Issue 6 2021-2022

Colorado Banker

Getting the Most Value from Your Banking Compensation Survey

Page 4

OVER A CENTURY: BUILDING BETTER BANKS — *Helping Coloradans Realize Dreams*

Contents

2 A Word from CBA Chairman Significant Regulatory Changes

4 Getting the Most Value from Your Banking Compensation Survey

7 Executive Order Sets Stage for More Crypto Adoption

8 Goodbye Old Payroll Processes; Hello Happy Employees

10 Washington Update House Considers Overdraft Program Fee Reform

12 Five Things Banks Can Do to Prepare for Interest Rate Hikes

14 Countdown to CECL: A Timeline for Community Banks

18 Five Strategies for Strengthening Your Bank's Cybersecurity Posture

22 Why Commercial Lenders Should Invest in Automated Document Collection

26 66 . . . 6 Reasons Rule 66 Receiverships Are the Mark of Ingenuity

Over a Century

BUILDING BETTER BANKS—
Helping Coloradans Realize Dreams

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Feature

A Word From CBA

By Mike Brown, Regional President
Alpine Bank 2021-2022 CBA Chairman

Significant Regulatory Changes

Federal regulators are zeroing in on a number of issues affecting our industry. And when it comes to two very different areas – fees and climate change – the Fed may want to change how we do business.

Bank Fees

In April, the Colorado Bakers Association joined the ABA and other banking associations in challenging the CFPB RFI regarding fees. The bureau appears to have already determined that many bank fees are anti-consumer. The RFI asked for "stories" about fees that "you believed were covered by the baseline price," or "unexpected" or "seemed too high for the purported service," and closed by asking how the bureau should "address the escalation of excessive fees." CFPB clearly wants justification to take action.

The market for consumer financial services is competitive, and fees are disclosed to consumers in multiple ways. The bureau's testing and reports show that consumers understand these disclosures and appreciate the products and services provided even if they must pay fees for them.

This comes on the heels of OCC Acting Director Michael Hsu calling for banks to pursue what he called "pro-consumer" changes to their overdraft programs, noting that they should "resist limiting the extent of their reforms by taking a profit-oriented approach and reverse-engineering costs to meet predetermined revenue targets."

On March 31, the FDIC released the spring edition of the Consumer Compliance Supervisory Highlights. According to the FDIC, "failure to disclose material information to customers about re-presentment practices and fees" may be deceptive. The failure to disclose material information to customers "may also be unfair if there is the likelihood of substantial injury for customers, if the injury is not reasonably avoidable, and if there is no countervailing benefit to customers or competition. For example, there is risk of unfairness if multiple fees are assessed for the same transaction in a short period of time without sufficient notice or opportunity for consumers to bring their account to a positive balance."

Regulators are giving every indication that they expect the industry to make significant changes regarding overdrafts,

> It will take some time for climate-related disclosures to come into effect, but it is clear the agencies are pursuing additional disclosure.

but it is unlikely they will be content with just changes to overdraft practices.

Climate Change and Portfolio Risk

The FDIC issued climate risk guidance and a request for comment on Statement of Principles for Climate-Related Financial Risk Management for large institutions (banks with more than $100 billion of assets). This is in line with the OCC guidance sent in December. The SEC also has a proposed rule (www.sec.gov/rules/proposed/2022/33-11042.pdf) regarding climate-related disclosures.

The Securities and Exchange Commission proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements.

The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposal requires disclosure of a registrant's direct GHG emissions (scope 1), indirect emissions from purchased energy (scope 2) and indirect emissions from activities upstream and downstream in a registrant's "value chain," if material (scope 3, which would include "financed emissions" in a bank's lending portfolio).

It will take some time for climate-related disclosures to come into effect, but it is clear the agencies are pursuing additional disclosure. While this disclosure may initially be aimed at the largest banks, it is not unreasonable to expect an impact on smaller banks also.

Other Federal Issues: Bank Mergers and Cryptocurrency

Bank mergers are also in the regulator's crosshairs. FDIC is now requesting information and comments regarding bank mergers (www.fdic.gov/news/board-matters/2021/2021-12-06-notational-fr.pdf). This is in line with what we have seen from DOJ and OCC. There is an expressed interest in having the community weigh in on bank mergers.

Not surprisingly, regulators are also following recent advances in cryptocurrency. As banks begin to explore what services they might offer customers wanting to engage in cryptocurrency transactions, the OCC and FDIC both made statements. Treasury Secretary Yellen said, "Our regulatory frameworks should be designed to support responsible innovation while managing risks – especially those that could disrupt the financial system and economy," Yellen said. "As banks and other traditional financial firms become more involved in digital asset markets, regulatory frameworks will need to appropriately reflect the risks of these new activities. And, new types of intermediaries, such as digital asset exchanges and other digital native intermediaries, should be subject to appropriate forms of oversight." Shortly after the remarks by Treasury Secretary Yellen, FDIC issued a letter asking that any institution considering engaging in crypto-related activities provide notification, as well as "all necessary information that would allow the FDIC to engage with the institution regarding related risks" – specifically those related to safety and soundness, financial stability, and consumer protection. Banks that are already engaged in crypto-related activities should notify the FDIC "promptly," the letter said.

As you can see, CBA is engaging in several complex issues on your behalf, and they stand ready to assist you, so please don't hesitate to contact CBA directly if you have questions on these issues or any other banking issue you want to discuss.

Getting the Most Value from Your Banking Compensation Survey

By Rhonda Snyder
Pearl Meyer

Over the last year, banks and financial institutions faced higher than normal turnover, and compensation decisions continue to be crucial. As the economy changes during these uncertain times, employers are dealing with continued pressure on compensation levels. This is where a banking compensation survey can be helpful: supplying recent data on current practices for pay at all levels in the organization. However, they are not all equal in terms of the value they provide to your HR team.

There are several key items to look for to get the most from any survey participation and/or purchase. The best survey will be continually evolving, based on feedback from participants on evolving positions and trends in the industry. To get the maximum benefit from the data supplied, certain breakouts such as geography, asset size, and ownership model are important. Surveys developed with input from resources such as the Economic Research Institute (ERI) and the US Bureau of Labor Statistics will be more comprehensive.

When it comes to using the data at your disposal, the most obvious application is hiring – and increasingly in retention and dealing with salary compression. Employees expect to be compensated at the "going market rate" for comparable positions, and employees themselves are savvier than ever regarding compensation as access to online salary data sources is becoming more common. However, there are additional pay issues at play in your institution where survey data can be helpful, particularly in informing the development of comprehensive compensation philosophy and strategy. HR and the compensation committee can work together on an approach that serves the organization over the long term, with data providing important context. Some important questions to work on together include:

- What is our market pricing strategy?
- Are our philosophy and strategy the same across all levels in the institution?
- Is there an existing salary structure and/or incentive plan(s)? How are they set compared to the market?
- Do we have differences in geographic markets? What positions in our institution are geographically sensitive – or sensitive to on-site versus remote work models?

Then, your HR teams can use survey data for specific job-level analysis at a more granular level. Benchmark jobs, which are common to the industry, have a standard and consistent set of responsibilities from one organization to another, and for which there is sufficient data to price in a statistically reliable fashion, are the appropriate starting point. Never match your internal job to a survey job based on job titles alone.

Job matching depends on the equivalency between the survey benchmark job description and your institution's job description. As a best-practice guideline, if 75% of the core responsibilities reflected in the job descriptions match, then the two jobs can be considered a match, but keep in mind that the market is driven by the supply and demand of specific knowledge, skills, and abilities. Survey job descriptions are the industry's best representation for collecting that value.

After matching the benchmark positions to your internal positions, select the data points that best fit your organization's compensation philosophy and strategy. Remember the objectives of a strategic and well-designed compensation plan are:

- To attract, retain, and motivate a sufficient number of people with the knowledge, skills, and abilities necessary to implement your unique strategy;
- To balance the rewards to productive employees with returns to shareholders;
- To provide employees with an opportunity to earn a living comparable to others in similar jobs at similar organizations in relevant market areas;
- To pay people in a way that is internally fair, comparing the relative contribution made by each;
- To allow for the planning and controlling of the cost of human assets as well as the development of high performers; and
- To comply with legal and regulatory requirements.

Compiling, selecting, and analyzing compensation benchmark job data requires a thorough process, competitive market data for relevant peer size, similar jobs, and appropriate geographic markets. This process is best undertaken in the context of an organization-wide pay strategy. A well-constructed salary survey is your best bet for achieving both.

About Pearl Meyer's Banking Compensation Surveys

The Pearl Meyer banking compensation surveys provide detailed data on banking compensation and pay practices with metrics you need to create and maintain a well-designed compensation program. Pearl Meyer's survey team and consulting staff work with numerous state and regional banking associations, including the Colorado Bankers Association, to develop a survey

Compiling, selecting, and analyzing compensation benchmark job data requires a thorough process, competitive market data for relevant peer size, similar jobs, and appropriate geographic markets.

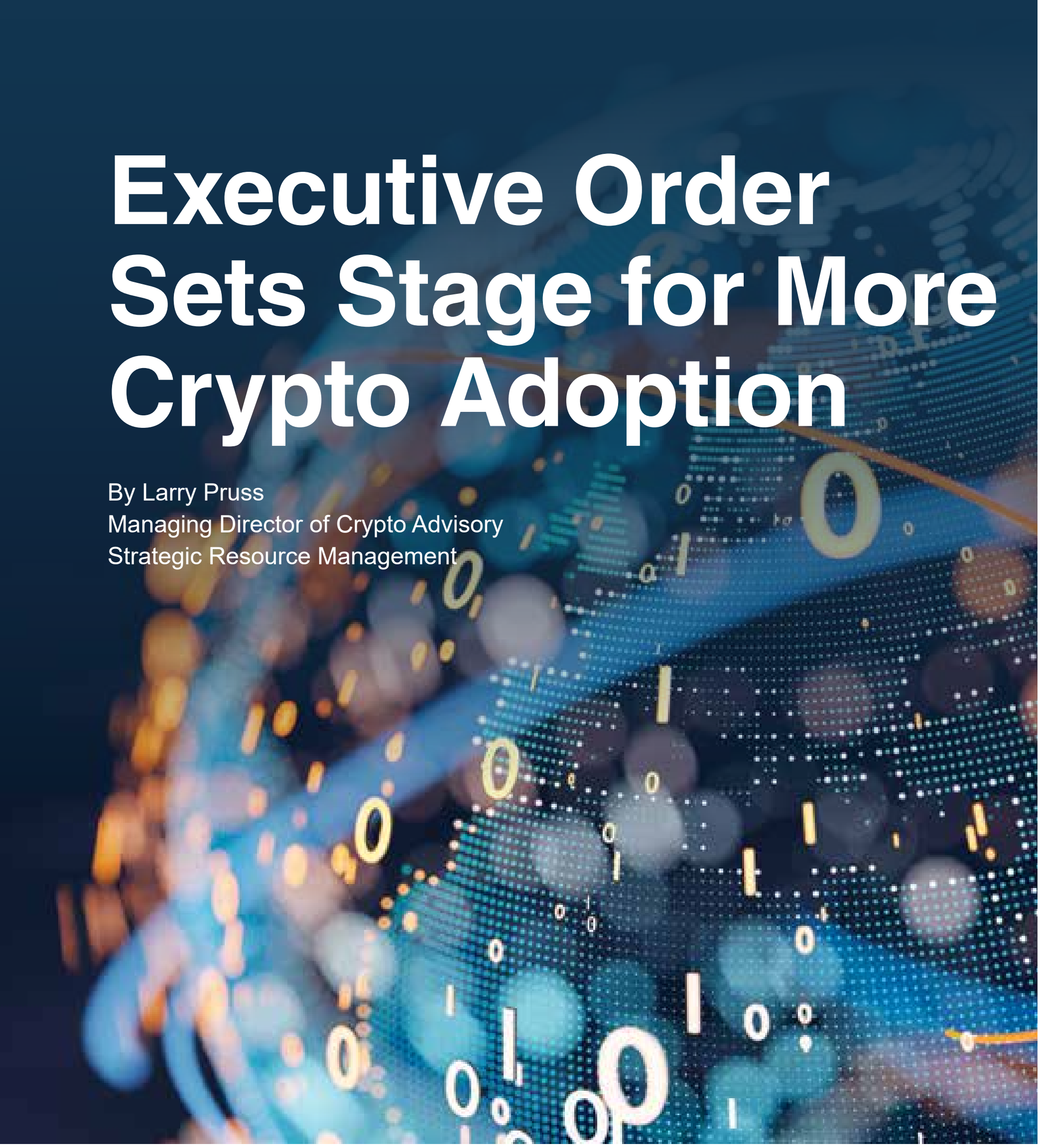
report, especially for association bank members. Our survey team listens to the association and member suggestions regarding evolving positions in the financial industry and our banking consultants' perspectives from their client experiences.

The Pearl Meyer banking surveys currently collect data for 275 benchmark banking positions. The data is reported by asset size, with several of our state banking surveys offering specially developed geographic markets. We establish geographic markets based on conversations with your association and data gathered from various resources such as the Economic Research Institute (ERI) and the U.S. Bureau of Labor statistics.

To support an HR professional in the administration of pay programs, our comprehensive survey reports pay information and policies and practices data. The Pearl Meyer banking compensation survey reports encompass the many facets of compensation: base salaries, salary ranges, short-term and long-term incentives, total cash compensation, and total compensation. Our surveys also include an in-depth policies and practices report, including information on salary increases, merit increases, structure adjustments, outsourcing, turnover, and recruiting.

To participate in the 2022 Colorado Bankers Association Compensation Survey, please contact us at survey@pearlmeyer.com. To learn more about Pearl Meyer's banking compensation surveys, please visit www.pearlmeyer.com/advisory-services/banking-salary-surveys.

About the Author
Rhonda Snyder is a survey account manager at Pearl Meyer. She joined Pearl Meyer in August 2019 and works as a liaison to the Southeast banking associations on banking salary surveys while also assisting many other state and national survey clients.



Executive Order Sets Stage for More Crypto Adoption

By Larry Pruss
Managing Director of Crypto Advisory
Strategic Resource Management

The Biden Administration recently issued an executive order to coordinate efforts among federal agencies to create a national policy for digital assets. The order shows that these assets, including cryptocurrency, are here, and they're here to stay.

The order aims to "ensure that safeguards are in place and [to] promote the responsible development of digital assets." In other words, the directive was issued to build a framework so the U.S. can catch up to other countries – and make innovation a top priority while protecting consumers and businesses.

The executive order isn't the only positive sign that crypto is gaining traction at financial institutions. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have weighed in; each indicated that banks they oversee can pursue crypto projects, though both agencies want advance notice before a financial institution takes the plunge. The agencies make clear that these services need to be offered through third parties and that crypto assets are not insured. The letters should help institutions feel more comfortable dealing with digital assets.

Also worth noting, the executive order encourages the Federal Reserve to examine the creation of a U.S. central bank digital currency (CBDC), including its impact on financial inclusion.

Transitioning from hesitancy to adoption

The various announcements from the Biden Administration and certain federal agencies have ultimately shined a spotlight on consumers' interest in crypto. While many financial institutions are still dragging their feet due to unfamiliarity and regulatory concerns, these announcements show that the necessary compliance structures are in place.

A wide variety of service providers – established names and new entrants – have solutions to support such products. Several core and digital banking providers have developed integrations with financial institution-focused crypto firms, streamlining implementation.

Banks still have many areas to consider before jumping in. Custodial services, rewards programs, trading services, mobile wallet integration, and lending services are all areas to consider – with varying levels of involvement.

U.S. consumer cryptocurrency adoption is running at, or slightly ahead of, the pace set by the internet in the 1990s. That said, financial institutions need to get involved before it's too late. The executive order and letters from federal agencies have affirmed a financial institution's authority to offer digital asset services through third parties. The endorsement is there – now is the time to act.

About the Author
Larry Pruss is Managing Director of Crypto Advisory at Strategic Resource Management (SRM). He brings more than 25 years of experience in payments and financial services technology to the table. Recently, Larry developed and now leads the cryptocurrency practice at SRM, helping financial institutions develop strategies for the next phase of the digital revolution.

Goodbye Old Payroll Processes;

Hello Happy Employees

By Erica Brune
President
Lever1

Let's face it: payroll is archaic. The current process for most W2 employees requires employees to work two weeks, wait an additional week for administrative tasks, and then finally get the money they earned almost a month ago.

But what if payday came a little sooner? Perhaps even instantly?

Forty-three percent of workers spend three or more hours per week thinking about financial stress. With daily access to their earned income, employees can close the gap between paychecks, pay bills on time, and avoid overdraft fees.

Getting paid biweekly can now be a thing of the past. Living a modern life means getting paid with modern technology that allows you to access your pay as you rightfully earn it. Earned wage access enables organizations to deliver instant payment of earned wages to employees with the click of a button. While some banks offer access to ACH funds up to two days prior to payday, the benefit of earned wage access allows employees to make their own decisions and access their funds according to their schedule and necessity.

Picture this: It is Monday morning, and you are on your way to work. Suddenly, you hit a pothole so intense you know it is bad news for your tire. You pull over to assess the damage and are hit with the overwhelming realization that you need a new tire, but it will be pricey. Payday isn't for another five days, and you do not have enough money in your account to pay for your tire. Your options are either: a) do not fix the tire and miss out on a week of work, or b) use high-priced short-term lending options. Both options are undesirable and leave you with a sinking feeling in your stomach.

However, if you had the option to access the wages you had already earned during the pay period, you would not have to select the lesser of two evils. You would be able to access the exact amount of money you need to replace your tire and carry on with your week.

Earned wage access is not just a benefit for employees but can help employers struggling with recruitment. Studies show that early access to wages results in:

- **72%** decrease in turnover
- **36%** increase in employee retention
- **86%** improved job performance

The future of the labor market continues to be uncertain, but one thing is for sure: employees are looking for what sets companies apart. Employers need to think outside the box regarding recruitment strategies, and what better benefit is there than access to earned wages in real-time.

In addition to enhancing your recruitment strategies, earned wage access can also benefit employers by:

1. Retaining top talent
2. Eliminating financial pressure on your employees
3. Increase workers' productivity
4. Lead the path for a financially literate workforce
5. Enjoy all the indirect benefits of a financially happy employee

In the United States, 78% of the population is described as living paycheck-to-paycheck and would rather not wait for their scheduled payday. In the current state of uncertainty, it is understandable for employees to desire consistent cash flow. When workers are not stressed about their financial struggles, they perform better and can focus easily. On-demand pay gives employees peace of mind over their finances and thus creates a healthier work environment.

Although some managers are hesitant to promote on-demand pay, citing poor budgeting skills, its successful implementation at many leading organizations should alleviate those concerns. The ridesharing company Uber has been offering Instant Pay for its drivers for several years. With their program, drivers can cash out their earnings up to five times a day and receive those funds instantly. Many other jobs like bartenders and tipped workers are used to taking home their pay daily.

Today's job market needs an earned wage access solution like never before. A benefit that ensures your employees receive timely salaries is what sets you apart in a sea of open positions. Studies show that when employees do not have to stress about finances, they can perform better at work. For much of the workforce, the standard two-week payday cycle is not working anymore. It is time to rethink the payroll process and understand how it affects employees' productivity and well-being.

> On-demand pay gives employees peace of mind over their finances and thus creates a healthier work environment.

Washington Update

House Considers
Overdraft Program Fee Reform

By Cheryl Lawson
JMFA EVP of Compliance Review

On March 31, the U.S. House of Representatives Financial Services Subcommittee held a hearing on possible government intervention regarding the future of overdraft programs. The hearing comes after an initiative announced by the CFPB to reduce “exploitative junk fees” and the highly publicized steps taken by big banks to eliminate or reduce overdraft fees.

Testimony from the hearing highlighted two very different perspectives on the role government should play in regulating overdraft fees. On the one hand, lawmakers argued that overdraft fees can have a disparate impact on some consumers, citing that “just 9% of consumers pay 80% of the reported $10B to $12B in overdraft and NSF fees in an average year.”

On the other hand, several representatives raised concern over the unintended consequences that eliminating overdraft fees would pose in “reducing consumers’ ability to access short-term liquidity financial products.” In addition to their testimony, Representatives highlighted the results of a recent Morning Consult survey that found 90% of respondents valued overdraft protection, and 72% of respondents who paid a fee in the last year were glad their bank paid the overdraft. The survey also found that 62% of respondents think overdraft fees are reasonable, with only 21% indicating the fee was unreasonable.

Input from industry trade groups expressed support for a fair, transparent and competitive market for consumer financial services. But it cautioned the committee that further regulation that could eliminate overdraft protection programs would likely negatively impact consumers and financial institutions.

The hearing coincides with potential new legislation – issued in a discussion draft by committee chair Maxine Waters – that would require banks with more than $10B of assets to offer no overdraft accounts. In addition, the

Overdraft Protection Act was reintroduced for the ninth time last summer by Rep. Carolyn Maloney, and the CFPB has launched an inquiry into fees on consumer financial products.

A fully transparent overdraft program + reasonable fees = a solution to the committee's concerns – no legislation required.

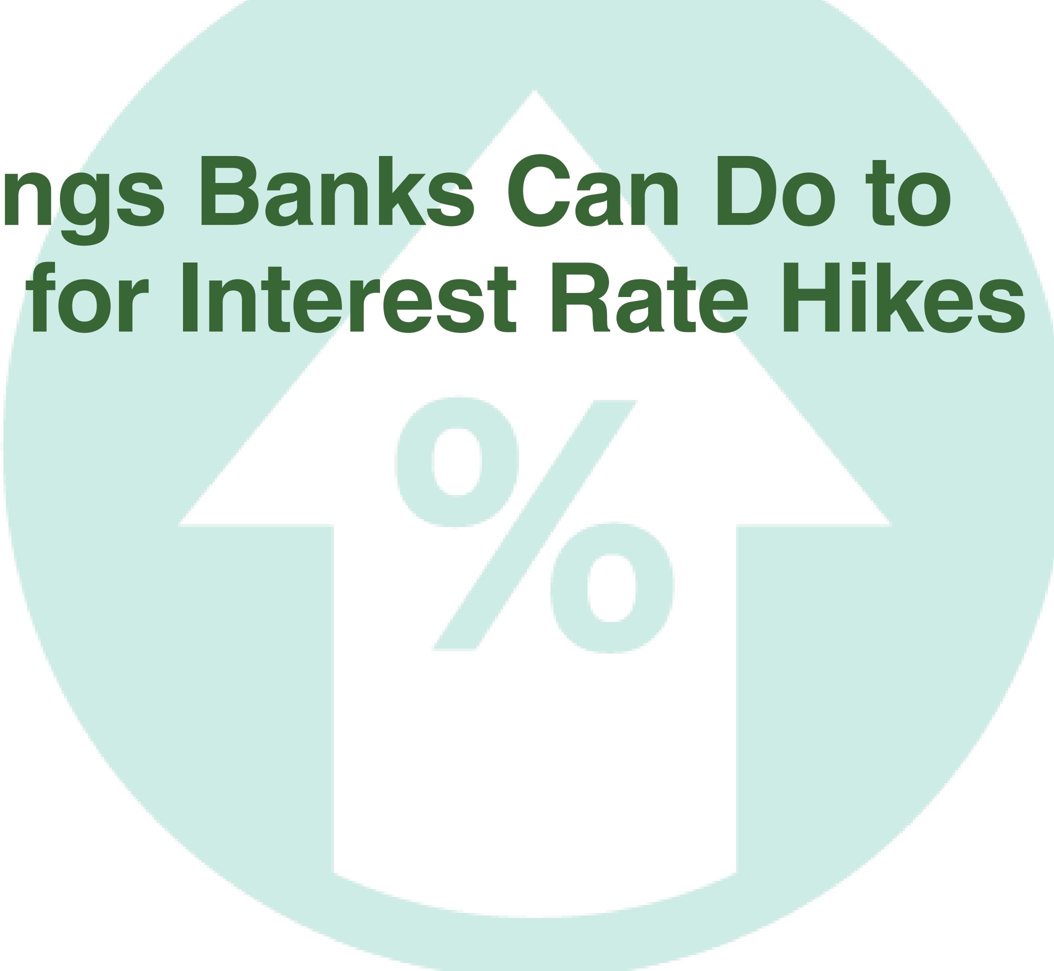
Every financial institution that has made any changes to its overdraft program is doing so as a well-intended practice. It's also important to note that it's a clear indicator that a one-size-fits-all solution doesn't work. Moreover, a transparent, easy-to-understand and fully disclosed overdraft solution where consumers can make a choice makes the most sense. All community banks and credit unions should be evaluating the options they offer their consumers to address their cash flow needs and adapt accordingly.

While legislators and regulators continue to debate the issues caused by undisclosed overdraft strategies, JMFA's community bank and credit union clients continue to educate their account holders about how overdrafts are handled and the options available. Our recommendations support the effective use of overdraft services, and we continue to provide a 100% compliance guarantee against federal or state regulatory criticism.

> "Representatives highlighted the results of a recent Morning Consult survey that found 90% of respondents valued overdraft protection, and 72% of respondents who paid a fee in the last year were glad their bank paid the overdraft.

JMFA provides community banks and credit unions comprehensive overdraft consulting with consumer-focused recommendations, data-driven intelligence and a 100% compliance guarantee to address your evolving needs. To learn more, please visit www.JMFA.com or call 800 809-2307.

Five Things Banks Can Do to Prepare for Interest Rate Hikes



By H.D. Barkett
Senior Managing Director
IntraFi Network

With inflation running hot, the Federal Reserve Board has recently begun accelerating its tapering program. In addition, the latest dot plot for the median federal funds rate shows that short-term interest rates could increase three times in 2022.

Bank leaders should be preparing for rising interest rates, a challenge that will be difficult given the extraordinary liquidity in today's market. Below are five tips to help them do just that.

1. Evaluate pricing strategies

Banks that haven't adjusted their deposit rates to match current market rates, which are effectively zero, should think about doing so now. Given the relative yields of other cash alternatives, deposit rates could be higher than they should be.

2. Segment customers by rate sensitivity

For the first time in recent memory, most banks don't need – or even want – all their deposits. This presents a unique opportunity for banks to evaluate the rate sensitivity of their customers and consider adding rate-insensitive customers down the road.

3. Take a harder look at derivatives

Many banks have been reluctant to embrace derivatives, but swaps can be a valuable tool for hedging against rising rates, as swapping a floating rate for a fixed rate will benefit banks once interest rates rise and funding costs increase. Also, tying funding to a swap that mirrors funding characteristics is an activity that can qualify for hedge accounting, which means the swap doesn't need to be marked to market and doesn't hit the income statement.

4. Shorten the duration of securities portfolios

Many bankers are wrestling with how to deploy deposits in the absence of loan demand. Shorter-term loans and securities are currently yielding little to nothing, but longer-dated assets could be underwater as soon as next year. It's a tricky balance, but banks may wish to consider keeping the duration of their securities as short as possible while keeping their heads above water. Margins may suffer in the near term, but having large portfolios of longer-dated securities could be even more problematic. Tools such as reciprocal deposits, which are insured, could provide relief by reducing the amount of collateral banks need to hold.

5. Review wholesale funding strategies

Wholesale funding also helps banks manage interest rate risk – more so than retail deposits. By borrowing amounts at terms more or less in line with those of a commercial loan, banks can effectively match funding to long-term, fixed-rate positions. And in an environment where rates are projected to rise, banks that lock in low rates today, or refinance higher-cost funding, can earn higher spreads once loan demand picks up.

The challenges facing today's banking industry are many, and interest rate risk is big. However, by proactively thinking about repricing deposits, segmenting customers, taking a closer look at derivatives, not overextending the securities portfolio, and reviewing wholesale funding strategies, bank leaders can position their institutions to ride out the uncertainty and succeed in the future.

IntraFi Network is the number one provider of deposit products to U.S. financial institutions, a leading provider of overnight and term funding solutions, and one of the nation's best places to work. Its members include most of the nation's community banks, minority depository institutions, and community development financial institutions. For more information on IntraFi Network, please contact Bryan Harper, Managing Director, at 866 776-6426, bharper@intrafi.com, or www.IntraFi.com.

> Wholesale funding also helps banks manage interest rate risk – more so than retail deposits.

Countdown to CECL:
A Timeline for Community Banks

By Kate Stoneburner
Content Marketing Manager
Abrigo

Preparing for 2023

Community banks have a 2023 deadline for CECL implementation, leaving limited time to refine their processes. This timeline will help plan the transition.

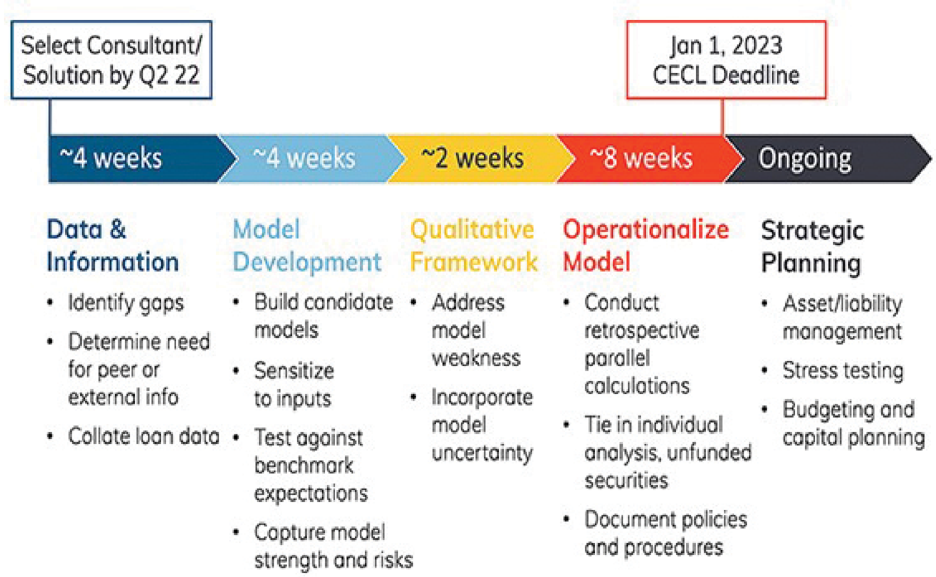
"The time is now" for CECL implementation

Large SEC filers have officially adopted the current expected credit loss standard, or CECL, for recognizing credit losses, and other financial institutions are eager to learn from their CECL implementation efforts. While community banks have until 2023 until they must comply with CECL, many institutions were caught up in "analysis paralysis" in their transition, delaying their preparations. Add a global pandemic to the mix, and CECL implementation has been on the back burner for many financial institutions. Experts and 2020 adopters have repeatedly stressed the importance of preparing early. "If you've kind of been dragging your feet on this, now is the time," said Brandon Quinones, Director of Client Education at Abrigo. "The bottom line is, there are no benefits to starting early, because it is no longer early. The time is now to ensure you are ready for Jan. 1, 2023."

Preparing for CECL implementation

During Abrigo's CECL Kickstart webinar, Garver Moore, Managing

If you're eager to get planning, but struggling to set goals for CECL implementation, review FASB's CECL Prep Kit and consider this timeline:



Director of Abrigo Advisory Services, discussed strategies for financial institutions' CECL implementation in 2023, including:

- How to address the most common CECL implementation problems, such as lack of historical loss experience or unreliable historical data
- How to use CECL models that are less reliant on historical, loan-level loss experience
- How to implement a straightforward CECL qualitative framework
- How to credibly identify peer institutions for the use of external information

Community banks just starting their transition to CECL should consider possible partnerships and begin assessing data gaps and accuracy. Leveraging a third-party vendor to assist with CECL can be highly beneficial in the CECL transition, but finding the right vendor is paramount. "You want to avoid 'black box' solutions," explained Quinones. "CECL is all about the data that you have available and the way that you use that data. So, if you're just putting it all into a 'box' that's just spitting out an answer, and you can't actually go in and identify where those numbers are coming from, then you put yourself in a difficult position to defend your calculations with examiners."

When completing vendor due diligence, ensure that the solution is transparent and can be easily communicated with examiners, including the need for user-driven changes and a simplified data integration process. Community banks will need to test and compare different methodologies to determine the right one for their loan portfolio, so it's critical a third-party solution has the ability to run multiple scenarios concurrently, which is key for modeling decision-making. Once the community bank selects a vendor, it should ensure that clear timelines and action plans have been communicated and are in place.

Determining whether their data is accurate and thorough enough to estimate future losses can be a struggle for some community banks. Thankfully, there are flexible options available depending on the type of data available to your institution.

"The standard gives you a lot of options on how to estimate future credit losses," said Moore. "And those different options have different data requirements, including the amount of data you need, how far back it goes, and what that data covers. Yet, even if you have data, that doesn't mean that you have intelligence. If you have 15 years of granular data as a small commercial bank, there might not be a material loss in that entire dataset, which wouldn't tell you anything meaningful."

If a community bank finds that it lacks data, has inaccurate data, or struggles with data gaps, it will likely need to make assumptions based on peer or industry data. For a successful CECL implementation and to satisfy examiners, assessing the community bank's data situation is a critical first step.

Methodology choice is vital in CECL implementation. Data availability should guide a community bank's decision to leverage a particular methodology or methodologies. "It's important to dispel the myth of, 'I need to just try every option on every loan type,' especially when it doesn't map out to what the institution does," advises Moore. While considering various scenarios is generally a good idea, there is no expectation to model every possible permutation. For example, some methodologies, like vintage analysis, can be ruled out quickly because the institution's data is simply insufficient, and discounted cash flow or remaining life would be a better approach.

Regardless of the community bank's methodologies, documenting the decision is critical. Not every methodology will work for a financial institution's unique circumstances, and there will likely be significant back and forth during CECL committee discussions before a community bank determines the direction it wants to go in. Examiners, however, will lack the context of the discussions and strategies unless these processes are well-documented. Community banks must ensure examiners understand why the institution ultimately decided on its chosen methodology.

Testing, discussing, and deciding do not happen overnight. Community banks must devote enough time to each area for successful CECL implementation.

CECL implementation stages for 2022

Based on the timeline graphic above, here are four stages of CECL implementation prep your institution can follow to stay on track before the 2023 deadline.

1. Data and Information

Four weeks into Q2 of 2022, institutions should ideally have selected a consultant or solution, identified gaps in their data, and determined a need for peer or external information. The good news for 2023 CECL adopters is that no set amount of data is required to produce a meaningful projection of future losses. Different amounts of data are necessary for different CECL methodologies, and a certain amount of data, in an information sense, is required to estimate likely defaults or losses in different economic environments. Learn more about efficient data and information assessment in the first webinar in the CECL Streamlined series.

2. Model Development

After data collating, your institution should be building candidate models, sensitizing to inputs, and testing against benchmark expectations. Many financial institutions adopting CECL decide that external information is required to construct a meaningful estimate for at least one material portfolio segment. However, peer selection without a way to determine likely measurement outcomes can lead to unpleasant surprises and do-overs, creating awkward decision trails to explain. Join a peer selection webinar to review best practices for identifying potential peer institutions for your estimation and discuss some "worst practices" to avoid during CECL implementation.

Continued on page 16

Continued from page 15

3. Qualitative Framework

At this stage, your institution should address model weaknesses and incorporate model uncertainty. Weaknesses vary, so prepare your institution for calibrating the historical loss basis, whether peer-based or based on internal experience, to anticipated economic conditions and projecting those same conditions.

4. Operationalize Model

In the final stage of this CECL implementation timeline, institutions should conduct retrospective parallel calculations and sensitivity tests in different environments. Financial institutions should understand how uncertainty about the future provides an important lever to calibrate allowance results and how that uncertainty can be used to establish a 'baseline' of allocation.

As the 2023 deadline becomes less distant, community banks will need to devote a significant amount of time and resources to their CECL processes. But with organization, determination, and expert assistance, they can build a credible and efficient model, overcome roadblocks, and stay on time.

Takeaway 1

"Analysis paralysis" and the pandemic put CECL implementation on the backburner for many CFIs.

Takeaway 2

CFIs getting started with CECL should consider possible partnerships and assess their data.

Takeaway 3

In 2022, consistency is key. Each quarter represents an opportunity to make progress on CECL implementation.

Kate Stoneburner is a Content Marketing Manager at Abrigo, where she works with industry thought leaders to create digital content that helps financial institutions better serve their customers. Before joining Abrigo, Kate managed social media and produced articles for Campbell University's quarterly magazine and other university content initiatives. She earned her bachelor's degree in strategic communication and professional writing from Miami University.

CHIPPEWA VALLEY BANK

Tired of Borrowing Money Being More Complicated and Difficult Than it Needs to Be?

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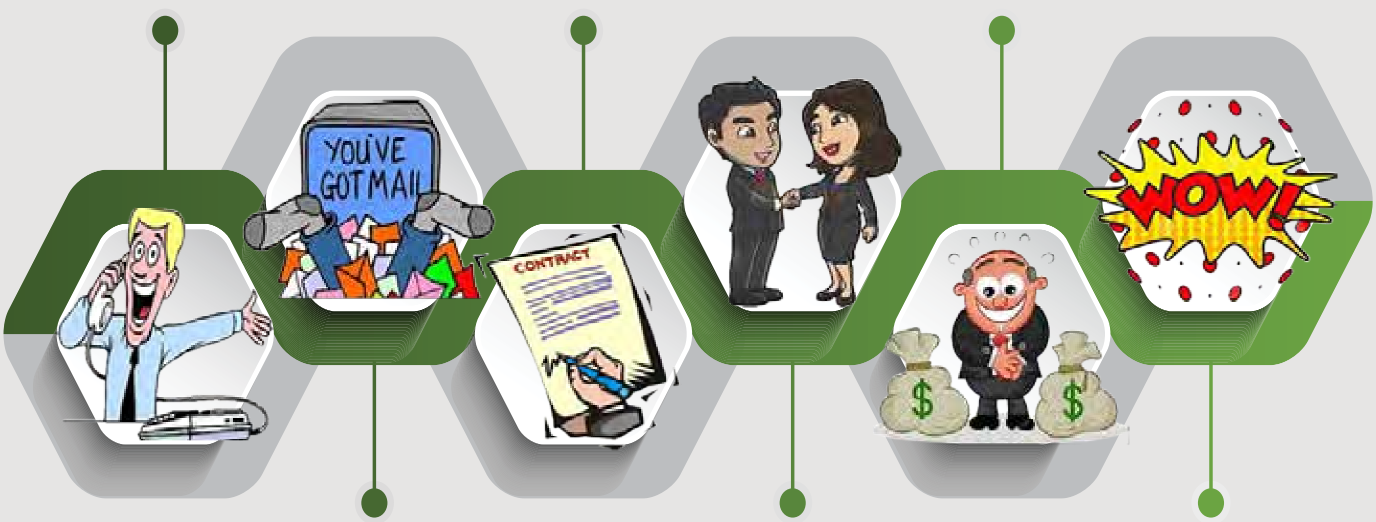
1. Calling us is the first step.

3. CVB preparing the loan documents generally within 5 to 10 days.

5. CVB wires the funds.



2. You email us the appropriate documents of information.

4. Meeting the customer. We will come to you to sign loan documents.

6. Wow that was easy.

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FDIC

EQUAL HOUSING LENDER

Five Strategies for Strengthening Your Bank's Cybersecurity Posture

By Steve Sanders

In its seventh annual survey, CSI asked banking executives from across the nation about their top strategies and priorities for 2022. The results were used to inform the 2022 Banking Priorities Executive Report, which details the challenges and opportunities in today's financial landscape.

When asked about the one issue that will most affect the financial industry in 2022, it's no surprise that cybersecurity (26%) outranked the other two leading issues – recruiting/retaining employees (21%) and regulatory change (14%).

What Did Bankers Identify as the Top Cybersecurity Threats for 2022?

According to the 2022 results, an overwhelming majority of bankers view employee-targeted phishing (57%) as the top cybersecurity threat, with customer-targeted phishing (51%) following closely. Often the result of social engineering schemes, 48% of bankers worry about the threat of ransomware.

As cybercriminals enhance their tactics to continue targeting data-rich institutions, this concern is well-founded. Ransomware is a type of malware that locks out the authorized user once installed and encrypts the available data to hold for ransom, posing an operational and reputational risk. Incidents of ransomware have risen, with the global attack volume skyrocketing by more than 150% for the first half of 2021 compared to the previous year.

The current geopolitical climate, greater reliance on digital channels and increased turnover in a variety of industries have created an environment ripe for vulnerabilities. And cybercriminals are wasting no time exploiting the weaknesses and vulnerabilities of systems to launch sophisticated attacks.

Unfortunately, the availability and automated nature of modern ransomware allows an attack to be initiated with limited upfront costs and maintenance from criminals. Since ransomware attacks pose little risk to the hacker, provide a quick payout for criminals and are carried out relatively easily and anonymously, institutions should remain on high alert to identify and combat these threats.

How to Strengthen Your Bank's Cybersecurity Posture

As incidents of ransomware and other attacks increase in frequency and sophistication, consider the following strategies to enhance your bank's cybersecurity posture:

1. Prioritize Cybersecurity Training:

With 41% of bankers emphasizing employee/board cybersecurity training, most understand that the "people factor" represents an institution's biggest potential

> "The current geopolitical climate, greater reliance on digital channels and increased turnover in a variety of industries have created an environment ripe for vulnerabilities. And cybercriminals are wasting no time exploiting the weaknesses and vulnerabilities of systems to launch sophisticated attacks.

Continued on page 20

> As institutions navigate the changing cybersecurity landscape, embracing a layered approach to cybersecurity will maximize protections for your bank. Implementing multiple layers of security – including cybersecurity training and tools – makes it more difficult for cybercriminals to infiltrate your systems and keeps employees and customers secure.

Continued from page 19

weakness. To create a cybersecurity-focused culture, ensure employees are familiar with the latest threats and know how to identify the warning signs. If employees fail social engineering tests, revisit your strategy to provide real examples of phishing as well as incentives for employees to do their part.

2. Raise Customer Awareness: Only 18% of bankers identified customer cybersecurity training as a top tactic in 2022, but it's important to remember that banks benefit significantly from an informed customer base. Since customers, especially those newest to digital banking, are another component of the "people factor," institutions must ensure they reinforce the importance of good cyber hygiene through cybersecurity awareness programs, which could include videos and gamification.

3. Update Your Incident Response Plan (IRP): Institutions must consider all the operational, financial and reputational implications of being held hostage to ransomware. Your bank's IRP should include planning for data and system backups, communication plans, business continuity plans if employees or customers are unable to access your systems and dealing with the attackers. You don't want to confront those issues for the first time during a ransomware attack. With 23% of bankers reporting IRP testing as a top tactic to combat cyber threats, remember that maintaining a tested IRP puts your bank in a stronger position to withstand an attack.

4. Conduct Vendor Due Diligence: Even if your internal systems and employees are prepared for a cybersecurity attack, your bank is vulnerable if an external vendor does not adhere to the same defense standards. Appropriate cybersecurity due diligence and regular monitoring should be conducted on all third-party vendors, especially any external vendor who has access to your sensitive data or systems. This process is critical to mitigate risk of supply chain attacks, which have surged in the past year.

5. Implement Multi-Factor Authentication (MFA): Incorporate MFA into all applications where employees – or customers – must enter their credentials. With MFA, multiple authentication factors are required to verify a user's identity, preventing unauthorized account access. This verification strengthens resiliency and provides an effective defense against the two largest threat vectors: social engineering and phishing. When confronted with this extra obstacle, many hackers will move to a less secure target.

Maximize Protections with a Layered Approach to Cybersecurity

As institutions navigate the changing cybersecurity landscape, embracing a layered approach to cybersecurity will maximize protections for your bank. Implementing multiple layers of security – including cybersecurity training and tools – makes it more difficult for cybercriminals to infiltrate your systems and keeps employees and customers secure.

Download CSI's 2022 Banking Priorities Executive Report for additional insight into bankers' perceptions of cyber threats, technology, compliance and more.

Steve Sanders serves as CSI's chief information security officer. In his role, Steve leads CSI's information security vision, strategy and program and chairs the company's Information Security Committee. He also oversees vulnerability monitoring and awareness programs as well as information security training. With over 15 years of experience focused on cybersecurity, information security and privacy, he employs his strong background in audit, information security and IT security to help board members and senior management gain command of cyber-risk oversight.

THE BENEFITS OF SELLING YOUR CHARGED-OFF LOAN PORTFOLIOS

Like many financial institutions nationwide, you probably have a considerable amount of charged-off loans from the last four years. Also, like many financial institutions, you might not know that your charged-off loans have value to a debt-buying company.

Charged off loans are the dirty words in modern banking. You have lent funds to a customer, and it went bad. It is most likely due to a loss of job, divorce, injury, or in modern times, COVID. When this happens on a large scale, you are left with considerable loss. Now, we are sharing a great secret in the charged-off world that you might not know exists, selling your charged-off loan portfolios.

Cherrywood Enterprises is a debt buying entity that has been in that space for over nine years, with their CEO Craig Geisler having spent over 14 years in the debt buying arena.

Cherrywood Enterprises has worked with banks, credit unions, auto lenders, and commercial lenders nationwide, helping these entities understand the value of their charged-off portfolios and infusing capital back into these financial sectors.

What are the benefits of selling your charged-off loan portfolios?

- Create much-needed liquidity through a cash infusion from the sale of the distressed debt
- Bolster the bottom line now versus waiting months or years for collection efforts to take effect
- Reduce ongoing costs associated with internal collections as well as management of third-party agencies
- Lessen or eliminate reliance on third-party collection agencies
- Eliminate months or years of waiting without a guarantee of a return — a major benefit when factoring in the time value of money
- Protect your brand — this is typically the effect of a debt buyer owning the purchased accounts outright, having a longer time horizon, and, therefore, a strong incentive to work professionally with debtors and obtain repeat business from you

The process of selling your charged-off debt portfolios is simple: we first send you a Mutual NDA to protect both parties' proprietary information. We also send you a blank Excel Spreadsheet with the headers of information we would need to review your portfolio, and in addition, we would need the sample docs for one account. It takes us approximately three to five business days to review these docs, and we will come back with an offer for your portfolio.

Once we agree on a price, we send you a Purchase and Sale Agreement for both parties to sign, and within 24 hours of receiving that signed agreement, funds are wired directly into your account. Once you have the funds, we will need the backup docs for all of the accounts sold, and we are on our way.
It's that simple!

No further action is required on those accounts that you have sold! Plus, this is a program that you can do on a monthly, bi-monthly, quarterly, or annual basis! It's just a matter of changing dates and numbers!

To get started, feel free to call us at (561) 508-7650 or email our CEO directly at cgeisler@cherrywoodenterprises.com.

Come and see how easy and beneficial selling your charged-off loan portfolios can be!

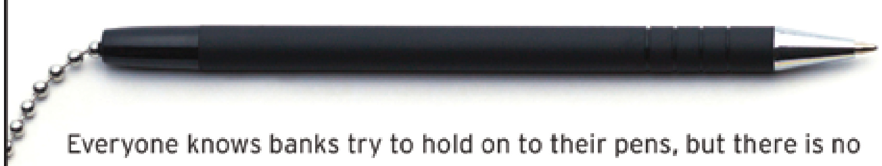
HOLDING ON TO PENS

WE UNDERSTAND.

HOLDING ON TO YOUR

DEBT PORTFOLIOS,

NOT SO MUCH.



Everyone knows banks try to hold on to their pens, but there is no reason to hold on to your credit card, auto deficiency, overdraft, judgements or commercial and consumer debt. We'll buy your debt portfolio from the last four years, with minimum sizes of $100k and no maximums. We'll even walk you through the sales process to help with compliance and data integrity. To get started, contact Craig Geisler at cgeisler@cherrywoodenterprises.com or 561.508.7650.

Cherrywood ENTERPRISES

Why Commercial Lenders Should Invest in Automated Document Collection

Financial organizations continue to use outdated document collection methods like paper forms, email, and manual workflows. Automation offers a better solution.

Commercial lending is a saturated and highly regulated field.

As if that were not enough, lenders often must fight not only their competitors but their own internal processes as well. A surprising number of commercial lending institutions continue to rely on outdated document collection methods such as paper forms, in-person meetings, Excel spreadsheets, and manual workflows.

Over time, this inevitably takes a toll on their productivity and ability to scale.

The good news is that automating document collection is possible – and by doing so, commercial lenders can effectively optimize their processes, save time and money, provide better customer service and improve their bottom line.

What Is Automated Document Collection?

Automated document collection leverages modern digital tools to prepare, send, sign, collect, modify, and save client documents automatically and with minimal human intervention. The goal is to streamline document handling, reduce administrative errors, provide quicker and better customer service, and improve productivity overall.

Digitization vs. Automated Document Collection

Automated document collection is different from document digitization, which merely replaces paper documents with electronic, but still requires a fair amount of manual intervention and oversight.

Automated document collection goes beyond converting analog into digital data. It completely transforms the document handling process and reduces the need for human intervention to the bare minimum.

Electronic vs. Automated Document Collection

There are many tools currently on the market that offer some form of electronic document collection. Most commercial lenders will doubtless be familiar and likely use some of the more popular ones, such as:

- **Dropbox:** Rather than emailing documents around, Dropbox enables users to share files with coworkers and clients by uploading them to an online folder to be downloaded by whoever has access.

> A surprising number of commercial lending institutions continue to rely on outdated document collection methods such as paper forms, in-person meetings, Excel spreadsheets, and manual workflows.

- **ShareFile:** ShareFile offers secure file sharing, sync, and content collaboration solutions through a dedicated client portal.
- **DocuSign**: The company was one of the early pioneers of e-signature technology, helping digitize the agreement process. DocuSign users can prepare, send, and sign agreements on almost any device.
- **Adobe Send & Track:** This Adobe Document Cloud service enables users to send files as links, track them, and get confirmation receipts when the recipient opens the file.

While they once were a real game-changer, electronic document collection tools are becoming increasingly obsolete in the financial services industry.

A new generation of document collection systems now combines the various features of these older applications with more sophisticated and powerful yet easy-to-use workflows. In addition to boosting productivity, modern automation solutions can improve businesses' credibility with clients, partners, investors, and other third parties.

Five Document Collection Challenges Facing Modern Commercial Lenders

Most commercial lending institutions these days will have faced at least one of these common workflow bottlenecks:

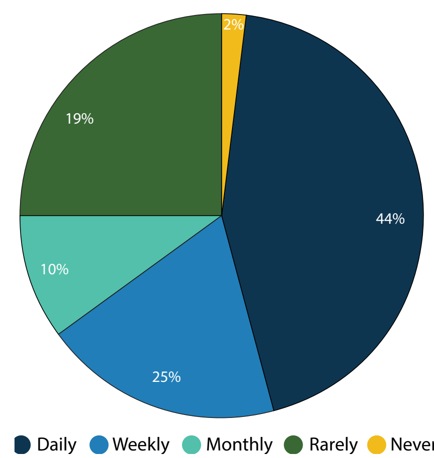
1. Document Collection Teams Are Drowning in Paper

Despite having access to more modern solutions, many lenders continue to rely on paper. They are not alone in this. Over 44% of businesses still use paper documents daily, and U.S. corporations spend more than $120 billion every year on printed forms alone. Most of these will be out of date within three months.

Manually filling out, sending, and chasing paper forms – only to then reenter the same information in the internal software system – makes an already document-heavy process even more time- and labor-intensive.

The issues with this approach are obvious.

How Often Do Employees Across Industries Use Paper?



2. Manual Workflows Are Slowing Everything Down

Even where lenders have largely transitioned from paper-based to digital documents, manual processes are rampant.

Dedicated employees spend hundreds of business hours chasing lost DocuSigns and application forms, sending reminders to clients about supporting documentation, and manually keying in data into gigantic Excel spreadsheets.

In addition to being massive time- and money-wasters, manual workflows are notoriously error-prone. IBM reports that as many as 90% of spreadsheets have errors that affect their results, and research on comparative data entry methods suggests that manual verification results in 2,958% more errors.

3. Scaling Up Is Extremely Expensive

There is only one way for lending institutions to scale their business: by expanding their customer base and approving more loan applications in less time. Traditionally, this was done by hiring more employees.

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“

Automated document collection goes beyond converting analog into digital data. It completely transforms the document handling process and reduces the need for human intervention to the bare minimum.

Continued from page 23

The problem with this approach is that human agents are incredibly expensive. They are also not that effective at increasing document processing speed.

A (somewhat) better way to boost document handling capacity was to hire a team of developers, either in-house or externally, to build a custom document collection system or invest in an off-the-shelf product.

But this was not an ideal solution, either. Developers do not exactly come cheap and building an in-house solution can take a long time. Prior to the introduction of cloud-based automation solutions, ready-to-use software was also not always up to the task.

4. Frustrated Customers Are Dropping the Onboarding Process

To this day, an overwhelming number of lenders still rely on in-person meetings, email, and, perhaps worst of all, post to collect financial documents from clients. All too often, business owners looking to apply for funding or simply open a new account are told they need to book an appointment and spend half a day traveling, waiting in lines, and filling out paperwork.

The long-handling times and document-heavy workflows with multiple touchpoints, many of which unnecessary, frustrate clients. Some end up abandoning the process altogether and resort to more flexible providers such as alternative lending institutions or tech-forward incumbents.

5. Compliance Is Eating Up a Big Chunk of the Budget

The commercial lending space is highly regulated. Keeping up with the ever-changing regulations – from Know Your Customer (KYC) to Anti-Money Laundering (AML) requirements and beyond – and staying compliant at all times eats up a lot of time, money, and human capital.

Compliance is also one of the reasons many commercial lenders hesitate to adopt new electronic solutions. They are concerned, and rightly so, about the regulatory implications.

The Benefits of Automated Document Collection

In its latest Global Intelligent Automation Survey, Deloitte reported that 78% of the surveyed executives – including CFOs and finance directors – said that their organizations were currently using some form of Robotic Process Automation (RPA). A further 16% planned to do so in the next three years.

And no wonder. Here are just some of the benefits of automating document collection in the commercial lending sector:

1. Drastically Reduced Processing Times

Automation enables lending institutions to collect financial evidence and other supporting documents more quickly than ever before. Where it once took teams days, weeks, and sometimes months to collect, review, and process client documentation, automation technologies can accelerate the application process to just a few minutes.

Automation also helps speed up time to close from what can be months to six to 13 weeks. In some cases, deals can close in under four weeks. This not only enables lenders to process more applications in less time but also frees employees up to focus on more impactful activities than pushing paper, such as revenue generation and customer service.

2. Streamlined Workflows and Optimal Use of Resources

Automated document collection effectively:

- Eliminates paper piles
- Clears inbox clutter
- Minimizes manual data entry
- Reduces the reliance on spreadsheets
- Improves file structure and organization

Lending teams no longer must sift through a never-ending drip feed of emails with different attachments just to find a single form or ask for an update. Wasting hours hunting for missing, poorly labeled, or misfiled documents is also a thing of the past.

> IBM reports that as many as 90% of spreadsheets have errors that affect their results, and research on comparative data entry methods suggests that manual verification results in 2,958% more errors.

3. Fewer Errors and Improved Compliance

The less financial services organizations rely on manual entry, the lower the potential for costly human errors. Thanks to automation, there is no need for employees to manually enter and verify important data. Because of the above-human accuracy of automation solutions, teams also do not have to go back and forth correcting errors, mistakes, and omissions across multiple spreadsheets.

Most automation solutions were also specially developed for the needs of the financial services industry. This means they are fully compliant with all relevant SOC2-Type 2 and other regulations, ensure secure document collection, and integrate seamlessly with the most commonly used internal software and CRM systems.

4. Better Customer Service

Quicker processing times and remote document collection directly translate into better customer service, higher client satisfaction, and lower dropout rates. In addition to servicing clients faster, employees have more time to answer queries, solve customer problems, and promote financial products.

5. Improved Bottom Line

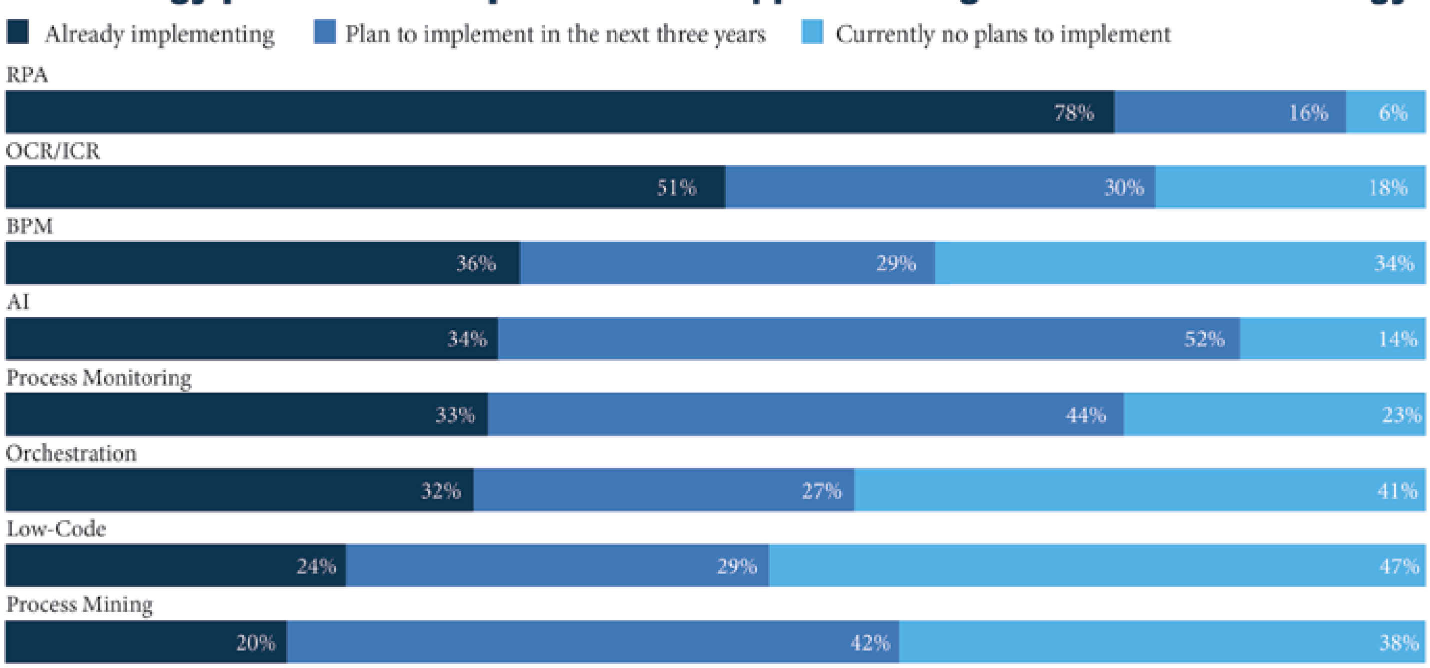
Perhaps the biggest benefit of automated document collecting is its impact on ROI. It helps save time and money on repetitive mundane tasks, makes it possible to approve more applications in less time, and spares lending institutions from having to increase their headcount just so that they can scale.

As a result, most lenders see a rapid improvement in their bottom line shortly after implementing automation into their workflows.

Automated Document Collection in Commercial Lending: Final Thoughts

While fintechs and alternative lenders were the first to embrace automation solutions, traditional banks are quickly catching up on the potential of modern technologies. To remain competitive in this highly saturated industry, commercial lenders need to start incorporating automation as soon as possible and before it is too late.

Technology portfolio of respondents to support intelligent automation strategy



Source: Deloitte anaysis

66 . . . 6 Reasons Rule 66 Receiverships Are the Mark of Ingenuity

By Lucas L. Schneider
Partner, Stinson, LLP

Recent headlines regarding conservatorships, highlighting their negative consequences which can include overbearing administrators flexing too much power over long periods of time at high expense, can unjustifiably cloud the public perception of a similar process – receiverships. But such a rush to judgment would be a misstep when a receivership is tactfully deployed, in circumstances such as insolvency or other mismanagement. Here are six reasons why establishing a Rule 66 receivership can be a creative tool to achieve a best-case goal.

1. Attain More Claims

This requires an example, which we will call the “Three Party Case.” In a recent case in Colorado, the problem confronting a real estate developer was that while its insolvent and near defunct client was cooperative and suffered damages due to the acts of a breaching third party, the developer did not have privity of contract directly with the breaching third party, that privity being necessary to support contract-based claims such as breach of contract. With the client’s poor state of affairs, the client did not have the will or means to pursue the breaching third party either. In essence, the third party unlawfully breached a critical contract with the client, causing the client to fold and terminate the real estate development, leaving the real estate developer to sort out a plan to pursue relief.

For the real estate developer to increase its chances of recovery against the breaching third party, the real estate developer needed a breach of contract claim directly against the breaching third party, which meant the real estate developer had to strategically find a way to “stand in the shoes” of the client, who no longer had officers or employees, had no other known creditors, and was effectively dissolved. Since the client was friendly and accepting of its insolvent circumstances, pursuing a default judgment against the client with an order installing a receivership over the client, for the receiver to then pursue the client’s claims against the breaching third party became the answer. The endgame was to have the

client win or settle its breach of contract claim, the client bringing in money that the receiver would then distribute to the developer. The developer *de facto* attained more claims, all because of a strategically placed receiver.

2. Cost Effective Alternative

In the Three Party Case, placing the client into federal bankruptcy was not the answer, because a bankruptcy stood to take too long, cost too much, have too many costly and regular reporting requirements, and have too many parties involved (e.g., a trustee, an actively involved judiciary). Further, the client was a non-profit, which per 11 U.S.C. § 303(a) cannot generally be placed into involuntary bankruptcy. This is where the receivership, with no costly monthly operating report requirement, no regular fee application requirement, and more manageable receivership fees versus U.S. Trustee fees, presented a significant financial advantage. The real estate developer could prearrange fees and reporting requirements, with the court's blessing, creating a budgeted, efficient process.

3. Flexibility

Another notable positive attribute of a Colorado state court receivership of a business, versus pursuing federal bankruptcy, is more flexibility in dictating the scope and process of the receivership, which contributes to the additional advantage of control over cost. Additionally, narrowing and refining the scope of the receivership orders artfully reigns in the control and power of the receiver and interested parties. Still, to the outside observer, even an efficiently run receivership can appear to be a broadly extending hydra, with its reach into every aspect and issue of the business, which can seem administratively cumbersome.

That does not have to be the case, though. To the contrary, and by the open design of Rule 66, a strategically planned receivership with narrowly tailored orders intended for specific tasks, can add a relatively inexpensive tool to a creditor's belt. Using the Three Party Case, to further create value-added efficiency, having the receiver share counsel with the real estate developer was important, because then the receiver could prosecute the subsequent suit against the breaching third party with counsel loaded with ready-to-go institutional knowledge. But conflicts could arise if other creditors sought relief against the receivership, because the receiver and the developer's counsel could not "split" duties, seeking a pot of money that could ultimately be divided then amongst multiple parties with conflicting interests.

The answer to this involved a thorough front-end investigation to determine that there very likely were no other creditors, obtaining affidavits from former client officers that there were no other creditors, and designing a portion of the receivership orders that allowed the receiver to first investigate this, and then hire the developer's counsel if the receiver reasonably determined there were no other creditors, while also having orders that extended privilege among the collective of the receiver, the developer, and the counsel for then the developer and the receiver. This well-crafted plan set the stage to cost-effectively pursue the at-fault breaching third party, now further armed with a breach of contract claim alleged by the receivership/ defunct client against the wrongdoing third party. Tools of this nature are highly unlikely to be found in the Bankruptcy Code or pass muster with the U.S. Trustee or a Federal bankruptcy judge, both of which are bound to adhere to the Bankruptcy Code.

Continued on page 28

Using the Three Party Case, to further create value-added efficiency, having the receiver share counsel with the real estate developer was important, because then the receiver could prosecute the subsequent suit against the breaching third party with counsel loaded with ready-to-go institutional knowledge.

Continued from page 27

4. You Cannot Force or File Federal Bankruptcy

We are in Colorado, so we are familiar with the fact there is and has been an industry here that our federal laws do not allow. As we learned from *In re Way to Grow, Inc.*[1], industries with even indirect business relationships to cannabis companies cannot file federal bankruptcy. But the holding of *Way to Grow* does not preclude creditors of cannabis-related companies or cannabis-related companies themselves from filing Rule 66 receiverships to administer assets and debts, distributing value in the order of priority, and obtaining something akin to discharge orders.

5. Discharge Orders

Finality, by way of ordered releases and discharge orders, is a key sought after component that one can obtain in a receivership, generally the same as in a bankruptcy. The one caveat to this is there can be challenges to a Colorado state court discharge order, or any other order in the receivership, extending to bind out-of-state parties and courts. That said, doctrines and legal concepts such as the Barton doctrine, full faith and credit, and comity may allow orders to apply broadly to parties, or receivers to seek assets in other states.[2] For example, in *Wright v. Philips*[3], a case decided by the California Court of Appeals, the court stated that:

> "Receivers appointed under a jurisdiction other than that of the state forum may be permitted to sue in a stranger state as a matter of comity only. That this privilege of comity will be extended, wherever the rights of local or domestic creditors are not prejudiced, is now the general rule in the United States."

Colorado courts, similarly, have recognized such comity, and the limits of it.[4] Ultimately, while there is law providing leverage against out-of-state creditors and parties, the best laid scheme is to investigate the existence, nature, and extent of any out-of-state creditors, assets, and claims before electing to proceed with a Rule 66 receivership, to weigh the advantages/disadvantages, and perhaps more appropriate venue.

6. Adding Value and Preventing Loss

Just as in the Three Party Case, where the client had neither the means nor drive to prosecute the client's claims, letting those claims potentially melt away, a receivership can allow a creditor to add value, where others do not care, do not see value, or are not protecting assets. Intangible or intellectual property do not stand out immediately to all as being valuable, but placed in the hands of a competent receiver with investment banker contacts and creditors angling to extract what they can, a receiver can obtain much more value beyond that seen by the debtor's abandoning officers and owners. Akin to that, officers and owners of insolvent companies may seek to have value leave out the back door, and a creditor that uses evidence of threats of theft to obtain *ex parte* orders appointing a receiver can swiftly and tactfully protect collateral's value.

Conclusion

The maxim that possession is nine-tenths of the law has its merits. Rule 66 receiverships allow creditors and claimants to possess, figuratively, a nimble, creative avenue to collect, assert claims, and close tumultuous matters, and possess, precisely, assets of a counterparty to achieve those goals. When the route to relief appears unclear, a state receivership may be the less traveled device to achieve the creditor client's objectives.

[1] ***In re Way to Grow, Inc.,*** **597 B.R. 111 (Bankr. D. Colo. 2018).**
[2] ***Herstam v. Bd. of Directors of Silvercreek Water & Sanitation Dist.,*** **895 P.2d 1131, 1134 (Colo. App. 1995) (*citing* U.S. Const. art. IV, § 1).**
[3] ***Wright v. Phillips,*** **213 P. 288, 289 (Cal. Ct. App. 1923).**
[4] ***McCague v. Dodge,*** **114 P. 648, 650 (Colo. 1911) (though denying the application of comity, finding the receiver failed to state a cause of action in using his NE court orders to control assets located in CO, of a CO corporation).**

Colorado Banker

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