Community Bankers of Michigan Regulatory Dispatch

May 8, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Agencies issue guide to assist community banks to develop and implement third-party risk management practices

Federal bank regulatory agencies today released a guide to support community banks in managing risks presented by third-party relationships.

Community banks engage with third parties to help compete in and respond to an evolving financial services landscape. Third-party relationships present varied risks that community banks are expected to appropriately identify, assess, monitor, and control to ensure that their activities are performed in a safe and sound manner and in compliance with applicable laws and regulations. These laws and regulations include, but are not limited to, those designed to protect consumers and those addressing financial crimes.

The guide offers potential considerations, resources, and examples through each stage of the third-party relationship and may be a helpful resource for community banks. While the guide illustrates the principles discussed in the third-party risk management guidance issued by the agencies in June 2023, it is not a substitute for that guidance.

Third-Party Risk Management: A Guide for Community Banks

Comment: This 'guide' reiterates the principles addressed in the actual June 2023 guidance - namely planning; due diligence and third-party selection; contract negotiation; ongoing monitoring and termination. This 'guide' can be used to help develop a third-party risk management strategy.

Items of Interest

Bank Management

	No news to report this week.

BSA / AML

	No news to report this week.

Deposit / Retail Operations

FTC Use Pass It On to talk about fraud this Older Americans Month (05/01/2024) – This month, we join the nation to celebrate Older Americans Month. It's also the 10th anniversary of Pass It On, the FTC's fraud education campaign for older adults. As Older Americans Month recognizes the power of social connections, we recognize the many thousands of people who've connected through Pass It On, starting conversations to help others avoid scams.

When the FTC first developed Pass It On, we asked older adults what they wanted from fraud education. They told us: clear language, direct advice, and easy readability. In response, we created plain language materials that respect readers and their life experience. At the start, Pass It On covered the seven most relevant topics. But as scams and scam tactics changed, the topics covered nearly doubled, including topics from Grandkid and Family Scams to Unwanted Calls and Text Messages. You can read articles online, or order print copies to share, in English and Spanish.

Comment: Pass It On is a great tool to share with accountholders – find ways to get this information out to your customers.

CFPB Highlights the Hidden Costs of Health Savings Accounts (05/01/2024) – **WASHINGTON, D.C.** — The Consumer Financial Protection Bureau (CFPB) released a report detailing the complex costs and fees that many consumers with health savings accounts are forced to pay. There were approximately 36 million health savings accounts in 2023 – holding more than $116 billion. These accounts provide tax benefits to help offset the costs of high deductible health plans. However, these benefits are being offset by charges like monthly maintenance fees, paper statement fees, outbound transfer fees, and account closure fees. Today's report is part of the CFPB's continuing efforts to reduce the risks and costs brought by financial institutions as they increase their presence in the American healthcare system.

"Health savings accounts are promoted for the tax benefits that chip away at the price tag of health care," said CFPB Director Rohit Chopra. "Many consumers do not realize the fees, switching costs, and low interest yields that will come with the accounts."

A health savings account is a tax-advantaged account that generally comes with a high deductible health plan. Typically, a health savings account is in the form of a deposit account selected by an employer or a health insurance company. An employee makes tax-deductible contributions that can then be used for certain health care expenses. Unspent contributions can earn interest and roll over each year. The individual and family contribution limits for 2024 are $4,150 and $8,300, respectively.

Health savings accounts today hold more than $116 billion, a 500 percent increase since 2013. Additionally, the number of accounts rose more than three times from 2013 to 2023, 11.8 million to 35 million, respectively. The significant growth in the accounts has coincided with the rising use of high deductible health plans.

Consumers have reported a range of concerns with health savings accounts. For some consumers, these accounts come with high costs. Employers often decide on the financial service provider that will manage employees' health savings accounts. The factors that motivate employers can differ from those of employees. Providers design health savings accounts to compete for employers. The result is that health savings accounts can often present challenges and costs for consumers, such as surprise fees, lack of fund portability, and low-yield interest rates.

When a consumer ends up with a health savings account with high fees and inferior terms, it directly reduces the funds they can allocate to their health care needs. High deductible health plans have higher deductibles than other health plans, so many individuals with these plans, such as people with chronic illnesses, experience higher upfront out-of-pocket health care costs.

High costs and fees can quickly erode a consumer's ability to pay medical bills. In the case of health savings accounts such fees and costs can also erode tax savings. Specifically, the CFPB's report found:

- **Costly, complex, and captive junk fee structures:** Many providers that offer health savings accounts charge various fees, including monthly maintenance fees and paper statement fees. Expensive exit fees, like outbound transfer fees and account closure fees, can hold consumers, who may not have selected their accounts, captive to their current providers. The fees are costly and typically unavoidable.

- **Low interest yields:** Despite the recent increase in interest rates across the United States most providers offer consistently low interest rates. Typically, these rates are less than 1%, and, sometimes, even 0%. As a result, consumers could incur significantly more in fees than they earn in interest.

The CFPB has been working to reduce the financial consequences of medical debts as well as to ensure consumers are treated fairly by providers participating in the health care sphere. In September 2023, the CFPB initiated a rulemaking to remove medical bills from many credit reports. In July 2023, the CFPB, along with other federal agencies, launched an inquiry into costly credit cards and loans pushed on patients to pay for health care costs.

Read the CFPB's report, *Health Savings Account Issue Spotlight*.
Read *Statement of CFPB Director Rohit Chopra on Medical Financial Products*.
Read consumer complaints about health savings accounts.

Comment: If your bank is offering Health Savings Accounts, use this report as a guide to perform a proactive review of those accounts and the associated fee structures.

Human Resources

SHRM FLSA Overtime Rule (05/02/2024) – The Fair Labor Standards Act overtime rule determines whether employees are eligible or exempt for overtime pay. Exempt employees, because of their rate of pay and type of work that they do, are not eligible for overtime pay for hours worked over 40 in a workweek. Nonexempt employees must be paid time and a half for any hours worked more than 40 in a workweek.

The rule does not affect overtime requirements for workers who are paid hourly.

DOL Announces New Overtime Rule Salary Thresholds

The U.S. Department of Labor announced an update to the FLSA overtime rule on April 23, 2024, that is expected to extend mandatory overtime pay to about four million salaried workers. The new overtime

rule salary threshold increases to $43,888 on July 1, 2024, and increases again to $58,656 as of Jan. 1, 2025. Unless exempt, employees covered by the Fair Labor Standards Act must receive at least time and one-half their regular pay rate for all hours worked over 40 in a workweek if their salaries are below these thresholds.

Starting July 1, 2027, the DOL will also automatically increase the overtime threshold every three years.

What Does the New Overtime Rule Mean for Employers?
Employers must decide whether to raise the salary of employees who earn below the new overtime threshold so they remain exempt from overtime pay. Employers that choose not to raise these employees' salaries should be prepared to pay overtime when they work more than 40 hours in a workweek.

Additionally, schedules for employees whose salaries are not raised above the new threshold may need adjusting to limit overtime costs.

Careful communication should be rolled out to explain why employees formerly categorized as exempt are now nonexempt.

How to Prepare for the New Overtime Rule
To meet the Jan. 1, 2025, deadline for the new federal overtime rule, HR professionals must lay the groundwork now. To do that, experts suggest taking the following steps:

- Identify currently exempt employees who earn less than the new annual threshold of $58,656.
- Estimate how much overtime those employees currently work.
- Analyze your budget to help assess your compensation options.
- Review job descriptions for exempt positions to verify that the duties are accurately listed.
- Ensure that employees in the same roles aren't classified differently - that could prompt discrimination claims.
- Develop a communications plan for those moving from exempt to nonexempt status to minimize negative impact on morale.
- Consider placing restrictions on overtime and explore ways to track nonexempt workers' hours.
- Determine whether changes are needed in other policies such as telecommuting and mobile device usage to curtail overtime and working off-the-clock.

Comment: This is a great opportunity for a bank to use its 'change management' tools and SHRM lays out the issues to address in that process.

FTC Hosts Compliance Webinar on Rule Banning Non-Competes (05/02/2024) – The Federal Trade Commission will host an online compliance webinar on May 14, 2024, at 11a.m. ET to provide an overview of the FTC's final rule banning non-competes, which will include information on how to comply with the rule after its effective date.

Comment: While banks are exempt from the FTC rule on non-compete agreements, bank affiliates are not. Additionally, in March of this year under the revised SOP for mergers, the FDIC said it will consider divestitures of businesses or bank branches to mitigate anticompetitive effects and will expect the divestitures to be completed before a merger. In such cases, the revised SOP states that "the FDIC will generally require that the selling institution will not enter into non-compete agreements with any employee of the divested entity nor enforce any existing non-compete agreements with any of those entities."

DOL What the New Overtime Rule Means for Workers (05/03/2024) – One of the basic principles of the American workplace is that a hard day's work deserves a fair day's pay. Simply put, every worker's time has value. A cornerstone of that promise is the Fair Labor Standards Act's (FLSA) requirement that when most workers work more than 40 hours in a week, they get paid more. The Department of Labor's new overtime regulation is restoring and extending this promise for millions of lower-paid salaried workers in the U.S.

Overtime protections have been a critical part of the FLSA since 1938 and were established to protect workers from exploitation and to benefit workers, their families, and our communities. Strong overtime protections help build America's middle class and ensure that workers are not overworked and underpaid.

Some workers are specifically exempt from the FLSA's minimum wage and overtime protections, including bona fide executive, administrative or professional employees. This exemption, typically referred to as the "EAP" exemption, applies when:

1. An employee is paid a salary,

2. The salary is not less than a minimum salary threshold amount, and

3. The employee primarily performs executive, administrative, or professional duties.

While the department increased the minimum salary required for the EAP exemption from overtime pay every 5 to 9 years between 1938 and 1975, long periods between increases to the salary requirement after 1975 have caused an erosion of the real value of the salary threshold, lessening its effectiveness in helping to identify exempt EAP employees.

The department's new overtime rule was developed based on almost 30 listening sessions across the country and the final rule was issued after reviewing over 33,000 written comments.

We heard from a wide variety of members of the public who shared valuable insights to help us develop this Administration's overtime rule, including from workers who told us: "I would love the opportunity to...be compensated for time worked beyond 40 hours, or alternately be given a raise," and "I make around $40,000 a year and most week[s] work well over 40 hours (likely in the 45-50 range). This rule change would benefit me greatly and ensure that my time is paid for!" and "Please, I would love to be paid for the extra hours I work!"

The department's final rule, which will go into effect on July 1, 2024, will increase the standard salary level that helps define and delimit which salaried workers are entitled to overtime pay protections under the FLSA.

Starting July 1, most salaried workers who earn less than $844 per week will become eligible for overtime pay under the final rule. And on Jan. 1, 2025, most salaried workers who make less than $1,128 per week will become eligible for overtime pay. As these changes occur, job duties will continue to determine overtime exemption status for most salaried employees.

Comment: In its ruling, the DOL says employers have several options to comply with the rule: 1) Pay time-and-a-half for overtime work; 2) Raise workers' salaries above the new threshold; 3) Limit workers' hours to 40 per week; or 4) Some combination of the options.

Lending

CFPB Finds 15 Million Americans Have Medical Bills on Their Credit Reports (04/29/2024) – **WASHINGTON, D.C.** – The Consumer Financial Protection Bureau (CFPB) released research showing that 15 million Americans still have medical bills on their credit reports despite changes by Equifax, Experian, and TransUnion. The 15 million Americans disproportionately live in the South and low-income communities. Collectively, they have more than $49 billion in outstanding medical bills in collections. This is the CFPB's second analysis of the changes made by the three national credit reporting companies to reduce the number of medical bills on credit reports. Today's report follows the start of a CFPB rulemaking that will consider options to restrict the reporting of allegedly unpaid medical bills on credit reports.

"Experian, Equifax, and TransUnion took steps to remove many medical bills in part because of the recognition that they hold little predictive value," said CFPB Director Rohit Chopra. "Findings from our latest research reveal the impact of these changes and the need for further reforms."

In early March 2022, a CFPB study found an estimated $88 billion in medical bills on Americans' credit reports. Following that study, the three nationwide credit reporting companies – Equifax, Experian, and TransUnion – announced they would no longer report certain medical bills in collections. The companies announced they would increase the time before medical bills in collections can appear on credit reports – from 180 days to one year. Second, the companies would stop reporting medical bills that had been in collections but were resolved. Third, the companies would remove medical bills below $500 from credit reports.

Today's research found the number of people with medical bills in collections on their credit reports has declined. As of June 2023, about 5% of Americans had unpaid medical bills on their credit reports – down from 14% in March 2022. Older Americans saw the largest improvement – 8.4% of older Americans had medical bills on their credit reports in March 2022 compared to below 3% in June 2023.

For the 15 million Americans with medical bills on their credit reports, today's research finds:

- **Many live in low-income communities and the southern United States:** The credit reporting changes were slightly less likely to help Americans in lower-income communities compared to those in higher-income communities. The changes did not do as much for individuals residing in the South. On average, people living in the South continue to have the most medical bills in collections and for the largest dollar amounts.

- **The average medical balance on credit reports increased from $2,000 to over $3,100:** The credit reporting changes primarily removed smaller balances. As a result, the average balance of the remaining reported medical bills increased.

- **Most medical collections balances stayed on credit reports:** The three national credit reporting companies removed many bills, and many people now have no remaining medical bills on their credit reports. However, a majority of medical collections balances remain on credit reports.

The CFPB will continue to prioritize fixing the credit reporting market, including issues that involve the reporting of medical bills. In addition to the September 2023 announced rulemaking to address medical bills on credit reports, the CFPB launched an inquiry into costly credit cards and loans that are pushed onto patients to pay for health care costs. The CFPB also took action against illegal nursing home debt collection practices, as well as against medical debt collection and credit reporting practices that violate the No Surprises Act.

	The CFPB has taken actions against entities engaged in illegal medical debt collection practices. The CFPB shut down Commonwealth Financial Systems for illegal medical debt collection practices. The CFPB also ordered Phoenix Financial Services to pay millions in redress and penalties for attempting to collect disputed medical debts through unlawful collection letters and misrepresentations. Read the report, *Recent Changes in Medical Collections on Consumer Credit Records.* Read more about the CFPB's work on medical debt. Read consumer complaints about medical bills and medical collections.

Technology / Security

	No news to report this week.

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

03.28.2024 **FinCEN** Request for Information and Comment on Customer Identification Program Rule Taxpayer Identification Number Collection Requirement SUMMARY: FinCEN, in consultation with staff at the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System (Board) (collectively, the "Agencies"), seeks information and comment from interested parties regarding the Customer Identification Program (CIP) Rule requirement for banks to collect a taxpayer identification number (TIN), among other information, from a customer who is a U.S. person, prior to opening an account (the "TIN collection requirement"). Generally, for a customer who is an individual and a U.S. person ("U.S. individual"), the TIN is a Social Security number (SSN). In this request for information (RFI), FinCEN specifically seeks information to understand the potential risks and benefits, as well as safeguards that could be established, if banks were permitted to collect partial SSN information directly from the customer for U.S. individuals and subsequently use reputable third-party sources to obtain the full SSN prior to account opening. FinCEN seeks this information to evaluate and enhance its understanding of current industry practices and perspectives related to the CIP Rule's TIN collection requirement, and to assess the potential risks and benefits associated with a change to that requirement. This notice also serves as a reminder from FinCEN, and staff at the Agencies, that banks must continue to comply with the current CIP Rule requirement to collect a full SSN for U.S. individuals from the customer prior to opening an account ("SSN collection requirement"). This RFI also supports FinCEN's ongoing efforts to implement section 6216 of the Anti-Money Laundering Act of 2020, which requires FinCEN to, among other things, identify regulations and guidance that may be outdated, redundant, or otherwise do not promote a risk-based anti-money laundering/countering the financing of terrorism (AML/CFT) regime. **DATES: Written comments on this RFI are welcome and must be received on or before May 28, 2024.**