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BREAKING DOWN THE DEBATE OVER DIGITAL ASSETS

CRUCIAL STEPS IN A DATA BREACH RESPONSE PLAN FOR FINANCIAL ORGANIZATIONS

SIXTH ANNUAL UBA GOLF CLASSIC A SWINGING SUCCESS

OFFICIAL PUBLICATION OF THE UTAH BANKERS ASSOCIATION

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The Bottom Line

Howard Headlee
President and CEO
Utah Bankers Association

I recently attended the American Bankers Association Annual Convention in Austin, Texas. It was an excellent event, loaded with critical information and insights on the latest issues. Scott Anderson delivered a stirring farewell as Chairman of the ABA, recognizing the exceptional leadership of ABA President Rob Nichols, the ABA's leadership in assisting its member banks in becoming more diverse and inclusive, the commitment of bankers across the country in advocating for our industry, and the dedication of those same bankers to serving their communities. Scott's enthusiasm energized the room. He repeated his pride in being a banker, and I was proud of how he represented the industry and, more specifically, bankers in Utah!

Scott's presentation was followed immediately by FDIC Chairman Marty Gruenberg. Talk about a roller coaster ride. We all braced for his comments — after all, we have entered some challenging times. But no one in the room could have predicted what he said.

But before I get to that, let me restate my recent message: inflation is the sworn enemy of banking. Our mission is to help people save, protect, and build wealth. Inflation does the exact opposite; it destroys wealth and works against everything we are trying to accomplish for our customers.

The Fed understands the threat inflation poses to individuals and the economy, so it has taken an aggressive approach to increasing interest rates, inflicting short-term pain in hopes of minimizing the more damaging long-term impact of inflation. After an unprecedented period of historically low rates, such a rapid change in interest rates creates enormous challenges for customers and bankers alike. As I wrote previously, if those in charge of fiscal policy fail to exercise the same discipline, this could go on for a while.

Clearly, this is a significant economic moment for bankers, and their skills and wisdom will be seriously tested. Their ability to navigate these competing economic forces will impact every American and every community.

So, bankers gathered in Austin, fully expecting to hear some cautionary words and critical insights from Chairman Gruenberg of the FDIC — a man who has witnessed and weathered many economic storms. What we heard was flabbergasting.

He spent his entire presentation discussing, explaining, and rationalizing the FDIC's obsession with climate change. Like every other federal agency, the FDIC appears consumed with the Biden administration's directive on climate change. And without even a nod to the current economic challenges, the Chairman of the FDIC spent every minute in front of over 1,000 bankers lecturing them on a risk they have successfully managed for decades.

Don't get me wrong; it would be fantastic if current economic challenges ended up being a small blip and bankers had the luxury of focusing all their time and attention on facilitating our customers' smooth and seamless transition to more renewable sources of energy. But for now — right now — that feels like a dangerous miscalculation of the current risks.

We know how this plays out inside the beltway. Policymakers continue to ignore the obvious danger, pushing their preferred agenda until reality, and the American people, demand they reverse course. Then, they abruptly shift gears, blame everyone else — including the banks — and pretend their policy had no role in the outcome. It happened before with housing policy, and it's happening now with climate.

However, I predict the outcome will be different this time, and here's why: the public overwhelmingly trusts banks, especially their individual bankers. Satisfaction with banks has never been higher. The same cannot be said for Congress and executive branch agencies. And banks will continue to build this public trust by helping customers navigate the economic risks at hand. Eventually, people will realize this crisis was created by foolish policymakers so enamored with their political narratives that they lost sight of our economic reality. ■

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Upcoming UBA Events

NOV 16

Emerging Bank Leaders Conference

Zions Technology Center
Midvale, UT
New This Year! Networking Social 11/15

DEC 2

Bank Executive Winter Conference

Little America Hotel
Salt Lake CIty, UT

JAN 26

FDIC Community Bankers Workshop

Wasatch Retreat Center
Salt Lake CIty, UT

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Rob Nichols
President and CEO
American Bankers Association

BREAKING DOWN THE DEBATE OVER DIGITAL ASSETS

As I traveled the country this summer speaking at various state bankers association conventions, I'd always ask this question of my audience: *How many of you have clients and customers asking you about cryptocurrencies and digital assets?* And nearly everywhere I went, nearly every hand would go up.

The interest in cryptocurrencies and digital assets is undeniable – even in the face of recent volatility in digital asset markets. Americans want them: from the casual dabbler to the serious investor, from Gen Z'ers to boomers, it seems everyone wants a bite at the crypto apple. Many banks want to engage, too – as digital assets become more popular, and those banks are exploring ways to meet the needs of customers who want their bank to be the custodian of these assets.

I've written previously about the merits of banks being able to take on custodial roles for digital assets – there are many – and the need for a regulatory architecture that will support them in taking on these roles if they choose. That's an area where ABA continues to advocate for banks' ability to enter the digital asset space safely and soundly. But it's just one of the debates currently brewing over crypto.

There are several others of which bankers should be aware:

Who should regulate? One key quandary facing policymakers right now: what's the right way to regulate crypto, and to which agency should that authority be delegated?

Currently, the Securities and Exchange Commission and the Commodity Futures Trading Commission are both vying for the role of crypto cop. Two separate bills have been introduced this summer – one by Sens. Cynthia Lummis (R-Wy.) and Kirsten Gillibrand (D-N.Y.) and another by Sens. Debbie Stabenow (D-Mich.) and John Boozman (R-Ark.) – that would delegate most of this authority to the CFTC. Simultaneously, there are some in the crypto community calling for the creation of a whole new regulatory agency dedicated to digital asset supervision, though this seems far less likely.

Regardless of which entity ultimately ends up with regulatory authority, it is imperative that it develops clear definitions of digital asset products that are based on the risk that each category of digital asset carries. Working with the banking agencies, any prospective crypto regulator must also ensure a level playing field between bank and non-

bank entities in the digital asset markets and establish clear guidelines for risk management and consumer protection.

Payments system access? Another key question is the extent to which nonbank crypto firms should have access to the payment system. The Federal Reserve took a significant step toward answering this question in mid-August when it finalized a framework for assessing which entities may be granted payment system access. This framework creates a tiered system for evaluating incoming requests, and under it, institutions that engage in novel activities would undergo a more extensive review.

Access to the payments system is a significant privilege with many responsibilities. As the Fed begins evaluating new requests for access, we'll be watching carefully to ensure that these new guidelines appropriately account for the inherent risks that come with some of these new financial players.

Is there a use case for a CBDC? Finally, there's the question of a central bank digital currency and whether there's a use case for it in the U.S. As ABA told policymakers in several comment letters and testimonies over the last year, our view is that no such case exists – for every problem that proponents say a CBDC could solve, the fact is that there are already solutions available that don't involve a government-created currency. Financial inclusion is just one example: Banks are already making great strides to bring more unbanked households into the financial system by offering Bank On-certified accounts.

> The interest in cryptocurrencies and digital assets is undeniable – even in the face of recent volatility in digital asset markets. Americans want them: from the casual dabbler to the serious investor, from Gen Z'ers to boomers, it seems everyone wants a bite at the crypto apple.

Not only would a CBDC be duplicative of private-sector solutions that already exist, but it also has the potential to have an incredibly damaging effect on bank balance sheets and the flow of credit to households and businesses if the Federal Reserve were to become a competitor for bank deposits.

These ongoing debates underscore an urgent need for a fair, well-calibrated regulatory framework for digital assets that promote responsible innovation while minimizing systemic risk and protecting consumers. And that's a framework we'll continue to fight for. ■

FEDERAL HOME LOAN BANK CELEBRATES 90 YEARS

By Douglas L. DeFries, President and CEO of Bank of Utah, FHLB Des Moines Board of Directors Utah Directorship

This year marks the 90th anniversary of the creation of the Federal Home Loan Bank System. Established at the height of the Great Depression through the Federal Home Loan Bank Act of 1932, the system is composed of 11 regional FHLBanks and serves 6,500 members, including many financial institutions in Utah. Today, nine decades later, FHLBanks across the U.S. continue to champion community-focused lenders, such as Bank of Utah, by providing affordable liquidity. This means we can bring homes and financial stability to our communities and give back in meaningful ways.

As a director for FHLB Des Moines, I am especially proud that our partnership helps ensure our neighbors have a great place to live and work, a place where they can thrive. I'd like to share two examples of how we do that, both of which underscore why the Bank of Utah is celebrating 90 years of FHLB Des Moines' service.

The Affordable Housing Program Supports Local Housing Needs

Since its creation, the Affordable Housing Program (AHP) has grown to be one of the most successful sources of private funding for affordable housing, providing nearly $7 billion in funding to build or improve 994,000 homes nationally. The state of Utah has utilized $32 million in grant funds to build or improve nearly 5,200 homes.

The program is designed to help local banks and their nonprofit partners develop housing based on the affordable housing or economic development needs in their communities. FHLB Des Moines understands the gaps in the cost of housing versus household incomes across its district. That intimate knowledge provides a great opportunity for the bank to customize grant programs, including helping Utah communities overcome the high cost of housing.

> There are too many obstacles and getting a mortgage can feel impossible, but with Home$tart we remove a few of those barriers.

Grant Funds Put People in Homes

Bank of Utah has been a supporter and user of FHLB Des Moines' services for a long time, and while we appreciate the access to low-cost liquidity and the Mortgage Partnership Finance® Program, we believe the program that makes the most difference in whether or not people can get into a home is the Home$tart® Program.

Through Home$tart, families and individuals receive up to $7,500 in down payment and closing cost assistance to purchase their first home. FHLB Des Moines has awarded $111 million in these types of grants to help more than 20,300 families.

Many of these families would not have had the opportunity to purchase homes without Home$tart. Down payments are hard to save for, especially when the housing market is incredibly competitive. Paying for day-to-day expenses can seem overwhelming. There are too many obstacles and getting a mortgage can feel impossible, but with Home$tart we remove a few of those barriers.

FHLB Des Moines is celebrating a huge milestone, and while congratulations are definitely in order, I would also like to extend a big "thank you" to the FHLBank System. Without our partnership with FHLB Des Moines, we would lose a backstop and stable source of liquidity that I have come to rely on in my 38 years in the banking industry. More importantly, our communities would suffer, and families would not have the opportunities to build a future.

Congratulations on 90 years! Bank of Utah is proud to be a member of the Federal Home Loan Bank of Des Moines. ■

Douglas L. DeFries
President and CEO of Bank of Utah
FHLB Des Moines Board of Directors
Utah Directorship

SIXTH ANNUAL UBA GOLF CLASSIC A SWINGING SUCCESS

By Brian Comstock, Director of Communications & Marketing, Utah Bankers Association

More than 100 bankers and business partners teed off at Old Mill Golf Course in Salt Lake City Sept. 9, 2022, a glorious day of golf to support Utah's banking industry. Mother Nature cooperated by dialing back the sweltering summer temperatures, making for a gorgeous day on the links with perfect opportunities to connect with colleagues and tournament sponsors.

Each hole on the course was sponsored by one of UBA's amazing business partners, with many handing out free swag and raffling off fantastic golf prizes.

Congratulations to the group from Wells Fargo, who shot the tournament's low score of 55. The foursome was led by Wells Fargo's Regional Banking Director and UBA Chair, Matt Bloye, and included Steve Alsup, Song Mom, and Dallen Atwood.

Contest Winners

Longest Drive (Men): Dallen Atwood, Wells Fargo

Longest Drive (Women): Jhae Smith, Capital Community Bank

Longest Putt: Zach Espinosa, Celtic Bank

Closest to Pin: Judd Anderton, Regions | EnerBank


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TECH

CRYPTOCURRENCY: SAFE OR "SUS"?

By Carol Ann Warren, JD, Associate General Counsel, Compliance Alliance

In today's financial regulatory environment, two of the hottest topics are cryptocurrency and cybersecurity. Within the past year, multiple agencies have released various regulations and guidance regarding cryptocurrency, banking, and cybersecurity, both individually and collectively.

As my teachers would say, if something is said more than once, it is probably important, and you will likely see the material again. Similarly, cryptocurrency and cybersecurity threats are likely here to stay, and regulators are preparing for those implications. Banks are now put on the spot to adapt to the market shift and the regulations that will surely follow.

What is cryptocurrency?

The Merriam-Webster's dictionary defines cryptocurrency as "any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units, and that relies on cryptography to prevent counterfeiting and fraudulent transactions."

How does cryptocurrency relate to banking?

For bankers, the question of how cryptocurrency relates to banking is pressing and hard to answer. Crypto-currency usage is typically stereo-typed between two different groups: underground-market transactions (i.e., drug market or selling a kidney online) and GameStop/Reddit kids who almost crashed the stock market in 2021. Volatility and illicit activity are two of the biggest regulatory fears for bankers, so how do banking and cryptocurrency relate?

First, who are the individuals actually investing or using cryptocurrency?

According to a November 2021 article from Pew Research, 16% of Americans have used or are invested in cryptocurrency. Of

> According to a November 2021 article from Pew Research, 16% of Americans have used or are invested in cryptocurrency. Of that 16% of Americans, 52% of those individuals are between the ages of 18-49. The individuals in this age group are not typical “in-person” banking customers.

that 16% of Americans, 52% of those individuals are between the ages of 18-49. The individuals in this age group are not typical “in-person” banking customers. As the market is shifting and these individuals have more market power, banks scramble to advertise to this group. Cryptocurrency may be a way to do that successfully.

The guidance from regulators is that banking, one of the most highly regulated industries in the country, is supposed to mix with cryptocurrency, one of the most unregulated commodities in the world. The two seem like oil and water, but the Office of the Comptroller of the Currency (OCC) argues in Interpretive Letter #1170 that it is more like M&Ms and popcorn, an unlikely yet satisfying combination.

The OCC didn’t actually say that, but they did argue that for banks, providing custodial services related to cryptocurrency would be in line with a bank’s intended purpose: “safe keeping” of assets.

The banking world has been shifting from physical currency and safekeeping to virtual safekeeping for many years now. Therefore, the argument is that providing services for cryptocurrency is not a far-fetched idea, but a natural progression.

How does cryptocurrency relate to cybersecurity?

Because cryptocurrency is “so hot” right now and because of its anonymity, it is a prime target for hackers and bad actors around the world. From what the banking industry is seeing with P2P activity in relation to Regulation E and the new Interagency Guidance on cybersecurity, the question many bankers are asking is, “Do we want to add cryptocurrency to this dumpster fire?”

The answer: Maybe.

The Interagency Guidance defines a “cybersecurity incident” as one that rises to the level of a “notification incident.” A cybersecurity incident is an occurrence that:

> (i) Results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or
>
> (ii) Constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

This new guidance is giving rise to new policies, procedures, and safeguards for banks to have to implement. Ultimately, this is giving time to prepare for the inevitable cybersecurity attack, but this is not without cost to the bank.

The next question is: If a bank takes on servicing cryptocurrency customers, does this increase the risk of a cyber-security incident?

The answer: Probably.

Ultimately, this will be more of a cost-benefit analysis for the bank. According to a recent CNN article, there were over $1.9 billon worth of cryptocurrency stolen in 2022, so far. According to FinCEN, ransomware attacks are at an all-time high and only continue to increase.

There is an argument that combining the banking with cryptocurrency will only lead to an increase in cyberattacks on banks, which is likely true.

Is it worth it?

The answer: Maybe.

Banks need to have safeguards in place to protect current assets, private information, and to comply with the myriad of new guidance. There is an argument that the infrastructure is already there.

Lastly, several agencies acknowledge the risk associated with servicing cryptocurrency and still push for banks to consider servicing this group.

At the end of the day, a bank is one of the safest places to keep assets, virtually or physically. Therefore, banks may want to consider servicing this group, because banks have specialized in safekeeping throughout their existence. If they choose not to service this group, they may miss out on a lucrative market opportunity. ■

Carol Ann Warren, JD, is an Associate General Counsel at Compliance Alliance, and can be reached at compliancealliance.com.

FOR COMMUNITY BANKS, THE SUN ALSO RISES

SOLAR TAX CREDIT INVESTMENTS NOW MORE ACCESSIBLE

By Josh Miller, CEO, KeyState Renewables

For more than a decade, large financial institutions like U.S. Bank and Wells Fargo, joined by Fortune 500 giants like Apple and Google, have been the dominant players in solar investment tax credits (ITCs). Driven by federal incentives, these companies have provided funding for the largest solar projects in the country, collecting healthy returns while raising their corporate profiles as environmental/social/governance (ESG) leaders.

The benefits of solar ITCs are hard to ignore. Tax credit investors funding renewable energy projects can significantly offset their federal tax liability and recognize a meaningful annual GAAP earnings benefit. From 2005 to 2020, renewable energy tax credits have fueled the explosive growth of solar and wind power production nearly 18-fold.

The recently passed Inflation Reduction Act is a transformational bill with provisions to entice large numbers of mid-size businesses and community banks to deploy capital into renewable energy projects across the U.S. It extends solar ITCs for at least 10 more years (until greenhouse gas emissions are reduced by 70%) and retroactively increases the ITC from 26% to 30%, effective January 1, 2022. This extension and expansion of ITCs, along with other meaningful incentives included in the bill, will result in a significant increase in renewable energy projects being developed and constructed over the next decade.

Community banks are the logical source of financing for solar ITCs and traditional loans in response to this expected flood of mid-size renewable projects. Solar ITCs have a notably better return profile than other tax credit investments commonly made by banks. Solar ITCs and the accelerated depreciation associated with a solar power project are fully recognized once built and producing power. This is quite different from other tax credit investments, such as new markets tax credits (NMTCs), low-income housing tax credits (LIHTCs) and historic rehabilitation tax credits (HTCs), where credits are recognized over the holding period of the investment (five, seven, 10, or 15 years).

Like other tax equity investments, solar tax equity investments require complex deal structures, specialized project diligence and underwriting, and active ongoing monitoring. Specialty

investment management firms like KeyState provide support to community banks hoping to make solar tax credit (i.e., "solar tax equity") investments by syndicating the investments across small groups of community banks. Without support, community banks may struggle to consistently identify suitable solar project investment opportunities built by qualified solar development partners.

Not all solar projects are created equally, and it is critical for a community bank to properly evaluate all aspects of a solar tax equity investment. Investment in particular types of solar projects, including utility, C&I, municipal, and community solar projects, can provide stable and predictable returns. However, a community bank investor should perform considerable due diligence or partner with a firm to assist with the diligence.

There are typically three stages of diligence:

- The bank should review the return profile and GAAP model with their tax and audit firms to validate the benefits illustrated by the solar developer and the anticipated impact of the investment on the bank's earnings profile and capital.
- The bank should work with regulatory counsel to identify the path to approval for the investment. Solar tax equity investments are permissible for national banks under an April 1, 2021, OCC Rule (12 CFR 7.1025). Banks have been making solar tax equity investments based on OCC published guidance for over a decade. In 2021, this new OCC rule codified that guidance. It provides a straightforward roadmap and goes so far as to encourage community banks to consider solar tax equity investments. Alternatively, under Section 4(c)(6) of the Bank Holding Company Act, holding companies under $10 billion in assets may also invest in a properly structured solar tax equity fund managed by a professional asset manager.
- The bank must underwrite the solar developer and each solar project. Community banks should partner with a firm experienced in evaluating and underwriting solar projects. The bank's diligence should ensure structural mitigants are in place to fully address the unique risks associated with solar tax equity financings.

Beyond the compelling return profile and stable and predictable cash flows offered by conservative, investment-grade solar projects, achieving energy independence and reducing carbon emissions are critical goals in and of themselves. Solar tax credit investments can be a key component of a bank's broader ESG strategy. The bank can monitor and report the amount of clean energy generated by the projects it has financed and include this information in an annual renewable energy finance impact report or a broader annual sustainability report. ■

Josh Miller is CEO of The KeyState Companies, which manages tax-advantaged investment and insurance structures for over 130 community banks across the country. KeyState Renewables launched its solar tax equity fund platform, SOLCAP, in 2019. To date, SOLCAP has financed over $120 million across 35 mid-size U.S. solar projects in seven states. SOLCAP expects to double this amount in 2023, providing another $130 million in capital for new solar project development.

AS CLIENT NEEDS EVOLVE, BANKS ARE EXPANDING OFFERINGS THROUGH CORRESPONDENT BANKING

By Phil Diederich, Manager, Zions Correspondent Banking

Community banks play an important role in serving residents and businesses across Utah, while the state's industrial banks also serve their unique niche clients. As of the second quarter of 2022, *Banking Strategist* reports 4,612 community bank charters in the U.S., and nearly half are headquartered in smaller, rural counties with populations less than 50,000.

Many community and industrial banks recognize that their growth plans are tied to their need for technology tools and specialized lending capabilities to deliver a better customer experience.

Over the years with Zions Correspondent Banking, I've come to recognize the challenges many community banks face in managing growth and profitability. More and more are finding the need for a full range of credit, treasury, and liquidity products to serve their commercial clients.

As community and industrial banks work to expand their quiver of tools as their clients' needs evolve, they may consider the benefits of these services:

Fed Funds

Fed Funds Sweep Accounts can seamlessly allow banks to manage balances by moving them into an overnight interest-bearing account that can earn added revenue.

Letters of Credit

As more Utah companies expand overseas, community and industrial banks may find a need for commercial and standby letters of credit for both domestic and international deals.

Foreign Exchange

Community and industrial bank clients need tools to mitigate foreign currency exposure and execute cross-border transactions. Correspondent banking can offer the safe conversion and transfer of funds online for current rates worldwide. By expanding services to clients, banks can better support their customers' global business objectives.

Commercial Card

More and more banks are finding value in utilizing commercial cards, not only for their employee expenses but also for paying vendors. In doing so, community and industrial banks can maximize their opportunities for revenue share.

Third-Party Solutions

Some third-party service providers offer loan programs for those with additional liquidity. Other services can assist in tax incentives for banks wanting to invest in renewable energy. When community and industrial banks look to enhance their software, digitized records/information, cash machine automation and recycling, a correspondent banking relationship can help. Additional third-party offerings can include employee retention credits and financial or strategic advisors.

Safekeeping

Banks can enhance their liquidity by using safekeeping accounts. Online safekeeping allows banks to find the latest information on their accounts.

Investment Portfolio Reporting

Banks can enhance their portfolio management by using Investment Portfolio Reporting solutions. These pull all data from all of a bank's investment sources into one program, enabling customizable data reports.

Banks can enhance their liquidity by using safekeeping accounts. Online safekeeping allows banks to find the latest information on their accounts.

Capital Markets

Bank clients seeking to maximize their investment needs and objectives may want to participate in the fixed income market. A correspondent banking relationship can help bridge community and industrial bank gaps for their institutional clients to work with registered representatives.

Asset-based Lending and Factoring

Community and industrial banks with commercial clients who need customized solutions can explore specialized credit programs. Asset-based lending (ABL) can provide working capital through a modified factoring product to assist with cash flow needs based on the creditworthiness of commercial accounts receivable. As an alternative to conventional financing, this can be a stable and flexible source of funding that ensures available liquidity and flexibility for growing or transitioning businesses. From start-ups to financially sound companies with seasonal needs, ABL and factoring can provide working capital solutions tailored to clients' requirements and industry.

Treasury

As more and more of their business clients seek automated payment and cash flow solutions, community and industrial banks can utilize correspondent banking relationships to deliver their treasury solutions. These capabilities can include private-labeled lockbox, check image and traditional clearings and wires, online banking, brokered deposit programs and excess balance accounts.

As community and industrial banks strive to grow their services to meet clients' needs, a correspondent banking relationship can enhance their offerings. ■

Phil Diederich manages Correspondent Banking at Zions Bancorporation, N.A. A veteran banker, he has 38 years of industry experience, 24 years of which have been serving community banks through correspondent banking. He and his team can be reached at 800-737-6470.

Zions Bank currently maintains more than 700 community bank correspondent relationships across the country in 48 states and Guam, including both community banks and industrial banks in Utah. Helping advance more economic opportunity for traditionally underserved communities, Zions also provides banking services to 44 minority-owned (MDI) banks. We currently have a relationship with 85% of community banks and 84% of industrial banks in the Utah market.

THE EDULOGUE

By Beth Parker, Director of Education, Utah Bankers Association

Learning & Development Trends for 2023: What You Should Know

eLearning is the future of training and development. The pandemic paved the way for the creation of technologies that continually refine and redefine how we learn. The digitization of learning not only brings convenience but also offers ways for organizations to harvest crucial insights that inform learning strategy. eLearning can provide equal access and learner customization that addresses the need of every learner.

Virtual Training

Virtual learning refers to an environment where students study a digital-based curriculum taught by instructors that lecture online via video or audio. This instruction can occur either in a self-paced, on-demand environment or a real-time instructor-led environment. Within the realm of virtual learning, virtual reality (VR) and augmented reality (AR) are immersive technologies that enable users to experience digitally rendered content in both physical and virtual spaces.

Highlights and benefits:

- Remote work setup will increase the demand for ways to provide virtual training.
- Virtual Reality (VR) is set to revolutionize corporate learning.
- Virtual training has the potential to close the skills gap in organizations.

Microlearning

Microlearning is educational content focused on a single learning objective delivered in a short modular format (often 5-10 minutes long). This content is typically designed as digital media to meet a specific learning outcome.

Highlights and benefits:

- In the corporate sector, learners prefer microlearning over other training methods.
- The on-demand design of microlearning improves employee engagement.
- The focused and targeted design of microlearning increases comprehension rates.

Planned Learning Journeys

A planned learning journey is a strategic employee development approach anchored on business strategy. It incorporates multiple formal and informal development components that take place over time. Most organizations design a learning journey for employees in leadership positions. The main objective is to optimize training investment and maximize learning stickiness (when knowledge stays with us forever) to transform behavior.

Highlights and benefits:

- 91% of HR professionals find the planned learning journey approach more effective in employee development.
- Using AI, planned learning journeys deliver customized learning experiences.
- Planned learning journeys optimize training investment and maximize learning stickiness.

Smart Content Curation and Adaptive Learning

Smart content curation is the act of continually identifying, selecting, and sharing the best and most relevant online information in a timely manner. Aside from smart content curation, another eLearning trend related to content curation is Adaptive learning. This is a technique for providing personalized learning, which aims to provide efficient, effective, and customized learning paths to engage each student. Adaptive learning systems use a data-driven approach to

adjust the path and pace of learning, enabling the delivery of personalized learning at scale.

Highlights and benefits:

- Smart content curation filters irrelevant information and provides targeted learning content.
- AI assists smart content curation in making learning more effective by collecting and filtering relevant information as needed by the learner.
- Smart content creation complements social learning through sharing of well-curated content.
- Adaptive learning will benefit learners by ensuring efficient and effective learning.
- The data-driven approach of adaptive learning addresses unique learner needs.
- Adaptive learning designs and monitors both progression of learning and method of delivery, making it an effective eLearning tool.

Accessible learning

Employees with physical limitations require assistive technologies to effectively work and train remotely.

The demand for accessible learning programs is a significant eLearning trend. There is an urgent need for platforms and content formats optimized to meet the needs of employees that rely on assistive technologies.

Highlights and benefits:

- Tools that promote inclusive learning will be at the forefront of eLearning.
- Technology that will address accessibility issues will be in high demand to engage all types of learners.
- Tools that will engage learners with disabilities will address the demand for accessible learning programs.

Social Learning

When learners are placed in an environment with other learners, they can observe the behavior of others and model the behavior if it is aligned with the outcomes that learners value. This occurs within gamification leaderboards, direct message functions, forum discussions, and comment boxes. Consequently, this integrated environment paves the way for forming shared values.

> The digitization of learning not only brings convenience but also offers ways for organizations to harvest crucial insights that inform learning strategy.

Highlights and benefits:

- Social learning occurs each time interaction takes place, making it an effective tool for forming shared values.
- Collaboration in the workplace facilitates social learning.
- Social learning can be a very useful tool in promoting desired organizational outcomes.

UBA and our training partners are constantly striving to meet the eLearning needs and expectations of Utah bankers. ■

CRUCIAL STEPS IN A DATA BREACH RESPONSE PLAN FOR FINANCIAL ORGANIZATIONS

By James Fair, Sr. VP of Technical Operations, Executech

Banks and other financial institutions handle some of the most sensitive parts of an individual's life. We hope that our information is safe with these organizations, but unfortunately, breaches happen far too often. In fact, 62% of breached data came from financial services in 2019. And companies in the financial services sector can suffer dramatically if a breach occurs.

So, what should banks and other organizations do in the aftermath of a data breach? There are a few steps these organizations should include in their data breach response plan to mitigate damage and retain customers.

Protecting Banks from Cyber Attacks

Data breach response plans will help financial institutions find their footing after a data breach, but banks should also have measures in place to prevent cyber-attacks and breaches in the first place.

To do this, leaders and decision-makers need to understand and implement strict cybersecurity policies throughout the organization. This includes safeguards like password policies. Put together a formal password guide, informing employees what types of passwords are the strongest, setting password expiration dates, and requiring the use of multi-factor authentication. Even this small step can add a level of protection to your organization.

You'll also want to ensure your organization utilizes a firewall and other cybersecurity solutions. One thing organizations often overlook in securing their data is mobile devices. Many financial services companies use laptops, tablets, and smartphones for their employees. If these devices contain company information and are not protected, you are opening a door for hackers.

To give your business the best chance at preventing data breaches, you must do an entire risk assessment to determine the best cybersecurity solutions. If you don't have internal IT resources to provide this assessment, you can always reach out to a cybersecurity provider and have them help you. Some companies even offer free assessments for this very situation.

Putting Together a Data Breach Response Plan

No matter what cybersecurity measures you have in place, if you experience a data breach, you'll want to have a response

> To give your business the best chance at preventing data breaches, you must do an entire risk assessment to determine the best cybersecurity solutions.

plan ready. A previously prepared plan of action will help you get back up and running as quickly as possible.

When creating your data breach response plan, what are a few things you should ensure are included?

1. Assess the Situation

Following a breach, the first step organizations should take is to evaluate their systems and identify the stolen data. Many businesses want to spring into action immediately. However, you first must identify the security vulnerabilities that led to your systems becoming compromised.

Then, determine what information the criminal may have taken. Was it financial information? Or was it a more personal type of information, such as names and addresses? The type of data exposed will help you figure out how serious the breach was and what other steps need to be taken.

2. Comply with Legal Obligations

There are a variety of different laws regulating data breaches – both on the state and federal levels. These regulations will dictate the timeline in which you must notify customers and what information the notification requires. It also may dictate which authorities you must alert to the breach.

Depending on where your business operates, you will need to determine what legal obligations you must meet. If you fail to comply with any laws, you will most likely have to pay a hefty price.

3. Prevent Further Unauthorized Access

As recommended in step one, after you have evaluated your network and systems, you'll want to ensure that any remaining vulnerabilities are quickly patched and secured. For example, if a hacker got to your data from an exposed mobile device, you'll need to implement solutions so that that access point is no longer open.

You'll likely want to call in the help of security experts to ensure your organization is secure.

4. Notify Your Customers

One of the most important pieces of a data breach response plan involves keeping your customers in the loop. This can help you regain your clients' trust and minimize lost business.

A data breach can easily impact your customers' confidence in your organization, but being upfront and transparent can make a big difference in keeping them around.

You might already have a legal obligation to inform your customers of the breach within a specified time window. Whether this is the case or not, we recommend communicating with your customers sooner rather than later.

Notify them what data was affected by the breach, whom they can reach out to for more information, and what steps you are taking to secure your systems and their data.

5. Continually Monitor and Update Your Security

Lastly, your data breach response plan should also include continual security monitoring. This way, you can help ensure your organization won't be hit again.

New types of cyber-attacks are always emerging, and older forms evolve. To stay on top of your cybersecurity landscape and keep your organization protected, you have to stay updated on the newest forms of threats. To do this, you might consider hiring a managed service provider to manage and improve your cybersecurity. If you choose this option, you can keep focusing on your core business and leave the security up to the experts.

Conclusion

Cybersecurity cannot be underestimated in the financial services industry. Any bank, credit union, or other institution must prepare and protect its organization. And if a breach does happen, they need to be ready with a response plan.

A response plan will give a company an outline of the steps it should take to reduce stress and panic within the organization. Even more, it will help ensure that a business does not miss any crucial steps in recovery. ■

UBA FALL WASHINGTON, D.C. VISIT

A group of Utah bankers traveled to Washington, D.C. in September to meet with federal regulators and Utah's Congressional delegation.

EMERGING BANK LEADERS SPOTLIGHT

LYDIA LEVIN RECOGNIZED WITH ABA EMERGING LEADER AWARD

Lydia Levin, SVP, Channel Strategy at Zions Bank in Salt Lake City, was one of 11 recipients of the American Bankers Association's inaugural Emerging Leader Awards, honoring the next generation of bank leaders for their high standards of achievement and service to the industry and their communities.

"Banking provides the great opportunity to meet, work with, and serve people from all segments of society," said Levin. "I love the focus that we have on improving the communities where we live and work."

Levin served on the UBA Emerging Bank Leaders Board from 2019-2022, and she is still active in the group's Mentoring Committee.

Asked why she is passionate about banking, Levin said, "I work with intelligent, passionate, and talented people. This makes it rewarding and fun. My peers are professionals, genuinely interested in improving the financial condition of our customers through delivering the bank's suite of products and services, whether they work in operations, compliance, or manage branches and client relationships."

Her best piece of advice to other bankers or those looking to join the industry? "To plan, but always be flexible and open to new challenges and opportunities."

The complete list of 2022 ABA Emerging Leader Awards Winners can be found on ABA.com.

FALL NETWORKING EVENT @ TOPGOLF

Emerging Bank Leaders from around Utah gathered at TopGolf in Midvale on September 28 for an afternoon of friendly competition, networking, and fun. This annual fall event is a highlight of the EBL calendar, and it's totally free for members. Join us today at utah.bank/ebl, and we look forward to teeing it up with you next year!

BANK KUDOS

BANK OF UTAH ANNOUNCES WINNERS OF 2022 "MY UTAH" PHOTO CONTEST

A stunning photo of Utah Lake's seasonal ice stacks, taken by Jami Bollschweiler of Weber County, won first prize in Bank of Utah's 2022 "My Utah" photo contest. Now in its third year, the bank's photo contest has gained popularity, resulting in a pool of nearly 400 entries, compared to 86 in 2021. Bollschweiler received a $500 prize for rising to the top, and Bank of Utah will highlight her spectacular photo in advertising, on social media platforms, and on the bank's website.

D.L. EVANS BANK OPENS NEW LAYTON BRANCH

D.L. Evans Bank hosted a Grand Opening for their new Layton branch on September 13, celebrating the occasion with a ribbon cutting ceremony, prize giveaways, and refreshments. The new branch is located at 360 E. Gentile Street in Layton.

FIRST COMMUNITY BANK CELEBRATES COMMUNITY GIVING MONTH

During August, First Community Bank Utah, Division of Glacier Bank, celebrated their annual community giving month. The employees participated in giving back to their communities through various events, including Customer Shred Days, a Red Cross Blood Drive, a massive Community Giveaway Drawing, and a surprise drink blitz in which bankers purchased drinks for customers at local soda and coffee shops. Employees also flooded their communities with $95,000 in donations to non-profit organizations selected by each branch. The response from these organizations was overwhelmingly grateful, and bank employees were proud to live out their purpose of building their communities, one dream at a time.

TAB BANK'S SUSAN HOSTETTER NAMED A 2022 HR ACHIEVEMENT HONOREE BY UTAH BUSINESS

TAB Bank announced that Susan Hostetter – Executive Vice President, Human Resources – was named a 2022 HR Achievement Honoree by Utah Business. The annual list honors HR professionals who foster culture, growth, and happiness in the workplace. Hostetter has prioritized efforts to combat the tough labor market impacted by the great resignation and the COVID-19 pandemic by ensuring that employees connect with TAB's mission and vision. TAB has also invested in training employees and providing opportunities to grow within and across the business as they progress in their careers.

TAB BANK HOSTS FUNDRAISING GOLF TOURNAMENT FOR OGDEN RESCUE MISSION

TAB Bank hosted the 2022 Ogden Rescue Mission Charity Golf Tournament on September 9 at Wolf Creek Resort in Eden, Utah, to raise money for the Ogden Rescue Mission, a faith-based 501(c)(3) nonprofit organization that provides housing, food, counseling, and employment services for homeless persons in Northern Utah. Since 2001, with the generous support of past participants, donors, sponsors, and friends, the tournament has raised $475,000 to provide 180,000 meals to the less fortunate in the community.

ZIONS BANK CELEBRATES RE-OPENING OF HISTORIC PARCEL POST BANK

Parcel Post Ribbon Cutting

After two years of extensive renovations, Zions Bank celebrated the re-opening of its historic Parcel Post Bank with a ribbon cutting and community celebration in August. Vernal City Manager Quinn Bennion, Zions Bank President and CEO Scott Anderson and region president Charles Balch spoke at the ceremony for the newly renovated building, and Zions Bank presented donations to Thompsen House of Hope and the Uintah Ute Marching Band, which performed at the event.

Known as the "building shipped by mail," the Parcel Post Bank garnered national attention while it was being built in 1916. Vernal businessman William H. Coltharp found that he could ship the bricks by U.S. mail for less than half the price of sending them by freight wagon. He shipped 80,000 individually wrapped bricks by parcel post 407 miles from Salt Lake City through Mack, Colorado, to Vernal. The shipment overwhelmed the U.S. Postal Service, prompting new postal regulations nationwide.

Zions Bank has operated in Vernal since 1973 when it acquired the Bank of Vernal. The Parcel Post Bank is listed on both the Utah State Register of Historic Places and the National Register of Historic Places. ■

BANKERS ON THE MOVE

ALTABANK

Russ Carnahan has been promoted to the Branch Manager in Washington County. Russ has been at Altabank for 11 years and has been in banking since 2001, previously with Sunfirst Bank and Town & Country Bank.

Mark Southam is moving from Relationship Banker to Loan Specialist at the Orem branch. Mark has been with Altabank for under a year and is also studying Finance at Utah Valley University.

Lica Strasner is moving from a Loan Specialist to Credit Analyst at the Pleasant Grove branch. She has been with Altabank since December 2021.

BANK OF UTAH

President and CEO Doug DeFries has announced his retirement, effective Dec. 31, 2022. The board of directors has announced that company veteran Branden Hansen will replace him as president of Bank of Utah, effective Jan. 1, 2023.

As president, Branden will set the vision and strategy of the bank and will oversee all aspects of the institution's operations and drive the bank's growth and business opportunities.

The board of directors also appointed Benjamin Browning as CEO, also effective Jan. 1, 2023. Ben will focus on the company's culture and will work with new president, Branden Hansen to create strategic objectives for the bank. He will remain vice chair of the board of directors, helping to represent the Browning family, who founded Bank of Utah years ago.

Andrew "Andy" Cromwell has been hired as a mortgage loan officer at Bank of Utah. He will be based out of the bank's home loans office in the Logan City Center.

CENTRAL BANK

Scott Nicholls recently joined Central Bank as a Loan Officer in their American Fork Office. In his 21-year banking career, Nicholls has accumulated a wealth of experience that will benefit his customers in his new role.

Nate Carter has been promoted to IT Systems Manager of Central Bank. Carter has worked in the banking industry for 17 years, with almost a decade in bank information technology.

Troy Marsh has been appointed as Information Security Offer of Central Bank. Marsh has worked in banking technology for over 22 years.

D.L. EVANS

Morris Smith was recently appointed to Vice President Commercial Loan Officer at the South Ogden branch. He will be responsible for receiving, reviewing, evaluating, and underwriting commercial loan requests, and will also focus on business development and marketing of existing and prospective accounts.

Fred Pettersson is the Vice President Commercial Loan Officer at the Layton branch. In addition to his extensive industry experience, Fred is also a graduate of Pacific Coast Banking School and has previously been an instructor for the Utah Bankers Association.

Sam Taylor is the Vice President Commercial Loan Officer for the Murray branch. Sam brings with him almost two decades of financial experience and is currently attending the Pacific Coast Banking School.

Laurie Criddle is the Operations Officer at D.L. Evans Bank's newest branch in Layton. She will be responsible for directing and administering the operational efforts of the branch – training, directing, and supervising branch operations staff.

Elvia Daniels is the Operations Officer at the Logan branch. Elvia has been in banking for over 20 years; prior to joining D.L. Evans Bank, she was a branch manager at Zions Bank. She is responsible for directing and administering the operational efforts of the branch and oversees a full range of services to customers and prospective customers.

Maryann Byg is the Operations Officer at the Murray branch. Maryann has over 15 years of financial experience and will oversee operations and other members of her team while serving her customers.

FINWISE BANK

Maria Montoya-Elder has been promoted to Vice President of Audit and Regulatory Exam Management for FinWise Bank. Maria has more than 20 years of experience in the financial services industry and is a Certified Regulatory Compliance Manager (CRCM) and a Certified Anti-Money Laundering Fraud Professional (CAFP).

NELNET BANK

Ben Focht has joined Nelnet Bank as Chief Information Security Officer (CISO). Ben brings 20 years of Information Technology and Cyber Security experience to the team, including leading Vulnerability Operations, Penetration Testing, and Incident Response teams.

STATE BANK OF SOUTHERN UTAH

State Bank of Southern Utah announced the following additions to their team:

Cordelle Morris
Chief Marketing Officer
Cedar City

Andi Jensen
Business Development Officer
St. George

Cliff Hall
Business Development Officer
St. George

They are also happy to announce the following Cedar City promotions:

David Duncan
SVP, Chief Operations Officer

Jeremy Andrews
SVP, Area Lending Manager

Garrett Cottam
SVP, Group Lending Manager

ZIONS BANK

Zions Bank Names Two New Region Presidents

Mike Van Roosendaal has been promoted to president of Zions Bank's Suburban Salt Lake Region, and Stephanie Sherrell has been named president of the bank's Metro Salt Lake Region. Roosendaal has worked in the banking industry for 19 years, with 14 of those years at Zions Bank. He previously managed the bank's Centralized Business Banking team. Sherrell has spent 13 of her 37-year banking career at Zions Bank. She most recently managed the Draper branch.

UBA COMMUNITY REINVESTMENT CONFERENCE

By Brian Comstock, Director of Communications & Marketing, Utah Bankers Association

More than 40 bankers convened for the 2022 UBA Community Reinvestment Conference on Oct. 4, 2022, both in-person at Rice-Eccles Stadium in Salt Lake City and online via Zoom. With so much happening in the CRA space, attendees enjoyed the opportunity to reconnect and share ideas with colleagues.

UBA President Howard Headlee kicked off the proceedings by thanking everyone for their hard work, reminding them to "Stay focused on what you do because it matters."

The robust program continued with several key topics, including support for low-income and diverse businesses, CDFI Partnerships, Community Land Trusts, tips for getting internal support for your CRA program, and a Utah economic outlook.

Thank you to all who attended. We look forward to seeing you next year!

QUESTIONS, ISSUES AND STRATEGIES INVOLVED IN OPENING ACCOUNTS ONLINE

By Sharvelle Washington, CAMS BSA/Compliance Officer
Bankers' Bank of the West

The new era of opening accounts online is here. Over time, more people have opted to open accounts online instead of in person at a branch, as some of us might be used to. And with online account opening come uncertainties in staying compliant with Bank Secrecy Act requirements.

Even though the process of account openings has evolved, the requirements for opening accounts remain the same. This raises a question: How can one verify someone's identity without that person being present?

Of course, third-party vendors with solutions can be integrated into the financial institution's interface to collect all the data needed to open an account. But before the decision to integrate online account openings, it's important to do some research and resolve some crucial questions.

Start by determining your financial institution's risk tolerance for online account openings. This will hinge, in part, on the products an online applicant could enroll in. Risk tolerance varies from bank to bank and also depends on the products offered by each institution.

Next, conduct comprehensive due diligence on the third-party vendors you're considering. Compare what several companies offer with respect to the data collection process and their methods of verifying the customer. Determine whether the vendor can collect scanned or captured photo IDs and a live photo at the time of enrollment, and find out what you'll be able to provide when an auditor asks for verifying information. Make sure you'll have easy access to this information.

Compare what several companies offer with respect to the data collection process and their methods of verifying the customer.

Never ignore red flags or evasiveness on the part of a vendor. If a potential service provider is unable or unwilling to give you satisfactory answers, it's not the right vendor for your institution.

Don't forget to create a marketing strategy for engaging new customers to open accounts online. Visual appeal is important today: showing what the process entails could entice more people to sign up. Referrals from current customers may also draw in more new customers.

Finally, stay positive throughout the entire process. Opening accounts online is still a fairly new advancement in the financial services industry. Everyone is still learning and adjusting to changing times. ■

Sharvelle Washington, CAMS BSA/Compliance Officer
Bankers' Bank of the West

LOAN STRATEGIES TO HELP YOUR CUSTOMERS FIGHT INFLATION AND EARN THEIR TRUST

Stephenie Williams
Vice President, Financial Institution
Product and Strategy, Vericast

It's no secret that over the last two-plus years public trust in our nation's leading institutions has severely declined. Whatever the reason, people are less likely to look outside of their inner circles for guidance and advice on important life decisions.

Vericast Survey Reveals a Disturbing Trend

What you may not realize is the shift from institutional trust appears to have bled into the financial services industry. Our recent survey of 1,000 U.S. adults revealed this alarming trend: people are increasingly turning to alternative sources for financial information, advice and assistance.

While our poll shows that every generation is affected, the change in attitude and behavior of Generation Z (ages 10–25, our survey included those 18–25) stands out. This coming-of-age generation, now with more income to spend, save and invest, is the most likely to report that they may seek financial advice from online practitioners who in many cases appear far less qualified, knowledgeable and accountable than professional financial advisors.

It's Not Only Gen Z With Trust Issues

A notable percentage of millennials (25%) and Generation X (22%) say they also turn to YouTube videos for important financial planning advice for paying off debt, choosing loans, opening credit card accounts, taking out home equity lines of credit, and more.

34% of Gen Z consumers surveyed say that they are getting financial advice from TikTok® and 33% are getting it from YouTube®, while only 24% of this age group are seeking advice from financial advisors.

Yes, It has Come to This ...

More than 60 percent of all survey respondents said they seek financial advice from social media. Institutions must now compete with Tik Tok®, YouTube® and other sometimes opportunistic social media influencers for the opportunity and privilege of being consumers' go-to for the financial advice, products and solutions they need to navigate surging inflation and a slowing economy.

Interestingly enough, the resource that scored highest across all generations was *friends and family*.

Financial Institutions Have a Clear Advantage

This additional survey information provides financial institutions with valuable insight into

VERICAST

"I get my financial advice from *family and friends*."

45% Gen Z

45% Millennials

47% Gen X

45% Baby Boomers

the unique advantage they hold over their social media rivals: an ability to proactively reach out and connect on a personal level with customers and prospects anytime, anywhere and from any channel.

Does that mean "friends and family" status with consumers is achievable?

How Do You Promote Loans *and* Build Trust?

The answer is *ubiquity, relevance and empathy*. People not only want — *but expect* — to receive easy and convenient access to loans, advice, guidance, and financial services designed to help them survive inflation and prepare for the economy's next period of growth.

Omnichannel Lives Require Omnichannel Approaches

It's not enough to focus your loan marketing efforts on a single channel, or two, even. Successful financial marketers know their customers expect a connected and omnichannel experience and make a point to deliver that experience to the channels they prefer to interact with most.

Understand Customers Better Using Data and Insight

All those channels mean there's no single path consumers will follow to engage with you. It also means the paths will be more complex. There are numerous data points involved that indicate consumers' needs and preferences, their key decision drivers and acceptance barriers, and what inspires them to act, just to name a few. It's critical to get to know your customers and potential customers, including how they navigate life, both online and offline. Only then can you build an efficient and effective loan marketing strategy that engages consumers how, when and where it matters.

Provide Value Financially and Emotionally

Rising prices are putting a strain on consumers financially and emotionally. A slowing economy and skyrocketing inflation are eating up their savings as they struggle to fill their tanks, put food on the table, and even purchase everyday essential retail products.

Our survey revealed three out of four of respondents say the amount of money in their bank account impacts their mental health.

Customers will still need money for the basics, like food, gas and essential everyday items but also seek funds for major purchases, home repairs, tuition, and savings for unplanned expenses. Offers for **home equity loans**, **credit cards** and **personal loans** provide the immediate financial relief for mounting consumer money woes.

→

- **Home equity loans** allow homeowners to leverage elevated home values and turn them into the funds they need to pay bills, make overdue home improvements, pay off debt, or even take a vacation — and, best of all, provide much-needed peace of mind.
- While **credit card** offers on the surface seem like a solution inconsistent with rising debt, a closer look shows how credit cards can stem the rising tide of debt with low- and no-interest rate balance transfers and squelch rising prices with rewards for groceries and gas.
- **Fixed-rate personal loans** offer a quick, no-collateral way for qualified customers to have the flexibility to make large purchases, consolidate debt, or tide them over until the economy improves.

Be Data-Driven and Creative

Data is key to lending success during inflationary times. With the right targeting, you can lend smartly, with fewer concerns. Here are a few proven strategies:

- **Run a one-time or ongoing loan generation campaign.** Target homeowners with credit card debt. You could also enroll in trigger-based alerts for customers applying for loans with other lenders.
- **Conduct a proactive outbound call campaign.** Use your data for a variety of targets including existing mortgage holders or customers who have payments going to credit cards other than yours.
- **Use highly targeted digital advertising.** Use demographic, intention and behavioral data points to connect with customers through digital banking, and on connected tv or the web. Using data will help you be top of mind — and trusted — when the need arises.

It's Primetime for Lending and Connecting

Now is the time to pour your energies into executing a successful omnichannel, data-driven loan acquisition campaign. Show customers and prospects that you truly understand and care about their problems and challenges by offering solutions that address their financial and emotional needs and *gain their trust*.

Source for All Data: *2022 Vericast Dynata Financial Health Survey, n=1000*

STEPHENIE WILLIAMS
Vice President, Financial Institution Product and Strategy, Vericast
Stephenie has more than 20 years of experience in direct marketing, strategic planning, product management, and promotions in the financial services industry.

NEW ASSOCIATE MEMBER

FHN FINANCIAL

FHN Financial is an industry leader in fixed income sales, trading, and strategies for institutional customers in the U.S. and abroad. They also provide investment services and balance sheet management solutions. With an average daily trading volume of $7 billion-plus, FHN Financial transacts business with approximately 50% of all U.S. banks with portfolios over $100 million.

Visit www.fhnfinancial.com or contact Trae Winston at trae.winston@fhnfinancial.com to learn more.

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A CASE STUDY:
LENDERS BEWARE OF AN EXPIRING STATUTE OF LIMITATIONS

A 2021 decision from the Utah Court of Appeals, *Daniels v. Deutsche Bank National Trust, et al.,* presents a cautionary reminder to lenders. The case began with an ordinary $300,000 loan, secured by a deed of trust against the borrower's home, and ended with the borrowers taking their home free of the bank's lien. To add insult to injury, the bank was required to reimburse the borrowers $95,523 in legal fees.

In January 2007, a couple purchased a newly-constructed house in Kamas, Utah, financed by a loan of over $300,000. By mid-2007, they had defaulted on their loan. After the lender recorded a notice of default, the couple filed for bankruptcy protection, thus staying foreclosure proceedings and tolling the applicable six-year statute of limitations for breach of a written contract.

In Utah, a lender must generally move forward to collect any debt made pursuant to a written loan document within six years. But when does the six-year statute start to run? Utah Code Ann. § 78B-2-113(1) clarifies:

> An action for recovery of a debt may be brought within the applicable statute of limitations from the date: (a) the debt arose; (b) a written acknowledgment of the debt or a promise to pay is made by the debtor; or (c) a payment is made on the debt by the debtor.

In other words, the statute of limitations starts to run when the debt arises and may "restart" each time a debtor makes a payment on the debt or when the borrower acknowledges the debt or promises to pay the debt in writing.

In the *Daniels* case, the homeowners obtained a discharge of their personal liability to the bank in their bankruptcy case. However, the bank's trust deed lien against the home remained in place. After emerging from bankruptcy, the homeowners repeatedly sent letters to the bank asking to help them "keep their home" and to "mediate a new mortgage." During this time, the homeowners also made some post-bankruptcy payments to the bank. Their last such payment was made on Feb. 25, 2010 — the key date in this case.

Fast forward nearly six years later. On Sept. 29, 2015, the lender recorded a new notice of default. Under Utah law, the trustee may have been able to hold the trustee's sale as early as February 2016. But, for reasons not specified in the *Daniels* decision, the sale was not scheduled until May 6, 2016. That later sale date, of course, was more than six years after the homeowners had made their last payment on the loan.

In April 2016, before the bank completed its foreclosure sale, the homeowners filed a complaint seeking a declaratory judgment that the six-year statute of limitations had run on the bank's right to foreclose against the property.

The homeowners argued that the six-year period began running on the date of their last payment, Feb. 25, 2010, and thus had expired on Feb. 25, 2016. The trial court ruled in favor of the homeowners and quieted title in their favor, free of the bank's lien. The trial court also ordered the bank to pay the borrowers' attorneys over $95,000.

The bank appealed the trial court's decision to the Utah Court of Appeals.

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The main takeaway of the *Daniels* decision is probably just a reminder that there is a clock ticking that limits the time a lender has to work out a problem loan. For purposes of restarting that clock, "money talks." Promises and ambiguous requests for loan modifications, very well, may not.

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It should be noted that at roughly the same time the homeowners filed their lawsuit, the Utah legislature was working on a series of changes to Utah's nonjudicial foreclosure law, including to Utah Code Ann. § 57-1-34, that establishes the actions a lender collecting a debt secured by real property must take before the statute of limitation expires. That change in the law became effective on May 10, 2016, the month after the borrowers filed their lawsuit and about three months after the statute of limitation had already expired under the old law.

Prior to May 2016, Utah law required a lender to either: 1) complete a nonjudicial "trustee's sale of property under a trust deed" or 2) file "an action to foreclose a trust deed." But after May 10, 2016, a lender need only file a lawsuit commencing a judicial foreclosure or "file for record a notice of default." In other words, before May 10, 2016, a nonjudicial trustee's sale had to be completed during the limitations period. Under the new statute, a lender need only record a notice of default in the county recorder's office prior to the running of the limitations period. That change in law, had it been in effect sooner, may have saved the bank's lien in the *Daniels* case. The bank had, in fact, recorded a notice of default before the limitations period expired, but it had not completed its trustee's sale. Thus, the bank had complied with the new law (that had not then been enacted) but not the old law, which was in place when the statute of limitation lapsed.

Although the bank was not able to take advantage of the new law, it still had other arguments to present. For example, what about all those post-bankruptcy letters the bank received from the borrowers asking the bank to modify their loan? The bank argued that those communications must certainly constitute a written acknowledgment or promise to pay the debt, which should have restarted the limitations period.

The Court of Appeals agreed that a written acknowledgment of a debt restarts a statute of limitations. However, the court explained, the borrower's acknowledgment of debt must be "clear, distinct, direct, unqualified, and intentional" and "must be more than a hint, a reference, or a discussion of an old debt; it must amount to a clear recognition of the claim and liability as presently existing."

The Court of Appeals ruled that the communications between the homeowners and the bank did not meet this standard, in large part because the homeowners reiterated during those conversations that their personal liability had been discharged in bankruptcy. The Court of Appeals determined that these "communications were a 'reference' to 'or a discussion of an old debt' not a clear recognition of . . . [a] liability as presently existing." Therefore, the limitations period was not tolled by those letters.

In short, the Court of Appeals affirmed the remedy granted by the trial court of quieting title in favor of the homeowners, free of the bank's lien, because "the Trust Deed was no longer enforceable as security . . . after the limitations period expired." And as mentioned earlier, the court also affirmed the trial court's award of attorney's fees to the borrowers.

The main takeaway of the *Daniels* decision is probably just a reminder that there is a clock ticking that limits the time a lender has to work out a problem loan. For purposes of restarting that clock, "money talks." Promises and ambiguous requests for loan modifications, very well, may not. So, even though it may be beneficial for a lender to attempt to work out a problem loan without resorting to judicial or nonjudicial foreclosure, the prudent course is to calculate the statute of limitations based on the date the last payment was made, and not by a debtor's acknowledgment or promise to pay the debt. Better yet, lenders may decide to simply record their notice of default early in the workout process, even if negotiations with the borrower are ongoing. ■

Ray Quinney & Nebeker P.C.'s banking and creditors' rights lawyers Stephen C. Tingey, Michael D. Mayfield, and Richard H. Madsen II contributed to this article.

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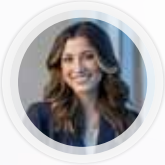

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