Community Bankers of Michigan Regulatory Dispatch

January 24, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CFPB Issues Overdraft NPRM

The CFPB issued the Overdraft Notice of Proposed Rulemaking (Overdraft NPRM), which proposes to update regulations that apply to overdraft credit offered by certain financial institutions with more than $10 billion in assets (referred to as "very large financial institutions") by amending Regulation E and Regulation Z.

As proposed, Regulation Z would generally apply to all overdraft credit provided by very large financial institutions unless (1) the overdraft fee charged to a consumer is at or below the institution's costs and losses of providing the overdraft service, or (2) the overdraft fee charged to a consumer is set at or below a benchmark fee to be set by the CFPB. The proposal would also update several additional provisions of Regulation E and Regulation Z so that overdraft credit is no longer excepted from those provisions.

Comments on the Overdraft NPRM must be received on or before April 1, 2024.

Read the CFPB's fact sheet on the proposed rule.

Read the CFPB's research report, *Overdraft and NSF Practices Report*.

Read Director Chopra's remarks on the proposed rule.

Comment: CBM plans to comment on the proposed rule.

CBM Insights

Q. When is an 'application' an 'application' and what dates do we use?

A: That depends on which regulation you are looking at.

Under Regulation B (ECOA), you have an 'application' when you have a request for credit however that request is received – written, oral or online. The date the request is made starts the clock for approving, denying or providing notice of incompleteness for the 'application.'

Under Regulation C (HMDA), you need a request for credit (an 'application' under Regulation B) and a property address. That is a request for credit in connection with '…an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.'

Under Regulation Z (TILA), it is TRID we are most concerned about. Under TRID, you have an 'application' when you have the required six pieces of information - name, income, SSN, property address, property value estimate, and loan amount – and can't require any additional information to start the disclosure clock.

In theory, you could have three different dates for an 'application' under the various regulations.

Items of Interest

Bank Management

	OCC Acting Comptroller Discusses Bank Liquidity Risk (01/18/2024) –Below is a portion of the acting comptrollers remarks: *I would like to talk about bank liquidity risk. With the one-year anniversary of last year's large bank failures fast approaching, it is a good time to reflect on lessons learned and to discuss how best to ensure the safety and soundness of the banking system going forward.* *The characteristics of bank runs are changing. Banks and regulators need to adapt accordingly. As the speed of banking and finance accelerates, so too does the need for better brakes to enable a safe and sound system. Some adaptation has already taken place through supervision on an individual bank-by-bank basis. Careful consideration also needs to be given, however, to targeted regulatory enhancements to help ensure that updated liquidity risk management practices are implemented and sustained systematically and consistently, especially across midsize and large banks.* *I want to conclude where I started: The characteristics of bank runs are changing, and banks and regulators need to adapt accordingly. We need to develop better brakes to keep banks safe and sound and to mitigate systemic risk. I believe it is possible to take a targeted regulatory approach to address the lessons from the failures of SVB and Signature. I look forward to working with my interagency peers, banks, academics, and other stakeholders on this important task.* ***Comment: The Baker Group wrote an interesting article in December 2023 entitled 'Preparing for 2024 for Banks' that is well worth the read.***
	FRB Announces Four New Members of its Community Depository Institutions Advisory Council (CDIAC) (01/18/2024) – The Federal Reserve Board on Thursday announced four new members of its Community Depository Institutions Advisory Council (CDIAC), and the president and vice president of the council for 2024. The CDIAC advises the Board on the economy, lending conditions, and other issues of interest to community depository institutions. Members are selected from representatives of commercial banks, thrift institutions, and credit unions serving on local advisory councils at the 12 Federal Reserve Banks and serve three-year terms. One member of each of the Reserve Bank councils serves on the CDIAC, which meets twice a year with the Federal Reserve Board in Washington, D.C. Chuck Sulerzyski, president and chief executive officer of Peoples Bank, Marietta, Ohio, will serve as CDIAC president in 2024. Kim DeVore, president and chief executive officer of Jonah Bank of Wyoming, Casper, Wyo., will serve as vice president. The four new CDIAC members will replace former members from the Boston, Philadelphia, Chicago, and San Francisco districts.

The Council is scheduled to meet April 11 and November 14, 2024. Further information on the CDIAC, including records from their meetings with the Board, can be found here.

The new members of CDIAC in 2024:

Ronald Justice
President and Chief Executive Officer
The State Bank
Fenton, Mich.

Agnes Catherine Ngo
Chair of Central Pacific Financial Corp.
Central Pacific Bank
Honolulu, Hawaii

Jeffrey A. Stopko
President and Chief Executive Officer
AmeriServ Financial Inc.
Johnstown, Pa.

Anne P. Tangen
President and Chief Executive Officer
BankFive
Fall River, Mass.

The other members of CDIAC in 2024:

Daniel P. Berry
President and Chief Executive Officer
Duke University Federal Credit Union
Durham, N.C.

Dylan S. Clarkson
President and Chief Executive Officer
Pioneer Bank & Trust
Spearfish, S.D.

Tyler K. Clinch
Chief Executive Officer and President
First Community Bank of East Tennessee
Kingsport, Tenn.

Luanne Cundiff
President and Chief Executive Officer
First State Bank of St. Charles
St. Charles, Mo.

Tracy Harris
President and Chief Executive Officer
National Bank and Trust
La Grange, Texas

James S. Vaccaro
Chair, President, and Chief Executive Officer
Manasquan Bank
Wall Township, N.J.

Comment: Thanks to all the community bankers that serve, with a special 'Thank you' to our very own Ron Justice.

FRB Beige Book (01/17/2024) – The Beige Book is a Federal Reserve System publication about current economic conditions across the 12 Federal Reserve Districts. It characterizes regional economic conditions and prospects based on a variety of mostly qualitative information, gathered directly from each District's sources. Reports are published eight times per year.

Overall Economic Activity
A majority of the twelve Federal Reserve Districts reported little or no change in economic activity since the prior Beige Book period. Of the four Districts that differed, three reported modest growth and one reported a moderate decline. Consumers delivered some seasonal relief over the holidays by meeting expectations in most Districts and by exceeding expectations in three Districts, including in New York, which noted strong holiday spending on apparel, toys, and sporting goods. In addition, seasonal demand lifted airfreight volume from ecommerce in Richmond and credit card lending in Philadelphia. Several Districts noted increased leisure travel, and a tourism contact described New York City as bustling. Contacts from nearly all Districts reported decreases in manufacturing activity. Districts continued to note that high interest rates were limiting auto sales and real estate deals; however, the prospect of falling interest rates was cited by numerous contacts in various sectors as a source of optimism. In contrast, concerns about the office market, weakening overall demand, and the 2024 political cycle were often cited as sources of economic uncertainty. Overall, most Districts indicated that expectations of their firms for future growth were positive, had improved, or both.

Labor Markets
Seven Districts described little or no net change in overall employment levels, while the pace of job growth was described as modest to moderate in four Districts. Two Districts continued to note a tight labor market, and several described hiring challenges for firms seeking specialty skills, such as auto mechanics or experienced engineers in the Boston and San Francisco Districts, respectively. However, nearly all Districts cited one or more signs of a cooling labor market, such as larger applicant pools, lower turnover rates, more selective hiring by firms, and easing wage pressures. The pace of wage growth was characterized as moderate in Boston, Richmond, Chicago, and Dallas; as modest in New York and Philadelphia; and as slight in St. Louis. Firms from many Districts expected wage pressures to ease and wage growth to fall further over the next year.

Prices
Six Districts noted that their contacts had reported slight or modest price increases, and two noted moderate increases. Five Districts also noted that overall price increases had subsided to some degree from the prior period, while three others indicated no significant shift in price pressures. Firms in most Districts cited examples of steady or falling input prices, especially in the manufacturing and construction sectors, and more discounting by auto dealers. Districts also noted that increased consumer price sensitivity had forced retailers to narrow their profit margins and to push back in turn on their suppliers' efforts to raise prices. Premium increases for property and casualty insurance and for health insurance continue to impact most firms. Three Districts noted that their firms were expecting price increases to ease further over the next year, while four Districts' firms anticipated little change.

CSBS Community Bankers Adapting to Higher Interest Rates (01/17/2024) – The CSBS fourth quarter 2023 Community Bank Sentiment Index (CBSI) indicates that community bankers are less pessimistic than they were in the previous two quarters, but concerns persist. The Federal Reserve's aggressive monetary tightening over the past 22 months has significantly raised interest rates, resulting in lower loan demand, greater deposit competition, and an inverted yield curve. With narrower net interest margins, community bankers' challenge will be to assiduously manage their banks' assets and liabilities to maintain profitability.

At 92 points, the CBSI remains below its neutral level of 100 but is 19 points higher than its historic low of 73 from just six months ago, signaling community banker pessimism is not as bleak as it has been all year. Even so, the most recent survey underscores that community bankers continue to be deeply concerned about future business conditions, profitability, and regulatory burdens.

Comment: In December 2023, the Kansas City FRB published an interesting Economic Bulletin entitled 'Community Bank Funding Is Getting Costlier and Riskier.'

CSBS Basel III Endgame Proposal Threatens the U.S. Economy (01/16/2024) – Washington, D.C. – The federal banking agencies' capital proposal is misguided and unjustified, the Conference of State Bank Supervisors (CSBS) said in comments filed today. Without significant changes, state regulators are concerned that the proposal could disrupt the United States economy.

After a decade of reform, the banking system has strong capital levels and is more resilient. However, the Basel capital proposal, as written, would undermine the nation's diverse banking industry, financial stability, and economic growth.

"State regulators are concerned that this proposal would arbitrarily and dramatically increase capital, with unknown and unknowable consequences for American households and businesses," said CSBS President and CEO Brandon Milhorn. "We need a capital regime that enables competition, not one that dictates business models."

CSBS urged the federal banking agencies to make substantial revisions to the proposal and provide ample opportunity for public input once they release an economic impact analysis. Federal regulators should also consider the cumulative impacts of several other significant, interrelated regulatory proposals now under consideration.

Comment: It is worth reading the comments of Brandon Milhorn President and CEO of the Conference of State Bank Supervisors in in speech he made just after release of the CSBS position on Basel III.

FRB Almost as Good as It Gets…But Will It Last? Governor Christopher J. Waller (01/16/2024) – *Let me start with the data on economic activity that has brought me to this view, and then I'll talk about the labor market, financial conditions, and inflation. I'll conclude with what I think the implications are from all that for monetary policy.*

First, economic activity has moderated. After averaging an annualized 3 percent over the first three quarters of 2023, and 5 percent in the third quarter, growth in real GDP appears to have slowed appreciably in the fourth quarter. The average of private-sector forecasts summarized by the Blue Chip survey estimates that real GDP grew 1.5 percent in the final three months of 2023. The Atlanta Fed's GDP Now model, based on data in hand, currently stands at 2.2 percent. An important part of that moderation comes from business investment and government spending, both of which showed rapid growth earlier in 2023 that didn't appear sustainable. Consumer spending also accounted for much of the surprising strength in GDP growth earlier in the year, but here the slowdown so far appears more tentative. Factors such as high interest rates, a depletion of excess savings, and a pickup in credit card usage all portend slower

	growth ahead, but it is unclear how much of that slowing has already occurred. Since consumer spending accounts for more than two-thirds of GDP, this component of demand is obviously critical for the outlook. We'll find out more about consumer spending tomorrow from the report on December's retail sales. *Turning to the labor market, over the course of 2023, there have been increases in labor supply amid slowing demand for labor, and I expect this to continue to bring the labor market into better balance. Some have seen the latest jobs report as in conflict with this story, so let me explain why I don't see it that way. The short version is that I see the surprises in the December jobs report as largely noise against a trend of ongoing moderation that supports progress toward 2 percent inflation.* *The unemployment rate in December held steady at 3.7 percent while employers added 216,000 jobs, which was more than expected and an increase from the 173,000 created in November and 105,000 in October. While that looks like a modest acceleration in job creation, I remind myself that revisions to monthly payrolls have been downward for most of 2023—from the first to the third estimate employment gains were revised down in 9 of 10 job reports. Given this recent history of revisions, there is a good chance December will be revised down. Furthermore, with growth expectations moderating over coming quarters, employment gains are likely to slow. We can see that this is already happening if we look at progress over the previous quarters. Average monthly payroll gains over the fourth quarter were 165,000, a step down from the 221,000 average in the third quarter and 257,000 in the first half of 2023. This data shows an improving balance between labor supply and demand.*

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	FRB Lender-Reported Reasons for Mortgage Denials Don't Explain Racial Disparities (01/18/2024) – Lender-reported denial reasons conflict with some common hypotheses about racial disparities in conventional mortgage approvals. These findings could inform next steps for lenders looking to understand and potentially close such racial disparities. The Federal Reserve has privileged access to confidential Home Mortgage Disclosure Act (HMDA) data, which include credit scores and other financial information from millions of mortgage applications. An analysis of a confidential HMDA dataset our team conducted previously, along with others' analysis of the same data, found that an applicant of color is more likely to have their application denied1 than a White applicant with the same income and credit score who applies for a conventional mortgage of the same size for a similar home. ***Comment: This is not the first report to explore bias in the mortgage loan process. No doubt the mortgage industry has evolved in many ways, including widespread adoption of technologies such as***

	automated under writing that can help reduce racially biased credit decisions, but is that enough? This report says there is more work to be done.
	FRB Industrial Production and Capacity Utilization - G.17 (01/17/2024) – Industrial production moved up 0.1 percent in December and declined 3.1 percent at an annual rate in the fourth quarter. Manufacturing output edged up 0.1 percent in December after increasing 0.2 percent in November. The index for utilities declined 1.0 percent in December, while the index for mining rose 0.9 percent. At 102.5 percent of its 2017 average, total industrial production in December was 1 percent above its year-earlier level. Capacity utilization was unchanged in December at 78.6 percent, a rate that is 1.1 percentage points below its long-run (1972–2022) average.

Technology / Security

	CISA Emergency Directive Ivanti Connect Secure and Ivanti Policy Secure (01/19/2024) – CISA has observed widespread and active exploitation of vulnerabilities in Ivanti Connect Secure and Ivanti Policy Secure solutions, hereafter referred to as "affected products." Successful exploitation of the vulnerabilities in these affected products allows a malicious threat actor to move laterally, perform data exfiltration, and establish persistent system access, resulting in full compromise of target information systems. CISA has determined these conditions pose an unacceptable risk to Federal Civilian Executive Branch (FCEB) agencies and require emergency action. This determination is based on widespread exploitation of vulnerabilities by multiple threat actors, the prevalence of the affected products in the federal enterprise, the high potential for a compromise of agency information systems, the impact of a successful compromise, and the complexity of the proposed mitigations. On January 10, 2024, Ivanti released the following information on the vulnerabilities in the affected products: CVE-2023-46805 is a vulnerability found in the web component of Ivanti Connect Secure (9.x, 22.x) and Ivanti Policy Secure. This authentication bypass vulnerability allows a remote attacker to access restricted resources by bypassing control checks. CVE-2024-21887 is a command injection vulnerability in web components of Ivanti Connect Secure (9.x, 22.x) and Ivanti Policy Secure. This vulnerability, which can be exploited over the internet, allows an authenticated administrator to send specially crafted requests and execute arbitrary commands on the affected products. ***Comment: Share these alerts with your IT Department.***
	CISA Oracle Releases Critical Patch Update Advisory for January 2024 (01/18/2024) – Oracle released its Critical Patch Update Advisory for January 2024 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 Oracle's January 2024 Critical Patch Update Advisory and apply the necessary updates. ***Comment: Share these alerts with your IT Department.***

	CISA Drupal Releases Security Advisory for Drupal Core (01/18/2024) – Drupal released a security advisory to address a vulnerability affecting multiple Drupal core versions. A cyber threat actor could exploit this vulnerability to cause a denial-of-service condition. CISA encourages users and administrators to review Drupal security advisory SA-CORE-2024-001 for more information and apply the necessary update. This product is provided subject to this Notification and this Privacy & Use policy. ***Comment: Share these alerts with your IT Department.***
	FRB Opening Remarks by Vice Chair for Supervision Barr on Cyber Risk (01/17/2024) – *Cyber threats are constantly evolving, and we can expect them to become increasingly disruptive as technology advances and our financial system becomes more interconnected. In the past few months, ransomware attacks have disrupted the ability of some financial institutions to offer a variety of banking and market services, including Treasury clearance and settlement and access to online banking and ATM operations. These incidents were resolved without significant disruption to the broader market, but they are stark reminders of the potential for cyber incidents to generate broader, even systemic risks, and the importance of addressing these risks.* *Cybersecurity preparedness has become increasingly important for banks. Banks must take action to uncover vulnerabilities in their systems and remedy those vulnerabilities before attacks occur. But focusing on cyber defense is not sufficient. It is important that banks also focus on resilience to successful cyber-attacks, including by developing and regularly testing business continuity plans.* ***Comment: Barr, the Fed's top bank regulator, says all banks need to do more to focus on cybersecurity risks as some in the FinTech world face a barrage of attacks on their systems.***

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

01.17.2024 **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 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)**