



Community Bankers of Michigan Regulatory Dispatch

April 10, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FRB Compliance Spotlight: Resources to Combat Increased Check Fraud

The Federal Reserve System (Federal Reserve) recognizes that check fraud is a top concern of bankers. In 2023, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) noted that financial institutions reported 680,000 suspicious activity reports for possible check fraud in 2022, a significant increase from 2021. While the Federal Reserve actively monitors trends in check fraud, it generally does not intervene in fraud disputes between banks, including banks over which it may not be the primary federal banking regulator. The Federal Reserve is sharing these resources and sound practices to help financial institutions respond to check fraud.

- **The Federal Reserve**
 - **Consumer Compliance Outlook (CCO).** In 2018, CCO published an article titled "[Responding to Counterfeit Instrument Scams.](#)" This article identifies common schemes involving counterfeit instruments and sound practices to mitigate risk.
 - **Contact Us link.** Financial institutions can communicate their concerns about check fraud and other issues to the Federal Reserve at this link. If a bank chooses to report a fraud incident, the notice should provide full details in the comment section at the bottom, without including any personally identifiable information. Board staff will review the information received, which may include sharing it within the Federal Reserve System and with other banking supervisory agencies.
- **FinCEN.** On February 27, 2023, FinCEN issued an [alert](#) about the surge in check fraud. This alert provides red flag indicators to assist financial institutions in meeting their Bank Secrecy Act obligation to identify and report suspicious activity. It emphasizes that information sharing among financial institutions is critical to identifying, reporting, and preventing mail-theft related check fraud. The alert strongly encourages financial institutions to

share information under the safe harbor authorized by Section 314(b) of the USA PATRIOT Act; refer to FinCEN's [Section 314\(b\) page](#) for additional information.

- **U.S. Postal Inspection Service (USPIS).** The USPIS has published [Tips & Prevention](#) on scams in general, an [information page](#) on check fraud, and a [brochure](#) financial institutions can send to their customers, titled "Don't Be a Victim of a Check Scam." It also provides forms to [report fraud](#).
- **The American Bankers Association (ABA).** The ABA's [Check Fraud Claim Directory](#) provides a searchable database of contact information for banks needing to file a check warranty breach claim with another financial institution. To access the directory, a bank must participate by providing its fraud contacts but does not need to be an ABA member.
- **Check Service Providers.** Check service providers may offer products and services designed to mitigate check fraud, such as duplicate detect and positive pay products that can help spot duplicate check presentment or accelerated presentment options that may help institutions detect problems earlier in the check collection process. Institutions can contact their provider about whether these sorts of potential features are offered.

Comment: Community banks across Michigan – and the nation - have seen a dramatic increase check fraud. Compounding the problem, many community banks have struggled to get the banks of first deposit to honor their presentment warranties and refund the maker's bank. Use these tools to help you bank combat check fraud and to find ways to get the attention of the bank of first deposit.

CBM Insights

Q: Can a bank waive certain charges for employees, directors, and executive officers when it comes to, for example, cashiers' checks and safe deposit boxes? Is Regulation O an issue?

A: The rule for Fed member banks (Section 376, below) is that a bank can't provide preferential pricing for insiders which is broadly defined to include all employees - but that is applicable to the interest rate paid on deposit accounts and not the waiving a fee. See below:

§376. Rate of interest paid to directors, etc.

No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank.

Source [link](#).

On the credit side, Regulation O prohibits preferential terms and conditions for executive officers, directors and principal shareholders related to credit transactions. The waiving of a deposit fee, with the exception of an overdraft fee, would not be a violation of Regulation O. Additionally, Regulation O permits preferential terms and conditions in connection with an extension of credit 'program' available to all employees.

(2) Exception. Nothing in this paragraph (a) or paragraph (e)(2)(ii) of this section shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) That is widely available to employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(ii) That does not give preference to any insider of the member bank over other employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

Source [link](#).

Items of Interest

Bank Management

	<p>OCC Acting Comptroller Discusses Elevating Fairness in Banking (04/04/2024) – WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed the importance of fairness in remarks given at the National Community Reinvestment Coalition Just Economy Conference 2024.</p> <p>Mr. Hsu highlighted bank progress in overdraft protection program reforms since the OCC issued guidance last April and provided an update on Project REACH accomplishments regarding credit invisibles, minority depository institutions and affordable housing. Additionally, he discussed the importance of ensuring fairness as it relates to artificial intelligence and fraud.</p> <p><i>Comment: “In the United Kingdom, the Payment Systems Regulator (PSR) recently issued a new reimbursement requirement for authorized push payment fraud, where criminals trick an individual to send money to a fraudulent account. Under the new requirement, the customer’s bank and the receiving bank must reimburse the customer for losses, with the reimbursement cost split 50/50 between each bank. In addition to making the consumer whole, the requirement incentivizes both banks to develop and implement more effective fraud controls.” – That would likely require a rewrite of Regulation E, and absolves the customer of any accountability in fraud mitigation.</i></p>
	<p>FRB Bank Mergers and Acquisitions, and De Novo Bank Formation: Implications for the Future of the Banking System Governor Michelle W. Bowman (04/02/2024) – Bank Mergers and Acquisitions - A more immediate concern is the dramatically evolving approach to bank mergers and acquisitions (M&A) by some prudential regulators. It is helpful to consider bank M&A broadly, to include not only bank-to-bank mergers subject to approval under the Bank Merger Act, but also the broader set of business combinations contemplated under sections 3 and 4 of the Bank Holding Company Act, and under section 10 of the Home Owners' Loan Act.</p> <p><i>These M&A transactions allow banks to thrive in our dynamic banking system, and help to promote the long-term health and viability of banks. M&A also ensures that some institutions have a meaningful path to transitioning bank ownership. In the absence of a viable M&A framework, we increase the potential for additional risks including limited opportunities for succession planning, especially in smaller or rural communities and zombie banks that continue to exist but have no competitive viability or exit strategy.</i></p> <p><i>M&A reform is currently a popular topic on the banking agency regulatory agenda with the process and standards regulators employ to review and approve transactions under intense scrutiny. Recently some of the federal banking regulators have proposed or described new M&A policy approaches, with the Department of Justice currently reviewing how it enforces section 7 of the Clayton Act.</i></p> <p><i>As regulators revisit the evaluation standards for bank M&A transactions under the statutory framework, we should consider whether the regulatory review process is fair, transparent, and consistent with applicable statutes. This should begin with an important threshold question—what are the identified shortcomings with the current process or standards, and are the proposed reforms targeted and effective to address these shortcomings?</i></p>
	<p>FRB Accepting Applications for its Community Advisory Council (04/01/2024) – The Federal Reserve Board announced on Monday that it is accepting applications from individuals who wish to be considered for membership on the Community Advisory Council (CAC). The CAC was formed in 2015. It advises the Board on issues affecting consumers and communities and complements two of the Board's other advisory</p>

councils whose members represent depository institutions--the Federal Advisory Council and the Community Depository Institutions Advisory Council.

The CAC is made up of a diverse group of experts and representatives of consumer and community development organizations and interests, including affordable housing, community and workforce development, small business, and asset and wealth building. CAC members meet semiannually with members of the Board of Governors in Washington to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities.

The Board expects to announce the appointment of CAC members in the fall of 2024. Applicants from previous years are encouraged to re-apply in 2024. Additional information about the selection process, including instructions for submitting an application, can be found in the attached Federal Register Notice.

FDIC [Consumer Compliance Supervisory Highlights – March 2024 Edition](#) (03/28/2024) – The FDIC’s Consumer Compliance Supervisory Highlights is a publication that features articles of interest to the banking industry. Its purpose is to enhance transparency regarding the FDIC’s consumer compliance supervisory activities and provide a high-level overview of consumer compliance issues identified in 2023 through the FDIC’s supervision of state non-member banks and thrifts. Topics include supervisory observations related to consumer protection laws, examples of practices that may be useful to institutions in mitigating risks, regulatory developments, consumer compliance resources, and an overview of consumer complaint trends.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:

This FDIC publication provides an overview of consumer compliance issues identified through the FDIC’s supervision of state non-member banks and thrifts in 2023.

This edition of the FDIC’s Consumer Compliance Supervisory Highlights includes:

- A description of the most frequently cited violations and other consumer compliance examination observations;
- Information on regulatory developments;
- A summary of consumer compliance resources and information available to financial institutions; and
- An overview of consumer complaint trends.

Comment: These Supervisory Highlights are a valuable tool to sharpen you banks compliance program. This issue includes exam findings on Part 328: Third-Party’s Misrepresentations of Insured Status and Misuse of FDIC’s Name or Logo; Regulation E: Managing EFT Dispute Investigations Handled by Third Parties; RESPA Section 8: Payments for Mortgage Brokerage Services; and plenty on fair lending.

BSA / AML

FDIC [Collecting Identifying Information Required Under the Customer Identification Program \(CIP\) Rule](#) (03/28/2024) – The FDIC is issuing this advisory to reemphasize the requirements under the Customer Identification Program (CIP) Rule as it relates to collecting identifying information from customers. This advisory reminds institutions of the information required to be collected from the customer prior to account opening.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:

- In 2003, the final CIP Rule was issued for banks, savings associations, credit unions, and certain non-federally regulated banks.
- The CIP Rule requires a bank to implement a program that includes risk-based verification procedures that enable the bank to form a reasonable belief that it knows the true identity of its customers. These requirements exist regardless of whether the bank establishes this relationship directly with the customer or through an intermediary.
- These procedures must include collecting, at a minimum, the customer’s name, date of birth (for an individual), address, and identification number.
- A bank is required to collect the taxpayer identification number (TIN) from a customer that is a U.S. person prior to account opening or another approved identification from a non-U.S. person. This applies to all accounts with the exception of credit card accounts.
- To gain an understanding of the issues related to the TIN collection, FinCEN is seeking information and comment from banks and interested parties regarding the CIP Rule’s TIN collection requirement through a [Request for Information: Customer Identification Program Rule Taxpayer Identification Number Collection Requirement](#).

Deposit / Retail Operations

OCC Promotes National Financial Capability Month (04/02/2024) – (OCC) supports National Financial Capability Month in April, and encourages national banks and federal savings associations (collectively, banks) to support this annual commemoration by recommitting their focus on improving the financial capability and financial health of their customers.

Banks can promote financial capability through high-quality financial literacy education, as well as through improved access to financial services for all consumers, especially those who are underserved.

“National Financial Capability Month allows us to reaffirm our commitment to empower individuals and communities with tools and knowledge to achieve financial well-being,” said Acting Comptroller of the Currency Michael J. Hsu. “Activities that promote financial capability are important to helping consumers make informed choices across a range of areas, including avoiding fraud and scams and planning for the future.”

The OCC is dedicated to making resources available to help banks deliver top-tier financial literacy education and services. The OCC’s Community Affairs office issues publications and provides resources to banks on financial capability and financial literacy topics including the recently updated [Community Developments Fact Sheet on Financial Capability](#), the quarterly [Financial Literacy Update](#) and the [Financial Literacy Resource Directory](#). The OCC also has [Community Affairs Officers](#) across the nation to assist banks in providing financial literacy education to their customers and in providing other services across their communities. These officers can explain how banks can support National Financial Capability Month and how banks can find ways to expand access to financial literacy education, credit, and capital in their communities.

CSBS [COMMENT LETTER Proposed Rule – Overdraft Lending: Very Large Financial Institutions](#)

(04/03/2024) – The Conference of State Bank Supervisors (“CSBS”) provides the following comments on the proposed rule titled Overdraft Lending: Very Large Financial Institutions (“proposal”) issued by the Consumer Financial Protection Bureau (“CFPB”). The proposal would apply to all insured depository institutions with more than \$10 billion in total assets (“covered institutions”). The proposal would amend Regulations Z and E to deem “above breakeven overdraft credit” provided by covered institutions to be extensions of credit subject to numerous disclosures and protections under the Truth in Lending Act (“TILA”) and Regulation Z. Overdraft services provided by covered institutions at or below their so-called “breakeven point” or at a CFPB-established benchmark fee would be considered a “courtesy” service and would not be subject to Regulation Z. Overdraft services provided by institutions with less than \$10 billion in total assets, regardless of its pricing, would not be subject to Regulation Z.

The CFPB should withdraw the proposal and issue an advanced notice of proposed rulemaking (“ANPR”) in its place. The proposal would significantly alter the regulatory treatment of overdraft services, with potentially far-reaching consequences for the 23 million households that pay overdraft fees annually and the estimated 93% of banks that offer an overdraft program. In effect, the CFPB would, by regulation, set the amount of fees that banks could charge consumers when they overdraw their accounts because the alternatives, as discussed below, would be impractical and/or pose significant operational costs and compliance risks.

State regulators support strong consumer protections, including protections related to overdraft services. However, the proposal raises significant questions, issues, and uncertainties that merit public input prior to the CFPB issuing a proposed rule, including:

- The CFPB’s proposal rests on questionable interpretations of TILA and Regulation Z.
- The proposed alternatives for providing overdraft services do not appear to be equally viable, and all three could lead to decreased options for consumers across a wide range of financial institutions.
- The proposal fails to consider conflicts with state law.

Comment: We agree with the CSBS and applaud their request for the CFPB to withdraw their proposal.

FDIC [Consumer News – April 2024 Edition](#) (04/01/2024) – Safe travels with your money -

Considering a vacation soon? In the rush of preparing for travel, it is easy to forget the steps you should take to protect your finances while you are away. Here are some ways to avoid money-related travel issues, save money on fees, and greatly improve your chances for a safe, pleasant journey.

Comment: Find ways to share these educational resources with your accountholders.

CFPB [Releases 2023 Consumer Response Annual Report](#) (03/29/2024) – In 2011, the CFPB began hearing directly from consumers about the challenges they face in the marketplace, bringing their concerns to the attention of financial institutions and assisting in addressing their complaints. Last year, we sent more than 1.3 million complaints to more than 3,400 companies for review and response.

Our 2023 Consumer Response Annual Report found a continued increase in credit or consumer reporting complaints, with more than one million of these complaints being sent to the three nationwide consumer reporting companies: Equifax, Experian, and TransUnion.

Consumers also raised issues about fraudulent activity in nearly every product category, including credit or consumer reporting, debt collection, checking or savings accounts, and credit cards.

Human Resources

No news to report this week.

Lending

No news to report this week.

Technology / Security

CISA Publishes New Webpage Dedicated to Providing Resources for High-Risk Communities (04/02/2024)

– CISA published a new dedicated [High-Risk Communities](#) webpage comprised of cybersecurity resources to support civil society communities at heightened risk of digital security threats, including cyber hygiene guidance, a repository of local cyber volunteer programs, and free or discounted tools and services.

Despite their vulnerability to advanced cyber threats, many civil society organizations operate on lean budgets and cannot significantly invest in cybersecurity. CISA’s High-Risk Communities webpage provides resources specifically for civil society organizations, such as:

- [Project Upskill](#), a suite of cyber hygiene guides designed to arm individuals of high-risk organizations with simple steps to meaningfully improve their cyber hygiene.
- [Cybersecurity Resources for High-Risk Communities](#), which offers a wide selection of free or steeply discounted tools and services.
- [Cyber Volunteer Resource Center](#), a repository of cyber volunteer programs across the country that provide free, hands-on cybersecurity support to under-resourced organizations.

For more information on the initiative, read Associate Director Clayton Roman’s blog post, [JCDC Working and Collaborating to Build Cyber Defense for Civil Society and High-Risk Communities](#). Visit [Joint Cyber Defense Collaborative](#) to learn more about the planning effort that aided in developing these valuable resources.

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

03.28.2024 **FinCEN** [Request for Information and Comment on Customer Identification Program Rule Taxpayer Identification Number Collection Requirement](#) SUMMARY: FinCEN, in consultation with staff at the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System (Board) (collectively, the “Agencies”), seeks information and comment from interested parties regarding the Customer Identification Program (CIP) Rule requirement for banks to collect a taxpayer identification number (TIN), among other information, from a customer who is a U.S. person, prior to opening an account (the “TIN collection requirement”). Generally, for a customer who is an individual and a U.S. person (“U.S. individual”), the TIN is a Social Security number (SSN). In this request for information (RFI), FinCEN specifically seeks information to understand the potential risks and benefits, as well as safeguards that could be established, if banks were permitted to collect partial SSN information directly from the customer for U.S. individuals and subsequently use reputable third-party sources to obtain the full SSN prior to account opening. FinCEN seeks this information to evaluate and enhance its understanding of current industry practices and perspectives related to the CIP Rule’s TIN

collection requirement, and to assess the potential risks and benefits associated with a change to that requirement. This notice also serves as a reminder from FinCEN, and staff at the Agencies, that banks must continue to comply with the current CIP Rule requirement to collect a full SSN for U.S. individuals from the customer prior to opening an account (“SSN collection requirement”). This RFI also supports FinCEN’s ongoing efforts to implement section 6216 of the Anti-Money Laundering Act of 2020, which requires FinCEN to, among other things, identify regulations and guidance that may be outdated, redundant, or otherwise do not promote a risk-based anti-money laundering/countering the financing of terrorism (AML/CFT) regime. **DATES: Written comments on this RFI are welcome and must be received on or before 60 days after publishing in the Federal Register.**

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)**