Community Bankers of Michigan Regulatory Dispatch

January 31, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CFPB Issues Nonsufficient Funds Fees NPRM

The CFPB issued the Nonsufficient Funds Fees Notice of Proposed Rulemaking (NSF NPRM), which proposes to prohibit covered financial institutions from charging fees, such as NSF fees, when a consumer initiates certain payment transactions that are instantaneously declined, on the grounds that charging such fees would constitute an abusive practice. The NSF NPRM proposes the term "covered financial institution" have the same meaning as a "financial institution" in existing Regulation E, 12 CFR 1005.2(i).

'The CFPB is taking proactive steps to ensure that financial institutions do not impose these fees, which can occur for a host of reasons that are out of the consumer's control. Specifically, as technology advances, financial institutions may be able to decline more transactions right at the swipe, tap, or click. These transactions include ATM, debit or prepaid card, online transfer, in-person bank teller, and certain person-to-person transactions.'

Comments on the NSF NPRM must be received on or before March 25, 2024.

Comment: The rule would cover banks, credit unions and certain peer-to-peer payment companies and classify NSF fees as unlawful under the Consumer Financial Protection Act. According to the CFPB, financial institutions currently "charge a fee for insufficient funds transactions that are processed and then declined—i.e., checks or electronic authorizations, like Automated Clearing House transactions," but they rarely charge the NSF fees for transactions declined in real time.

Items of Interest

Bank Management

	FRB Announces the Bank Term Funding Program (BTFP) Will Cease Making New Loans as Scheduled on March 11 (01/24/2024) – The Federal Reserve Board announced that the Bank Term Funding Program (BTFP) will cease making new loans as scheduled on March 11. The program will continue to make loans until that time and is available as an additional source of liquidity for eligible institutions. During a period of stress last spring, the Bank Term Funding Program helped assure the stability of the banking system and provide support for the economy. After March 11, banks and other depository institutions will continue to have ready access to the discount window to meet liquidity needs. As the program ends, the interest rate applicable to new BTFP loans has been adjusted such that the rate on new loans extended from now through program expiration will be no lower than the interest rate on reserve balances in effect on the day the loan is made. This rate adjustment ensures that the BTFP

	continues to support the goals of the program in the current interest rate environment. This change is effective immediately. All other terms of the program are unchanged. The BTFP was established under Section 13(3) of the Federal Reserve Act, with approval of the Treasury Secretary. ***Comment: The Spring 2023 banking issues led to liquidity concerns, which the Fed sought to stabilize with the BTFP.***
	FRB Announces it Will Extend the Comment Period on Its Interchange Fee Proposal Until May 12, 2024 And Published Additional Related Data (01/13/2024) – The Board announced that it will extend until May 12, 2024, the comment period on its interchange fee proposal. The Board extended the comment period to allow the public more time to analyze the proposal and prepare their comments. Comments on the proposal were originally due by February 12, 2024. Separately, the Board published additional data related to the interchange fee cap. The Board published the data to give the public additional information as they consider the proposal. The additional data are available here. Interchange fees are paid by merchants and received by debit card issuers for each debit card transaction. In October 2023, the Board requested comment on a proposal to lower the maximum interchange fee that a large debit card issuer can receive for a debit card transaction. The proposal would also establish a regular process for updating the maximum amount every other year going forward. By law, the Board is required to establish standards for assessing whether an interchange fee received by a large debit card issuer for processing a debit card transaction is reasonable and proportional to certain issuer costs.
	CSBS The Critical Role of the Dual-Banking System (01/19/2024) – *A Uniquely American System* *I will not start with Hamilton and Jefferson, but the states have been chartering banks since the early days of the Republic. Congress passed the National Bank Act in 1863, forming the foundations of the national bank charter that we know today. Fifty years later, in response to a number of intervening financial crises, Congress established the Federal Reserve System. These two laws — the National Bank Act and the Federal Reserve Act — largely set the federal framework for the American dual-banking system. This unique system has sustained the competitive, resilient, and vibrant financial services sector of the United States.* *We stand alone among nations in the number and diversity of our banks . . . ranging in size and business model from a small community bank operating in one town to some of the world's largest financial firms operating across the globe.* *This diversity is not an accident of history. It is the result of over 200 years of carefully considered and thoroughly debated policy decisions. It is born from our Founders' commitment to decentralized power and economic self-determination. These core values are reflected in our regulatory system — balancing national interests with local accountability.* *This truly American construct allows federal and state governments to focus on their strengths. It balances the stability of a strong national framework with the ability of states to provide for the well-being of their citizens and communities.* *Every time the dual-banking system has been challenged, Congress has maintained a state-federal structure of financial oversight — rejecting a single, monolithic approach that would produce myopia and uniformity.*

Congress has consistently recognized the dual-banking system as a valuable contributor to safety and soundness, consumer protection, and competitive markets.

BSA / AML

FinCEN Announces Inflation Adjustments to Bank Secrecy Act Civil Monetary Penalties (01/25/2024) – The Financial Crimes Enforcement Network (FinCEN) issued a final rule on January 25, 2024, to reflect annual inflation adjustments to its civil monetary penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This rule adjusts certain maximum civil monetary penalties within the jurisdiction of FinCEN to the amounts required by that Act.

Comment: Routine annual adjustment.

Deposit / Retail Operations

FTC The IRS Doesn't Send Tax Refunds by Email or Text (01/23/2024) – IRS impersonators are at it again. This time, the scammers are sending messages about your "tax refund" or "tax refund e-statement." It might look legit, but it's an email or text fake, trying to trick you into clicking on links so they can steal from you. How? They tell you to click a link — supposedly to check on your "tax refund e-statement" or "fill out a form to get your refund." But it's a scam and if you click that link, the scammer might steal your identity or put malware on your phone or computer.

If someone contacts you unexpectedly about a tax refund, the most important thing to know is that the real IRS won't contact you by email, text message, or social media to get your personal or financial information. Only scammers will.

If someone does reach out, here's what to do:

- Never click on any links, which can put malware on your computer or phone, letting scammers steal from you.
- Check the status of any pending refund on the IRS official website. Visit Where's My Refund to see if you're really getting a refund.
- Share what you know. By telling your friends and family members about the scam, you can help protect your community.

Comment: Tax fraud season is here – and it's time once again to educate your accountholders. The IRS has helpful Tips to help taxpayers spot and avoid tax scams.

FTC Identity Theft Awareness Week 2024 starts January 29 (01/13/2024) – You've probably heard about identity theft, but have you heard about Identity Theft Awareness week? That's when the FTC and its partners host free podcasts, webinars, Facebook Live interviews, and other events to talk about how to spot, avoid, report, and recover from identity theft. Mark your calendars. Identity Theft Awareness Week starts Monday, January 29!

Comment: January 29–February 2, 2024 is Identity Theft Awareness Week. Identity theft can happen through data breaches, losing or misplacing personal identifying information (such as a wallet), online profile hacking, tax fraud, falsified health insurance claims, and much more.

Human Resources

	No news to report this week.

Lending

	No news to report this week.

Technology / Security

CISA Mozilla Releases Security Updates for Thunderbird and Firefox (01/13/2024) – Mozilla has released security updates to address vulnerabilities in Thunderbird and Firefox. A cyber threat actor could exploit one of these vulnerabilities to take control of an affected system.

CISA encourages users and administrators to review the following advisories and apply the necessary updates:

•Thunderbird 115.7
•Firefox ESR 115.7
•Firefox 122

Comment: Ensure your IT staff is aware of these alerts.

CISA Joins ACSC-led Guidance on How to Use AI Systems Securely (01/23/2024) – CISA has collaborated with the Australian Signals Directorate's Australian Cyber Security Centre (ASD's ACSC) on Engaging with Artificial Intelligence—joint guidance, led by ACSC, on how to use AI systems securely.

The guidance provides AI systems users with an overview of AI-related threats as well as steps that can help them manage AI-related risks while engaging with AI systems. The guidance covers the following AI-related threats:

1. Data poisoning
2. Input manipulation
3. Generative AI hallucinations
4. Privacy and intellectual property threats
5. Model stealing and training data exfiltration
6. Re-identification of anonymized data

Comment: If your bank is using AI, your board should be informed about how AI and machine learning are being used and what practices are in place to mitigate risks.

CISA Apple Releases Security Updates for Multiple Products (01/23/2024) – Apple has released security updates for iOS and iPadOS, macOS, Safari, watchOS, and tvOS. 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 Apple security release and apply the necessary updates:

	• iOS 17.3 and iPadOS 17.3 • iOS 16.7.5 and iPadOS 16.7.5 • iOS 15.8.1 and iPadOS 15.8.1 • macOS Sonoma 14.3 • macOS Ventura 13.6.4 • macOS Monterey 12.7.3 • Safari 17.3 • watchOS 10.3 • tvOS 17.3 ***Comment: Ensure your IT staff is aware of these alerts.***

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

01.24.2024 **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)**

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.**

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)**