



Community Bankers of Michigan Regulatory Dispatch

January 17, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS Community Bankers' Outlook Still Negative Despite Slight Uptick

Washington, D.C. – While community bankers continue to hold a negative view of future economic conditions, their outlook is becoming less pessimistic, according to the latest Community Bank Sentiment Index (CBSI), released by the Conference of State Bank Supervisors (CSBS).

The CBSI inched up 6 points to 92 in the fourth quarter of 2023. This is the second continued bump for the CBSI and the highest it has been in nearly two years. However, the CBSI remains below the neutral level of 100 for the eighth consecutive quarter, as the nearly 280 community bankers surveyed voiced concerns about future business conditions, profitability, and regulatory burden.

“While it is encouraging to see the CBSI improve even slightly, rapidly rising interest rates that started in early 2022—while necessary to combat rising inflationary pressures—have stressed net interest margins, liquidity, securities valuations, loan demand, and credit quality,” said CSBS Chief Economist Tom Siems.

The CBSI surveys community bankers nationwide in the last month of each quarter to capture their thoughts on future economic conditions in seven areas. An index reading of 100 indicates a neutral sentiment. Anything above 100 indicates a positive sentiment, and anything below 100 indicates a negative sentiment. Quarterly results are included in the Federal Reserve Economic Data, the online database maintained by the Federal Reserve Bank of St. Louis known informally as the FRED.

The CBSI’s fourth quarter uptick follows last quarter’s increase of 13 points, making the six-month surge of 19 points the highest recorded since the survey premiered in 2019. At 81 points, the profitability component rose 3 points but was down 18 points compared to a year prior. The regulatory burden component, at 25 points, continued to be the lowest among the seven components. The business conditions component rose 14 points to 73, its highest level in two years. Meanwhile, the monetary policy component had the greatest quarterly improvement, climbing 40 points to 96.

In a special section unrelated to the seven components, inflation fell from the list of top concerns for the first time in two years, and slightly fewer community bankers (81%) said they believe the U.S. economy is either starting or in a recession.

Comment: With 1071 and 1033 on the horizon - and the realities of the CRA final rule - it is not surprising that regulatory burden remains the lowest category. Unexpected events early in 2023 forced bank executives to change course and focus on foundational issues such as liquidity and balance sheet management. However, strategic plans for fintech engagements and technology innovation are still mission critical issues.

CBM Insights

Q. Is there any time you can think of that a rate lock agreement could be signed before we have a 1003 Application on hand?

A: The 1003 issue is a bit of a red herring. Use of the actual 1003 Application is only required by government guaranteed lenders and is often required by most third-party investors. Use of a 1003 Application could also be by bank policy.

The question becomes, can a rate lock agreement be executed before you have an “application” (§1026.2(a)(3)) and prior to disclosures (§ 1026.19(e)(1))?

Regarding rate lock agreements, in the Preamble, the CFPB refers to the rate lock agreements as an “executed” agreement. Generally speaking, a document such as a contract should be in writing to be executed or enforceable. That is really the only guidance on rate lock agreements.

While it may be true that many lenders don't have or issue an “executed” rate lock agreement (meaning a written rate lock agreement) with the applicant before an “application” is received and a Loan Estimate is issued, there's nothing in the rule that would prohibit it.

Items of Interest

Bank Management

	<p>Joint Release Overview Webinar of New Community Reinvestment Act Regulations (01/10/2024) – The federal bank regulatory agencies jointly issued an overview webinar on the final rule to strengthen and modernize regulations implementing the Community Reinvestment Act (CRA).</p> <p>The nearly one-hour video provides an overview of the new CRA rule issued on October 24, 2023, and its objectives. Additional topics in the recording include assessment areas, community development, evaluation framework, performance tests, ratings, data collection and reporting, and applicability dates.</p> <p>The CRA is a landmark law enacted nearly 50 years ago to encourage banks to help meet the credit needs of their local communities, with a focus on low- and moderate-income neighborhoods, in a safe and sound manner.</p> <p><i>Comment: If you are an Intermediate or Large bank, this ‘overview webinar’ is a must watch to hear directly from regulators about what their expectations are.</i></p>
	<p>OCC Civil Money Penalties: Notice Adjusting Maximum Civil Money Penalties for 2024 (01/09/2024) – On January 8, 2024, the Office of the Comptroller of the Currency (OCC) published in the Federal Register the linked notice to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act). The adjusted maximum penalties are effective as of January 8, 2024, for violations occurring on or after November 2, 2015.</p> <p>Note for Community Banks: The OCC may exercise its discretion to impose inflation-adjusted maximum CMPs on any national bank or federal savings association, if appropriate.</p>

Highlights:

The notice updates the inflation-adjusted maximum CMPs that the OCC may impose, using the inflation adjustment required under the 2015 Adjustment Act, as provided by the Office of Management and Budget (OMB) in OMB Memorandum M-24-07 issued on December 19, 2023.

This revision does not affect the OCC’s discretion to assess a CMP in an amount lower than the maximum allowed.

Background:

The 2015 Adjustment Act requires federal agencies with CMP authority to annually adjust each CMP authorized by law that the agency has jurisdiction to administer in accordance with the guidance published by the OMB. Agencies must adjust their CMPs no later than January 15 of each year and publish those adjustments in the Federal Register.

Comment: Routine adjustments. Share as needed.

CFPB [Issues Civil Penalty Inflation Adjustments Final Rule](#) (01/08/2024) – The CFPB announced the annual adjustments for inflation to the CFPB’s civil penalty amounts, as required by the Federal Civil Penalties Inflation Adjustment Act, as amended. This final rule is effective on January 15, 2024.

You can access the final rule at: <https://www.consumerfinance.gov/rules-policy/final-rules/civil-penalty-inflation-annual-adjustments/>.

Comment: Routine adjustments. Share as needed.

FRB [New Year’s Resolutions for Bank Regulatory Policymakers - Governor Michelle W. Bowman](#)

(01/08/2024) – *For community banks, two of the most important developments last year were the finalization of revisions to the Community Reinvestment Act regulations, and the proposal to amend the debit interchange fee cap in the Board’s Regulation II. Many in the banking industry have expressed concern with the amendments to the CRA regulations, noting among other things the increased cost and burden associated with a number of the proposed revisions and new data systems required for compliance. In addition, many raised concerns about the potential adverse consequences of the rules, which include the possibility that these rules will reduce the availability of credit in some underserved markets if banks cut back lending activities due to revisions made to assessment areas defined in the new rules. Similarly, the proposed revisions to Regulation II have generated concern from banks directly subject to the rules, but also from exempt banks concerned that the practical effect will be to push lower interchange fees down to all debit card issuers.*

Of course, supervision also saw significant changes in 2023, with the publication of new guidance on third-party risk management applicable to all financial institutions, without tailoring or guidance to assist the smallest banks in compliance, and climate guidance that on its face applies only to institutions with more than \$100 billion in assets. In 2023, many banks also reported very material shifts in bank examinations, with a renewed focus on interest rate risk, liquidity risk, and management, and banks continue to see ongoing changes in supervisory expectations. Many of these examination-related shifts have received little public acknowledgement or attention, in large part because the rules designed to protect confidential supervisory information frustrate visibility into structural shifts in the supervisory process. As you all know well, changes in supervisory expectations frequently come without the benefit of guidance, advance notice, or published rulemaking, and in the worst-case scenario these shifts, cloaked by the veil of supervisory opacity, can have significant financial and reputational impacts.

FinCEN [Updates Paycheck Protection Program Frequently Asked Questions](#) (01/12/2024) – The Financial Crimes Enforcement Network (FinCEN) published updated Paycheck Protection Program (PPP) frequently asked questions (FAQs) with one additional question and answer clarifying that a PPP lender may reveal the existence of a suspicious activity report (SAR) to the Small Business Administration (SBA) when requesting a guaranty purchase (without charge-off).

Comment: See question #5 on page 3. The Bank Secrecy Act prohibits the filer of a Suspicious Activity Report from notifying any person involved in the suspicious transaction that the transaction has been reported. Implementing regulations issued by the Financial Crimes Enforcement Network have construed this confidentiality provision as generally prohibiting a banking organization from disclosing the existence of a Suspicious Activity Report except where such disclosure is requested by appropriate law enforcement agencies, bank supervisory agencies, or the Financial Crimes Enforcement Network.

FinCEN [Issues Analysis of Identity-Related Suspicious Activity](#) (01/09/2024) – Report examines suspicious activity tied to the exploitation of identity processes during account creation, account access, and transaction processing.

WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued a Financial Trend Analysis (FTA) on information linked to identity-related suspicious activity in Bank Secrecy Act (BSA) reports filed in calendar year 2021. FinCEN’s analysis found that approximately 1.6 million reports (42% of the reports filed that year) related to identity—indicating \$212 billion in suspicious activity.

“This report reveals the existence of significant identity-related exploitations through a large variety of schemes,” said FinCEN Director Andrea Gacki. “Robust customer identity processes are foundational to the security of the U.S. financial system, and critical to the effectiveness of financial institutions’ programs to combat money laundering and counter the financing of terrorism. Financial institutions are encouraged to work across their internal departments to address these schemes.”

The report, which is part of what FinCEN has previously referred to as its Identity Project, explores how bad actors exploit identity-related processes involved in processing transactions as well as opening and accessing accounts. FinCEN identified over 14 typologies commonly indicated in identity-related BSA reports. The most frequently reported were fraud, false records, identity theft, third-party money laundering, and circumvention of verification standards. These top five typologies accounted for 88% of identity-related BSA reports and 74% of the total identity-related suspicious activity amount reported during calendar year 2021.

Trends found in the BSA reporting include:

Although identity-related suspicious activity impacted all types of financial institutions, depository institutions filed the most identity-related BSA reports, around 54% of all identity-related filings.

While most financial institutions in the identity-related BSA dataset reported impersonation as their top identity exploitation, money services businesses most often reported circumvention of verification.

The report found that compromised credentials have a disproportionate financial impact as compared to other types of identity exploitation.

FinCEN’s FTAs highlight the value of information filed by financial institutions in accordance with the BSA. Additional reports on a variety of topics are located on FinCEN’s website.

FinCEN is committed to using its authorities to assist financial institutions with detecting, reporting, and preventing criminals from circumventing these processes to victimize customers. In line with the 2022 National Strategy for Combating Terrorist and Other Illicit Financing, Treasury and FinCEN recognizes that innovations in digital identity can strengthen anti-money laundering and countering the financing of terrorism compliance and help banks and other financial institutions more effectively and efficiently identify and report illicit financial activity.

To advance responsible innovation, FinCEN has engaged with the private and public sectors to assess opportunities and to explore the risks and challenges emerging technologies present to financial institutions—including through the Bank Secrecy Act Advisory Group, FinCEN Exchanges, and Innovation Hours. The bureau has partnered with the Federal Deposit Insurance Corporation in a digital identity-focused Tech Sprint, and with other regulators and law enforcement to support the U.S.-UK Privacy Enhancing Technologies Prize Challenges. FinCEN has also served as the Department of the Treasury's point for the Federal Identity Forum and Expo or FedID conference, the U.S. government's annual public-private identity conference. These efforts served as a forum for stakeholders to both embrace responsible innovation and leverage innovation to mitigate risks, as well as identify threats and opportunities to protect the American people and the financial sector from illicit finance.

Comment: Very interesting read. FinCEN said it observed attackers are leveraging data breaches, as well as automated password cracking tools, in their attempts to undermine identity processes. The agency also cited remote work as a vulnerability that could present additional openings for bad actors to exploit and warned the rapid evolution of artificial intelligence (AI) might further enable money laundering, fraud, and other cybercrime.

Deposit / Retail Operations

CBA [Launches Overdraftfacts.com](#) (01/11/2024) – The Consumer Bankers Association (CBA) announced the launch of a new microsite, [overdraftfacts.com](#), to demonstrate the value overdraft services provide to consumers, highlight bank-driven overdraft and non-sufficient funds (NSF) innovations and reforms that have significantly reduced consumer costs, and serve as a resource for policymakers. The microsite also includes statements from regulators, legislators, scholars, thought leaders, and the media; input about the CFPB's planned NSF and overdraft fee rulemaking; and related industry articles.

Comment: Meanwhile, we are still awaiting the CFPB's NSF and overdraft fee rulemaking in 2024 follow the CFPB's December report, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel.

FDIC [Consumer News](#) (01/08/2024) – Starting Small Can Lead to Big Savings

Do you have accumulated debt, perhaps from student loans, credit cards or car loans? Do you want to set aside savings for future needs? There are simple strategies for gradually building small savings into large sums. Here are some ways to help you begin to save or build up your savings.

Comment: Find ways to share FDIC information like this with your accountholders.

Human Resources

DOL [Announces Final Rule On Classifying Workers As Employees Or Independent Contractors Under The Fair Labor Standards Act](#) (01/09/2024) – WASHINGTON – The U.S. Department of Labor announced a [final](#)

[rule](#) to help employers and workers better understand when a worker qualifies as an employee and when they may be considered an independent contractor under the Fair Labor Standards Act.

The rule provides guidance on proper classification and seeks to combat employee misclassification, a serious problem that impacts workers' rights to minimum wage and overtime pay, facilitates wage theft, allows some employers to undercut their law-abiding competition and hurts the economy at-large.

"Misclassifying employees as independent contractors is a serious issue that deprives workers of basic rights and protections," explained Acting Secretary of Labor Julie Su. "This rule will help protect workers, especially those facing the greatest risk of exploitation, by making sure they are classified properly and that they receive the wages they've earned."

The guidance provided by the final rule aligns with longstanding judicial precedent on which employers have previously relied to determine a worker's status as either an employee or independent contractor. The new rule will preserve essential worker rights and provide consistency for entities covered by the Fair Labor Standards Act.

The new "independent contractor" rule restores the multifactor analysis used by courts for decades, ensuring that all relevant factors are analyzed to determine whether a worker is an employee or an independent contractor. The rule addresses six factors that guide the analysis of a worker's relationship with an employer, including any opportunity for profit or loss a worker might have; the financial stake and nature of any resources a worker has invested in the work; the degree of permanence of the work relationship; the degree of control an employer has over the person's work; whether the work the person does is essential to the employer's business; and a factor regarding the worker's skill and initiative.

The rule separately rescinds the 2021 Independent Contractor Rule that the department believes is not consistent with the law and longstanding judicial precedent.

In crafting the new rule, the department's Wage and Hour Division considered feedback provided by stakeholders at forums in the summer of 2022 and during the comment period after the proposal's announcement in October 2022. The final rule takes effect on March 11, 2024.

Comment: The final rule imposes a new, six-factor test for determining whether workers are "independent contractors." The final rule takes effect on March 11, 2024, and will generally make it more difficult for businesses to classify workers as independent contractors, rather than employees.

Lending

[CFPB Addresses Inaccurate Background Check Reports and Sloppy Credit File Sharing Practices](#)

(01/11/2024) – People have the right to know what information consumer reporting companies keep about them as well as where the information originates. Disclosure of a person's complete file, upon their request, is a critical component of a person's right to dispute false or misleading information. Consumers must be provided with all sources for the information contained in their file, including both the originating sources and any intermediary or vendor sources, so they can correct any misinformation.

As explained in the advisory opinion on file disclosure, individuals requesting their files:

- Only need to make a request for their report and provide proper identification – they do not need to use specific language or industry jargon to be provided their complete file.
- Must be provided their complete file with clear and accurate information that is presented in a way an average person could understand.

- Must be provided the information in a format that will assist them in identifying inaccuracies, exercising their rights to dispute any incomplete or inaccurate information, and understanding when they are being impacted by adverse information.
- Must be provided with the sources of the information in their file, including both the original and any intermediary or vendor source or sources.

In a [January 2023 report](#), the CFPB noted improvements and continued challenges for the nationwide consumer reporting companies. The CFPB has highlighted other consumer reporting problems and has reminded consumer reporting companies of their obligations to consumers under the Fair Credit Reporting Act. For example, the CFPB issued guidance on [permissible purposes](#) for accessing consumer reports, identifying and eliminating [obviously false and junk data](#), and resolving [consumer disputes](#). Additionally, the CFPB has [taken action](#) against consumer reporting companies when they have broken the law, as well as affirmed the ability of [states](#) to police credit reporting markets.

[Read the advisory opinion, Fair Credit Reporting; Background Screening.](#)

[Read the advisory opinion, Fair Credit Reporting; File Disclosure.](#)

Comment: These releases largely target reporting companies. The CFPB has a page dedicated to Compliance with the Fair Credit Reporting Act [here](#).

OCC [Hosts Public Appraisal Subcommittee Hearing on Appraisal Bias](#) (01/09/2024) – WASHINGTON—The Office of the Comptroller of the Currency (OCC) will host a public hearing of the Appraisal Subcommittee (ASC) on appraisal bias on February 13, 2024, from 10:00 a.m. to 1:00 p.m., at its headquarters, 400 7th Street SW, Washington, D.C.

Acting Comptroller of the Currency Michael J. Hsu will provide opening remarks. The subcommittee panel will consist of a representative from each of the five Federal Financial Institutions Examination Council (FFIEC) regulatory agencies, the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency. Witnesses will include representatives from the Appraisal Foundation, state appraiser licensing and regulatory organizations, and active appraisers.

This is the fourth hearing in a series of ASC hearings on appraisal bias and is open to the public. In-person and virtual attendees must register to attend the hearing no later than February 9. Registration for in-person attendance may close sooner if maximum capacity is reached.

The ASC oversees the real estate appraisal regulatory framework for federally related transactions. The ASC is a subcommittee of the FFIEC and provides federal oversight of state appraiser and appraisal management company regulatory programs and a monitoring framework for the Appraisal Foundation.

Related Link

[Appraisal Subcommittee Hearing Registration Information](#)

Comment: Previous hearings have included a focus on these issues, as well as appraiser qualifications and training, reconsideration of value, and use of technology in valuation.

OCC [State Small Business Credit Initiative 2.0: Frequently Asked Questions](#) (01/08/2024) –

The Office of the Comptroller of the Currency (OCC) published answers to frequently asked questions (FAQ) about the State Small Business Credit Initiative 2.0 (SSBCI) based on the facts and circumstances presented in the questions. These FAQs are not regulations and do not have the force and effect of law.

	<p>Note for Community Banks: These FAQs apply to community banks.¹</p> <p>Highlights: These FAQs address the following topics:</p> <ul style="list-style-type: none"> • Reporting on loans to businesses owned by socially and economically disadvantaged individuals. • Regulatory treatment for loans using certain SSBCI-supported credit enhancements. • Considerations for loans in Indian Country. • Community Reinvestment Act considerations.
	<p>FRB Consumer Credit - G.19 (01/08/2024) – November 2023</p> <p>In November, consumer credit increased at a seasonally adjusted annual rate of 5.7 percent. Revolving credit increased at an annual rate of 17.7 percent, while nonrevolving credit increased at an annual rate of 1.5 percent.</p>

Technology / Security

	<p>CISA Cisco Releases Security Advisory for Cisco Unity Connection (01/11/2024) – Cisco released a security advisory to address a vulnerability (CVE-2024-20272) in Cisco Unity Connection. A cyber threat actor could exploit this vulnerability to take control of an affected system.</p> <p>CISA encourages users and administrators to review the Cisco Unity Connection Unauthenticated Arbitrary File Upload Vulnerability advisory and apply the necessary updates.</p> <p><i>Comment: Share these alerts with your IT department.</i></p>
	<p>CISA Microsoft Releases Security Updates for Multiple Products (01/10/2024) – 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.</p> <p>CISA encourages users and administrators to review Microsoft’s January Security Update Guide and apply the necessary updates.</p> <p><i>Comment: Share these alerts with your IT department.</i></p>

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

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 February 12, 2024.**

10.11.2023 [FTC Trade Regulation Rule on Unfair or Deceptive Fees](#) - SUMMARY: The Federal Trade Commission commences a rulemaking to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The Commission finds these unfair or deceptive practices relating to fees to be prevalent based on prior enforcement, the comments it received in response to an Advance Notice of Proposed Rulemaking, and other information discussed in this proposal. The Commission now solicits written comment, data, and arguments concerning the utility and scope of the trade regulation rule proposed in this Notice of Proposed Rulemaking to prevent the identified unfair or deceptive practices. **DATES: Comments must be received on or before February 7, 2024. (Extended from January 8, 2024)**

10.11.2023 [FDIC Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \\$10 Billion or More](#) - SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on proposed corporate governance and risk management guidelines (Guidelines) that would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of \$10 billion or more on or after the effective date of the final Guidelines. These proposed Guidelines would be issued as Appendix C to FDIC's standards for safety and soundness regulations in part 364, pursuant to Section 39 of the FDI Act, and would be enforceable under Section 39. The FDIC also proposes to make corresponding amendments to parts 308 and 364 of its regulations to implement the proposed Guidelines. **DATES: Comments on the proposed Guidelines must be received by February 9, 2024. (Extended from December 11, 2023)**