Community Bankers of Michigan Regulatory Dispatch

April 3, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Texas Federal Judge Blocks Community Reinvestment Act Final Rule

On Friday of last week, a federal judge granted an injunction against federal banking regulators' Community Reinvestment Act final rule as requested by the Independent Bankers Association of Texas (IBAT), ICBA, ABA and other plaintiffs. The injunction extends the CRA final rule's effective date for each day that the injunction remains in place, pending the resolution of plaintiffs' challenge of the rules.

The ruling marks the latest victory in opposition to federal overreach in rulemaking. IBAT shared the following:

"IBAT maintains that the Community Reinvestment Act final rule is a gross overreach of the agencies' authority. The rules disincentivize growth and undermine community banks' ability to meet the needs of the communities that they serve," said IBAT President and CEO Christopher Williston. "We are grateful that the court acknowledged the immediate and irreparable harm that banks are incurring to make initial steps towards compliance with the rule."

Plaintiffs released the following joint statement following the ruling:

"We welcome this decision by the Northern District of Texas pausing implementation of the Community Reinvestment Act Final Rules until the litigation we filed challenging the rules can be resolved. While we strongly support the goals of CRA, the Final Rules exceeded the banking agencies' regulatory authority and created disincentives for banks to lend in low- and moderate-income communities that need access to credit the most. We look forward to a ruling on the merits in this matter."

Comment: The judge noted that the rules went too far by allowing that banks can be assessed not just in the geographic areas they maintain physical branches but also in other areas in which they conduct retail lending and by allowing the regulators to assess the availability of a bank's deposit products, not just credit, in a community.

CBM Insights

Q: Can a bank deny credit based at least in part on medical collections in a credit report?

A: Yes – but within the exceptions noted for its use in the Fair Credit Reporting Act, section §1022.30 - §1022.32. Under the rules, you can use that information in your credit decision provided those debts are treated the same as any other information.

The rule includes specific examples below on how a creditor can use 'medical information' in making a credit decision.

See below:

(ii) Examples of uses of medical information consistent with the exception.

(A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

Source link.

It's also worth noting that the CFPB began rulemaking in the Fall of 2023 that would stop creditors from relying on medical bills for underwriting decisions. The proposal would narrow the 2005 exceptions (identified above) and prohibit creditors from using medical collections information when evaluating borrowers' credit applications.

Items of Interest

Bank Management

	FRB Speech by Governor Waller on the Economic Outlook (03/27/2024) – *Turning to the performance of the U.S. economy, the Atlanta Fed's GDPNow model, based on all current data, predicts first quarter growth in real GDP of 2.1 percent at an annual rate. Similarly, the consensus from the Blue Chip survey of private sector forecasters is 2 percent. This would be a significant slowdown from the average of around 4 percent in the second half of 2024 but still quite solid growth.* *Consumer spending, the largest component of GDP, seems to be moderating this quarter. Retail sales fell significantly in January and then retraced about half of that decline in February. Smoothing out these*

swings, they clearly indicate a moderation in goods spending from the second half of last year. However, services spending, excluding energy, grew moderately in January, which offset to some extent the decline in goods spending. I will be watching on Friday morning to see what the February data on personal income and spending show.

On the business side, surveys of purchasing managers in February continued to report results we have been hearing for over a year. For manufacturers, the Institute for Supply Management indicated a slight contraction in activity, with new orders and production moving down a bit. This contrasts with nonmanufacturing businesses that continued to see an expansion in activity, with measures of new orders and business activity on the higher end of their readings over the past year.

Joint CFPB Joins Federal and State Agencies in Coordinated Statements on Tech & Enforcement (03/26/2024) – WASHINGTON, D.C. – Federal and state agencies, including the Consumer Financial Protection Bureau (CFPB), released agency-specific action statements on tech capacity. These statements reflect concrete actions to increase tech capacity, including actively hiring technologists – which will help enforce the laws on the book and design remedies that work for consumers, workers, small businesses, and others in the digital era.

Amid a rapidly evolving tech ecosystem – including the wave of attention on generative AI – CFPB technologists work in interdisciplinary teams across the Bureau to help ensure that the rights of consumers are not being violated. This includes helping to identify emerging technology developments, spot potential issues, and where appropriate, help enforce the law and develop lasting remedies.

"From cracking down on data abuses and shoddy AI to tracking Big Tech's movement into financial services, technology is fundamental to the CFPB's work," said CFPB Director Rohit Chopra. "Our technologists help the agency enforce existing laws and track emerging risks to consumers to ensure that American families are protected through whatever technological changes the market encounters."

Read the statement from CFPB Director Chopra and Chief Technologist Erie Meyer.

Read the Federal Trade Commission's statement.

OCC Acting Comptroller Discusses Fairness and Compliance Risk Management (03/25/2024) – WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed fairness and effective compliance risk management in remarks at CBA LIVE 2024, hosted by the Consumer Bankers Association.

Mr. Hsu discussed how banks can improve their ability to anticipate and adapt to emerging compliance risk issues by elevating and developing a strong internal sense of fairness.

Comment: In his remarks, Acting Comptroller Hsu broadly covered improving banks' ability to anticipate and adapt to emerging compliance risk issues by elevating and developing a solid internal sense of fairness. Focusing on compliance and fairness, Hsu noted that banks can improve the effectiveness of their compliance risk management programs by developing a strong internal sense of fairness.

FRB The Dual Mandate and the Balance of Risks - Governor Lisa D. Cook (03/25/2024) – *How should we think about the tradeoff between our two goals? There is no long-run tradeoff that monetary policy can exploit. Monetary policy is generally thought to be able to control inflation over the long run. In contrast, the maximum level of employment depends on structural forces and economic policies beyond the influence of monetary policy.*

In the short run, the two mandates often suggest the same course of action. This is particularly true in the presence of demand shocks. For instance, a negative demand shock in the economy will tend to raise unemployment and also put downward pressure on inflation. In this case, both mandates suggest a need for monetary stimulus to increase demand in the economy, bring down unemployment, and keep inflation from falling significantly below target.

However, a negative supply shock (like a rise in oil prices) will tend to increase both inflation and unemployment at first, which creates a short-run tradeoff for monetary policy. Stimulus to bring down unemployment could push inflation even higher, but responding aggressively to inflation may have significant employment costs. The FOMC lays out our approach to this potential tradeoff in its annual Statement on Longer-Run Goals and Monetary Policy Strategy, which says the following:

The Committee's employment and inflation objectives are generally complementary. However, under circumstances in which the Committee judges that the objectives are not complementary, it takes into account the employment shortfalls and inflation deviations and the potentially different time horizons over which employment and inflation are projected to return to levels judged consistent with its mandate.10

In 2022 and into 2023, with unemployment near historical lows but inflation at its highest level in four decades, it was clear that this approach to meeting the dual mandate implied forceful tightening of monetary policy. More recently, with inflation having fallen substantially, even as the labor market has remained strong, it is worth considering how economic developments may have shifted policy tradeoffs and associated risks.

BSA / AML

FinCEN Seeks Comments on Customer Identification Program Requirement (03/28/2024) – WASHINGTON—The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) is issuing a request for information (RFI) related to existing requirements for banks under the Customer Identification Program (CIP) Rule to collect a taxpayer identification number (TIN) from a customer prior to opening an account. Generally, for a customer who is an individual and a U.S. person, banks are required to collect a full Social Security number (SSN) from a customer. The RFI is being issued in consultation with staff at the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Board of Governors of the Federal Reserve System.

"The requirement for banks to collect identifying information from a customer prior to opening an account has been a long-standing component of a bank's anti-money laundering program," said FinCEN Director Andrea M. Gacki. "However, FinCEN recognizes the significant changes in technology and financial services that have taken place since promulgation of the CIP Rule, and we welcome comments from interested parties as we explore ways to modernize the U.S. anti-money laundering/countering the financing of terrorism regime." FinCEN recognizes that since the adoption of the CIP Rule there has been significant innovation in customer identifying information collection and verification tools available to banks and other financial institutions. This RFI will inform FinCEN's understanding in this area and evaluate the risks, benefits, and safeguards if banks were permitted to collect partial SSN information from a customer and subsequently use reputable third-party sources to obtain the full SSN prior to account opening. This RFI also reminds banks of the requirement to collect identifying information from the customer prior to opening an account.

In addition, this RFI 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 AML/CFT regime.

	FinCEN strongly encourages all interested parties to submit written comments. Comments to the RFI will be accepted for 60 days following publication in the Federal Register. ***Comment: The CIP Rule requires banks to collect a taxpayer identification number from a customer before opening an account. Comments submitted in response to the request will also help FinCEN identify regulations and guidance that may be outdated, redundant or otherwise not useful in promoting a risk-based anti-money laundering/combating the financing of terrorism (AML/CFT) regime, per the release.***

Deposit / Retail Operations

	CFPB Takes Action to Halt False Claims of 'Free' International Money Transfers (03/27/2024) – WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) issued a new circular warning remittance transfer providers that false advertising about the cost or speed of sending a remittance transfer can violate federal law. Companies in the marketplace are charging junk fees on international money transfers and making false claims about the speed of transfers. The circular highlights several marketing practices relating to sending international money transfers that may violate the Consumer Financial Protection Act's (CFPA) prohibition on deceptive acts or practices. This prohibition is enforced by the CFPB, states, and other regulators. Guidance in the circular applies both to traditional providers of international money transfers and to "digital wallets" that offer the capability to send money internationally from the United States. "Consumers should not be paying junk fees on international money transfers that are advertised as free," said CFPB Director Rohit Chopra. "The CFPB will continue to work with law enforcement to ensure companies don't illegally burden families with fees or inflated exchange rates using false or misleading claims." Consumers in the United States send tens of billions of dollars in international remittances every year, often sent by immigrants to family and friends living abroad or to Americans living temporarily abroad, such as students. The CFPB administers and enforces the Remittance Rule under the Electronic Funds Transfer Act, the first and only federal regulation that provides disclosures and other important consumer protections for people who send international remittances from the United States. The CFPB also enforces the Consumer Financial Protection Act, which prohibits unfair, deceptive or abusive acts and practices across consumer finance. Remittance providers may be liable under the CFPA for deceptive marketing practices regardless of whether the provider is in compliance with the disclosure requirements of the Remittance Rule. Specifically, today's circular addresses the following practices by remittance providers, including digital wallet providers that offer remittance services, that consumers have complained to the CFPB about and that the CFPB has observed in its market monitoring: • Falsely marketing "no fee" or "free" services: Providers can engage in deceptive acts by marketing remittance transfers as "no fee," when in fact the remittance transfer provider charges consumers fees to send the remittance transfer. Providers may also engage in deceptive practices by marketing remittance transfers as "free," if they are not in fact free. With respect to digital wallets or other similar products, it can be deceptive to market a transfer as "free" if the provider imposes costs to convert funds into a different currency or withdraw funds from the product. It may also be deceptive to market international money transfers as "free" if the provider is imposing costs on consumers through the exchange rate spread.

	• Burying promotional conditions in fine print: Providers may violate the law by advertising promotional pricing for remittance transfers without clarifying that the offer is only limited or temporary in scope, even if the offer is disclosed in fine print or later in the transaction. • Deceptively advertising how long transfers will take: Remittance transfer providers may violate the CFPA's prohibition on deceptive acts or practices by marketing remittance transfers as being delivered within a certain time frame, when transfers may actually take longer to reach recipients. Recipients rely on remittance transfers for day-to-day expenses or for time-sensitive emergencies.

Human Resources

	No news to report this week.

Lending

	FFIEC 2023 HMDA Data on Mortgage Lending Now Available (03/26/2024) – WASHINGTON, D.C. — The Home Mortgage Disclosure Act (HMDA) Modified Loan Application Register (LAR) data for 2023 are now available on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform for approximately 5,089 HMDA filers. The published data contain loan-level information filed by financial institutions and modified to protect consumer privacy. To increase public accessibility, the annual loan-level LAR data for each HMDA filer are now available online. Previously, users could obtain LAR data only by making requests to specific institutions for their annual data. To allow for easier public access to all LAR data, the Consumer Financial Protection Bureau's 2015 HMDA rule made the data for each HMDA filer available electronically on the FFIEC's HMDA Platform. In addition to institution-specific modified LAR files, users can download one combined file that contains all institutions' modified LAR data. Later this year, the 2023 HMDA data will be available in other forms to provide users insights into the data. These will include nationwide loan-level datasets with all publicly available data for all HMDA reporters; aggregate and disclosure reports with summary information by geography and lender; and access to the 2023 data through the HMDA Data Browser to allow users to create custom datasets, reports, and data maps. The CFPB will later also publish a Data Point article highlighting key trends in the annual data. HMDA users may find the CFPB's Beginner's Guide to Accessing and Using HMDA Data useful for background on HMDA and tech tips for understanding and analyzing the data. The 2023 HMDA Loan Application Register data can be found on the FFIEC's HMDA Platform: https://ffiec.cfpb.gov/data-publication/modified-lar. ***Comment: Of note, the annual loan-level LAR data for each HMDA filer is now available online for this year. Previously, users could obtain LAR data only by making a direct request to specific banks for the annual data.***

Technology / Security

	CISA Marks Important Milestone in Addressing Cyber Incidents; Seeks Input on CIRCIA Notice of Proposed Rulemaking (03/27/2024) – WASHINGTON – The Federal Register posted for public inspection the Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA) Notice

	of Proposed Rulemaking (NPRM), which CISA was required to develop by the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA). This marks a major step in bolstering America's cybersecurity. Implementation of CIRCIA will improve CISA's ability to use cybersecurity incident and ransomware payment information reported to the agency to identify patterns in real-time, fill critical information gaps, rapidly deploy resources to help entities that are suffering from cyber-attacks, and inform others who would be potentially affected. When information about cyber incidents is shared quickly, CISA can use this information to render assistance and provide warning to prevent other organizations from falling victim to a similar incident. This information is also critical to identifying trends that can help efforts to protect the homeland. The NPRM will soon formally publish in the Federal Register, following which the public will have 60 days to submit written comments to inform the direction and substance of the Final Rule. "Cyber incident reports submitted to us through CIRCIA will enable us to better protect our nation's critical infrastructure," said Secretary of Homeland Security Alejandro N. Mayorkas. "CIRCIA enhances our ability to spot trends, render assistance to victims of cyber incidents, and quickly share information with other potential victims, driving cyber risk reduction across all critical infrastructure sectors. The proposed rule is the result of collaboration with public and private stakeholders, and DHS welcomes feedback during the public comment period on the direction and substance of the final rule." "CIRCIA is a game changer for the whole cybersecurity community, including everyone invested in protecting our nation's critical infrastructure," said CISA Director Jen Easterly. "It will allow us to better understand the threats we face, spot adversary campaigns earlier, and take more coordinated action with our public and private sector partners in response to cyber threats. We look forward to additional feedback from the critical infrastructure community as we move towards developing the Final Rule."

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)**