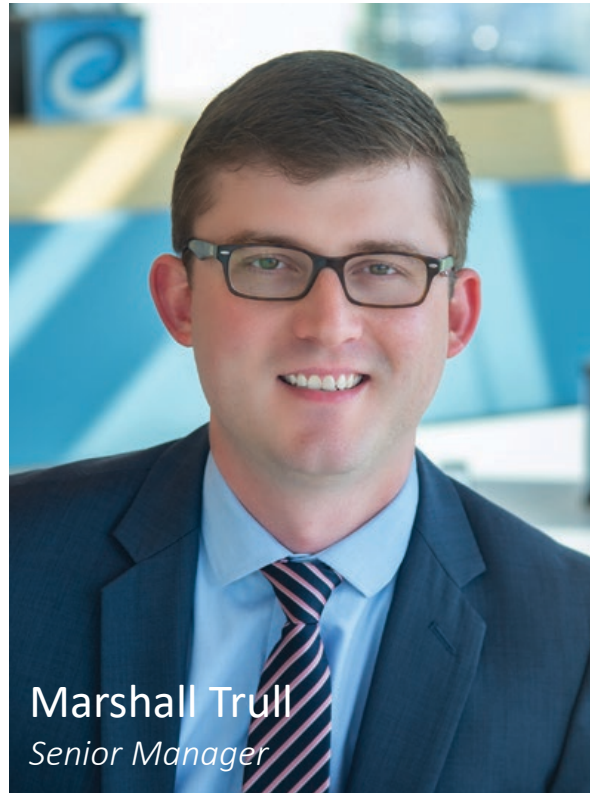


# 2022 Regulatory Hot Topics

September 15, 2022  
ACUIA – Region 2 - Annual Conference

# Today's Speakers

---



# Disclaimer

---

This material was used by Elliott Davis during an oral presentation; it is not a complete record of the discussion. This presentation is for informational purposes and does not contain or convey specific advice. It should not be used or relied upon in regard to any particular situation or circumstances without first consulting the appropriate advisor. No part of the presentation may be circulated, quoted, or reproduced for distribution without prior written approval from Elliott Davis.

# Polling Question

---

What has been your highest compliance priority for 2022?

- a) Bank Secrecy Act/Anti-Money Laundering (BSA/AML)
- b) Overdraft Protection Programs
- c) Fair Lending
- d) Another regulation not listed above

# Agenda

---

- Bank Secrecy Act (BSA)/Anti-Money Laundering (AML)
- Overdraft Programs
- Fair Lending
- Flood



# BSA/AML

---

# Recent Changes

---

- **Anti-Money Laundering Act of 2020 (AML Act)** – effective date January 1, 2021
  - Modernizes approach to fighting money laundering and terrorist financing
  - Directs FinCEN to develop national priorities
- **Corporate Transparency Act** – Notice of Proposed Rulemaking issued December 8, 2021
  - Comment period ended February 7, 2022 – they received 230 comments
  - Outlines requirements for entities to report beneficial owners directly to FinCEN

# AML Act

---

- Whistleblower Rewards and Protections
- Beneficial Ownership Registration for Entities
- Virtual Currency Inclusion
- New and Increased Penalties
- Codification of the Risk-Based Approach
- Subpoena Power Over Foreign Banks
- Streamlining SAR and CTR Reporting



# FinCEN

---

- Required to update priorities to highlight new or evolving AML/CFT threats at least once every four years
- AML/CFT Priorities
  - Corruption
  - Cybercrime – Including Virtual Currency
  - Domestic and International Terrorist Financing
  - Fraud
  - Transnational Criminal Organizations
  - Drug Trafficking Organizations
  - Human Trafficking and Human Smuggling
  - Proliferation Financing
- Will need to be incorporated into BSA Programs

# Corporate Transparency Act

---

- Overview: Requires entities to submit beneficial ownership information to FinCEN and timely access to this information be granted to law enforcement, financial institutions, and other authorized users
- Purpose: Combat shell companies
- The BOI NPRM is one of three rulemakings planned to implement the CTA –1) who may access BOI, 2) for what purposes, and 3) what safeguards will be required to ensure the information is secured and protected
- Requires revision of FinCEN's CDD rule

# Corporate Transparency Act (continued)

---

- Reporting Companies - Would be applicable to all entities that are created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.
  - This includes corporations, LLCs, LLPs, LLLPs, business trusts, and most limited partnerships.
- There are 23 types of entities that would be excluded\*. Some are listed below:
  - SEC Reporting Issuer, Governmental Authority, Bank, Credit Union, Depository Institution Holding Company, Money Transmitting Business, Broker or Dealer in Securities, Investment Company, Insurance Company,

excluded\*- these entities have to meet other stipulations outlined in the NPRM

# Corporate Transparency Act (continued)

---

- Still will report beneficial owners that meet one of the following:
  - Exercises substantial control over a reporting company
  - Owns or controls at least 25 percent of the ownership interests of a reporting company
- Reporting taxpayer identification number will be voluntary, but will have to report name, date of birth, address, and a unique identifying number from an acceptable identification document (and the image of such document)

# Corporate Transparency Act (continued)

---

- FinCEN identifier will be assigned to each beneficial owner
- Existing companies will have one year after the rule becomes final. New companies will have 14 days after their formation to file. (same for domestic and foreign)
- 30 days to file updates to their previously filed reports

# Model Validations

---

- AML Act - FinCEN required to review whether and how model validations apply to AML/CFT
- Interagency Statement issued April 9, 2021 –
  - NCUA was consulted on the guidance and participated in the Request for Information
  - Supervisory Guidance on Model Risk Management (MRMG) does not have the force and effect of law
  - The MRMG does apply to models used for BSA/AML compliance
  - Prudent risk management involves periodically reviewing and testing to ensure the model is effective, as well as independently validating the methodology and effectiveness of the model



# Polling Question

---

Have you completed a validation of your BSA/AML Model in the last two years?

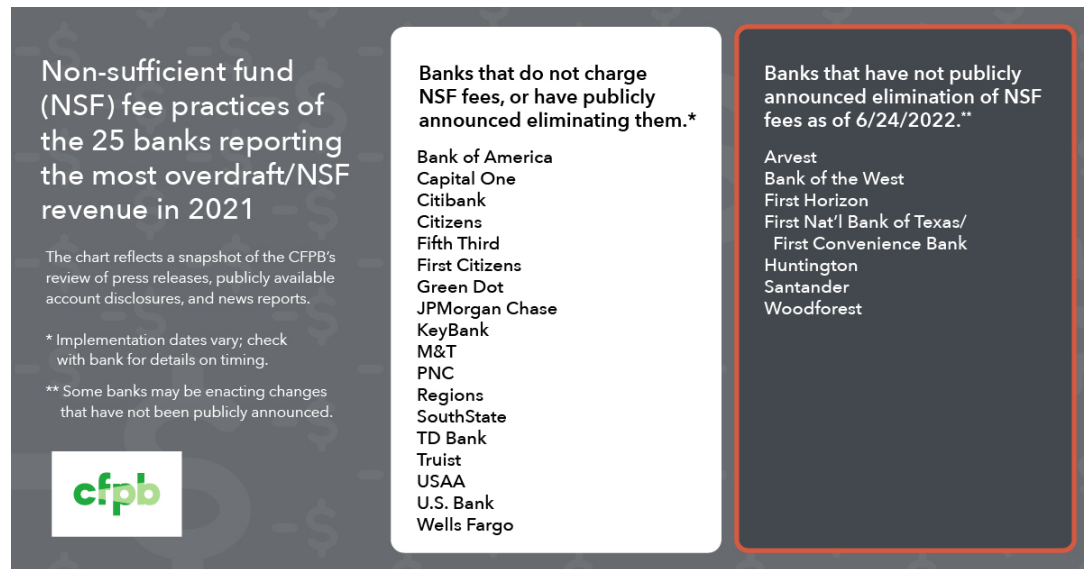
- a) Yes
- b) No
- c) We are planning to have a validation completed in the next audit cycle
- d) We do not utilize a model for BSA/AML

# Overdraft Programs

---

## Overdraft Programs

# News



AMERICAN BANKER

BANKING ▾ POLICY ▾ PAYMENTS ▾ TECH ▾ CREDIT UNIONS ▾ WORKPLACE ▾ OPINION

CREDIT UNIONS

### Pressure mounts on credit unions to cut overdraft fees

## Overdraft Fees Draw Critical Scrutiny in New Filene Report

Filene report says credit unions are re-evaluating their worth and fairness.

Forbes ADVISOR

Advisor > Banking

Ar

## Is 2021 The Beginning Of The End For Overdraft Fees?

FORTUNE RANKINGS ▾ MAGAZINE NEWSLETTERS PODCASTS MORE ▾

SEARCH SIGN IN Subscri

### Cutting overdraft fees could save Americans \$17 billion a year—but banks are slow to make changes

# CFPB Blog Post – February 10, 2022

---

- Notable trends in changes to overdraft programs include:
  - Eliminating NSF fees charged when transactions bounce;
  - Reducing the size of the overdraft fee;
  - Reducing the number of overdraft/NSF fees the financial institution can charge you each day;
  - Providing or increasing the amount your account can go negative before charging an overdraft fee;
  - Providing a grace period for you to bring the account back to positive before charging an overdraft fee; and
  - Eliminating “extended” or “sustained” overdraft fees charged when the account is not brought back to a positive balance after a certain period of time.

# CFPB – Overdraft/NSF Metrics Top 20 Banks

---

- Brief Overview
  - No overdraft fee on any transaction: 15%
  - No NSF fees: 80%
  - NSF fee amount: \$28 average
  - Daily limit on number of overdraft/NSF fees: 4 average
  - Cushion before overdraft fee is charged: \$18 average
  - Extended grace period: 59% have next day grace period, all others do not have one or it is N/A

## Overdraft Programs

# NCUA

---

- This is a focus area for 2022, with a more in-depth review coming in 2023
- Overview of NCUA webinar on March 23, 2022
  - Addressed how overdraft programs can harm members
  - Emphasized complete discontinuance of overdraft programs may not be the best fit for all credit unions
  - Encouraged credit union to offer a greater variety of loan products, including small personal loans
  - Described characteristics of members who may need more flexible options



# Responsible and Fair Overdraft Programs

---

- Overview of OCC's Attributes
  - Opt-in requirements
  - Grace periods before charging an overdraft fee
  - Allowing negative balances without triggering an overdraft fee
  - Offering balance-related alerts
  - Linking accounts
  - Providing access to real-time balance information
  - Allowing items to post or clear before collecting an overdraft fee
  - Avoid charging separate and multiple overdraft fees in a single day and not charging additional fees when an item is re-presented

# Polling Question

---

Has your Credit Union considered eliminating or reducing overdraft or NSF fees?

- a) Yes
- b) No
- c) I'm not sure or haven't heard of any discussions

# Fair Lending

---

# CFPB Updates

---

- May 2022 - Advisory Opinion on Revoking or Changing the Terms of Existing Credit Arrangements
  - Clarification of ECOA
    - Continues to protect borrowers after they have applied for and received credit
    - Requires lenders to provide “adverse action notices” to borrowers with existing credit

# CFPB Updates

---

- June 2022 - Consumer Credit Trends – Credit Card Line Decreases
  - Majority (67%) of decreased credit lines were not linked to recent credit card delinquencies
  - Credit line decreases led to dramatic (75%) reductions in available credit
  - Utilization rates increased
  - Credit scores decreased

# CFPB Updates

---

- May 2022 - 2021 Fair Lending Annual Report
  - Risk based prioritization
    - Mortgage lending and pricing
    - Small business lending
    - Student loans
    - Redlining
    - Use of artificial intelligence and machine learning models



# CFPB Updates

---

- May 2022 - 2021 Fair Lending Annual Report
  - Common Violations
    - Discrimination on a prohibited basis – Spousal signatures
    - Failure to evaluate married and unmarried applicants by the same standards
    - Failure to provide timely adverse action notices
  - NCUA referred two ECOA matters to the DOJ, both involving discrimination on the basis of age

# COVID-19 and Fair Lending Risks

---

- Loan Deferrals / Modifications due to COVID-19 are likely to be reviewed for fair lending risks
- Loan denials related to PPP lending or COVID-19 related denials should be reviewed to ensure denials are properly supported and adverse action notices were provided in a timely manner
- PPP lending risks associated with additional requirements imposed by institutions that are above and beyond CARES Act and SBA requirements (some institutions required the opening of a deposit account if the member did not already have accounts with the Credit Union)
- Member complaints should be properly monitored and analyzed considering all sources (written complaints, social media, phone calls, in-person...etc.)

# Polling Question

---

Have you utilized any data analytics internally to conduct fair lending reviews?

- a) Yes, we utilize a specialty fair lending software
- b) Yes, we utilize PowerBI, Tableau, etc.
- c) No, we utilize only Excel or complete our reviews manually
- d) We outsource all of our fair lending reviews

# Flood

---

# Q&A Update - Background

---

- May 2022 – 144 Final Q&As issues
  - Includes 24 new proposed private flood Q&As
  - Updated to reflect comments received on July 2020 initial proposal
  - 19 individual categories provide easier flow and easier future revisions

## Flood

# Q&A Update – What's New

Topic	Q&As	New	Revised	No Change
Applicability	15	5	6	4
Exemptions	7	1	6	-
Mandatory	9	9	-	-
Discretionary	4	4	-	-
Private Flood Compliance	11	11	-	-
SFHDF	4	-	1	3
Fees	2	-	-	2
Zone	3	1	2	-
Notice	7	-	2	5
Amount	10	1	5	4
Construction	6	1	3	2
Condo and Co-op	10	2	-	8
Other Security Interests	12	2	2	8
Escrow	7	5	2	-
Escrow Small Lender Exception	7	7	-	-
Escrow Loan Exceptions	5	3	2	-
Force Placement	16	10	4	2
Servicing	7	5	2	-
Penalty	2	-	1	1
<b>Total</b>	<b>144</b>	<b>67</b>	<b>38</b>	<b>39</b>



## Flood

# Q&A Update - Topics

---

- Escrow of flood insurance premiums
- Detached structure exemption
- Force placement procedures
- Private flood insurance

# Resources

---

## BSA/AML

- FFIEC BSA Manual – [bsaaml.ffiec.gov/manual](https://bsaaml.ffiec.gov/manual)
- NCUA's 2022 Supervisory Priorities (22-CU-02) – <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2022-supervisory-priorities>
- Anti-Money Laundering Act of 2020 and Corporate Transparency Act Resources by FinCEN– [fincen.gov/anti-money-laundering-act-2020](https://fincen.gov/anti-money-laundering-act-2020)
- NCUA's Model Validation RFI Announcement - <https://www.ncua.gov/newsroom/press-release/2021/agencies-issue-statement-and-request-information-bank-secrecy-act-anti-money-laundering-compliance>

## Overdraft Programs

- CFPB Comparing Overdraft Fees and Policies Across Banks – <https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/>

# Resources

---

## Overdraft Programs (continued)

- CFPB Overdraft/NSF Top 20 Banks Metrics Chart – [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-chart\\_2022-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-07.pdf)
- OCC's Attributes of a Responsible and Fair Overdraft Program - <https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf>
- NCUA Webinar March 23, 2022 - <https://www.ncua.gov/news/events/2022/ncua-overdraft-protection-programs-webinar>

## Fair Lending

- 2021 CFPB Fair Lending Report – [https://files.consumerfinance.gov/f/documents/cfpb\\_2021-fair-lending\\_report\\_2022-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2021-fair-lending_report_2022-05.pdf)
- FFIEC Fair Lending Examination Procedures - <https://www.ffiec.gov/pdf/fairlend.pdf>

## Flood Insurance

- 2022 Interagency Flood Insurance Q&As– <https://www.ncua.gov/files/press-releases-news/interagency-flood-insurance-qa-may-2022.pdf>



The leading accounting firms of Elliott Davis, LLC and Whitley Penn LLP will join forces and merge to form **Elliott Penn LLP** effective **January 1, 2023**. By proactively bringing our firms together, Elliott Penn will leverage the strengths of both firms and will have a larger national presence as a Top 25 firm with a broader market recognition. You will continue to work with the professionals identified in this proposal with additional depth and experience in our team to grow with us. Our commitment to providing excellent customer service stands and the impact of this merger adds to the strength of our commitment.

# STAY IN TOUCH

---

Marshall Trull, CPA, CRCM  
Senior Manager

marshall.trull@elliottdavis.com  
704.808.5279

Jennifer Bledsoe, CAMS  
Manager

jennifer.bledsoe@elliottdavis.com  
615.786.7928

[elliottdavis.com](https://elliottdavis.com)





500 East Morehead Street  
Suite 700  
Charlotte, NC 28202

**Direct:** 704.808.5279

**Office:** 704.333.8881

[marshall.trull@elliottdavis.com](mailto:marshall.trull@elliottdavis.com)

## Marshall Trull, CPA, CRCM

Senior Manager

**Services:** Assurance | **Emphasis:** Financial Services

### Professional Overview

Marshall provides accounting and assurance services to clients in the financial institution industry sector. Marshall has worked with de novo financial institutions as well as both private and public financial institutions ranging in size from \$100 million to more than \$10 billion in assets. Marshall's external audit experience includes institutions subject to SOX 404 and FDICIA requirements.

Marshall's internal audit experience also includes private and public institutions, and his specialties include development and testing of internal controls over financial reporting, regulatory compliance, and other consulting services including performing Bank Secrecy Act and Anti-Money Laundering reviews.

### Education, Credentials, and Special Training

Certified Public Accountant, North Carolina

Certified Regulatory Compliance Manager, American Bankers Association

Regulatory Compliance School, American Bankers Association

Regulatory Compliance School, North Carolina Bankers Association

M.S., Accounting, North Carolina State University

B.A., Accounting, Furman University

### Professional Affiliations

American Institute of Certified Public Accountants

North Carolina Association of Certified Public Accountants

Association of Credit Union Internal Auditors



341 Cool Springs Boulevard  
Suite 340  
Franklin, TN 37067

**Direct:** 615.786.7928

**Office:** 615.790.0542

[jennifer.bledsoe@elliottdavis.com](mailto:jennifer.bledsoe@elliottdavis.com)

## Jennifer Bledsoe, CAMS

Manager

**Services:** Assurance | **Emphasis:** Financial Services

### Professional Overview

Jennifer provides audit services to financial institutions with a focus on financial crimes and regulatory compliance. Her experience includes Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) compliance, BSA/AML model validations, deposit and loan compliance, fair lending analysis, and second-line defense consulting.

Prior to joining Elliott Davis, Jennifer worked for a large federal credit union for 11 years. She held an internal audit position and a compliance position separately, where she learned compliance and internal controls are pivotal to a credit union's success. Although Jennifer has experience in multiple areas, she has years of firsthand experience in complying with BSA/AML requirements and implementing practical processes to mitigate compliance risk.

### Education, Credentials, and Special Training

Certified Anti-Money Laundering Specialist

B.A., Mathematics, Maryville College

### Professional Affiliations

Association of Credit Union Internal Auditors

American Institute of Certified Public Accountants

Association of Certified Anti-Money Laundering Specialists



# Thank You!

---