Community Bankers of Michigan Regulatory Dispatch

March 6, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Reflections on the Economy and Bank Regulation - Governor Michelle W. Bowman

Notable Developments in Bank Regulation

Turning back to bank regulation and supervision, as I look at the bank regulatory framework agenda, I am struck by the sheer volume of matters that have recently been completed, that have been proposed, and that are in the pipeline. These reforms touch on a wide range of topics that directly or indirectly impact banks of all sizes. I expect that the regulatory agenda will remain very active for the foreseeable future, adding further to the already significant collection of rules, guidance, and supervisory changes made to date. While I supported some of these recent changes, the vast number of finalized, proposed, and potential changes suggest a lack of prioritization—whether we have effectively identified actual risks to the banking system and devoted resources to the most pressing of these issues. The significant volume of revisions also poses a real problem for banks that must review, provide feedback, and implement changes.

The primary goal of prudential bank regulation and supervision is to promote a safe and sound banking system. Although policymakers may agree on this shared objective, we sometimes disagree on the best path to achieve it. As we consider modifications to our regulatory framework, an important question arises about how we identify and implement areas for change. To be sure, we should focus on the areas of greatest risk, addressing known vulnerabilities and shoring up the framework to address emerging risks. But we also need to focus on efficiency, efficiency in how we deliver on our safety and soundness goals, and how regulatory reforms affect the banking market, the economy, and those who use banking services. We should also ensure, in our pursuit of reform, that our efforts result in a bank framework that is appropriately tailored and calibrated.

So today, I will offer my reflections on bank regulation, focusing on notable recent developments. As I have said in the past, more is not always better when it comes to the rules, guidance, expectations, and supervisory standards that apply to banks. In many ways, more can be counterproductive and harmful when it comes to regulatory reform. When reforms are disproportionate to risk or fail to promote safety and soundness in an efficient way, those changes can harm the competitiveness of the U.S. banking system, impede the ability of banks to manage their risks, and even result in the *allocation of capital by regulators instead of by bank management. Even if the consequences of reforms are unintended, we must consider those consequences and how they may shape the future of the banking system.*

Recently, we have seen many rule revisions, proposals, and ideas for reform, including supervisory reform. I expect that this activity will continue to feature prominently in the coming months.

Comment: Gov. Bowman has expressed skepticism over the FRB's recent rulemakings and how they impact community banks directly or indirectly.

CBM Insights

Q: According to the CRA Final Rule (October 2023), do we have to post our CRA public file to the bank's public website by 4/1/24?

A: Yes. The April 1, 2024, effective date is applicable to provisions of the final rule that are similar to the current CRA regulations: facility-based assessment area delineations, effect of CRA on applications, public file, bank public notice, and CRA examination schedule public notice provisions, as well as the new public engagement provision.

Source link.

Additionally, information must be available in a format compatible with the American with Disabilities Act.

Items of Interest

Bank Management

	***CSBS** Relays Concerns with SEC's Staff Accounting Bulletin 121 (02/28/2024) – On behalf of the Conference of State Bank Supervisors, I write to relay our concerns with the U.S. Securities and Exchange Commission's (SEC) Staff Accounting Bulletin 121 ("SAB 121," or "the Bulletin"). The Bulletin, issued without public consultation, unilaterally upends traditional custodial accounting obligations. As written, SAB 121 could lead to significant downstream effects for custodial firms subject to prudential regulation.* *State regulators strongly support appropriate customer protections and a safe and sound financial system. Further, we appreciate the SEC's effort to provide guidance concerning novel activities such as custodial services for "crypto-assets." However, decisions with wide-ranging implications across the banking sector should be made in consultation with prudential regulators at both the state and federal level and only after an opportunity for public notice-and-comment. As the Government Accountability Office (GAO) ruled in October 2023, SAB 121 qualifies as a rule under the Administrative Procedure Act (APA) and, as such, should have been made available for public comment.* *While custodial activities may have once elicited images of only safe deposit boxes holding valuable physical objects, today's banks hold a variety of both physical and electronic assets. More recently, bank customers have been increasingly interested in banks' ability to custody crypto-assets, including cryptographic keys. While the nature of the underlying assets may change and prudential risk management requirements may vary from asset to asset, the accounting and regulatory principles applicable to such custodial assets should be consistent. In unilaterally departing from well-established accounting principles for safeguarding custodial crypto-assets, SAB 121 ignores existing regulatory frameworks in place to ensure custodial activity is conducted in a safe and sound manner.* *Failure to take public comment or consult with other regulators on a cross-jurisdictional issue like this could result in substantial unintended consequences. Two areas of potential side effects from this opaque rulemaking include:*

	Potential Asset Concentration: *The Bulletin requires on-balance sheet accounting of crypto-assets under custody, which is a significant departure from the treatment of other assets held under custody. Due to the prudential regulatory implications of on-balance sheet accounting, this would likely require custodial institutions to raise significant funds to maintain adequate leverage ratios – a step many industry participants have indicated would be prohibitive to providing these custodial services for customers. Not only is this model inconsistent with the principle that similar activities should be regulated in a similar manner, but it could also result in an unnecessary and potentially risky concentration of custodial assets outside of prudentially regulated institutions.* *Loss of Insolvency Protections for Customers:* *Applying on-balance sheet treatment for crypto-assets may inappropriately subject customer assets to creditors' claims in the event of the insolvency of an institution offering custody products and services. In a traditional bankruptcy proceeding, assets accounted for on-balance sheet are typically subject to creditor claims. Conversely, assets held in custody for the benefit of customers are considered accounted for off-balance sheet – and thus protected in bankruptcy – because they remain the assets of the customer. Requiring custodied crypto-assets to be accounted for on-balance sheet risks losing the bankruptcy remote protections of custody services. This is an important distinction from the treatment for a broker-dealer that would be subject to a different form of bankruptcy under the Securities Investor Protection Act.* *These are only two unintended side effects that SAB 121 could impose on markets and consumers in an evolving technological environment.* *History repeatedly demonstrates the shortcomings of rulemaking in a vacuum. Without significant consultation with peer regulators and comments from the broader public, these types of missteps are all too common, particularly with new and innovative technologies. We support robust consumer and market protections in this growing and evolving asset class and stand ready to provide Congress and our federal regulatory partners with our experience and expertise. However, given the lack of adequate consultation and opportunity for public comment, and the potential for significant detrimental effects, we have significant concerns with SAB 121.* ***Comment: The CSBS does an excellent job pointing out the unintended consequences this rule could have on banks in general. Issuance of a rule without collaboration from all stakeholders' risks overextending into areas where it would hurt both innovation and consumers.***
	FRB *Sources of Uncertainty in the Short Run and the Long Run Governor Lisa D. Cook (02/22/2024) – Economic Resilience and Monetary Policy Effectiveness* *Economic activity, especially consumer spending, proved more resilient than expected last year. Real gross domestic product (GDP) grew more than 3 percent on a four-quarter basis, with personal consumption expenditures accounting for over half of that growth. Consumer spending generally has continued to show strong momentum in recent months.* *This broad resilience in the face of the sharp rise in interest rates since spring 2022 raises some questions: Why has growth remained robust in the face of a sharp tightening of monetary policy? Has the relationship between monetary policy and the economy fundamentally changed?* *To be sure, higher interest rates have reduced demand in some interest-sensitive sectors, such as housing, durable goods, and business investment in equipment and intangible capital. But the effects of those higher rates have been muted by the ability of many homeowners and firms to lock in low interest rates for longer terms before rates rose. Moreover, there has been pent-up demand in some sectors, such as motor vehicles, where supply was previously constrained by shortages of intermediate inputs, including computer chips.*

	Yet over time, these forces supporting demand are waning. New firms and many smaller firms face higher interest rates, as do established firms that need to refinance their debt. Interest rates on auto loans, at about 10 percent for new cars and 14 percent for used cars, are beginning to constrain demand for motor vehicles, while auto production has recovered to pre-pandemic levels as supply bottlenecks have eased. *Labor income growth was a significant support for consumer spending last year. Nonetheless, although the employment-to-population ratio, at 60.2, is just below its post-pandemic high, average hours worked have fallen back to normal levels, and wage growth has slowed. Thus, growth in total labor income has slowed to near the pre-pandemic rate of about 5 percent a year, which should contribute to moderating consumption.* *In addition, consumer spending growth may face increasing headwinds from deteriorating household balance sheets. Savings built up during the pandemic are diminishing, especially for those with low or moderate incomes. Some measures of credit use, such as credit card and buy-now-pay-later use and the share of households carrying a credit card balance, have risen above their pre-pandemic levels. And delinquencies on auto loans and credit cards, which fell to near-record lows during the pandemic, have risen back to near their long-run averages. Thus, although the consumer has been surprisingly resilient, there are reasons to expect some moderation going forward.*
	FRB What's the Rush? Governor Christopher J. Waller (02/22/2024) – *So, the data that we have received since my last speech has reinforced my view that we need to verify that the progress on inflation we saw in the last half of 2023 will continue and this means there is no rush to begin cutting interest rates to normalize monetary policy.* *Last week's report on consumer prices in January was a reminder that ongoing progress on inflation is not assured. The uptick in inflation in that report was spread widely among goods and services. This one month of data may have been driven by some odd seasonal factors or outsized increases in housing costs, or it may be a signal that inflation is stickier than we thought and will be harder to bring back down to our target. We just don't know yet. While I believe inflation is likely on track to reach 2 percent in a sustainable manner, I am going to need to see more data to sort out whether January's CPI inflation was more noise than signal. This means waiting longer before I have enough confidence that beginning to cut rates will keep us on a path to 2 percent inflation.* *Fortunately, the strength of output and employment growth means that there is no great urgency in easing policy, which I still expect we will do this year. More data, and more time, will tell whether January's CPI report was just a bump in the road to 2 percent inflation. The hotter-than-expected data that we received validates the careful risk management approach that Chair Powell has advocated in his recent public appearances. And, with most data indicating solid economic fundamentals, the risk of waiting a little longer to ease policy is lower than the risk of acting too soon and possibly halting or reversing the progress we've made on inflation.*
	OCC Acting Comptroller Discusses Banking and Commerce (02/21/2024) – WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed banking and commerce, regulatory effectiveness, and financial stability in remarks at Vanderbilt University in Nashville, Tenn. In his remarks, Mr. Hsu discussed the blurring of the lines between banking and commerce in payments and private credit/equity, and how this might lead to financial instability. He also offered thoughts on the potential for the Financial Stability Oversight Council's recently adopted analytic framework to identify and address financial stability risks as they emerge.

BSA / AML

	FinCEN Updates: FinCEN Issues Small Entity Compliance Guide for Beneficial Ownership Information Access and Safeguards Requirements (02/20/2024) – The Financial Crimes Enforcement Network (FinCEN) published a small entity compliance guide that provides an overview of the requirements regarding access to beneficial ownership information (BOI) by small entities – in particular, small financial institutions authorized to access BOI. Under the Access Rule, issued in December 2023, BOI reported to FinCEN is confidential, must be protected, and may be disclosed only to certain authorized Federal agencies; state, local, tribal, and foreign governments; and financial institutions. The guide includes sections summarizing the Access Rule's requirements that pertain to small financial institutions' access to BOI. ***Comment: The issuance of the Access Rule and the Guide do not create new regulatory requirements or supervisory expectations for banks or non-bank financial institutions to access BOI. FinCEN is required to revise the current Customer Due Diligence (CDD) Rule as directed by Section 6403(d)(1) of the CTA.***

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	FTC Price Fixing by Algorithm is Still Price Fixing (03/01/2024) – Landlords and property managers can't collude on rental pricing. Using new technology to do it doesn't change that antitrust fundamental. Regardless of the industry you're in, if your business uses an algorithm to determine prices, a brief filed by the FTC and the Department of Justice offers a helpful guideline for antitrust compliance: your algorithm can't do anything that would be illegal if done by a real person. The FTC and Department of Justice took action to fight algorithmic collusion in the residential housing market. The agencies filed a joint legal brief explaining that price fixing through an algorithm is still price fixing. The brief highlights key aspects of competition law important for businesses in every industry: (1) you can't use an algorithm to evade the law banning price-fixing agreements, and (2) an agreement to use shared pricing recommendations, lists, calculations, or algorithms can still be unlawful even where co-conspirators retain some pricing discretion or cheat on the agreement. ***Comment: This is very broadly written and could be problematic. If several banks in the same area use the same algorithm, in theory it would generate the same value for loan considerations. That is not independent valuations and in theory is collusion.***
	OCC Issues Second and Third Quarter 2024 CRA Evaluation Schedule (02/29/2024) – WASHINGTON—The Office of the Comptroller of the Currency (OCC) released its schedule of Community Reinvestment Act (CRA) evaluations to be conducted in the second and third quarters of 2024. The OCC encourages public comment on the CRA-related activities of the national banks and federal savings associations (collectively, banks) scheduled to be evaluated under the CRA. Public comments should be submitted to the banks themselves at the mailing addresses listed on the schedule or to the

	appropriate OCC supervisory office before the month in which the evaluation is scheduled. The OCC will consider all public comments received before the close of the CRA evaluation. ***Comment: If your bank is on this list, you should prepare to be evaluated for compliance under the new Final Rule. As noted above, the April 1, 2024, effective date is applicable to provisions of the final rule that are similar to the current CRA regulations: facility-based assessment area delineations, effect of CRA on applications, public file, bank public notice, and CRA examination schedule public notice provisions, as well as the new public engagement provision.***
	FDIC Issues CRA Examination Schedules for Second Quarter 2024 and Third Quarter 2024 (02/29/2024) – The Federal Deposit Insurance Corporation (FDIC) issued the lists of institutions scheduled for a Community Reinvestment Act (CRA) examination during the second quarter 2024 and third quarter 2024. CRA regulations require each federal bank and thrift regulator to publish its quarterly CRA examination schedule at least 30 days before the beginning of each quarter. The Community Reinvestment Act is a 1977 law intended to encourage insured banks and thrifts to help meet the credit needs of the communities in which they are chartered to do business, including low- and moderate-income neighborhoods, consistent with safe and sound operations. CRA examinations allow federal regulators to assess an institution's record of helping to meet those needs. CRA examinations are scheduled based on an institution's asset size and CRA rating. Absent reasonable cause, an institution with $250 million or less in assets and a CRA rating of Satisfactory can be subject to a CRA examination no more frequently than once every 48 months. Absent reasonable cause, an institution with $250 million or less in assets and a CRA rating of Outstanding can be subject to a CRA examination no more frequently than once every 60 months. The schedules of institutions to be examined April 1, 2024, through June 30, 2024, and July 1, 2024, through September 30, 2024, are based on the best information now available and are subject to change. For example, a regulated financial institution not otherwise scheduled for an examination may be examined in connection with the application for a deposit facility. Alternatively, some institutions may require more time and resources than originally allotted, thus delaying other scheduled examinations. If an institution is rescheduled for a different quarter, that information will be included on a later list. Federal bank and thrift regulators encourage public comment on the institutions to be examined under the CRA. Comments about FDIC-supervised institutions should be directed to the institutions themselves or to the Deputy Regional Director of the appropriate FDIC regional office (attached). All public comments received prior to completion of a CRA examination will be considered. ***Comment: If your bank is on this list, you should prepare to be evaluated for compliance under the new Final Rule. As noted above, the April 1, 2024, effective date is applicable to provisions of the final rule that are similar to the current CRA regulations: facility-based assessment area delineations, effect of CRA on applications, public file, bank public notice, and CRA examination schedule public notice provisions, as well as the new public engagement provision.***

Technology / Security

	CISA Mozilla Releases Security Updates for Firefox and Thunderbird (02/21/2024) – Mozilla released security updates to address vulnerabilities in Firefox, Firefox ESR, and Thunderbird. A cyber threat actor could exploit one of these vulnerabilities to take control of an affected system.

	CISA encourages users and administrators to review the following Mozilla Security Advisories and apply the necessary updates: MFSA 2024-05 for Firefox MFSA 2024-06 for Firefox ESR MFSA 2024-07 for Thunderbird ***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)**