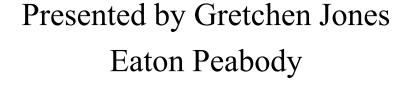
CRA; Reg B Amendments; Re-Presentment/NSF Fees

Maine Bankers Association
Bank Expo

April 26, 2023







Legal Disclaimer



The purpose of this presentation is to provide a **general overview** of its subject matter. It **does not** and is **not intended to provide legal or other professional advice** and must not be relied upon as such. You should **consult with a qualified legal professional** for specific questions and requirements.



CRA Update

Proposed Rule – FRB, FDIC and OCC

Issued 5/5/2022

Comment deadline 8/5/2022

> 375 Form Letters received (not published)

192 Published Comment Letters



Proposal requires regulator evaluation of bank performance across all activities and communities.

Provides for updated CRA assessment areas; include online and mobile banking, branchless banking, hybrids.



4 Tests:

Retail Lending

Retail Products and Services

Community Development Financing

Community Development Services





List of Preapproved CRA – eligible activities
Unified approach by
Regulators



Proposed Rulemaking = 679 pages

No indication yet whether/how final rule will deviate from proposal - or when it will issue.

STAY TUNED!



Overview of Reg B Amendments

Final Rule issued 3/30/23

888 pages; 794 = Preamble

Adds Subpart B to Rule – 1002.101-14

Requires reporting of information regarding small business credit applications



Purpose = facilitate enforcement of fair lending laws; enable communities/governmental entities/creditors to identify business/community development needs and opportunities for womenowned, minority-owned and small businesses.



"Covered credit transaction" = extension of business credit OTHER THAN

Trade credit

HMDA reportable credit

Insurance premium financing

Public utilities credit

Securities credit

Incidental credit



"Covered financial institution" = originated at least 100 "covered credit transactions" for "small businesses" in <u>each</u> of the two preceding calendar years.



"Small business" = gross revenue for its preceding fiscal year \leq \$5 million; adjusts for inflation based on CPI.



Requires banks to compile and maintain 20 data points for "covered applications" from small businesses.





"Covered application" = oral or written request for a "covered credit transaction".

Request must be made according to Bank's procedures to trigger reporting requirements.



In general, can rely on information provided by the applicant.





FIREWALL:

Employees cannot be allowed to access any of the information collected if the employee is involved in any determination concerning the application.



Reports due on/before June 1 of each year.

Format prescribed by CFPB; CFPB must provide to banks a "Filing Instructions Guide" and make reported data generally available to the public.

Compliance Dates

 \geq 2500 transactions in 2022 and 2023: 10/1/24

< 2500, but ≥ 500 transactions: 4/1/25

< 500, but ≥ 100 transactions: 1/1/26



Sample (Model) Data Collection Form – Appendix E

Re-Presentment/NSF Fees





FDIC Supervisory Guidance

Issued 8/22

Assessment of fee for same item when represented = "elevated risk of violations of law and harm to consumers"



Focus is on UDAAP

"failure to disclose material information
... has the potential to mislead reasonable consumers ... and may also present risk of unfairness ..."





Disclosures: must be clear and conspicuous; otherwise are deceptive.



Multiple fees assessed in a short period of time without sufficient notice or opportunity to deposit funds = unfair – even if disclosures are compliant.

Risk mitigation

- eliminate NSF fees altogether
- stop charging more than one fee for the same re-presented item
- review policies, practices and activities and make appropriate changes including revised disclosures



Revised disclosures:

whether multiple fees will be assessed

frequency with which fees will be assessed

maximum number/amount of fees





Ensure customers have the ability to avoid multiple fees.



Must provide restitution

for harmed consumers.



FDIC Exam Findings:

Updated Disclosures should include definition of "item" and explain that presentation of the same "item" on multiple occasions can cause multiple fees.

Provide restitution going back to least 2 years – for all fees <u>charged</u>.



Class Action Lawsuits

Allegations of UDAAP violations



But: claims are for breach of Account Agreement, where agreement/Rate & Fee Schedule do not disclose fees for multiple presentments, including breach of covenant of good faith.

Damages – Restitution of fees paid
Actual & exemplary
damages
Costs and attorneys fees

Were fees actually paid by customers?

Is the account still overdrawn?

Was the account closed with a negative balance?

FDIC does not seem to care – will courts?









