



# Community Bankers of Michigan Regulatory Dispatch

June 12, 2024

*Timely news and resources community bankers can use  
to better stay on top of a rapidly changing world.*

## **U.S. Department of Treasury Releases Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector**

The U.S. Department of the Treasury (Treasury) released a request for information on the Uses, Opportunities, and Risks of Artificial Intelligence (AI) in the Financial Services Sector. Building on Treasury's recent work on cybersecurity and fraud in AI and recent initiatives by other federal agencies, Treasury is seeking public comment on the uses of AI in the financial services sector and the opportunities and risks presented by developments and applications of AI within the sector.

"Treasury is proud to be playing a key role in spurring responsible innovation, especially in relation to AI and financial institutions. Our ongoing stakeholder engagement allows us to improve our understanding of AI in financial services," said Under Secretary for Domestic Finance Nellie Liang. "The Biden Administration is committed to fostering innovation in the financial sector while ensuring that we protect consumers, investors, and our financial system from risks that new technologies pose."

Through this RFI, Treasury seeks to increase its understanding of how AI is being used within the financial services sector and the opportunities and risks presented by developments and applications of AI within the sector, including potential obstacles for facilitating responsible use of AI within financial institutions, the extent of impact on consumers, investors, financial institutions, businesses, regulators, end-users, and any other entity impacted by financial institutions' use of AI, and recommendations for enhancements to legislative, regulatory, and supervisory frameworks applicable to AI in financial services. Treasury is seeking a broad range of perspectives on this topic and is particularly interested in understanding how AI innovations can help promote a financial system that delivers inclusive and equitable access to financial services.

Members of the public are encouraged to submit comments within 60 days. Comments responding to this request for information will be publicly viewable on [www.regulations.gov](http://www.regulations.gov).

***Comment: Earlier this year, the DOJ expressed concerns about how the rapidly developing technology could be exploited, by foreign adversaries or by corporate criminals, to harm the U.S. The DOJ put business leaders on notice of a legal responsibility to mitigate the risk of advancements in AI. Additionally, The U.S. Treasury Department indicated last week that it is also seeking public comments on the use of artificial intelligence in the financial services sector.***

*Regulators have cautioned that the rapid adoption of AI could create new risks for the U.S. financial system if the technology is not adequately monitored.*

## **CBM Insights**

**Q:** In the past our Regulation O ‘executive officers’ were always our executive team. The FDIC asked that we go deeper and include compliance officers and IT officers and other officers that may write policies. Our take has always been that although officers may write a policy, they cannot implement it without executive approval and board approval. What do you see from other banks?

**A:** That is an interesting question and equally interesting position from the FDIC. Best to look at the plain language of the rule. See below:

### *§215.2 Definitions*

*(e)(1) Executive officer of a company or bank means a person who participates or has **authority to participate** (other than in the capacity of a director) in **major policymaking functions** of the company or bank, whether or not: the officer has an official title; the title designates the officer an assistant; or the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, **and the officer does not actually participate therein.***

If they are writing policies, it is hard to argue that they don’t have the ‘authority to participate’ in the ‘major policymaking functions’ of the bank. The rule doesn’t expand upon what ‘participate’ means nor does it qualify that by requiring approval to implement a policy those individuals may have written.

## **Items of Interest**

### **Bank Management**

**CFPB Warns Against Deception in Contract Fine Print** (06/06/2024) – The Consumer Financial Protection Bureau (CFPB) issued a circular warning against the use of unlawful or unenforceable terms and conditions in contracts for consumer financial products or services. Companies use this fine print tactic to try to trick consumers into believing they have given up certain legal rights or protections. When financial institutions take these types of actions, they risk violating the Consumer Financial Protection Act. This warning is part of the CFPB’s broader efforts to ensure freedom and fairness in people’s interactions with financial institutions.

“Federal and state laws ban a host of coercive contract clauses that censor and restrict individual freedoms and rights,” said CFPB Director Rohit Chopra. “The CFPB will take action against companies and individuals that deceptively slip these terms into their fine print.”

Many consumer contracts include terms and conditions that claim to limit consumer rights and protections. This fine print may just be an attempt to confuse people about their rights. A common example is the general liability waiver, which purports to fully insulate companies from suits even though most states have laws that create hosts of exemptions to these waivers.

Similarly, several federal consumer financial protection laws offer protections that cannot be taken away from people, no matter what a contract says. For example, the Military Lending Act generally prohibits terms in certain consumer credit contracts that require servicemembers and their dependents to waive their right to legal recourse. Another example is mortgage rules, implementing the Truth in Lending Act,

which prohibit fine print that forces homeowners into arbitration or other nonjudicial procedures to resolve problems with a mortgage transaction.

The circular explains how and when fine print tricks and intimidation in contracts for consumer financial products and services may violate the Consumer Financial Protection Act's prohibition on deceptive acts and practices. Companies may be liable even if the unenforceable terms are borrowed from form templates or widely available contracts.

The CFPB has taken action with respect to this unlawful conduct on many occasions over the past several years, including on deceptive behavior toward:

- Mortgage borrowers: CFPB examiners have repeatedly found examples of deceptive contract terms purporting to waive mortgage borrowers' rights that cannot be waived.
- Bank account holders: The CFPB found that a bank deceived consumers through contract terms that it claimed waived consumers' right to hold the bank liable for improperly responding to garnishment orders when, in fact, this right could not be waived. The bank inserted these terms into deposit agreements with broad fine print language.
- Remittance transfer consumers: The CFPB found that a remittance transfer provider violated the Consumer Financial Protection Act's deception prohibition when it included misleading statements in disclosures purporting to limit consumers' error resolution rights, which would be unenforceable under the Electronic Fund Transfer Act and the Remittance Rule.
- Auto loan borrowers: The CFPB found an auto loan servicer deceptively included language in contracts that indicated that consumers could not exercise bankruptcy rights, when in fact, waivers of bankruptcy rights generally are void as a matter of public policy.

The circular builds on previous initiatives and guidance provided by the CFPB that are intended to ensure freedom and fairness in people's interactions with financial institutions. Last year, the CFPB proposed a rule to require certain supervised nonbank companies to register with the CFPB information about their use of contractual terms that claim to waive or limit consumer rights. The CFPB also has explained that banks and financial companies attempting to silence consumers from posting honest online reviews through contract terms undermine fair competition and may be breaking the law. The CFPB additionally has highlighted that certain tuition payment plans include terms and conditions that are likely unenforceable. And the CFPB recently filed an amicus brief with the Justice Department to help ensure that servicemembers can file lawsuits to enforce the Servicemembers Civil Relief Act notwithstanding unenforceable fine print in contracts.

Read the consumer financial protection circular, Unlawful and unenforceable contract terms and conditions.

***Comment: According to the release, many consumer contracts contain terms and conditions that claim to limit consumer rights and protections, which the bureau said might just be an attempt to confuse people about their rights.***

**CSBS [Community Banks' Product Pricing Influence in Local Markets](#) (06/06/2024) – In the [2023 CSBS Annual Survey of Community Banks](#), 21% of respondents reported that their pricing decisions on loans and deposits influence local market interest rates, 59% reported they have some influence, and the remaining 20% reported no influence. Can community banks product pricing have an impact in their local markets? For banks reporting significant influence on local market rates through their product pricing decisions, as well as those reporting no influence, this question provides a unique opportunity to investigate market structure: Do community banks in smaller markets with few competitors have greater pricing power? Is there a market share threshold where product pricing influence is more significant?**

To preview our results, we find that community banks located in smaller markets are more likely to report having significant product pricing power than those in more populous areas. As expected, there appears to be a general decrease in the percentage of community banks saying they have significant pricing power as market size increases. We also find that a greater percentage of smaller community banks reported having no pricing power, and that larger community banks in markets with fewer than 500,000 residents more frequently reported having significant pricing power than smaller institutions.

**OCC Acting Comptroller Discusses Artificial Intelligence and Financial Stability (06/06/2024)** - Acting Comptroller of the Currency Michael J. Hsu discussed systemic risk implications of artificial intelligence (AI) in banking and finance via livestream at the Financial Stability Oversight Council’s AI Conference.

In addition, Mr. Hsu released complimentary remarks to expand upon how the use and weaponization of AI pose financial stability risks, and offered thoughts on how a shared responsibility model for AI can improve its safety.

***Comment: Add the OCC to the DOJ and Treasury expressing concerns about AI and its use in the financial sector. In March of this year, The DOJ released [Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector](#) that is worth a read.***

**CFPB [Creates Registry to Detect Corporate Repeat Offenders](#) (06/03/2024)** – The Consumer Financial Protection Bureau (CFPB) finalized a rule to establish a registry to detect and deter corporate offenders that have broken consumer laws and are subject to federal, state, or local government or court orders. The registry will also help the CFPB to identify repeat offenders and recidivism trends. The new registry is part of the CFPB’s ongoing focus on holding lawbreaking companies accountable and stopping corporate recidivism.

“Too often, financial firms treat penalties for illegal activity as the cost of doing business,” said CFPB Director Rohit Chopra. “The CFPB’s new rule will help law enforcement across the country detect and stop repeat offenders.”

When a financial company violates the law, a government agency may take an enforcement action against them. Typically, this leads to an order entered by a court or the agency. These orders are not suggestions. While these orders are publicly available, they are not comprehensively tracked. The CFPB’s new registry will facilitate better understanding of bad actors that seek to restart a scam, fraudulent scheme, or other illegal conduct that harms the public. The CFPB expects that the registry will be used by state attorneys general, state regulators, and a range of other law enforcement agencies. The registry will also assist investors, creditors, business partners, and members of the public that are conducting due diligence or research on financial firms bound by law enforcement orders.

The 2008 financial crisis exposed significant weaknesses in the oversight of nonbank financial companies. Nonbank financial companies have traditionally faced inconsistent oversight, making it more difficult for regulators to identify and address potential risks to consumers. Congress has taken steps to increase oversight and transparency in the nonbank financial sector. For instance, in 2008, Congress passed the SAFE Act to address risks posed by nonbank financial companies. The Act requires mortgage loan originators to be registered and licensed.

While the list of banks, credit unions, and many mortgage companies are known to regulators and the public, many other types of financial companies are not licensed or registered – either through the Nationwide Multistate Licensing System (NMLS) or other regulatory registries. However, in the Consumer Financial Protection Act, Congress gave the newly created CFPB the authority to register nonbanks. This authority supports the CFPB’s role to monitor risks posed by nonbanks to consumers. It also supplements

and supports already existing registries, like the NMLS, by covering entities that are not subject to the types of state and federal oversight already extended to certain individuals and entities, like in the mortgage industry. This is the first-ever rule by the CFPB to utilize the authority to register nonbank entities.

The final rule requires covered nonbank companies to:

Register with the CFPB when they have been caught violating consumer law: Generally, covered nonbanks will report certain final agency and court orders and judgments to the CFPB. These orders include consent and stipulated orders brought under consumer protection laws.

Provide an attestation from a senior executive that the company is not flouting orders: For nonbank companies supervised by the CFPB, the entity subject to an order will provide a written attestation from an executive that confirms compliance with any relevant orders.

The CFPB made changes to the proposed rule in response to public feedback. For example, registrants with orders published in the NMLS Consumer Access website may use a simplified filing process. The registration requirements will be phased in on a rolling basis.

Reining in repeat offenders is a priority for the CFPB. Importantly, the CFPB established a Repeat Offender Unit. This national supervision team is responsible for designing and executing comprehensive oversight of supervised entities subject to CFPB law enforcement orders. The Repeat Offenders Unit is actively ensuring that a company, its senior management, and its board of directors are not treating any orders as suggestions.

The CFPB is taking several steps to identify specific individuals responsible for repeat offenses.

The CFPB's enforcement program is heavily focusing on stopping repeat offenders, including by bringing multiple enforcement actions against recidivist debt collectors, mortgage lenders, payday lenders, and credit reporting companies.

[Read the final rule.](#)

***Comment: The Conference of State Bank Supervisors (CSBS) expressed its concerns and reservations about the CFPB's final rule. In a release, CSBS President and CEO Brandon Milhorn [asserted](#), "We are disappointed that the CFPB is proceeding with its Public Orders Registry and stand by the concerns expressed by state regulators during the consultation process and in CSBS's comment letter. CSBS's primary focus now is to help ensure alignment between the CFPB's Registry and the Nationwide Multistate Licensing System to prevent consumer and industry confusion and redundant reporting. We encourage the CFPB to further consult with state regulators on requirements for coordinated systems as mandated by the Dodd-Frank Act," Milhorn added.***

## BSA / AML

FinCEN [Year in Review for Fiscal Year 2023](#) (06/07/2024) – The Financial Crimes Enforcement Network (FinCEN) issued its [Year in Review for Fiscal Year 2023](#). The Year in Review is intended to help stakeholders gain insight into the collection and use of Bank Secrecy Act data, including FinCEN's efforts to support law enforcement and national security agencies. The Year in Review includes statistics from fiscal year 2023 on BSA reporting and how it is queried and used by law enforcement agencies.

***Comment: As noted, this review provides helpful information on trends and how the information is used. While not actionable, it is informative.***

## Deposit / Retail Operations

[CFPB Launches Process to Recognize Open Banking Standards](#) (06/05/2024) – The Consumer Financial Protection Bureau (CFPB) finalized a rule outlining the qualifications to become a recognized industry standard setting body, which can issue standards that companies can use to help them comply with the CFPB’s upcoming Personal Financial Data Rights Rule. This rule identifies the attributes that standard setting bodies must demonstrate in order to be recognized by the CFPB. The rule also includes a step-by-step guide for how standard setters can apply for recognition and how the CFPB will evaluate applications.

“Industry standards can be weaponized by dominant firms in order to maintain their market position, undermining competition for all,” said CFPB Director Rohit Chopra. “Today’s rule will prevent these firms from rigging standards in their favor by identifying attributes the CFPB will use to recognize standard setters.”

The CFPB is working to accelerate the shift to open banking in the United States. In 2010, Congress passed into law new personal financial data rights for consumers. Guaranteeing a consumer’s right to their data will open up more opportunities for smaller financial institutions and startups offering products and services. However, these new rights have not taken full effect, because the CFPB never issued a rule. In October 2023, the CFPB proposed a rule to implement these rights and will finalize it in the coming months.

As part of the upcoming Personal Financial Data Rights rule, the CFPB expects to allow companies to use technical standards developed by standard-setting organizations recognized by the CFPB. This rule kicks off the process for standard-setting organizations to seek formal recognition.

The new rule identifies the attributes that standard setters must demonstrate in order to be recognized by the CFPB. Consensus standards issued by recognized standard setters can help put the Personal Financial Data Rights rule into action and accelerate the financial system’s movement towards truly open banking.

To be recognized by the CFPB, the standard setters must apply to the CFPB and display the following attributes:

**Openness:** The CFPB will not recognize any standard-setting organization that is rigged in favor of any set of industry players. The process must be open to all interested parties, including public interest groups, app developers, and a broad range of financial firms with a stake in open banking.

**Transparency:** Procedures must be transparent to participants and publicly available.

**Balanced decision-making:** The decision-making power to set standards must be balanced across all interested parties, including consumer and other public interest groups. There must also be meaningful representation for large and small commercial entities. No single special interest can dominate the decision-making process.

**Consensus:** Standards development must proceed by consensus, though not necessarily unanimity. Comments and objections must be considered using fair and impartial processes.

**Due process and appeals:** The standard-setting body must use documented and publicly available policies and procedures, provide adequate notice of meetings, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views. An appeals process is also available for the impartial handling of procedural appeals.



	<p>This rule also includes a mechanism for the CFPB to revoke the recognition of standard setters and a maximum recognition duration of five years, after which recognized standard setters will have to apply for re-recognition. These protections will ensure recognized standard setters’ ongoing adherence to the attributes codified by the CFPB.</p> <p>The rule also contains a step-by-step guide to help interested standard setters apply for recognition. The guide describes five steps in the application and recognition process, and the CFPB invites interested standard setters to begin engaging with us when they are ready to demonstrate their adherence to the attributes the CFPB codified.</p> <p><b><i>Comment: In this precursor to a final rule implementing Section 1033 expected this Fall, the CFPB defines technical standards that must be met in order to be recognized by the CFPB which, when granted, would provide access to the data in accordance with a final rule.</i></b></p>
	<p><b>FDIC</b> <a href="#">Consumer News: Banking With Third-Party Apps</a> (06/01/2024) – Technology has continued to transform the business of banking in recent years. Traditionally, consumers opened deposit accounts directly with banks (whether in-person, on the bank’s website, or through the bank’s mobile app). The easiest way for most consumers to have confidence that their money is safe continues to be opening an account directly with insured depository institutions, like FDIC-insured banks and savings associations.</p> <p><b><i>Comment: “A new <a href="#">survey</a> from Chase found 62% of consumers said they can’t live without their mobile banking app, and 78% are using it weekly.”</i></b></p>
	<p><b>FTC</b> <a href="#">Why It’s Not Rude to Ignore “Hi, How Are You?” Text Messages from Strangers</a> (06/03/2024) – A text message from an unknown number that simply says: hi, how are you? seems harmless. Your first instinct might be to respond to see if it’s someone you know. Or maybe tell them they made a mistake. But it’s best to ignore these type of text messages. Scammers are using this tactic as a conversation starter, so don’t text back.</p> <p><b><i>Comment: As always, find ways to share this information with your accountholders and the public. Education and information help your customers avoid being victims of a scam.</i></b></p>

## Human Resources

	No news to report this week.
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## Lending

	<p><b>FRB</b> <a href="#">Consumer Credit - G.19</a> (06/08/2024) – In April, consumer credit increased at a seasonally adjusted annual rate of 1.5 percent. Revolving credit decreased at an annual rate of 0.4 percent, while nonrevolving credit increased at an annual rate of 2.2 percent.</p>
	<p><b>HUD</b> <a href="#">Reconsideration of Value</a> (05/01/2024) – During the homebuying or refinancing process, an appraiser will submit an appraisal report to the lender for review. An appraisal is an important part of the homebuying process because it establishes the value of the property for a home loan. Simply stated, fair and accurate appraisals directly impact national homeownership rates, which impact the racial wealth gap.</p>

If the appraiser values your home for lower than expected, known as an “undervaluation”, you can appeal the appraiser’s decision by asking the lender to request a Reconsideration of Value or ROV.

An ROV challenges the initial appraisal by identifying inaccuracies, such as miscalculation of square footage or number of rooms. An ROV might also be appropriate if the appraiser uses unsuitable comparable properties and makes discriminatory inferences. Your lender can help you review the appraisal report and identify significant inaccuracies to include in the ROV.

When appropriate, the appraiser can republish the amended report and send it back to the lender or conduct another appraisal.

Ensuring that an appraisal reflects the fair market value of the property can help close the racial homeownership and wealth gap.

\*Please note, the ROV process may vary based on whether the borrower is a purchaser, refiner, or seeking a reverse mortgage.

*Comment: The agencies issued Proposed Reconsideration of Value Guidance in 2023 but have not finalized anything. In the meantime, GSEs and HUD announced this rule on Reconsideration of Value Policies on May 1, 2024, effective for applications received after August 29, 2024. Here is a good write-up on the GSE and HUD announcement. The GSE and HUD announcement has specific requirements for lenders that participate in lending with GSEs.*

## Technology / Security

CISA [National Internet Safety Month](#) (06/08/2024) – June is Internet Safety Month! Visit our Secure Our World page for four easy ways to stay safe online and to watch our new PSA!

*Comment: Think about adding a link on your web site to this CISA PSA.*

## 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.