Rule in the Federal Register. Look for Vol. 88, No. 53, Monday, March 20, 2023, and page 16531 if you want all the details. The "Regulations" pages on BankersOnline.com also reflect these changes. These were considered non-substantive corrections and updates. The "Cliff Notes" version of the changes simply tells you that some regulatory agencies have had address changes for notices you provide to your customers and those disclosures and notices need to be corrected. The effective date for optional compliance has passed. It was April 19, 2023, so you may comply now, but compliance with these changes is not mandatory until March 20, 2024. Again, why wait and risk this falling through the cracks?

Reg B and Adverse Action Notices

The most significant change for banks is under Reg B. Appendix A, which lists contact information for the CFPB, OCC, FDIC, National Credit Union Administration (NCUA), Federal Trade Commission (FTC), and other agencies. (The Federal Reserve is listed but did not change.) This contact information listed must be included in Reg B adverse action notices. This is separate from the FCRA disclosure many banks have combined onto the Reg B, adverse action notices. The two are called the

same thing but have different disclosure rules and content. The FCRA notice on Reg B's forms has not changed, although there is an FCRA change noted below.

The OCC regulated institutions should be showing the following:

Office of the Comptroller of the Currency
Customer Assistance Group
P.O. Box 53570
Houston, TX 77052

The FDIC regulated institutions should be showing the following:

Division of Depositor and Consumer Protection
National Center for Consumer and Depositor Assistance
Federal Deposit Insurance Corporation
1100 Walnut Street, Box #11
Kansas City, MO 64106.

The CFPB regulated institutions should be showing the following:

Bureau of Consumer Financial Protection
1700 G Street NW
Washington DC 20552

And without change but for the record and accountability in case you want to check, the FRB regulated institutions should be showing the following:

Federal Reserve Consumer Help Center
P.O. Box 1200
Minneapolis, MN 55480

Interpretations

The CFPB also corrected its contact information in Reg B's Appendix D, for the process for requesting official CFPB interpretations of Reg B. The same address below is applicable for Reg E interpretations. The difference between the old and new addresses was a change in the ZIP code.

A request for an official interpretation should be in writing and addressed to:

Assistant Director, Office of Regulations,
Division of Research, Monitoring, and Regulations,
Bureau of Consumer Financial Protection,
1700 G Street, NW
Washington, DC 20552

Fair Credit Reporting Act

In Reg. V and the Fair Credit Reporting Act (FCRA), the CFPB amended the model form in Appendix K for the "Summary of Consumer Rights" to correct the

contact information for various agencies, including the OCC, FDIC, and NCUA. Those addresses are on the form itself. A Word version is in a link on the BankersOnline, Regulations page. Consumer reporting agencies must provide the Summary form when making written disclosure of information from a consumer's file or providing a credit score to a consumer. Most importantly, this Summary must also be provided by Human Resources at your bank, before obtaining an investigative consumer report (under 1681d(a)(1)), and with pre-adverse action notices for employment purposes (under 1681b(b)(3)). As Compliance and/or Internal Audit complete a periodic FCRA audit this is one of those potential "gotchas" you want to look at to ensure the procedures are correct for providing these notices if someone is denied employment or a promotion, as examples, based on a credit report.

Real Estate Settlement Protections Act

In Reg. X, the Real Estate Settlement Protections Act (RESPA), the CFPB has corrected its contact information in the definition of "Public Guidance Documents" in section 1024.2(b) and in the introductory section of Supplement I, which provides the procedure for requesting copies of public guidance documents from the CFPB and the procedure for requesting official CFPB interpretations of Regulation X.

Truth in Savings Act

In Reg. DD, and the Truth in Savings Act (TISA), the CFPB has corrected its contact information in Appendix C, which provides the procedure for requesting a determination from the CFPB regarding whether a state law is inconsistent with TISA and Regulation DD.

Truth in Lending Act

In Reg. Z, the Truth in Lending Act (TILA), the Bureau has corrected its contact information in Appendices A, B, and C which provide the procedures for requesting a determination from the CFPB regarding whether a state law is inconsistent with or substantially the same as TILA and Reg Z, the process for a state to apply to the CFPB to exempt a class of transactions from TILA and Reg Z, and the process for requesting official CFPB interpretations of Reg Z. In Appendix J, the CFPB has corrected its postal address for requests to the CFPB for APR calculation tables and to add a URL on its website at which the tables can be accessed.

Download previous editions of Legal Briefs.

Visit www.oba.com and click on the "Legal" section.

#BANKERSOFOKLAHOMA

From Boulder, to Durant to wide open skies ...

EDITOR'S NOTE: The OBA's Megan McGuire #BankersOfOklahoma feature is modeled upon the Humans of New York photograph series. It will essentially be a "best of" the photographs of bankers Megan takes from around the state during the month. You can see all of Megan's "#BankersOfOklahoma" photographs on the OBA's Instagram and Facebook feeds. We hope you enjoy this feature and, please, feel free to send any feedback to Megan or newspa-



Megan McGuire
OBA MEMBER RELATIONS
megan@oba.com

per editor Jeremy Cowen (jeremy@oba.com).



"The future depends on what we do in the present."

This Mahatma Gandhi quote resonated with me early in life, and it sparks joy when seeing folks embodying it in real time. For example ... dozens of Oklahoma bankers continued their education this summer at graduate schools of banking, and this large group (below photo) gathered for dinner in Boulder at the Graduate School of Banking at Colorado. Meanwhile, (at left) a crew of The Bankers Bank board members took the plunge out of a plane, successfully skydiving into a shared life experience and well-earned round of celebratory beers. Led by a facilitator (above), several OBA staff and board members retreated to Durant for two-and-a-half days, collaborating on the future of the association during a strategic planning meeting.

Note: No one is standing alone. That future we're building in the present ... it's done better when we are together.





OBA Emerging Leaders

The OBA's Emerging Leaders program was created with the goal of engaging the next generation of banking leaders in the process of dealing with issues facing their industry through their participation in the OBA. This program lets these future leaders interact frequently during lunch meetings where speakers share valuable ideas. Other events are planned as well!

No membership dues are required to join the Emerging Leaders program. The only requirement is to be an employee of an OBA-member bank. For more information, visit www.oba.com/emergingleaders or contact:

Megan McGuire
megan@oba.com
405-424-5252 ext. 109



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2023 OBA Directory of Banks

This essential reference includes:

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Important information about all Oklahoma banks, savings and loans, savings banks and holding companies.

Key personnel

By function and title

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PHONE _____ FAX _____

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PRICING	OBA Member	Non-Member
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10-20 copies	\$35 ea.	n/a
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*Tax and shipping are included

PLEASE SEND ME _____ DIRECTORIES @ \$ _____ EA.*

TOTAL PAYMENT \$ _____

PAY BY CREDIT CARD: For security reasons, please fax ONLY to the OBA's dedicated registrations fax line: 405-604-9545.

BILL TO: VISA MASTERCARD

CARD # _____ EXP DATE _____ NAME _____ SIGNATURE _____

PAY BY CHECK: Mail this form with payment to Oklahoma Bankers Association, P.O. Box 960173, Oklahoma City, OK 73196-0173.

For OBA use only: Rec'd _____ Ck# _____ Amt _____

Code: 301



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CARD # _____ EXP DATE _____ NAME _____ SIGNATURE _____

PAY BY CHECK: Mail this form with payment to Oklahoma Bankers Association, P.O. Box 960173, Oklahoma City, OK 73196-0173.

ABA: FDIC must bolster processes for determining special assessments

The FDIC’s proposed assessment to recover the cost to the Deposit Insurance Fund resulting from the recent bank failures should not set a precedent for future special assessments, the American Bankers Association said late last month in comments to the agency.

Instead, the association recommended that the FDIC bolster its processes to ensure that future systemic risk exceptions, resolutions and special assessments are fair, evidence-based, transparent and predictable.

The FDIC in May proposed a special assessment to recover the costs of protecting uninsured deposits following the closures of Silicon Valley Bank and Signature Bank, which it did by making a systemic risk determination.

The FDIC proposal exempts the first \$5 billion in uninsured deposits, which effectively carves out small-

er institutions from the assessment. Noting that it represents banks of all sizes, ABA said it continues to support the effective carveout for community banks. The association also urged the FDIC to do everything possible to reduce the assessment further through asset sales and other steps, and to take into consideration comments submitted by every institution that weighs in on the proposal.

ABA recommended that the FDIC provide additional details regarding its approach to the resolutions of SVB and Signature so that banks and other stakeholders can better understand the agency’s reasoning, “which is not yet clear.”

It expressed concern that the focus on uninsured deposits could lead to “an unwarranted and negative taint of uninsured deposits that would be damaging to banks of all sizes.”

It further requested that the FDIC not issue a final rule until the fourth quarter of this year, that a transition option be granted that allows banks to phase in over the eight-quarter collection period the adverse effects of the assessment on their regulatory capital ratios, and that the FDIC “true up” the final quarterly assessment to prevent under or overpayment.

ABA noted that the U.S. banking system is strong and resilient, and that the recent failures were largely idiosyncratic, being the result of lax risk management and balance sheets unprepared for rising interest rates.

“However, these failures have raised important questions about, among other things, whether FDIC insurance coverage has kept pace with changes to the banking marketplace and allows banks to compete for customers on equitable footing,” the association said.



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Bank: _____ Phone: _____

Address: _____ City, State, Zip: _____

Quantity (minimum order of 100): _____ ALL calendars will be delivered to bank by Nov. 1.

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Provide bank logo and imprint information in a high resolution Illustrator eps or tif file (300 dpi or higher) and email to thi@oba.com. Please supply all linked art and fonts required to print your file.**

Black and white bank logo (free) or Color logo (add \$100 for color logo) PMS Colors & Numbers _____

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www.cpcdc.org

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Maxwell Supply
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Southwestern Stationery & Bank Supply, Inc.
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- ✓ Limited or no origination costs
- ✓ Low interest rates
- ✓ Principal payments often determined with the borrower's input on a year by year basis
- ✓ In many circumstances we accept bank capital growth instead of loan principal reduction
- ✓ We will come to you! Most loans initiated and closed at the borrower's home or office.

Deal directly with a lender/owner who is a CPA who understands the banking industry. Although we cannot give direct advice, we have 35 years of industry experience and can make your job far less stressful and time consuming. We will understand your transaction. You do not need to educate the lender.

Our belief is to make the loan and then stay out of the banker's way and let you do your job. You will only see us when you choose to.

**Call Rick Gerber or Ryan Gerber at
1-866-282-3501 or email**

**rickg@chippewavalleybank.com
ryang@chippewavalleybank.com**



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You're working diligently to best position your balance sheet, and we know what you're up against in the current environment. As you navigate complex strategies to maintain liquidity and margin, we can help you develop solutions backed by our own experience so you can confidently move your operation forward. We can help get you there because we've been there.



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