

Issues & Answers



August 2023

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Heading into Advocacy Season



By Glen Simecek, President and CEO, Washington Bankers Association

As we bask in a string of warm, sunny days, it might be hard to remember that fall is just around the corner.

The coming season means different things to

different people. It represents the annual rush of back-to-school activities for teachers, students, and parents. To sports fans, it means the return of football to local stadiums and televisions. And to those with a specific brand of sweet tooth, it's time to celebrate the reappearance of their beloved pumpkin spice lattes.

But to those of us at the Washington Bankers Association, fall means ramping up our advocacy efforts. I've said before that advocacy doesn't have an offseason, that it's a year-round game. That's still true, but it's equally true that some periods of the year are more focused than others. While the annual legislative session is the most

obvious, the months leading up to our time in Olympia are just as important.

That's why I hope you will try to join us at one – or several – of our annual Legislative Roundtables in September and October. We will hold seven sessions between September 12 and October 5 in Seattle, Tacoma, Bellevue, Spokane, Mt. Vernon, Kennewick, and Vancouver. For a full schedule and the registration form, email Megan Managan at megan@wabankers.com.

I can't overstate these sessions' importance in helping us build stronger personal relationships with legislators. Our lobbying team does a great job of representing our industry's interests on many issues, but lawmakers want to get to know and listen to their constituents.

You never really know what will provide a meaningful connection. Maybe you're alumni of the same college. Or your kids play on the same soccer team. Or you share a hobby. Whatever it is, the informal conversations at these roundtables are critical in building and solidifying relationships that can be important during the heat of a legislative battle.

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The official publication of the Washington Bankers Association is sponsored by Vericast and WBA Professional Services.

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Of course, the Roundtables are about much more than just small talk and relationship-building. They're also our first chance to hear and react to what our elected officials see as their top priorities in the legislature and to present our priorities for the coming session.

In other words, the sessions pack a lot of substance and socialization into less than three hours of your time. After several years of virtual sessions and last year's initial return to in-person gatherings, we expect a full complement of legislators, so we must have strong banker representation at these meetings. I urge you to attend.

In preparation for these roundtables, our Government Relations Committee will host its annual legislative priorities discussion on Wednesday, August 9. This is our opportunity for the Committee to weigh in and help set the course for our legislative discussions this fall and into the 2024 session. We know that many issues will carry forward from past years: opposing new taxes that will negatively impact our industry and our customers; opposing the creation of a state bank that would compete with tax-paying financial institutions; ensuring that any new privacy legislation fully exempts banks in recognition of the federal regulatory requirements imposed under the Gramm-Leach-Bliley Act. But we also want to identify emerging issues of concern or areas of opportunity. Input from the Committee helps us identify issues in neighboring states that are gaining traction and be prepared for potential surprises come January.

Of course, Olympia isn't the only venue for our advocacy efforts. We also have to focus on "the other Washington." So you're invited to join us for our annual Pacific Northwest Capitol Hill Visit, October 16-18. This is an excellent opportunity to hear directly from members of our Congressional delegation, federal regulators, and representatives of our national trade associations like the American Bankers Association and the Independent Community Bankers Association. For more information, visit <https://www.eventleaf.com/Attendee/Attendee/EventPage?eId=cBGiBHC3rNJSKvLfyqfL-BQ%3D%3D>.

Finally, I'm excited to report that we have a new tool to support our dealings with state and federal officials. We recently contracted with Voter Voice, an easy-to-use tool that allows our members to communicate directly with lawmakers. From time to time, you will receive an email from us through Voter Voice, asking you to send a message to your elected representatives to support our position on a piece of legislation. You just need to click a button, and a pre-loaded email is sent. Of course, you can also customize your message if you'd prefer. So far, most of our Voter Voice activity has focused on national issues like the Credit Card Competition Act. Still, as the state Legislature convenes in January, we know it will be an increasingly important tool in our advocacy toolbox.

Advocacy season is getting underway. We need you on the team!

Contact Us

Contact the Washington Bankers Association at 601 Union Street, Suite 1720, Seattle, WA 98101

Call us at (206) 447-1700 and visit us on the web at wabankers.com.

Connect With Us

Connect with the WBA online by following us on our social media accounts.

On the Cover

Sun shines through the trees at Falls Creek Falls, located in southwestern Washington.

Photo courtesy of Kait Evensen, USDA Forest Service, Flickr

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Association

Partners in the Fight Against Elder Abuse



By Rob Nichols, President & CEO, American Bankers Association

Earlier in June, we observed World Elder Abuse Awareness Day (WEAAD) — a day intended to call attention to the pervasive and worsening problem of elder abuse, including financial exploitation.

According to a 2022 FinCEN advisory, elder fraud scams affect at least 10% of older adults in the U.S. annually. But because fraud and scams are often significantly underreported, it means that the actual percentage of victims is likely much higher.

Elder financial exploitation generally falls into one of two categories. The first is elder theft, in which a trusted individual like a family member or caregiver, steals from an older person by forging checks, stealing retirement or Social Security benefits, using credit cards or bank accounts without permission, or other means. The second is elder scams—in which a stranger succeeds in coercing an older adult into transferring money to them through tech support scams, romance scams, or other impostor scams.

Seniors are often targeted for their accumulated wealth, and these scams can be financially and mentally devastating to the victims. In fact, the average loss per older adult was just over \$35,000 in 2022, according to the FBI's Internet Crime Complaint Center. In worst cases, seniors may lose their life savings or their homes.

That's why it's critical for bankers—who are on the front lines in the fight against elder financial exploitation —to have a solid understanding of the red flags that can signal when an older customer is potentially being exploited. This might look like an older customer making sudden or unusual

changes to their account like adding new contacts located overseas, making uncharacteristic attempts to wire large sums of money, or seeming fearful of or submissive to a caregiver or family member.

This year, the ABA Foundation has partnered with the FBI to create a new guide for bankers to help them recognize, respond and report suspected elder financial exploitation to the proper authorities. The guide outlines red flags, provides steps bankers can take if elder abuse is suspected and includes a list of agencies and other partners that can provide additional resources.

The ABA Foundation also offers its popular Safe Banking for Seniors program—a free national program that provides bankers with helpful tools and resources to connect with their local communities to discuss topics like avoiding scams, preventing identify theft, choosing a financial caregiver and more. Any bank in the country, member or non-member, can access these free resources by registering at [aba.com/Seniors](https://www.aba.com/Seniors). You can also access a comprehensive list of resources for older Americans at [aba.com/OlderAmericans](https://www.aba.com/OlderAmericans).

Finally, ABA continues to support the fight against fraud more broadly through its award-winning [#BanksNeverAskThat](https://www.aba.com/BanksNeverAskThat) campaign. The consumer-facing awareness campaign aimed at educating the public about the types of information banks would never ask them to disclose over the phone or via text or email will be back this fall, complete with updated resources.

Check it out at [aba.com/BanksNeverAskThat](https://www.aba.com/BanksNeverAskThat) and register to join the more than 2200 banks across the country doing their part to protect their customers.

We observed World Elder Abuse Awareness Day on June 15—but working to protect seniors from financial exploitation is an ongoing responsibility for all bankers.

2023

VIRTUAL FINANCIAL TECHNOLOGY & SECURITY CONFERENCE

Featuring futurist Brett King, Ron Shevlin on AI tools for banking, and the popular Buzz Sessions!

Register online at [wabankers.com/fintech](https://www.wabankers.com/fintech)

Registration Open for 2023 Legislative Roundtables

Building relationships with your local lawmaker has never been more critical, so you and your team need to attend one of the upcoming WBA Legislative Roundtables this fall.

The roundtables allow bankers to learn about the issues facing the industry and to share with lawmakers how the policies crafted in Olympia impact the business industry and local communities.

The event includes a briefing about the 2023 Legislative Session with WBA Lobbyists Trent House and Carrie Tellefson and a look at what we expect for 2024, including the election and local issues to watch. Following the briefing, lawmakers will join us for lunch.

We encourage you to invite senior management from

Legislative Roundtable Schedule

September 12	Tacoma	Heritage Bank Ops Center
September 13	Seattle	Union Square Conference Center
September 14	Mt. Vernon	Swinomish Casino & Lodge
September 18	Kennewick	SpringHill Suites
September 19	Spokane	Spokane Convention Center
October 4	Bellevue	Crossroads Community Center
October 5	Vancouver	Vancouver Hilton

your bank to each roundtable location and share this information if you have branches in several regions.

If you have questions, please get in touch with Megan Managan at megan@wabankers.com or (206) 344-3472.

Pacific Northwest Capitol Hill Visit

SAVE THE DATE!

October 16-18, 2023

Mayflower Hotel | Washington, D.C.

Make your lodging reservations by calling the Mayflower Hotel at 877-212-5752 and referencing the Idaho, Oregon and Washington Visit to get the discounted rate of \$359.

Meet with members of Congress

Hear from regulators and national associations

Network with your Pacific Northwest peers

Registration Now Open! [Click here for more information.](#)

2023 CREDIT & LENDING CONFERENCE

SEPTEMBER 7-8

WASHINGTON ATHLETIC CLUB

Register online: wabankers.com/credlend/



Revamped RBMDP Launches in October

In keeping with the WBA's education mission, we are excited to announce the launch of our recently revamped Virtual **Retail Branch Manager Development Program** (RBMDP). This innovative program will change how branch managers are trained and prepared for success in the dynamic world of modern banking.

In response to the ever-changing landscape of the banking industry, the WBA recognized the need to adapt its training programs to better align with the digital age. Based on feedback from WBA Retail Sales Committee members, including bankers across the region, the updated RBMDP seeks to equip branch managers with the necessary skills and expertise to navigate the challenges and opportunities presented by the digital revolution.

Interactive Virtual Learning Environment: At the core of the revamped program is an interactive virtual learning environment designed to provide participants with a comprehensive and immersive learning experience. Leveraging cutting-edge technology, the program takes learners through realistic scenarios, simulating day-to-day branch operations and customer interactions. Participants can apply their knowledge in a risk-free environment, gaining confidence and proficiency in handling various banking situations. This hands-on approach fosters critical thinking, decision-making, and problem-solving skills, which are essential for effective branch management.

Comprehensive Curriculum: The RBMDP offers a well-rounded curriculum that covers a wide range of topics crucial to successful branch management in the digital age. Key areas of focus include:

- **Digital Banking Solutions:** Understanding and effectively utilizing the latest digital banking tools and platforms to enhance customer experience and streamline operations.
- **Customer Engagement:** Developing strategies to engage and retain customers in an increasingly competitive market while delivering personalized and exceptional service.
- **Data Analytics:** Leveraging data-driven insights to identify trends, anticipate customer needs, and make informed business decisions.
- **Compliance and Risk Management:** Navigating the

Registration is Now Open for 2024 EDP

Registration for the 2024 Executive Development Program starting in January, is now open.

This comprehensive 12-month program was designed to cultivate the next generation of bank leaders. It is ideal for anyone aspiring to take the next step in their career and an excellent opportunity to invest in strong leaders.

EDP covers all aspects of running a bank and features a one-on-one mentorship program, pairing students with executives from within their organization to further student learning.

Over 400 students from Washington, Idaho, Oregon, Utah, Montana, and California have benefited from this program, graduating with increased knowledge of banking and all financial institution functions. Over half have been recognized and promoted within their organizations, including several roles within the C-Suite.

To learn more, visit www.wabankers.com/edp.

regulatory landscape and implementing best practices to ensure compliance and mitigate risks.

- **Leadership and Team Management:** Cultivating leadership skills to motivate and inspire teams for peak performance and professional growth.

Flexibility and Accessibility: One of the primary advantages of the RBMDP is its flexibility and accessibility. As a virtual program, branch managers can participate from various locations without travel, reducing branch staff burdens. The program's design also accommodates a variety of learning styles, ensuring an inclusive and enriching experience for all participants.

Industry Expert Instructors: To ensure the highest quality and relevance, the RBMDP is led by seasoned industry experts with a wealth of experience in banking and financial services. These instructors bring a deep understanding of the challenges branch managers face in the digital era, providing valuable insights and practical advice throughout the program.

For those seeking to enhance their managerial

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Events Calendar

August 7 – Virtual Commercial Lending Development Program

August 7-8 – Virtual Compliance & ERM School

Sept. 7-8 – Credit & Lending Conference, Washington Athletic Club

Sept. 14 – Virtual Credit Analyst Development Program

October 12 – Virtual Retail Branch Manager Development Program

October 23-24 – Virtual Financial Technology & Security Conference

October 30 – Virtual Understanding Bank Performance

January 23, 2024 – Executive Development Program

To register or to learn more about any of the listed events, please visit www.wabankers.com/calendar.

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prowess and lead their teams to success in an increasingly digital world, the RBMDP presents a unique opportunity. As the banking industry continues to evolve, the WBA remains steadfast in its commitment to empowering professionals and elevating the standards of excellence across the sector.

Interested individuals can visit the program's website at wabankers.com/rbmdp/ for more information and registration details.

This fall, the WBA has two conferences planned featuring nationally-recognized speakers covering various topics, such as Chat GPT in finance, digital lending, and the industry's future.

The **2023 Credit & Lending Conference** will be held September 7-8 at the Washington Athletic Center in downtown Seattle.

The agenda includes Cornerstone Advisor's Chief Research Officer Ron Shelvin, who will cover Chat GPT and other AI tools, how some banks use it, and ways to consider implementing this new technology.

The event will also feature Jorge Sun, the co-founder of Lending Front. He will share his expertise on the latest lending and credit underwriting trends. With over a decade of experience in the fintech industry, Jorge has been instrumental in developing innovative lending technologies that have revolutionized lending institutions' operations.

Other sessions at the conference will include a regulator update and plenty of time for networking with fellow industry professionals.

In honor of Cybersecurity Awareness Month in October, we will host the **Virtual Financial Technology and Security Conference** on October 23-24.

This year's agenda includes future Brett King. As the founder and CEO of Moven, a mobile banking startup changing how people manage their money, Brett will share his thoughts on the future of financial services, including the role of artificial intelligence, blockchain, and other emerging technologies.

Shelvin will also speak about AI tools at the conference, and the popular Buzz Session format will feature subject matter experts during the roundtable format, providing time for bankers to ask questions and learn from each other.

WBA also offers a virtual session of the **Credit Analyst Development Program** this September.

The CADP will begin in mid-September. It is ideal for new and experienced analysts to better understand their role in the industry and organization while providing skills needed for all economies.

This program is designed to equip credit analysts with the skills, knowledge, and connections they need to excel in their roles. Over the course of the program, you will engage in interactive sessions led by top experts in the field, covering topics such as financial analysis, credit risk assessment, loan structuring, and more.

Whether you're a seasoned credit analyst or just starting in the field, this program is designed to help you grow and develop. You'll learn from top experts in the field and have the opportunity to apply your knowledge in real-world scenarios.

After the success of its April and July classes, the WBA is hosting another virtual session of the **Understanding Bank Performance** program starting in late October.

This eight-session program will start on Oct. 30 and help bankers of all levels understand bank performance; students will learn to assess and analyze a bank's financial performance using real data. Relevant for directors, solution providers, or anyone the bank works with to provide a foundation of industry knowledge, students will become familiar with balance sheets and income statements and learn how to apply key performance metrics to data in those documents. The program will finish with students going through a proforma capstone.

Please visit the WBA website at www.wabankers.com for more information about registration for our upcoming programs.

Industry News

New Hires

Jake Mast
Vice President and Relationship Manager at Washington Trust Bank

Aaron Hannon
Vice President and Relationship Manager at Washington Trust Bank

Esperanza Espinoza-Alonzo
Assistant Vice President Regional Operations and Client Service Manager at Washington Trust Bank

Albert Lau
Business Banker at Seattle Bank

Denise Levels
Universal Banker at Olympia Federal Savings

Kelli Yoder
Universal Banker at Olympia Federal Savings

Janae Thomas
Customer Service Representative at Olympia Federal Savings

Krista Montes
Commercial Loan Officer at Sound Community Bank

Julia Larson
Relationship Banker at First Fed Bank

Promotions

Kristy Dickson
Senior Area Retail Leader at KeyBank

Stephanie Nicklaus
Chief Credit Officer at 1st Security Bank of Washington

Tiffany Blair
Vice President and Commercial Banking Officer at Peoples Bank

Erika Fraizer
Branch Manager at Olympia Federal Savings

Retirements

Greg Swanson
Commercial Loan Officer at Mountain Pacific Bank

Robert Fuller
Chief Credit Officer 1st Security Bank of Washington

Have Industry News to share with WBA? Email megan@wabankers.com or call (206) 344-3472.



First Fed Bank Welcomes Another Club 100 Member

This summer, First Fed Bank announced that Lori Larson joined the bank's Club 100, honoring bankers who have volunteered over 100 hours that year.

Larson volunteers as the board treasurer for the Sequim Irrigation Festival, the longest-running festival in the state, and helps out at many local events in the community.



Baker Boyer Bankers Volunteer at Local Park

Members of the Baker Boyer Bank team volunteered recently at a park, helping to beautify the area.

The group worked at the new playground at Fort Walla Walla Park, spreading woodchips.



Mountain Pacific Bank Hosts Shred Day in Burlington

Mountain Pacific Bank hosted its second to last Shred Day of the year in Burlington.

The event allowed local customers and residents to destroy sensitive documents safely.

The bank's final Shred Day of the year will be held at its Lynnwood branch on September 30.

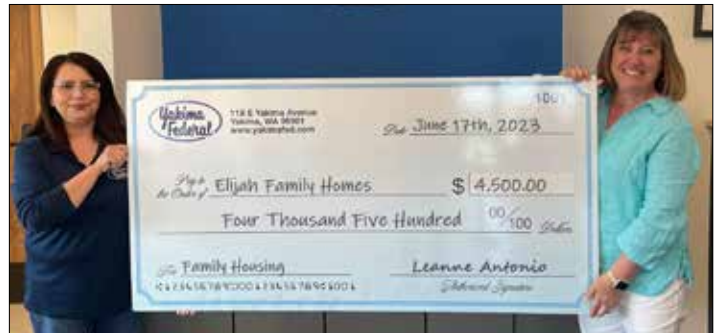


Kitsap Bank Donates to Port Townsend Film Festival

Kitsap Bank announced this summer a donation to the Port Townsend Film Festival.

The bank donated \$7,500 to the organization, which puts on its annual festival at the end of September, welcoming over 2,000 attendees and 30 filmmakers to enjoy over 50 films.

The PTFF also hosts events throughout the year, such as Backyard Movies and Women & Film.



Yakima Federal Savings & Loan Donates to Elijah Family Homes

In mid-June, Yakima Federal Savings & Loan announced a donation to Elijah Family Homes in Richland.

The \$4,500 donation will help the organization continue to work with families in Benton and Franklin Counties to have the opportunity to contribute to the community by being self-sufficient and stably housed, regardless of their substance abuse history.



Washington Trust Bank Supports Summer Community Events

This summer, members of the Washington Trust Bank Crew in Blue were out in force throughout the state, supporting community events in various ways.

In Bellevue, Wealth Management and Advisory Services team

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members hosted a workshop for nonprofit partners focused on cybercrime, cybersecurity, and fraud prevention.

In Spokane, the bank sponsored the annual Bourbon, Bacon, and Brews event and also volunteered, helping to raise money for Teen & Kid Closet, a nonprofit that provides free new and used clothing to needy children.

The bank participated in the 2023 Greater Vancouver Chamber golf tournament in Southwest Washington. It brought together business professionals from around the area to network and learn.

In Western Washington, the bank sponsored Housing Hope's annual fundraiser Stone Soup. The event raised over \$360,000 to help families experiencing homelessness and poverty access affordable housing and support services.



JPMorgan Chase Volunteers at Kin On Community Center

Seattle JPMorgan Chase team members recently volunteered at Kin On Community Center, providing an elderly financial literacy workshop.

The group learned to protect themselves from identity theft, financial scams, and exploitation.

The bank plans another series of classes in the fall with the Community Center.



Community First Bank Earns United Way Award

Community First Bank was named the 2022 Small Business Partner of the Year and earned the Cornerstone Award from the United Way of Benton & Franklin Counties.

The awards were announced at the organization's annual Spirit of Philanthropy Breakfast.

The bank regularly supports United Way events, including Bikes for Tikes and Festival of Trees.



HomeStreet Bank Donates to St. Martin's University Golf Classic

HomeStreet Bank announced it was donating to Lacey-based St. Martin's University for its annual golf tournament this summer.

The St. Martin's University Golf Classic supports the student-athletic scholarship fund, and the bank made a \$1,000 donation.



Kitsap Bank Supports North Kitsap Fishline

In July, Kitsap Bank announced a donation to longtime partner, North Kitsap Fishline.

The \$2,500 donation was for the organization's Food for Thought program, which provides food to kids in grades K-12 on weekends when they may not otherwise have access to nutritious options.



Community First Bank Announces Scholarship Recipient

In late July, Community First Bank and the 3 Rivers Community Foundation announced the recipients of the 2023 Richard C. Emery Business and Finance Scholarship.

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James Harrison earned the honor that goes to Benton or Franklin Counties students interested in business, finance, economics, or accounting.

The scholarship honors Richard C. Emery, a former president and CEO of the bank.



KeyBank Washington Earns SBA Honor

KeyBank in Washington was recognized by the Small Business Administration for the smallest loans valued at \$350,000 or less during the fiscal year 2022 in the Washington Congressional District 9.

The award was presented to the bank's Renton Highlands branch.

"Small business is the backbone of a thriving community, which is why we dedicate so many resources and talented teammates to support these business owners," said Derek Pender, KeyBank Regional Retail Leader for Washington and Alaska. "We are humbled to receive this honor by the SBA and appreciate their partnership."

Washington Trust Bank Donates to Parkview Services

Washington Trust Bank announced a \$10,000 donation to Parkview Services in late July.



The nonprofit, based in Lynnwood, helps people with intellectual and developmental disabilities with housing, offering inclusive housing solutions and providing resources.

The bank's Seattle team presented the donation to help Parkview continue its work.



Kitsap Bank Volunteers at Tacoma/Pierce County Habitat for Humanity

This summer, members of the Kitsap Bank team volunteered with the Tacoma/Pierce County Habitat for Humanity.

The group helped a building project at Madison Meadow, working on building a fence, cleaning around the project, and laying paper.



Virtual Understanding Bank Performance

No one ever failed by being really good at the fundamentals

Next session begins Oct. 30!

Learn more and register at wabankers.com/ubp

WBA Endorsed Vendor: Vericast

Safeguarding Your Customers' Financial Security with Advanced Fraud Prevention Techniques

By Michael Rutledge, Vice President, Payments Product Management, Vericast

In an era dominated by the steady march toward cashless transactions, the relevance and importance of traditional payment methods like checks cannot be underestimated. They still hold an integral position in our financial landscape – a fact known all too well by fraudsters.

With increasing digitization, check order fraud has emerged as a significant concern. This type of fraud occurs when individuals other than the account holders order checks to be delivered to a different address. The unfortunate reality is that such actions, if not detected quickly and addressed immediately, can cause substantial financial damage.

Innovating Fraud Prevention

Vericast offers a comprehensive solution to stop check fraud before it starts. Using an advanced fraud prevention system integrated into its check ordering platform, Vericast combats check order fraud in real time. This method ensures that secure transactions are the norm, not the exception.

Real-Time Scoring and Assessment

Vericast employs a blend of cutting-edge technology and consortium data to score check order sessions through our direct consumer-facing ordering channel. The scoring process, done in real time, doesn't require any additional information from the customer that is not already part of the check order process. The system analyzes a variety of data points from the check order session, including email account age, online activity, proxy detection, and more.

Leveraging Digital Identity Assessment

A significant aspect of Vericast's advanced fraud prevention is the use of digital identity assessment. As a member of a global consortium, Vericast has access to crowdsourced intelligence from numerous sectors. This pooled knowledge allows the system to detect potential fraud attempts, not only from new customers but also from existing account holders who might be trying to alter their shipping locations. The system's efficiency is further boosted by considering known fraudulent devices across retailers, leading to enhanced accuracy in fraud detection.

Three-Level Fraud Mitigation

This preventative system operates on three distinct levels for maximum efficiency:

- Level 1: Device level validation ensures the legitimacy of the device used for placing the check order.

- Level 2: Traditional ID verification confirms the accuracy of the customer's identifying information.
- Level 3: Fraud consortium data leverages shared risk data from consortium members, potentially identifying first-time offenders before they commit fraudulent acts.

Streamlining and Ensuring Security

Upon the evaluation of these factors, the system generates a risk score for each order, which determines whether an order passes or fails. The score is derived from over 500 real-time authentications, ensuring that orders are analyzed thoroughly and accurately. For orders that fail, customers are directed to contact their financial institution for further assistance, providing a streamlined, user-friendly process.

Discreet Operation for User Trust

One of the standout features of Vericast's system is its discreet operation. While it employs complex algorithms and advanced tech in the background, it does not necessitate requesting sensitive customer data for validation purposes. This aspect not only adds a layer of convenience for the user but also builds trust in the system's operations.

Continuous Improvement for Future-Proofing Fraud Prevention

In addition, Vericast's system is built on the principle of continuous improvement. When a potential fraudulent order is detected, the information is securely shared within the fraud prevention consortium, fostering a collaborative effort to stay ahead of evolving fraud schemes. This evolving nature of the system ensures its robustness and responsiveness to emerging threats, maintaining optimal fraud prevention measures.

Looking Ahead in Financial Security

Check order fraud is an issue that we must tackle head-on to secure our financial transactions. Vericast's advanced fraud prevention system exemplifies a potent combination of technology and shared intelligence, working in tandem to deliver a safe, reliable, and user-friendly process.

In a world where the rate of fraud seems to grow as quickly as the pace of technological advancement, solutions like Vericast's are invaluable tools in protecting our financial security.

Learn more by downloading our brochure, "Stopping Check Order Fraud: Secure Check Order Process with Vericast."



Thank You to

VERICAST

FOR SPONSORING ISSUES & ANSWERS

UCC Article 12 - Coming to a State Near You?



By Theo Kelly, Associate General Counsel, Compliance Alliance

In 2022, the Uniform Law Commission (ULC) introduced amendments to the Uniform Commercial Code (UCC), including a new Article 12 (UCC-12). Already introduced in over 29 states, this new Article seeks to govern certain transfers of Controllable Electronic Records (CERs).

The 2022 amendments also updated Article 9 to contemplate the perfection of security interests for digital assets. So far, these amendments have been enacted in seven states: Alabama, Colorado, Indiana, Nevada, New Mexico, North Dakota, and Washington.

The federal government has not yet created a legal framework for digital assets, although the Basel Committee on Banking Supervision (BCBS) did introduce its Prudential Treatment of Cryptoasset Exposure guidance late last year. It may be many years before banks see legislation enacted by the federal government, and potentially years longer until a regulatory framework is in place (think of the substantial delays in promulgating regulations associated with Dodd-Frank, e.g., 1033 and 1071). States have begun to fill in these gaps to address market concerns about the lack of structure and guidance for commercial transactions involving digital assets.

New provisions under UCC-12 include rules for transactions involving new types of digital assets like cryptocurrency and non-fungible tokens (NFTs). The Article calls these assets “controllable electronic records” or CERs. CERs are defined as, “a record stored in an electronic medium that can be subjected to control under Section 12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.” UCC 12-102(a)(1). The UCC now defines “controllable account” and “controllable payment intangible” under Article 9. These are representative of tethered assets akin to an electronic promissory note. “Controllable account” means those that are “evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12-105 of the controllable electronic record. UCC 9-102(a)(27A). And “controllable payment intangible” means “a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12-105 of the controllable electronic record. UCC 9-102(a)(27B).

One of the biggest concerns for lenders in dealing with CERs, controllable accounts, and controllable payment intangibles is undoubtedly the method of attachment and perfection, as well as the priority of their security interest. UCC Article 9 (UCC-9) has now been updated to reflect these new rules. Like non-electronic accounts and payment intangibles, lenders may perfect their security interest in CERs either by establishing control or by filing a financing

statement. However, control prevails in a priority battle vs. a financing statement on its own. UCC 9-331.

Other important considerations in the new UCC provisions are the take-free and the governing law rules. The take-free rules of UCC-9 are akin to the “holder in due course” rules from UCC Article 3 (UCC-3). “Qualifying purchasers” take priority over an earlier security interest, even if perfected. UCC 12-104(e). And, under the governing law provision, if there is no logical jurisdiction, the parties to the agreement may choose the jurisdiction. If no jurisdiction is agreed to, the governing law will be the District of Columbia. UCC 12-107(c).

Banks that have delved into crypto-assets are likely familiar with the Joint Statement on Crypto-Asset Risks to Banking Organizations released earlier this year, which reiterates the Agencies’ position “that issuing or holding as principal crypto-assets that are issued, stored, or transferred on an open, public, and/or decentralized network, or similar system is highly likely to be inconsistent with safe and sound banking practices. Further, the agencies have significant safety and soundness concerns with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector.” Of course, this Statement was viewed as a response to the November 2022 downfall of FTX. Suffice to say, the Agencies expect a good deal of partnership and cooperation with them when proposing, and prior to beginning, new crypto-asset-related activities.

So, banks now have a little guidance regarding risk-weighting crypto-assets, a little guidance from the Agencies, and a little guidance from the UCC (at least in some states). What’s next? Banks should continue to monitor these changes in their applicable jurisdictions, particularly banks that have already begun to enter the crypto-asset space. Consider how these changes will affect existing loan agreements, including the grace period in Article 13 (UCC-13) to renegotiate pre-existing loan agreements regarding the method of perfection. Policies, procedures, and training should be updated to reflect the bank’s position on crypto-asset lending and custody services, even to simply state that the bank does not engage in crypto-asset activities. Contemplate and implement the requisite security standards and vendors for custody of CERs, controllable accounts, and controllable payment intangibles. Review the tax consequences and reporting obligations for crypto-asset transactions. Identify the risks associated with future laws and regulations that will affect the bank’s loan agreements and other services, and design controls and contract language to mitigate those risks to the extent possible.

Theodore Kelly serves as Associate General Counsel for Compliance Alliance. Theo’s professional pursuits include competently guiding business leaders in all matters of regulatory compliance, learning and sharing ways in which blockchain technology can positively impact business operations, and writing publications related to emerging technologies in the legal, risk, and compliance spaces. For B/A, he will be writing monthly for our various publications, including ACCESS magazine.

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