



## Community Bankers of Michigan Regulatory Dispatch

February 7, 2024

*Timely news and resources community bankers can use*

*to better stay on top of a rapidly changing world.*

### **The CFPB's Enforcement Work In 2023 And What Lies Ahead**

The CFPB safeguards household financial stability by ensuring that consumer financial markets are fair, transparent, and competitive. Our enforcement authority is among the CFPB's most impactful tools—reinforcing compliance with federal consumer financial laws and sending a clear message to entities within our authority and the public that the CFPB remains vigilant on behalf of consumers.

When a financial institution, individual, or other entity subject to the CFPB's authority breaks the law, the CFPB may take enforcement action against them. In certain cases, the CFPB may partner with other federal, state, or local agencies to investigate the wrongdoing and coordinate the enforcement action.

In 2023, the CFPB filed 29 enforcement actions and resolved through final orders 6 previously filed lawsuits. Those orders require lawbreakers to pay approximately \$3.07 billion to compensate harmed consumers and pay approximately \$498 million in civil money penalties.

***Comment: The takeaway from this is that the CFPB is making a strategic call that problems like overdraft fees and 'junk fees' can't be fixed with disclosures (by amending existing regulations) and the bureau has to step in and address the suitability of a product, further expanding the authority to prohibit abusive acts or practices under the Consumer Financial Protection Act.***

### **CBM Insights**

**Q:** We have a deceased borrower who is 97 days past due on a mortgage loan. Her will has not been probated. Her husband, who is not on the note, lives in the house. Is he a 'successor in interest?' Additionally, the escrow account has a surplus so how should that be handled?

**A:** Likely he is. The new rules define a 'successor in interest' as anyone who obtains an ownership interest in a property secured by a mortgage loan, provided that the transfer occurs under one of the scenarios listed below.

*(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;*

*(2) A transfer to a relative resulting from the death of a borrower;*

*(3) A transfer where the spouse or children of the borrower become an owner of the property;*

(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(5) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.”

Source [link](#).

If a servicer (your bank) receives any written request “that indicates that the person may be a successor in interest” and “includes the name of the transferor borrower” and “information that enables the servicer to identify the mortgage loan account,” a servicer (your bank) shall respond by requesting, in writing, the documents reasonably required to confirm whether the person is a successor in interest.

Regarding the escrow surplus, your option is to retain the surplus in the escrow account until the loan is current.

See below:

(i) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$50). If the surplus is less than 50 dollars (\$50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) *These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may **retain the surplus in the escrow account** pursuant to the terms of the federally related mortgage loan documents.*

Source [link](#).

## Items of Interest

### Bank Management

FRB [The Future of Banking - Governor Michelle W. Bowman](#) (02/02/2024) – *Regulatory Dynamics and the Regulatory Perimeter*

*Earlier this year, I shared three resolutions that will guide my approach to regulation in the coming year, and beyond:*

- 1. prioritize safety and soundness in the execution of our regulatory responsibilities when it comes to both enacting regulation and conducting supervisory examinations,*
- 2. renewing our commitment to tailoring, and*
- 3. increasing transparency in supervisory expectations.*

*I continue to believe that adherence to these principles will help buttress the safety and soundness of banks.*

*In some ways, these priorities focus on the "how" of regulation and supervision—how we engage in prioritization of supervision, how we make policy decisions, and how we engage with regulated institutions and the public. Of course, another equally important consideration—relevant for regulators and those who run banks—is the "why," which goals and objectives should be kept in mind in the execution of these responsibilities. An awareness of the impacts of regulation and supervision—the intended and unintended consequences of changes to the bank regulatory framework—must underpin the regulatory process.*

*Policymakers often acknowledge that the diversity of banks—with a wide range of sizes, locations, and activities—contributes to the strength of the banking system. As I have noted in the past, research supports this perspective. Banking reforms that result in over-regulation, or excessive compliance burdens that are disproportionate to risk, can threaten the banking system, and by extension, the U.S. economy. The cyclical nature of risks—and the perception that fundamental transformation of the regulatory framework is the only cure—can often contribute to instability in the regulatory approach and in the financial system. Targeted changes—changes that ensure ongoing attention to long-recognized risks and nimbleness to deal with emerging risks—can often be more efficient and effective in addressing the concerns on a permanent basis. I do not envy bankers that have to deal with regulatory whiplash. Establishing a consistent framework to deal with regulatory risks, a framework that is broadly supported through consensus and analysis, is often a better and more permanent solution to enhance safety and soundness than more pronounced swings of the regulatory pendulum.*

**FRB [Federal Open Market Committee reaffirms its "Statement on Longer-Run Goals and Monetary Policy Strategy"](#)** (01/31/2024) – The Federal Open Market Committee, at its annual organization meeting last week, unanimously reaffirmed its "Statement on Longer-Run Goals and Monetary Policy Strategy," often known as the consensus statement, which articulates its approach to monetary policy.

The reaffirmed statement is identical to the version initially adopted in August 2020. The Committee first adopted a similar statement in 2012.

[Statement on Longer-Run Goals and Monetary Policy Strategy](#) Reaffirmed January 30, 2024

***Comment: In his statements, Chair Jerome Powell noted that balance sheet run-off "has gone very well." He was referring to a process known as quantitative tightening, or QT, which involves the Fed allowing its holdings of cash and bonds to contract by way of allowing Treasury and mortgage bonds it owns to mature and not be replaced.***

**FDIC [Proposed Revisions to the Consolidated Reports of Condition and Income \(Call Report\) Related to the Agencies' Regulatory Capital Proposal](#)** (01/31/2024) – As described more fully in the linked Federal Register notice, the proposed revisions to the Call Report forms and instructions would:

1. Revise the FFIEC 041 and FFIEC 051, Schedule RC–R, Part I, to remove items that are no longer relevant and make other technical edits;
2. Revise the FFIEC 031 instructions to require all banks subject to the expanded risk–based approach under the proposed capital rule to file the FFIEC 031; and
3. Revise the FFIEC 031, Schedule RC–R, Part I, Regulatory Capital Components and Ratios, to align the calculation of regulatory capital for institutions subject to Category III or Category IV standards with the calculation used for institutions subject to Category I and Category II standards.

STATEMENT OF APPLICABILITY:

The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.

***Comment: Share with the person(s) responsible for preparing the Call Report for your bank.***

## BSA / AML

[FinCEN Seeks Comments on the Information to be Collected from Authorized Recipients Requesting Beneficial Ownership Information](#) (01/29/2024) – The Financial Crimes Enforcement Network (FinCEN) is seeking comments on the information to be collected from certain authorized recipients requesting access to beneficial ownership information, consistent with the requirements of the final [Access and Safeguards rule](#). The Corporate Transparency Act authorizes law enforcement, government agencies, and financial institutions and their regulators to obtain beneficial ownership information under certain specified circumstances for national security and law enforcement purposes.

The public has an opportunity to comment on: (1) the information to be collected from certain persons requesting beneficial ownership information from FinCEN; and (2) FinCEN’s estimate of the burden involved in the information collection. Comments must be submitted by April 1, 2024.

*Comment: Protection of that information and who has access is obviously very important to prevent fraud and misuse. FinCEN posted this back in early January – ‘Alert: FinCEN has been notified of recent fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act. The fraudulent correspondence may be titled “Important Compliance Notice” and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Please do not respond to these fraudulent messages or click on any links or scan any QR codes within them.’*

## Deposit / Retail Operations

[FTC Be Scam Free for Black History Month](#) (02/01/2024) – February is Black History Month — a great time to help raise awareness in Black communities, and among your family and friends, by staying on top of the latest scams that might affect them. We know that talking about a scam helps you avoid it — and it helps people you care about avoid them, too. Connect with the FTC and share what you learn with others.

*Comment: Find ways to share these alerts with your customers.*

[FTC Veterans: Guard Against Identity Theft](#) (01/31/2024) – Identity theft can happen in a lot of ways: a stolen wallet, a missing phone, or a hacked online account. Then there are impersonators — scammers who pretend to be almost anyone. They’ll tell you almost any story to get you to trust them, so they can steal your money or information.

*Comment: Find ways to share these alerts with your customers.*

## Human Resources

No news to report this week.

## Lending

No news to report this week.

## Technology / Security

No news to report this week.

## 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)**