Community Bankers of Michigan Regulatory Dispatch

March 20, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Items of Interest

Bank Management

	CFPB Prepared Remarks of CFPB Director Rohit Chopra at the Financial Data Exchange Global Summit (03/14/2024) – *I want to discuss the status of where we are on accelerating America's shift to open banking, with a focus on the role of standard setters and standard-setting. I then want to discuss some of the dangers of how the standard-setting process can be weaponized in an anticompetitive way. I'll close with how standard-setting organizations can anticipate becoming recognized by the Consumer Financial Protection Bureau (CFPB).* *All of you in this room know that the United States has a clunky system when it comes to switching financial products. Moving to a new checking account with a better interest rate involves resetting direct deposits and recurring bill-paying, printing new checks, and obtaining a new card device. Mistakes can be costly. It's no surprise that the largest banks in the country have barely budged on their rates, but still retain their depositor base.* *Open banking involves less red tape and more seamless switching. Several months ago, the CFPB proposed rules that will serve as a key foundation in the shift to open banking. The rules rely on a dormant authority under Section 1033 of the Consumer Financial Protection Act, which gives consumers rights to access their data. The rules also seek to ensure that sensitive personal financial data is safe and private.* *We are in the process of finalizing these rules, by reviewing feedback to our proposal, coordinating with our sister components within the Federal Reserve System, and thinking through enforcement with other financial regulators.* *Chopra continues:* *While interoperability is an important component of a healthy open banking system, I would eventually like to recognize more than one standard to allow the market to develop without complete reliance on one set of protocols. I also recognize that not every standard setter might be ideally suited to create standards for every part of the open banking system, and new standard-setting organizations may need to emerge as the system evolves.*

As I conclude, I want to emphasize that existing standard setters should not take their place in this market for granted. The CFPB's strong preference remains for market-driven standards, but we will not be able to rely on such standards if they are structured to allow incumbents to maintain their market power to the detriment of open banking in the United States.

If we're unable to identify standard-setting organizations, we will be prepared to step in with more detailed guidance. But we think the industry should be prepared to think critically about these issues now, to stand ready to engage with us, and to

Comment: The 1033 Proposed Rule is intended to accelerate the aforementioned shift towards open banking in the United States, establish a comprehensive regulatory framework providing consumers and their authorized third parties with rights to receive structured, consistent and timely access to consumers' personal financial data held by banks and by imposing limitations on authorized third parties' collection, use and retention of that data.

OCC Acting Comptroller Discusses Operational Resiliency (03/12/2024) – WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed the importance of operational resiliency in remarks at the Institute of International Bankers Annual Washington Conference.

In his remarks, Mr. Hsu discussed the growing risks of disruptions that may impede the provision of financial services or adversely impact systems. He also discussed considerations to strengthen operational resiliency requirements for large banks with critical operations, including third party service providers.

Comment: Operational resilience is a growing area of concern for bank regulators - especially for large banks. Regulators are contemplating a bank's ability to adjust and recuperate from operational disruptions, echoing the outsized role that financial services have in the larger context of the economy. It would not be surprising to see additional guidelines or even rulemaking in this area in the near future.

BSA / AML

CSBS Money Transmission Modernization Act (03/14/2024) – The Money Transmission Modernization Act is a single set of nationwide standards and requirements to modernize the supervision and regulation of money transmitters. Nineteen states have adopted the law in full or in part and 17 have already introduced legislation in 2024. The law, created by state regulators and industry experts, was approved for nationwide implementation by the CSBS Board of Directors in August 2021. CSBS will continue to work with states to ensure that adoption and implementation is as uniform as possible, as states may require legislation, regulation or guidance changes to adopt the law's provisions.

Comment: Money transmitters are regulated at the state and federal levels. At the federal level, companies engaged in money transmission are generally subject to anti-money laundering compliance program obligations under the Bank Secrecy Act. Additionally, each US state (with the exception of Montana) regulates money transmission under a state-specific licensing regime. As a result, the regulatory frameworks under which money transmitters operate can vary significantly from state to state. CSBS, which released the Model Act two years ago, drafted it with the goal of creating a single set of nationwide standards and requirements that would be adopted by states, therefore harmonizing the regulation of money transmitters and other similarly situated payments companies.

	FinCEN UPDATED: Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.) (03/11/2024) – On March 1, 2024, in the case of National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and enjoining the Department of the Treasury and FinCEN from enforcing the Corporate Transparency Act against the plaintiffs. The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024. While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations. FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time. Update: This notice was updated on March 11, 2024, to reflect that a Notice of Appeal has been filed regarding this case. ***Comment: While the district court's decision only applies to the individual plaintiff (Isaac Winkles, and companies for which he is a beneficial owner or applicant), the National Small Business Association members everyone else still has to comply with the CTA. It is hard to see how this new wrinkle will impact FinCEN's efforts to reconcile the current CDD with the CTA.***

Deposit / Retail Operations

	FTC Sure Ways to Spot a Scammer (03/13/2024) – Scammers say and do things that can tell us they're lying — and they're not who they pretend to be. Of course, to hear or see those clues, we have to get past the panic scammers make us feel, thanks to the so-called emergencies they try to create. And since scammers are convincing, that can be hard to do. But recent scams are costing people their life savings, so here are some sure ways to spot the scammer. ***Comment: Share with your customers – if they avoid a scam, you bank might avoid a potential loss.***
	FTC Will Your Bank or Investment Fund Stop a Transfer To a Scammer? Probably Not (03/11/2024) – We expect banks and brokers to keep our money safe. We think they'll stop or warn us about suspicious transfers out of our accounts. But do they? Scammers are exploiting that trust and getting people to transfer their money and drain their retirement accounts to "protect" or "safeguard" or "legalize" it. The truth? The money gets stolen, and banks and brokers won't get it back from the scammer. ***Comment: Your customers have very high expectations – often unreasonable expectations – that you will spot a fraud and step in.***

Human Resources

	SHRM Total Compensation Costs on the Rise (03/17/2024) – After months of slow growth, employers began spending significantly more on employees' overall compensation in the last month of last year. According to the latest Employer Costs for Employee Compensation report, released by the U.S. Bureau of Labor Statistics (BLS), employers spent 3.8 percent more on wages and benefits in December 2023 compared to September 2023. Takeaway for employers: The BLS report indicates a greater increase in total compensation costs for employers than expected. Because compensation is often the largest expense line impacting an organization's profit and loss, HR leaders should begin a comprehensive workforce planning review to determine how these quickly increasing costs can be mitigated. ***Comment: Supply and demand imbalances have been a key feature of the economy since the sharp rebound in economic activity that began in mid-2020. At the same time, compensation for workers has grown at a faster rate than its pre-pandemic trend, as companies raise wages amid labor shortages and a record number of job openings. Community banks are facing the same labor market pressures pushing compensation higher across the broader economy, affecting bank profitability. Plan and budget accordingly.***

Lending

	FRB Industrial Production and Capacity Utilization - G.17 (03/15/2024) – Industrial production edged up 0.1 percent in February after declining 0.5 percent in January. In February, the output of manufacturing rose 0.8 percent and the index for mining climbed 2.2 percent. Both gains partly reflected recoveries from weather-related declines in January. The index for utilities fell 7.5 percent in February because of warmer-than-typical temperatures. At 102.3 percent of its 2017 average, total industrial production in February was 0.2 percent below its year-earlier level. Capacity utilization for the industrial sector remained at 78.3 percent in February, a rate that is 1.3 percentage points below its long-run (1972–2023) average.
	CFPB Junk Fees Are Driving Up Closing Costs – And We Want to Hear From You (03/08/2024) – Families who manage to save up for a down payment and get approved for a mortgage often get an unwelcome surprise: closing costs that all too often are full of junk fees. In 2022, the median amount paid by borrowers was nearly $6,000 in these costs and fees. That's a substantial upfront cost on what is already a major financial undertaking. It also appears that some closing costs are high and increasing because there is little competition. The CFPB is working to ensure that consumers can navigate the closing process more easily, shop around, and save money. If you have a problem with your mortgage or closing costs and need a response from the company, we want to hear from you. ***Comment: No doubt the CFPB will pursue "rulemaking and guidance to address anticompetitive closing costs imposed by lenders on homebuyers and homeowners," according to a White House announcement. That is certainly concerning and worth paying close attention to. Logically, the CFPB needs to be dealing with state insurance departments.***

Technology / Security

	CISA Microsoft Releases Security Updates for Multiple Products (03/12/2024) – Microsoft has released security updates to address vulnerabilities in multiple products. A cyber threat actor could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review the following and apply the necessary updates: • Microsoft Security Update Guide for March ***Comment: Share these alerts with your IT staff.***

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED RULES WITH REQUEST FOR PUBLIC COMMENT

01.29.2024 **FinCEN** Comment Request; Beneficial Ownership Information Requests SUMMARY: FinCEN invites all interested parties to comment on the proposed information collection associated with requests made to FinCEN, by certain persons, for beneficial ownership information, consistent with the requirements of the Beneficial Ownership Information Access and Safeguards final rule. The details included in the information collection are listed below. This request for comment is made pursuant to the Paperwork Reduction Act of 1995. **DATES: Written comments must be received on or before April 1, 2024.**

01.24.2024 **CFPB** Fees for Instantaneously Declined Transactions SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to prohibit covered financial institutions from charging fees, such as nonsufficient funds fees, when consumers initiate payment transactions that are instantaneously declined. Charging such fees would constitute an abusive practice under the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices. **DATES: Comments must be received on or before March 25, 2024.**

01.17.2024 **CFPB** Overdraft Lending: Very Large Financial Institutions SUMMARY: The Consumer Financial Protection Bureau (CFPB) proposes to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions, thereby ensuring that extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers applicable costs and losses. The proposal would allow consumers to better comparison shop across credit products and provide substantive protections that apply to other consumer credit. **DATES: Comments must be received on or before April 1, 2024.**

10.25.2023 **FRB** Requests Comment on a Proposal to Lower the Maximum Interchange Fee That a Large Debit Card Issuer Can Receive For a Debit Card Transaction SUMMARY: Regulation II implements a provision of the Dodd-Frank Act that requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Under the current rule, for a debit card transaction that does not qualify for a statutory exemption, the interchange fee can be no more than the sum of a base component of 21 cents, an ad valorem component of 5 basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of 1 cent if the issuer meets certain fraud-prevention-standards. The Board developed the current interchange fee cap in 2011 using data voluntarily reported to the Board by large debit card issuers concerning transactions performed in 2009. Since that time, data collected by the Board every other year on a mandatory basis from large debit card issuers show that certain costs incurred by these issuers have declined significantly; however, the interchange fee cap has remained the same. For this reason, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers. Further, the Board proposes to update the interchange fee cap every other year going forward by directly linking the interchange fee cap to data from the Board's biennial survey of large debit card issuers. Initially, under the proposal, the base component would be 14.4 cents, the ad valorem component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board also proposes a set of technical revisions to Regulation II. **DATES: Comments must be received on or before May 12, 2024. (Extended from February 12, 2024)**