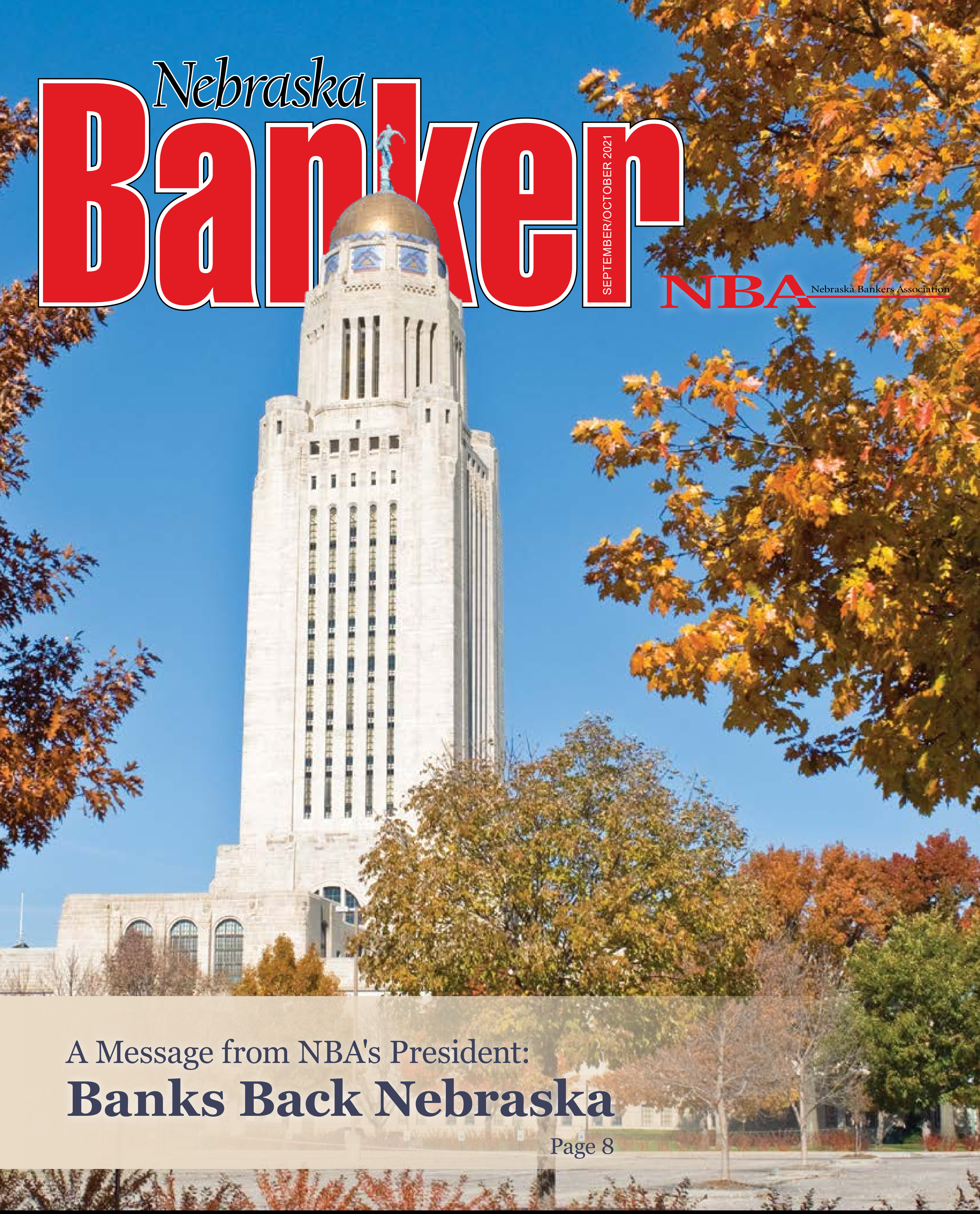

Nebraska Banker

SEPTEMBER/OCTOBER 2021

NBA Nebraska Bankers Association

A Message from NBA's President:
Banks Back Nebraska

Page 8

OFFICIAL PUBLICATION OF THE NEBRASKA BANKERS ASSOCIATION

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Nebraska Banker
SEPTEMBER/OCTOBER 2021

EDITORIAL: Nebraska Banker seeks to provide news and information relevant to Nebraska and other news and information of direct interest to members of the Nebraska Bankers Association. Statement of fact and opinion are made on the responsibility of the authors alone and do not represent the opinion or endorsement of the NBA. Articles may be reproduced with written permission only.

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Cozad

CHRIS HOVE
NBA Past Chairman
(402) 423-2111
Nebraska Bank of Commerce
Lincoln

NBA EDITORIAL STAFF

RICHARD BAIER
NBA President and CEO
richard.baier@nebankers.org

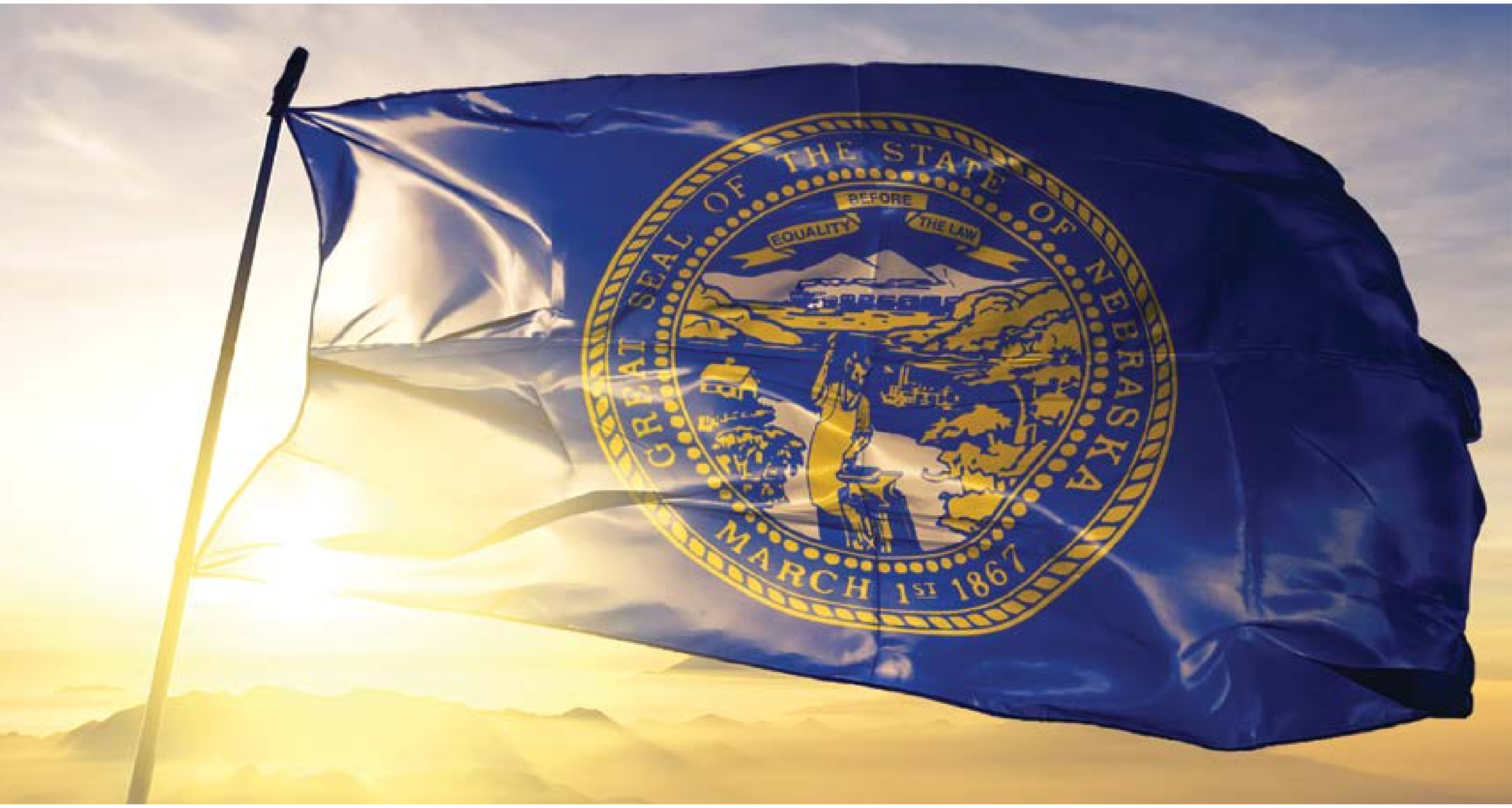
KARA HEIDEMAN
Director of Communications and Marketing
kara.heideman@nebankers.org

NBA Nebraska Bankers Association

233 South 13th Street, Suite 700
Lincoln, NE 68508
Phone: (402) 474-1555 • Fax: (402) 474-2946
nebankers.org

Banks Back Nebraska

Richard Baier, President and CEO, Nebraska Bankers Association



As I sat down to begin planning this magazine column, my mind instantly gravitated to the many Congressional hurdles, regulatory proposals and operational issues facing the banking industry in Nebraska; the list feels almost endless: potential new IRS reporting requirements, new Consumer Financial Protection Bureau reporting rules on small business lending, workforce limitations, etc. However, I know you don't need to be reminded. So, I decided to change course and reflect upon the important ways our members back Nebraska customers and their communities.

We are all keenly aware of the leading role Nebraska banks played in administering the Paycheck Protection Program (PPP) during the initial phases of the COVID pandemic. While eating lunch recently at a long-time Nebraska restaurant, the owner of the restaurant (also a long-time friend) shared with me that without PPP support, his business would have been forced to close. Instead, they were able to keep their doors open, retain and pay their staff, finish several much-needed improvements and plan for the future. Clearly banks back Nebraska small businesses!

During a recent member bank visit, I was finishing up my discussions when a young family with two young children exited one of the front offices near the bank entrance. This young family was all smiles, and the little boy was happy to be out and about. Our member banker noted that this family was returning to their hometown and buying their first home. As the family headed to the door, I overheard the rambunctious young man tell his parents that he and his sister could not wait to "have new swings and a slide" at the new house. Wow, banks back Nebraska families!

Through a family connection, recently I watched intently as a first-generation Nebraskan and his business partner were able to secure permanent financing for a small vehicle repair shop. This property, while not considered grade A by any definition, provided these young entrepreneurs with the stability necessary to support and grow their thriving repair business. The business owners told me about their long-term business plans and how this expansion will provide them the resources to support their families and grow their wealth. Banks back Nebraska's next generation!

If you routinely read the Banks & Bankers section of the NBA Update, you are aware of the many financial investments our members make in local not-for-profit and charitable activities. These activities range from affordable housing support to new swimming pools to new senior centers (and the list goes on). It is fair to say that banks back Nebraska communities!

Finally, I recently attended the NBA's Agri-business Conference in Lincoln. As part of this biannual conference, the NBA invites and recognizes the many students who are taking part in the University of Nebraska-Lincoln's agricultural banking and finance program. Eight students who recently completed their summer internships at an NBA-member bank attended parts of the conference. This process allowed a number of us to interact and talk with these amazing students. If history is any indication, a sizable number of these students will soon find themselves working at a Nebraska bank following graduation. Clearly, banks back Nebraska students!

> We are all keenly aware of the leading role Nebraska banks played in administering the Paycheck Protection Program (PPP) during the initial phases of the COVID pandemic.

If you are anything like me, you will find yourself sitting at your desk sometime in the very near future thinking about the overwhelming list of challenges facing your bank and the entire banking industry. I encourage you to take a step back and relish, if only for a brief moment, in the many ways that your banks back Nebraska. Keep up the great work!

Contact Richard Baier at (402) 474-1555 or richard.baier@nebankers.org.

Banking On Inclusion: America's Banks Embrace Bank On Movement

Rob Nichols, President and CEO, American Bankers Association

AMERICA'S BANKS HAVE A LONGSTANDING COMMITMENT to helping reduce the number of unbanked and underbanked individuals and families in the U.S. July marked a major milestone in that endeavor, with an announcement from the Cities for Financial Empowerment Fund that the number of Bank On certified deposit accounts now available has surpassed 100. At the time this column was written, it was up to 114.

As you may recall, nearly a year ago, I challenged banks of all sizes to offer Bank On-certified products, designed to promote access to financial services to the roughly 5% of U.S. households that remain unbanked. To receive Bank On certification, the account must meet specific standards, including low costs, no overdraft fees, robust transaction capabilities via a debit or prepaid card, and free online bill pay. The certification is free and the process is simple.

When I issued that challenge in October 2020, there were 43 banks offering accounts that were Bank On certified. Today, there are more than 90, with plenty more in the process of obtaining certification. In particular, we've seen a significant uptick in the number of community banks offering Bank On-certified accounts. This is partly due to ABA's efforts to engage with 20 of the nation's core technology providers – including Fiserv, FIS, Jack Henry and Associates and Finastra — and encourage them to simplify the process for their bank clients to create and offer these critical products.

Today, Bank On accounts are available in more than 32,500 branches in 99 out of the 100 largest metropolitan markets and all 50 states. They have received plaudits from bank regulators and policymakers alike – and for a good reason. Research suggests that the initiative is working as intended: according to the Federal Reserve Bank of St. Louis, 75% of consumers opening Bank On certified accounts were new customers for that bank. Additionally, while these accounts have widespread appeal, CFE Fund reports that customers opened close to 60% of Bank On certified accounts in communities with 50% or more people of color.

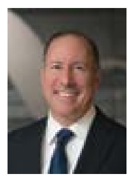
The importance of having a banking relationship has never been more apparent than during the COVID-19 pandemic. From obtaining Paycheck Protection Program loans to receiving economic impact payments quickly, countless stories speak to the benefit of having a trusted banking partner — and the disadvantages of not having one.

"For a long time, we'd known that we have consumers that don't have bank accounts in our market. It could be for cost; it could be for convenience. There could be a lot of reasons. The stimulus checks brought the issue to light a little more," says Gary Kleer, CEO of First Bank Richmond in eastern Indiana, whose bank recently had its Easy-Fit Checking Account Bank On certified. "When we saw this initiative being offered, we decided to get on board so that we could offer our consumers a more safe and affordable way to handle their money."

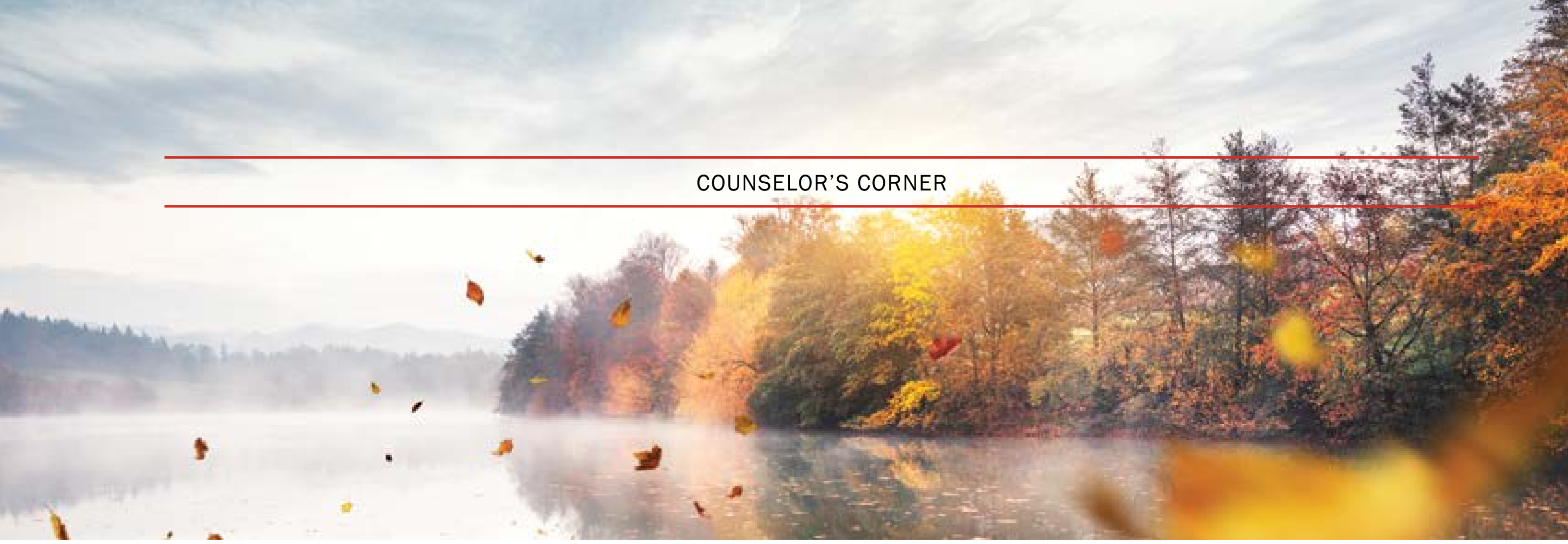
As we strive for a more equitable and inclusive society, one of the most constructive ways banks can help move the needle is to ensure that every American has the opportunity to access the banking system. That's why the Bank On certification is so important – it signals to those who may be hesitant to come in the door and start that banking relationship that the bank offers a product they can trust to meet their needs.

Many banks are already offering checking account options to meet Bank On standards — but it's time to go the extra step and get them certified — for free — with the Bank On seal of approval. If you haven't yet, I encourage you to visit aba.com/BankOn to learn more about the Bank On movement, how to certify an account product and why other banks were motivated to get involved. ABA staff is available to meet with your bank about the Bank On process and answer your questions; reach out anytime through our dedicated inbox: bankon@aba.com.

Together, we can bring more Americans into the banking system — a crucial step toward ensuring economic prosperity for all.



Email Rob Nichols at rnichols@aba.com.



Let the Coming Changing of the Seasons Trigger a Fall Retrospective

Kenneth W. Hartman, Baird Holm, LLP

ONE OF THE ASPECTS MANY NEBRASKANS LOVE SO MUCH about our state is that we get to experience all four seasons. As the calendar rolls into the second half of the year, our kids start going back to school, Friday night lights become the focal point of our communities, and we soon get to watch a football being tossed around Memorial Stadium on Saturdays. Fall is right around the corner. Many use the change in seasons as a time to focus on a particular task (how many of us are spring cleaners?) or prepare for the coming season. Likewise, you can use the march toward fall as a Fall Retrospective — a time to review your customer account agreements to determine if you need to update them in any way.

As you review those agreements, one item to which you can direct your attention is whether you spell out how disputes between the customer and the bank will be resolved. A few years ago, many financial institutions shied away from inserting dispute resolution provisions requiring arbitration into their account agreements because the Consumer Financial Protection Bureau (the "CFPB") went through a process resulting in a rule that would have prohibited such provisions. In particular, the CFPB refused provisions that paired binding arbitration with class action waivers. The CFPB was concerned that without the ability to bring class action litigation, consumers would be limited in their ability to seek relief against financial institutions.

However, Congress acted to prevent that rule from being able to have any force and effect. In fact, Congress was so concerned with the rule, it required that any such provision limiting arbitration in the future would need congressional approval.

Whether you decided not to include arbitration provisions with class action waivers in your customer agreements because of the activity of the CFPB or for some other reason, now would be a good time to look at your customer agreements. Consider using a dispute resolution procedure that would include requiring arbitration of the dispute while at the same time providing that the customer waive any right to be part of a class-action lawsuit.

So, why is now an excellent time to consider making this change? While there are many admirable reasons put forward in support of arbitration provisions with class action waivers, perhaps chief among them today are the current circumstances with which we as a society continue to struggle. As with so many things impacting us today, you do not have to go far to recognize that COVID-19 has had an impact on the courts. An already slow system for commercial litigants has become even slower. The pandemic forced many courts to stop having in-person proceedings, including jury trials, for long periods of time, resulting in a backlog of cases around the state and the country.

As courts work to get back to “normal,” alleviating the case backlog is first focused on criminal cases as the Constitution provides speedy trial rights to criminal defendants. And, as we experience new variants of SARS-CoV-2, the courts’ ability to get back to “normal” could continue to be impacted well into the future. Contractually agreed-to arbitration is a way to avoid this quagmire. One feature long touted about arbitration is that it provides an alternative to resolving disputes through the courts – and in a much more timely and flexible manner than courts can provide. Arbitration is a process that can provide all involved in a dispute a more flexible, timely, convenient, and comparatively inexpensive resolution to that dispute. Combined with a class action waiver, arbitration becomes a forum focusing on the resolution of the dispute. Addressing the customer’s complaint much more promptly and doing so without the threat that the cost of defending a single class-action lawsuit will devastate the financial institution’s ability to remain in business. Arbitration, after all, is not a disfavored method to resolve disputes; quite the opposite, as the United States Supreme Court has repeatedly explained federal law strongly favors arbitration. Similarly, the Nebraska Supreme Court has recently reminded us that the arbitration process is swift and informal precisely because the parties have agreed to be bound by it, including the arbitrator’s view of the facts and the contract.

Our bogged down (and some might say antiquated) judicial system is, of course, not the only reason to consider how an arbitration provision with a class action waiver would be beneficial to customers and financial institutions alike. Another, perhaps not as currently pressing on our minds the way the pandemic has been for well over a year now, but just as practical a reason might come to mind. On occasion, a financial institution leader or a financial service provider will open a letter that turns out to be from a class action plaintiff attorney claiming to represent a customer of the institution or service provider. This attorney threatens to file a class-action lawsuit claiming an alleged statutory violation or contractual breach. Hopefully, you have never received such a letter and experienced the heartburn it inevitably generates regardless of how meritless you may feel the claims may be. After all, you are bankers, and you know that every dollar spent on lawyers defending a lawsuit is a dollar you cannot spend on moving your business forward.

Suppose a letter does come to you, and there is a provision in your agreement where you and your customer have agreed to resolve your disputes through binding arbitration. Your customer has agreed to waive any ability to bring a class-action lawsuit. Then the focus of the conflict can be where it should be: on the disputed issue raised by the customer, instead of the profit the class action plaintiff lawyer is trying to make off your customer. That difference in focus can be important, but it is just one of several considerations you should consider as you review your customer agreements during your Fall Retrospective.

Kenneth W. Hartman is a Partner at Baird Holm, LLP in Omaha, Nebraska. He counsels clients in various ways to resolve their commercial, business and/or constitutional disputes. In doing so, he represents clients in litigation in both federal and state courts. He also represents clients in arbitration proceedings and mediation.

Components of a Modern Vendor Management Program

Cody Delzer, CISA, CDPSE, SVP IS Consultant/Regional Director, SBS CyberSecurity, LLC

ALTHOUGH VENDOR MANAGEMENT ISN'T A SILVER BULLET to preventing vendor data breaches, it's a necessary component to a healthy overall information security program. We're going to continue utilizing vendor relationships, so truly managing our vendors remains extremely important. A good vendor management program contains the following components: risk assessment, due diligence, contract review, and the watch list.

Vendor Risk Assessment

Everything that's good in information security starts with a risk assessment. If you cannot measure it, you cannot manage it. All of your risk assessments, including your vendor risk assessment, should help you make better decisions. Ultimately, you are seeking answers to two questions: Who do I want to do business with? Do I want to continue doing business with this vendor? You should seek to quantify the answers to these questions.

Due Diligence and Contract Review

This is where we'll get the majority of our data to ensure the goodness of a vendor relationship. It's also the most time-consuming and potentially daunting task of vendor management that frightens people and stops them from making meaningful progress. Let's be honest, due diligence and contract review is tedious work, it takes a lot of time, and it doesn't always feel like it's providing adequate value. Nevertheless, it is necessary, and it need not be that daunting. As discussed above, if you have a good risk assessment, you'll know where to focus most of your energy. If you've identified what you want to include in a review for each specific vendor level, you're well on your way to having an effective vendor management program.

The next step is to identify review criteria. Luckily your primary federal regulator provides you with good starting points. The FDIC, OCC, FRB, and NCUA all provide their own general criteria for due diligence and contract review. We would encourage you to go further by developing your own question sets for things like SOC reports, cloud providers, and foreign-based service providers, to name a few. Remember, the more critical the vendor, the deeper dive into the review you should do.

The Watch List

Occasionally a vendor review doesn't live up to our expectations or risk appetites. A vendor not meeting expectations can be due to them providing outdated or insufficient documentation based on our requirements. It could be that upon review of those documents, troubling items were found that resulted in less risk reduction than we would have liked. If that's the case, we are now presented with the choice of whether or not to continue doing business with the vendor. Assuming the decision is made to continue the relationship, the vendor in question should be placed

Everything that's good in information security starts with a risk assessment. If you cannot measure it, you cannot manage it. All of your risk assessments, including your vendor risk assessment, should help you make better decisions.

on a "watch list." Your vendor watch list should mimic your loan watch list. It identifies problematic vendors that require additional oversight. If a vendor is on the watch list, increase their review frequency identified by the risk assessment until such a time that you've decided to either:

- Accept the risk = Do nothing, but make sure you document it as a known risk exception!
- Resolve the risk = Work with the vendor to address issues until they're resolved.
- Change the risk = Find a new vendor or bring the service in-house.
- Transfer the risk = Insure against a loss.

Vendor Management + Incident Response

Your incident response plan should already identify the most severe threats your institution faces. Vendor compromise ought to be one of those.

You should perform tabletop testing of your incident response plan. Develop scenarios based on your threat assessment and walk through those scenarios with the incident response team. When performing a tabletop test for a vendor compromise scenario, reach out to the vendor prior to the test and encourage their direct participation. If the vendor chooses not to participate (note that in your vendor management program), put together a list of questions or requested information resulting from the tabletop test. Don't forget to ensure your tabletop test is well documented: Who attended? What was the scenario? What steps were determined to be taken? What did we do well? What can we improve? What additional questions do we need to answer?

Bottom Line, It's Your Data

We're more reliant on vendors than ever before. Vendors are storing, processing, or transmitting data on behalf of your organization. However, it's your data, so it's your responsibility to protect your customer information, your employees, and your institution, no matter where the data resides. Your vendor is not going to notify your customers about a breach for you or take the blame. Understand your vendor's security practices through your vendor management program. Align those vendor relationships with your cybersecurity goals and standards. Ensure you're tying vendor management and vendor relationships into your incident response considerations. Remember, it's not IF something is going to happen, it's WHEN. If we plan to fail well and build that capability into our vendor management process, we set ourselves up better to come out the other side as healthy as possible. ◗

For more information, contact Reece Simpson at 605-270-3916 or reece.simpson@sbscyber.com. SBS delivers unique, turnkey cybersecurity solutions tailored to each client's needs, including risk management, consulting, auditing, network security, and education. Learn more at www.sbscyber.com.

The Black and White of TRID Timing

John Berteau, General Counsel, Compliance Alliance

THERE ARE SO MANY ways to violate TRID. Mastering the content requirements (knowing what to put where) is difficult for even the most seasoned compliance professional and is the source of numerous violations. Conquering the timing requirements (knowing when to give what) seems to be a much easier assignment, but it too causes numerous violations. When it comes to what information to include in disclosures and in which section, there are many gray areas, too much, in fact. However, the regulations are a lot more black and white when it comes to giving the disclosures.

Let's face it, TRID is difficult. First, even the name is challenging: TRID is an acronym made up of other acronyms. TRID is short for TILA-RESPA Integrated Disclosures. TILA is an acronym for the Truth in Lending Act, and RESPA is an acronym for the Real Estate Settlement Procedures Act. Second, many things related to TRID are conditional: the definition of "application" differs from most other regulations. There are multiple definitions of "business day," and the regulations do not even address every common scenario, let alone every conceivable scenario. Third, the requirements are spread out: be sure to check the regulation, the commentary, the published guidance, any FAQs, and the occasional final rule preamble if you want to understand a requirement the best you can.

If you've read this far, then you should know that the TRID requirements are largely about giving an applicant two "named" disclosures: the Loan Estimate and the Closing Disclosure. The Loan Estimate is a reliable estimate of costs provided early in the process to loan applicants to allow them to shop around for the best loan. The Closing Disclosure is a detailed listing of costs given just before closing to let the applicant know the confirmed cost of credit.

In order for an extension of credit to be subject to the TRID requirements, it must be all of the following: 1) closed end, 2) made to a consumer, 3) for a consumer purpose, and 4) secured by real property. Once you've determined that your extension of credit is subject to the TRID requirements, the clock may have already started.

The Loan Estimate (Contents: 1026.37; Timing 1026.19(e))

The clock on the TRID timing requirements begins as soon as the bank receives an "application," which is defined specifically as submitting the applicant's name, income, Social Security number, collateral property

TRID Timing — continued on page 18

Occasionally a fee will need to be increased due to inaccurate information relied on by the bank when issuing the Loan Estimate. This situation is referred to as a changed circumstance, change in circumstance, or change of circumstance.

TRID Timing — continued from page 17

address, estimated value of the collateral property, and the loan amount requested. Once a bank has received all six pieces of information, the clock has started, and the bank is required to send the applicant a copy of the Loan Estimate within three business days. For this purpose, a business day is any day that the bank is open for carrying on substantially all of its business functions. This means some banks will count Saturdays for this window to send the Loan Estimate, and others will not. The regulations do not require that the initial Loan Estimate be received by any particular number of business days, so any questions of the receipt of the Loan Estimate are almost always relative to loan closing.

The bank is only required to honor the estimates given on the Loan Estimate for 10 business days, after which the Loan Estimate expires. If the applicant decides to proceed after expiration, it is up to the bank to honor the existing estimates or provide an applicant with a new Loan Estimate with new estimated costs. Expiration is determined using the definition of business day, including Saturdays for some banks but not for others.

Occasionally a fee will need to be increased due to inaccurate information relied on by the bank when issuing the Loan Estimate. This situation is referred to as a changed circumstance, change in circumstance, or change of circumstance. Regardless of what it is called when this occurs, for the bank to pass this increase off to the applicant, the bank must send a revised Loan Estimate within three business days of learning of the increase in the fee, using the definition of business day.

For the purposes of loan closing, any revised Loan Estimate must be received no later than four business days prior to loan closing. This definition of business day includes all calendar days other than Sundays and legal public holidays. This is sometimes called the "specific definition of business day." However, since this is a receipt requirement and not a sending requirement, it is important to point out that a TRID disclosure is considered to be received three business days after it is sent, using the definition that includes all calendar days other than Sundays and legal public holidays.

The Closing Disclosure (Contents: 1026.38; Timing: 1026.19(f))

Before closing a loan, the bank must send the Closing Disclosure to the applicant. The closing disclosure must be received at least three business days prior to loan closing, using the definition that includes all calendar days other than Sundays and legal public holidays.

If there is a change to the loan such that the APR becomes inaccurate, there is a prepayment penalty added, or there is a change in loan product, the bank is required to provide a revised Closing Disclosure to the applicant. This Closing Disclosure must be received at least three business days prior to closing, using the definition that includes all calendar days other than Sundays and legal public holidays.

After closing a loan (but within the 30 calendar day period following closing), an event in connection with closing causes the Closing Disclosure to be inaccurate, and the inaccuracy results in a change in the amount paid by the consumer, the bank must send a copy of the revised Closing Disclosure no later than 30 calendar days after discovery of the inaccuracy.

If the bank discovers a non-numeric clerical error within the 60 calendar day period following the loan closing, the bank is required to send a copy of the revised Closing Disclosure no later than 60 calendar days after loan closing.

If the amount paid by the consumer exceeds the amount indicated on the Closing Disclosure, the bank must provide a refund, and a revised Closing Disclosure, to the consumer no later than 60 calendar days after the loan closing.

John S. Berteau serves as Associate General Counsel for Compliance Alliance, where he is one of our hotline advisors and featured contributors.

Bond Market Behavior:
Trusting the Fed on Inflation

Jeffrey F. Caughron, Managing Director, The Baker Group

THE NARRATIVE FOR THE U.S. ECONOMY HAS SHIFTED AS WE move into the second half of this year. Not long ago, financial markets were saturated with talk about inflation and rising interest rates. However, after an initial economic reopening and rebooting surge, the bond market is now telegraphing expectations for weaker growth, lessened inflation fears, and perhaps a more diligent Federal Reserve. The 10-yr U.S. Treasury yield, which had jumped sharply from the August 2020 low-point of .50% up to 1.75% through the end of the first quarter, reversed and steadily traded lower into mid-year, ending the second quarter below 1.50%. The slope of the yield curve, which had previously steepened to the widest in six years, is now much flatter, reflecting clarity from policymakers and diminishing expectations for sharply higher yields.

Whereas fear of sustained inflation was a continuous theme for much of the first two quarters, concerns about growth constraints and adjustments to monetary policy are now prevalent. The jump in inflation seen so far this year has been tagged "transitory" by the Fed. And though they get a lot of things wrong, they seem to have a reasonably good handle on this as market measures of inflation expectations fell 25-30 basis points during the second quarter. The dampening of inflation fears is partly due to the continued reopening of global trade flows and access to low-cost resources, along with repaired supply chains and cost-saving efficiencies that accelerated during the pandemic shutdown.

But a key reason for the shift in market sentiment is belief in the Fed's commitment to stamp out any inflation fire should one occur. Though they recently adopted a more flexible "average inflation targeting" policy stance, recent changes to the FOMC's "dot plot" indicate a willingness to move more quickly on tapering asset purchases and a liftoff date for the Fed funds target. In his press conference, Fed Chair Jerome Powell emphasized that policymakers were fully prepared to deal with sustained inflation or self-fulfilling expectations of higher inflation. "We wouldn't hesitate to use our tools to address that risk. Price stability is half of our mandate." That should give comfort to those who worry that the recent eye-popping inflation rates might not fade so readily.

Make no mistake. The economy has been hot as it recovers and the recent jump in reported inflation numbers has been noticeably and uncomfortably high. Consumer prices rose in June by the most since 2008. But we expected that to be the case for a few months partly due to the "baseline" effect from the bounce off dreadfully low inflation rates early in the pandemic. As the initial snapback from reopening fades, growth and inflation should both moderate. As for output and employment, we have likely seen peak performance for the cycle as the initial massive injection of federal stimulus dollars into the economy begins to disappear. Likely, payrolls' growth, trade volumes, and consumption patterns will gradually revert to the mean as we move through the second half of the year. The recovery is very much intact, but we already see a pace of growth that is considerably less rapid than in prior months. That may turn out to be the best case if the economy experiences moderate growth and low inflation, as opposed to breakneck growth, shortages, and rising prices.

Financial markets see extended stimulus as an unnecessary distortion and crave clarity from policymakers about how and when they will pivot. It is often the case that the Fed is "behind the market" and reactive rather than anticipatory in their policymaking. Time will tell, but maybe they got this one right.

Jeffrey F. Caughron is a Managing Director with The Baker Group, where he serves as President and Chief Executive Officer. Caughron has worked in financial markets and the securities industry since 1985, always with an emphasis on banking, investments, and interest rate risk management. For more information, contact him at 800-937-2257, or jcaughron@GoBaker.com.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