Community Bankers of Michigan Regulatory Dispatch

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Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions

The Consumer Financial Protection Bureau (CFPB) reported on the first set of results from the newly updated Terms of Credit Card Plans survey. The survey data reveals that large banks are offering higher interest rates than small banks and credit unions, regardless of credit risk. In fact, the 25 largest credit card issuers charged customers interest rates of 8 to 10 points higher than small- and medium-sized banks and credit unions. This difference can translate to $400 to $500 in additional annual interest for the average cardholder.

“Our analysis found that the largest credit card companies are charging substantially higher interest rates than smaller banks and credit unions,” said CFPB Director Rohit Chopra. “With over $1 trillion in credit card debt outstanding, the CFPB will be accelerating its efforts to ensure that consumers can access better rates that can save families billions of dollars per year.”

The survey data include information on all general-purpose credit cards of the largest 25 credit card issuers in the United States. The data also includes a representative sample of products from small- and medium-sized banks and credit unions across the country. Among some the survey’s key findings:

•Large issuers offered higher rates across credit scores: Whether a person has poor, good, or great credit, large issuers offer higher interest rates. For example, the median interest rate for people with good credit – a credit score between 620 and 719 – was 28.20% for large issuers and 18.15% for small issuers.

•Fifteen issuers reported credit cards with interest rates above 30%: Nine of the largest credit card issuers in the country reported at least one product with a maximum purchase annual percentage rate (APR) over 30%. Many of these high-cost products were private label, or co-branded cards offered through retail partnerships.

•Large issuers were more likely to charge annual fees: Among large issuers’ credit cards, 27% carried an annual fee, compared to just 9.5% of small firms. The average annual fee was $157 for the largest issuers, as opposed to $94 for smaller issuers.

Comment: Why would some pay a higher rate? Community bank customers are bombarded with ads from companies they know. Add to the fact they might pay attention to a card’s introductory interest rate, which might be excitingly low, and ignore the fact it will climb after a year or so also contributes to the problem. Finally, cardholders might already have a checking account with a big bank and want to get a credit card from the same big bank.

Items of Interest

Bank Management

	FRB Industrial Production and Capacity Utilization - G.17 (02/15/2024) – Industrial production edged down 0.1 percent in January after recording no change in December. In January, manufacturing output declined 0.5 percent and mining output fell 2.3 percent; winter weather contributed to the declines in both sectors. The index for utilities jumped 6.0 percent, as demand for heating surged following a move from unusually mild temperatures in December to unusually cold temperatures in January. At 102.6 percent of its 2017 average, total industrial production in January was identical to its year-earlier level. Capacity utilization for the industrial sector moved down 0.2 percentage point in January to 78.5 percent, a rate that is 1.1 percentage points below its long-run (1972–2023) average.
	FRB The Intersection of Monetary Policy, Market Functioning, and Liquidity Risk Management (02/14/2024) – *Next, I want to turn to current banking conditions, lessons learned from the March 2023 banking stress in terms of liquidity risk management, and how we can put those lessons to use for a resilient banking system.* *Starting with current banking conditions, the banking system remains sound and resilient, and it is in much better shape than it was last spring. However, there are a few pockets of risk that we continue to watch, including the pandemic's persistent impact on office commercial real estate in certain central business districts.* *Just a couple of weeks ago, disappointing earnings and higher loss provisions at one bank precipitated significant declines in stock prices. A single bank missing its revenue expectations and increasing its provisioning does not change the fact that the overall banking system is strong, and we see no signs of liquidity problems across the system. Nevertheless, we continue to monitor conditions carefully across the sector, just as we always do.*
	OCC Opens Registration for Community Bank Director and Senior Management Workshops (02/14/2024) – WASHINGTON—The Office of the Comptroller of the Currency (OCC) opened registration for its 2024 schedule of in-person workshops for board directors and senior management of national community banks and federal savings associations. The OCC examiner-led workshops provide practical training and guidance to directors and senior management of national community banks and federal savings associations to support the safe and sound operation of community-based financial institutions. The OCC offers five daylong workshops: ▪ Building Blocks: Developing Strong Management ▪ Risk Governance: Improving Effectiveness ▪ Compliance Risk: Understanding the Rules ▪ Credit Risk: Recognizing and Responding to Risk ▪ Operational Risk: Navigating Rapid Changes The OCC is also offering a half-day workshop, Capital Markets: Keeping Current. This workshop covers balance sheet management risks, as well as hot topics and risk themes for bankers and regulators in the capital markets area. Workshops are limited to 35 participants. Attendees will receive course materials, supervisory publications, and lunch.

Visit the OCC's website to view the schedule, workshop locations, cost and fee waiver information, and to register online. For assistance with additional questions about the workshops, contact the OCC Bank Director Workshop Team at (202) 649-6490 or bankdirectorworkshop@occ.treas.gov

Comment: These workshops are excellent educational opportunities for national bank directors and senior management.

FRB Defining a Bank - Governor Michelle W. Bowman (02/12/2024) – *At least as important as the question of "What is a community bank?" is how the regulatory system treats this type of bank, and whether this treatment is appropriate. All banks are held to high standards, but we must consider the risks and implications of over-calibration of supervisory standards and regulatory requirements. Additional regulation and heightened supervisory expectations are not cost-free, particularly for community banks that may have limited resources, especially when we consider the cumulative impact of existing and proposed regulations. Over-calibration occurs when the resulting requirements are disproportionate to the underlying risks, and over-calibration can pose a threat to the viability of the community banking model. More is not always better, and imposing ever higher standards may actually frustrate safety and soundness goals, pushing activity to the non-bank financial system.*[5]

When considering these two questions—how we define, and how the regulatory framework treats, community banks—we must consider an approach that takes into account fairness. In my view, a "fair" approach is one that strives to achieve appropriate calibration. And without question, fairness ensures that we preserve the role of these important banks in the banking system. We know the role that community banks play is important to the financial system, with an unparalleled focus on local communities and unique expertise in certain lending activities, like lending to small- and medium-sized businesses.

But often, "fairness" for community banks often appears to be a non-factor when considering which proposals make the regulatory agenda, particularly in an environment where bank regulation and supervision of larger institutions was shown to have faced significant challenges around the banking stress in March of last year. In the aftermath of supervisory inattention, the primary response among regulators appears to be to crank the dial up to 11 on regulatory requirements.[6] *This has involved shifting to a more strict approach for the supervision of all institutions, even for those that had robust risk management, business models designed to be more resilient to interest rate changes, and less concentrated customer exposures. While higher regulatory requirements and stricter supervisory standards across the board may reduce risk in the banking system on a superficial level, it does so at substantial cost to banks, their customers, and to the broader economy.*

To be sure, many factors influence the path of regulatory reform. One of the key issues that has guided bank regulatory reform since the 2008 financial crisis has been how we address the problem of banks that are "too big to fail." Many of the reforms that stemmed from the Dodd-Frank Wall Street Reform and Consumer Protection Act were intended to address this problem. By contrast, statutory reforms since that time have largely been focused on "right-sizing" the regulatory framework, requiring regulatory tailoring for firms above $100 billion in assets, raising the threshold for enhanced prudential standards from its initial $50 billion asset threshold, and increasing the statutory threshold for periodic firm-run stress testing requirements from a $10 billion threshold to $250 billion.[7] *The debate about regulatory "right-sizing" has generally focused on larger firms, and in some ways, both the emergency actions taken last spring, and the ensuing regulatory reform requirements, force us to ask whether these reform efforts have, perversely, entrenched the too-big-to-fail expectations around larger firms.*

As community banks consider all of the applicable regulations, guidance, and recent bank regulatory reform efforts, I expect they ask themselves, "What is the overarching objective of the federal banking regulators?" And "What is really the goal here?" When asked, policymakers will tell you that a diversity of *banks—with a range of sizes, locations, and activities—contributes to the strength of the banking system, and that community banks play a particularly vital role for many bank customers and communities. Yet this can be hard to square with policy actions, especially those taken in recent times. While reform efforts may be well-intentioned, when the effect of reforms over time is to erode the ongoing viability of different banking models, especially the community banking model, I think we need to do some soul-searching about what sort of banking system we want, and how the bank regulatory framework can best support a banking system that is not only safe and sound, but efficient.*

BSA / AML

FinCEN Sees Increase in BSA Reporting Involving the Use of Convertible Virtual Currency for Online Child Sexual Exploitation and Human Trafficking (02/13/2024) – WASHINGTON—The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a Financial Trend Analysis (FTA) reflecting an increase in Bank Secrecy Act (BSA) reporting associated with the use of convertible virtual currency (CVC) and online child sexual exploitation (OCSE) and human trafficking. This FTA is based on BSA reporting filed between January 2020 and December 2021.

"Human traffickers and perpetrators of related crimes despicably exploit adults and children for financial gain," said FinCEN Director Andrea Gacki. "Financial institutions' vigilance and timely reporting is critical to providing law enforcement agencies with the information needed to investigate potential cases of human trafficking, sexual crimes against children, and related crimes. This reporting ultimately helps law enforcement protect and save innocent lives."

The analysis detailed in this FTA furthers Treasury efforts to combat human trafficking as well as the illicit uses of CVC. For example, Brian Nelson, Treasury's Under Secretary for Terrorism and Financial Intelligence, announced at the President's Interagency Task Force to Monitor and Combat Trafficking that FinCEN has joined the Canadian financial intelligence unit's Project Protect—a flagship public-private partnership on human trafficking. In addition, in June 2021, FinCEN identified human trafficking and cybercrime as among the "Anti-Money Laundering and Countering the Financing of Terrorism National Priorities" issued pursuant to the Anti-Money Laundering Act of 2020. More recently, in October 2023, FinCEN issued a finding pursuant to Section 311 of the USA PATRIOT Act that CVC mixing is a class of transactions of primary money laundering concern and proposed reporting requirements to increase transparency in connection with CVC mixing.

FinCEN's analysis highlights the value of BSA reporting filed by regulated financial institutions. Key findings in the FTA include:

- The total number of OCSE- and human trafficking-related BSA reports involving CVC increased from 336 in 2020 to 1,975 in 2021.
- BSA filers specifically reported child sexual abuse material (CSAM) or human trafficking and CSAM in 95 percent of the OCSE- and human trafficking-related BSA reports involving CVC.
- BSA reports overwhelmingly identified bitcoin as the primary CVC used for purported OCSE- and human trafficking-related activity, however, this does not necessarily mean that other types of CVC are not used for such crimes.
- FinCEN identified four typologies (i.e. the use of darknet marketplaces that distribute CSAM, peer-to-peer exchanges, CVC mixers, and CVC kiosks) that describe common trends within BSA reports related to OCSE and human trafficking.

	If you suspect OCSE or human trafficking is occurring or has occurred, please immediately contact law enforcement. To report suspicious activity indicative of OCSE or human trafficking to the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Tip Line, call 1-866-DHS-2-ICE (1-866-347-2423) 24 hours a day, seven days a week, every day of the year. The Tip Line is also accessible outside the United States by calling 802-872-6199. ***Comment: Because these markets almost always exclusively accept cryptocurrencies for payment rather than traditional payment methods, the last several years have seen a dramatic increase in the use of cryptocurrencies to purchase CSAM, including the world's most prominent and most widely traded cryptocurrency, Bitcoin (BTC).***
	FinCEN Requests Comments on Renewal of the OMB Control Numbers for Bank Secrecy Act Requirements in Connection with Suspicious Activity Reports (02/12/2024) – On February 12, 2024, the Financial Crimes Enforcement Network (FinCEN) published in the Federal Register a 60-day notice to renew the Office of Management and Budget (OMB) control numbers assigned to existing regulations requiring financial institutions to report suspicious transactions using FinCEN Form 111 – Suspicious Activity Report (SAR). The notice is required to give the public an opportunity to comment on existing regulatory requirements and burden estimates. The notice requests feedback from industry on or before April 12, 2024. FinCEN encourages the public to review this notice and provide comment.

Deposit / Retail Operations

	FTC Romance Scammers Love . . . to Take Your Money (02/14/2024) – When you have a new romance there's so much to talk about. But if your new sweetheart only wants to talk about your money and how you should invest it, stop talking. They might be a romance scammer, like those who stole more than $1 billion from people last year. How do the scams start, and what can you do to avoid one? ***Comment: Find ways to educate your account holders on avoiding becoming a romance scam victim and your staff on spotting red flags to identify and report romance scams.***
	FTC Government Impersonators Mail Fake Notices to Business Owners (02/13/2024) – You've heard about scammers who pose as government workers, calling to demand your money or information. But imposters are running scams by mail too. They're sending fake forms and letters from made-up agencies to small business owners and demanding payment ASAP. Here's what to know and do if you get a letter like this. The fake government letters have agency names that include words like *United States*, *business regulation*, and *trademark* to make them seem legitimate. The letters lie to you, saying it's time to register or renew a business license or trademark, sending you to a website that asks for your license, Social Security, EIN, and credit card numbers. Usually, the letters warn about fines if you don't respond fast. If you get a letter that looks like it's from the government and demands money or information, stop. It could be a scam. Before you do anything: • Find out if the agency is real before you respond. Go to USA.gov to verify the names and contact information of federal, state, and local, government agencies. Don't use any websites or phone numbers listed in the letter.

	• Know that the government will never ask you to wire money with services like Western Union or MoneyGram, or pay with gift cards, cryptocurrency, or a payment app. Only scammers will, because it's hard to track that money, and hard to get it back. • Check out the advice at *Scams and Your Small Business* in English, Spanish, and other languages. If you spot a scam like this, tell the FTC at ReportFraud.ftc.gov. Find out what to do if you paid someone you think is a scammer, or if you gave a scammer your personal information. ***Comment: Find ways to educate your business account holders.***

Human Resources

	No news to report this week.

Lending

	Joint Agencies Issue 2023 Shared National Credit Program Report (02/16/2024) – WASHINGTON -- Federal bank regulatory agencies reported in the 2023 Shared National Credit (SNC) report that credit quality associated with large, syndicated bank loans remains moderate. However, the agencies noted declining credit quality trends due to the pressure of higher interest rates on leveraged borrowers and compressed operating margins in some industry sectors. Risks in leveraged loans remain high, and risks in certain industries, including technology, telecom and media; health care and pharmaceuticals; and transportation services are also elevated. Risk in the real estate and construction sector is segmented, with deteriorating trends in some sub–sectors being offset by stability and/or improvement in other sub–sectors. Industries affected by the pandemic, including transportation services and entertainment/recreation, continue to show notable improvement. The 2023 review reflects the examination of SNC loans originated on or before June 30, 2023. The review focused on leveraged loans and stressed borrowers from various industry sectors. The 2023 SNC portfolio included 6,589 borrowers, totaling $6.4 trillion in commitments, an increase of 8.7 percent from a year ago. The percentage of loans that deserve management's close attention ("non–pass" loans comprised of SNC commitments rated "special mention" and "classified") increased from 7.0 percent of total commitments to 8.9 percent year over year. While U.S. banks hold 46 percent of all SNC commitments, they hold only 20 percent of non–pass loans. Nearly half of total SNC commitments are leveraged, and leveraged loans comprise 86 percent of non-pass loans. ***Comment: The combination of higher interest rates, declining credit quality, and a slowdown in loan demand in the first half of 2024 are all issues to be dealt with, but each factor could improve later in 2024.***
	FFIEC Issues Statement on Examination Principles Related to Valuation Discrimination and Bias in Residential Lending (02/12/2024) – The Federal Financial Institutions Examination Council issued a statement of principles related to valuation discrimination and bias for member entities to consider in their consumer compliance and safety and soundness examinations. The principles aid member entities in assessing whether their supervised institutions' compliance and risk management practices are appropriate to identify and mitigate discrimination or bias in their residential property valuation practices.

	Financial institution supervisors routinely assess the risk management processes of institutions' residential lending activity during both consumer compliance and safety and soundness examinations. Consumer compliance examinations focus on compliance with consumer financial protection laws and regulations, while safety and soundness examinations focus on an institution's financial condition and operations. The examination principles released today are designed for both types of examination. The statement of principles should not be interpreted as new guidance to supervised institutions nor an increased focus on supervised institutions' appraisal practices. Instead, the statement of principles offers transparency into the examination process and supports risk-focused examination work. ***Comment: The statement outlined principles that examiners should use to evaluate a bank's residential property appraisal and valuation practices to mitigate risks that stem from (i) discrimination "based on protected characteristics in the residential property valuation process, and (ii) bias, defined as "a preference or inclination that precludes an appraiser or other preparer of the valuation from reporting with impartiality, independence, or objectivity" as required by the Uniform Standards of Professional Appraisal Practice.***

Technology / Security

	CISA Adobe Releases Security Updates for Multiple Products (02/13/2024) – Adobe has released security updates to address vulnerabilities in Adobe software. 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 Adobe Security Bulletins and apply the necessary updates: • Adobe Commerce and Magento • Adobe Substance 3D Painter • Adobe Acrobat and Reader • Adobe FrameMaker Publishing Server • Adobe Audition • Adobe Substance 3D Designer This product is provided subject to this Notification and this Privacy & Use policy. ***Comment: Share with your IT staff.***
	CISA Microsoft Releases Security Updates for Multiple Products (02/13/2024) – 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 Microsoft's February Security Update Guide and apply the necessary updates. This product is provided subject to this Notification and this Privacy & Use policy. ***Comment: Share 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)**