Community Bankers of Michigan Regulatory Dispatch

May 30, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC Publishes 2024 Risk Review

WASHINGTON — The Federal Deposit Insurance Corporation (FDIC) published its 2024 Risk Review, which summarizes conditions in the U.S. economy, financial markets, and the banking industry.

The FDIC's Risk Review is an annual publication, based on year-end banking data from the prior year. The 2024 Risk Review provides an overview of banking risks in 2023 in five broad categories: market risks that include funding and liquidity risks; credit risks in various portfolios including commercial real estate and consumer lending; operational risks; crypto-asset risks; and climate-related financial risks. Monitoring these risks is among the FDIC's top priorities. The report pays particular attention to risks that may affect community banks, as the FDIC is the primary federal regulator for most community banks and has a unique perspective on these institutions.

Economic conditions remained strong in 2023, and financial market conditions improved toward the end of the year. The banking industry demonstrated resilience after a period of stress in early 2023 as full-year net income remained high, overall asset quality metrics were favorable, and liquidity stabilized.

Comment: Two things stand out - Check fraud increased, despite the overall decline in check usage. And 2023 saw the highest number of billion-dollar climate events since 1980, with rising insurance costs adding to the financial strain on the industry. Unfortunately, the climate events for 2024 are looking just as consequential in many parts of the country.

CBM Insights

Q: We have a question regarding adverse action notice for a joint deposit account application. The applicants happen to be mother and son. We ran ChexSystems on both but were unable to open the account based on one applicant's prior negative account history (account abuse.) Do we send two separate notices with the same denial reason, or can we provide just one notice addressed to both applicants?

A: With respect to FCRA adverse action notices specifically, the clearest guidance regarding who must receive an FCRA adverse action notice is found in the Federal Trade Commission's Stinneford opinion letter issued July 14, 2000. In that letter, the FTC said that any consumer with respect to whom adverse action is taken must receive FCRA adverse action notice if that action is based "in whole or in part" on information from a consumer report. See below:

Is it permissible for a creditor to send a combined ECOA/FCRA adverse action notification (similar to Form C-1) only to the primary applicant, even if the application was denied based on the co-applicant's (or guarantor's) consumer report?

For the reasons set forth below, it is our view that the answer is no with respect to a co-applicant and yes with respect to a guarantor.

Section 615(a) requires that "any consumer" with respect to whom adverse action is taken must receive the disclosures mandated by Section 615(a) if that action is based "in whole or in part" on information from a consumer report. (Emphasis added). In our view, the plain language "any consumer" includes a co-applicant. Neither Section 202.9(f) of Regulation B, nor the combined disclosure permitted in Appendix C, remove or modify that requirement with respect to co-applicants. The objective of the combined disclosures permitted by the Federal Reserve Board in Appendix C to Regulation B is only to simplify the paperwork involved in making ECOA and FCRA notifications to a single applicant, where both are required -- i.e., the action by the creditor is both adverse to the applicant (ECOA), and is based in whole or in part on information from that applicant's consumer report (FCRA).

The opinion continues below:

Thus, in response to the specific example posed in your letter, when there are two applicants a creditor cannot send a combined ECOA/FCRA adverse action notification to only the primary applicant if the application is denied, even in part, based on information in a co-applicant's consumer report. In that circumstance, the co-applicant has been the subject of "adverse action" and must be provided his or her own separate notification to satisfy the requirement of Section 615(a) of the FCRA. If the creditor has provided the ECOA-required information specified in Section 202.9(a)(2) of Regulation B to the primary applicant, it need not be included in the FCRA notice provided to the co-applicant.

Source link.

The translation of that is when there are two applicants – in this case 'applicants' for a deposit account - a bank must provide a separate adverse action notice to each co-applicant if the application is denied, even if the decision not to open the deposit account was based on information in a co-applicant's consumer report. In that circumstance, each applicant has been the subject of "adverse action" and must be provided with his or her own separate FCRA adverse action notice.

Items of Interest

Bank Management

	FFIEC Revisions to the Consolidated Reports of Condition and Income (Call Reports) and the FFIEC 002 Report (05/23/2024) – On May 22, 2024, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), and the Office of the Comptroller of the Currency (collectively, the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published the attached final regulatory reporting changes in the Federal Register. These reporting changes proposed by the agencies on September 28, 2023 (see FIL-53-2023) and December 27, 2023 (see FIL-68-2023), would apply to all three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as applicable, and are subject to approval by the U.S. Office of Management and Budget.

In the September 2023 notice, the agencies proposed revisions to all three versions of the Call Report (FFIEC 031, FFIEC 041 and FFIEC 051) and the Board proposed revisions, as applicable, to the FFIEC 002 related to the Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) 2022-02, "Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures" (ASU 2022-02), reporting on internet website addresses of depository institution trade names, and reporting on past due loans. In the December 2023 notice, the agencies proposed revisions to all three versions of the Call Report (FFIEC 031, FFIEC 041 and FFIEC 051) and the Board proposed revisions, as applicable, to the FFIEC 002 related to the reporting of loans to non-depository financial institutions (NDFIs) and other loans, guaranteed structured financial products, and proposed long-term debt requirements. In addition, this notice included a proposal to adopt ongoing standards for electronic signatures to comply with the Call Report signature and attestation requirement.

After considering the comments received on these notices, the agencies are moving forward with certain proposed revisions related to replacing references to "troubled debt restructurings" with "modifications to borrowers experiencing financial difficulty" consistent with ASU 2022-02, the reporting on the internet website addresses of depository institution trade names, and the adoption of the standards for electronic signatures. These updates to the Call Report and FFIEC 002 report forms and instructions will be effective as of the June 30, 2024, report date.

The agencies are implementing revisions related to reporting of loans to NDFIs as of the December 31, 2024, report date. The agencies are also adding a new Memorandum item that would identify the amounts reported as a structured financial product that are guaranteed by U.S. Government agencies or sponsored agencies, which would be effective as of the December 31, 2024, report date.

The agencies are continuing to review comment letters related to loan modifications to borrowers experiencing financial difficulty under ASU 2022-02, as well as the proposed clarification on the reporting of past due loans and proposed reporting of long-term debt requirements, for further changes to the Call Report and the FFIEC 002.

The agencies encourage you to review the proposed regulatory reporting revisions and comment on those aspects of interest to you. You may send comments on this reporting proposal to any or all of the agencies by the methods described in the attached Federal Register notice. Comments must be submitted by June 21, 2024.

Redlined copies of the FFIEC 031, FFIEC 041, and FFIEC 051 Call Report forms and the FFIEC 002 report form showing the proposed changes and the related draft reporting instructions will be available on the FFIEC's webpages for these reports, which can be accessed from the FFIEC's Reporting Forms webpage.

Comment: Be sure to get these updates to those responsible for preparing your Call report.

FRB Issues Economic Well-Being of U.S. Households in 2023 Report (05/21/2024) – The Federal Reserve Board issued its Economic Well-Being of U.S. Households in 2023 report, which examines the financial circumstances of U.S. adults and their families. Overall, the report shows that financial well-being was nearly unchanged from 2022 as higher prices remained a challenge for most households and workers continued to benefit from a strong labor market.

The report draws from the Board's eleventh annual Survey of Household Economics and Decision-making (SHED), which was fielded in October 2023. It analyzes topics including financial well-being, income, employment, expenses, banking and credit, housing, higher education and student loans, and retirement and investments.

	The report indicates that overall financial well-being was nearly unchanged from 2022. During 2023, 72 percent of adults reported either doing okay or living comfortably financially, similar to the 73 percent seen in 2022 but down 6 percentage points from the recent high of 78 percent in 2021. Despite the moderating pace of inflation, higher prices continued to be a top financial concern. Sixty-five percent of adults said that changes in the prices they paid compared with the prior year had made their financial situation worse, including 19 percent who said price changes made their financial situation much worse. Some groups continued to experience financial stress at higher rates than others. In particular, low-income adults were more likely to face material hardships, including not paying all bills in full, sometimes or often not having enough to eat, and skipping medical care because of cost. Seventeen percent of adults said they did not pay all their bills in full in the month prior to the survey. ***Comment: Inflation may have slowed last year, but it continued to deal heavy blows — some devastating — on Americans' livelihoods: Nearly two-thirds of US adults were worse off because of it, and roughly 1 in 6 couldn't pay all their monthly bills.***
	FRB Little by Little, Progress Seems to be Resuming. - Governor Christopher J. Waller (05/21/2024) – *Last week's report on consumer price index (CPI) inflation in April was a welcome relief after three months without progress toward 2 percent. That said, the progress was so modest that it did not change my view that I will need to see more evidence of moderating inflation before supporting any easing of monetary policy. If I were still a professor and had to assign a grade to this inflation report, it would be a C+—far from failing but not stellar either.* *Headline CPI inflation rose 0.31 percent month over month. That barely budged the 12-month total CPI inflation reading to 3.4 percent in April from 3.5 percent in March. More importantly for the inflation outlook, core CPI inflation, which excludes food and energy prices, came in at 0.29 percent, down from 0.36 percent in March and 12-month core CPI fell to 3.6 percent from 3.8 percent.* *Accounting for price data from the report last week on the producer price index, forecasts are predicting both monthly headline and core inflation based on personal consumption expenditures, the FOMC's preferred gauge, rose a bit less than CPI last month. Most forecasts seem to be in the range of 0.23 to 0.26 percent, which is less than March's monthly increase of 0.32 percent. Although both March and April may round to 0.3 percent, it is good to see monthly inflation falling, even if it requires looking out to the second decimal point.* *Looking across these estimates, they suggest three-month annualized core PCE inflation could decline around 1 percentage point to about 3.4 percent as the outsized January increase rolls off the 3-month average. Like the CPI inflation numbers, this is not where I want to see inflation. But, after having these three-month readings accelerate in January, February, and March, I'm happy to see a reversal of this recent pattern. It leaves me hopeful that progress toward 2 percent inflation is back on track.* *Before I say more about the implications for policy, this seems like a good moment to make a few points about a bedrock principle of monetary policy—data dependence. The appropriate setting of monetary policy requires understanding how the economy is performing and some idea of where we think it is going. The latter typically means making a forecast or projection, based on standard macroeconomic models, of key variables and what that implies for policy. But that forecast must be validated by the incoming data. The economy is dynamic, and sometimes new or revised data can significantly change one's understanding of economic conditions and the outlook, which has implications for monetary policy. One data point alone should not change one's view of the economy, and that is why changes in one's outlook and the appropriate path for policy tend to emerge gradually and over time. While you may have confidence in your forecast, incoming data may challenge that confidence. You neither want to overreact to incoming data nor do you want to ignore it.*

BSA / AML

No news to report this week.

Deposit / Retail Operations

FTC Free Money on Social Media? Nah. It’s a Scam (05/21/2024) – Say you’re scrolling through your social media feed, and you see a post saying, “I’m the winner of $600 million from the Powerball lottery. I’m giving away $50,000 to the first one thousand people to message me.” Would you answer? If you do, you could become the target of a scam.

Comment: Education is the best way to help your accountholders avoid becoming a victim of a scam. Continue to find ways to educate your customers.

Human Resources

Employer Associations Have Sued to Block the DOL’s New Overtime Rule (05/23/2024) – A coalition of U.S. business groups has filed a lawsuit seeking to block a Biden administration rule that would extend mandatory overtime pay to 4 million workers, saying it goes too far.

The groups filed a complaint in Sherman, Texas federal court late on Wednesday claiming the U.S. Department of Labor lacked the power to adopt the rule and that it would force businesses to cut jobs and limit workers' hours.

The Labor Department declined to comment. In adopting the rule, the agency said that lower-paid salaried workers often do the same jobs as their hourly counterparts, but work more hours for no additional pay.

The groups involved in the lawsuit include the National Federation of Independent Business, the International Franchise Association, and the National Retail Federation.

The case was assigned to U.S. District Judge Sean Jordan, an appointee of Republican former President Donald Trump.

FTC Noncompete Clause Rule: A Compliance Guide for Businesses and Small Entities (05/20/2024) – The Federal Trade Commission (FTC) voted to issue a rule banning non-compete clauses on April 23, 2024. The rule is set to go into effect on September 4, 2024. Under the rule, non-competes are arrangements that prohibit, penalize, or functionally prevent a worker from getting a new job or starting a business after leaving their employment. In short, the rule bans employers from entering into non-competes with workers covered by the rule. It also makes unenforceable most existing non-competes, except for existing non-competes with senior executives and situations where the non-compete was allegedly breached before the effective date.

To help businesses understand what this rule means for them and how to comply, the FTC has prepared a business and small entity compliance guide. The guide contains step by step instructions for complying along with FAQs further explaining the rule. Additionally, the FTC recorded a compliance webinar for businesses on May 14th, and you can access the video and transcript at https://www.ftc.gov/news-events/events/2024/05/ftc-compliance-webinar-final-noncompetes-rule.

You can read more about the final rule on our website and in this fact sheet. In particular, the text of the rule and model notices that you can use to comply with the rule’s notice requirement are available on our website. You can also contact the FTC at noncompete@ftc.gov if you have further questions.

	Comment: While banks and credit unions are currently excluded, their parent companies and affiliates are subject to the noncompete ban and the FTC's enforcement. This an important consideration for banking organizations with shared or dual-hatted employees.

Lending

	CFPB Protecting the Military Community and Providing Relief (05/23/2024) – Complaints to CFPB from servicemembers, veterans, and their families just crossed the 400,000 mark. Last year, the CFPB saw total complaints from the military community increase by 27% from 2022 and 98% compared to 2021—with complaints ranging from credit reporting errors to mortgage problems to financial fraud and scams. Each of these complaints represents a financial issue that a servicemember, military family member, or veteran could not get resolved with the respective company, so they turned to the CFPB for help. When banks and financial institutions flout consumer or military financial protections, the CFPB acts to ensure companies are held responsible. ***Comment: This is a good reminder to review your own bank's compliance efforts with both SCRA and MLA.***
	CFPB Takes Action to Ensure Consumers Can Dispute Charges and Obtain Refunds on Buy Now, Pay Later Loans (05/22/2024) – The Consumer Financial Protection Bureau (CFPB) issued an interpretive rule that confirms that Buy Now, Pay Later lenders are credit card providers. Accordingly, Buy Now, Pay Later lenders must provide consumers some key legal protections and rights that apply to conventional credit cards. These include a right to dispute charges and demand a refund from the lender after returning a product purchased with a Buy Now, Pay Later loan. The CFPB launched its inquiry into the rapidly expanding Buy Now, Pay Later market more than two years ago and continues to see consumer complaints related to refunds and disputed transactions. Today's action will help bring consistency to this market. "When consumers check out and choose Buy Now, Pay Later, they don't know if they will get a refund if they return their product or whether the lender will help them if they didn't get what was promised," said CFPB Director Rohit Chopra. "Regardless of whether a shopper swipes a credit card or uses Buy Now, Pay Later, they are entitled to important consumer protections under longstanding laws and regulations already on the books." The Buy Now, Pay Later market has expanded rapidly over the past few years. Lenders advertise buying products over four simple payments. Products are marketed as a way to help consumers pay for expensive products and services over time without having to pay interest. Today, both products, like televisions and gaming systems, and services, like airline tickets and cruises, can be purchased through Buy Now, Pay Later products. Buy Now, Pay Later products are popular across ages, races, and income levels. The CFPB began studying the Buy Now, Pay Later industry in 2021. The CFPB found that Buy Now, Pay Later is often used as a close substitute for conventional credit cards to purchase goods and services. When people go to check out online or in person at a store, Buy Now, Pay Later is frequently offered as an option alongside the option to pay with a credit card. Just as credit cards can be used in a variety of situations, and not just in-person with a swipe or tap, Buy Now, Pay Later products are used via digital user accounts linked to websites, mobile apps, browser extensions, or integrations with merchant websites or mobile apps. Like conventional credit cards, Buy Now, Pay Later combines payment processing and credit services, while charging transaction fees to merchants.

	Because Buy Now, Pay Later lenders will typically meet criteria under existing law and regulation as traditional credit card providers, they need to extend many of the same rights and protections as classic credit card providers. Importantly, these cover dispute and refund rights. In a market report, the CFPB uncovered that more than 13% of Buy Now, Pay Later transactions involved a return or dispute. In 2021, people disputed or returned $1.8 billion in transactions at the five firms surveyed. The failure to provide dispute protections can create chaos for consumers when they return their merchandise or encounter other billing difficulties. Today's interpretive rule describes how Buy Now, Pay Later lenders meet the criteria for credit card providers, under the Truth in Lending Act. For consumers, this means Buy Now, Pay Later lenders must: • **Investigate disputes:** Buy Now, Pay Later lenders must investigate disputes that consumers initiate. Lenders must also pause payment requirements during the investigation and sometimes must issue credits. • **Refund returned products or cancelled services:** When consumers return products or cancel services for a refund, Buy Now, Pay Later lenders must credit the refunds to consumers' accounts. • **Provide billing statements**: Consumers must receive periodic billing statements like the ones received for classic credit card accounts. In 2021, the CFPB opened an inquiry into Buy Now, Pay Later with a focus on debt accumulation, regulatory arbitrage, and data harvesting. The agency published its results in 2022, and highlighted the rapid expansion of the industry and growing consumer risks. Last year, the CFPB published its findings on the financial profiles of Buy Now, Pay Later borrowers. Read the interpretive rule, *Truth in Lending (Regulation Z); Use of Digital User Accounts to Access Buy Now, Pay Later Loans*. The CFPB encourages the public to submit comments on this interpretive rule. Given the rapid changes in this market, public comments will help inform where the CFPB can offer further clarity, including through rules and guidance, related to the Buy Now, Pay Later market. Comments will be accepted until August 1, 2024. ***Comment: In addition to this report, the OCC issued Bulletin 2023-37 entitled Retail Lending: Risk Management of 'Buy Now, Pay Later' Lending that is helpful to all banks engaged in BNPL.***

Technology / Security

	No news to report this week.

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED RULES WITH REQUEST FOR PUBLIC COMMENT – NOTHING NEW THIS WEEK