



# REGCORNER

February 20th, 2024

In this edition of the RegCorner, NCUA's Harper speech at Brookings Institution highlights regulatory uncertainty; the CFPB finds credit unions offer lower interest rates than banks; and FinCEN proposes rule requiring reporting of non-financed real estate transfers.

## From the Regulators

### NCUA

#### Webinar: The Revised CDFI Certification Application

Staff from the NCUA and the CDFI Fund will discuss the requirements of the revised CDFI Certification Application, including updates to the Application FAQs and available new materials.

**Date:** Thursday, February 29

**Time:** 2:00 PM

[REGISTER](#)

#### NCUA Chairman Todd M. Harper Speaks at the Brookings Institution

[Read More](#)

NCUA Chairman Harper spoke at the "Agenda for Credit Union Regulation" event, which the Brookings Institution hosted. During his remarks, Chairman Harper discussed the evolving landscape of the financial services sector and the need for NCUA's regulator structures to keep up and adapt. He also discussed the upcoming 90th Anniversary of the Federal Credit Union Act and the NCUA's legislative priorities, including restoring the Central Liquidity Facility's agent membership provisions and third-party vendor authority. He also discussed the NCUA's supervisory priorities for 2024 and noted that the agency will soon require credit unions with above \$1 billion in assets to report data on both overdraft and nonsufficient funds fees separately to the NCUA.

[Watch](#) Chairman Harper's Remarks

#### Also see:

- ACU – [NCUA Call Report Update: Focus on Overdraft & NSF Fees; Penalties Resume](#)
- Washington Credit Union Daily – [NCUA Inspector General: Lack of Vendor Authority Puts Billions at Risk](#)

2/6/24

#### NCUA's Funds Receive Clean Audit Opinions

[Read More](#)

The agency's four funds again earned unmodified, or "clean," audit opinions for 2023, according to audited financial statements released today by the agency's Office of Inspector General. The financial statements cover the National Credit Union Share Insurance Fund, the agency's Operating Fund, the Central Liquidity Facility, and the Community Development Revolving Loan Fund.

2/13/24

#### February NCUA Board Meeting

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##### Final IRSP: Financial Innovation – Minority Depository Institution Preservation Program

The Board unanimously approved a [final interpretive ruling and policy statement](#) that reflects the transfer of the MDI preservation program administration from the agency's Office of Minority and Women Inclusion to its Office of Credit Union Resources and Expansion, updates the program's features, and clarifies the requirements for a credit union to receive and maintain an MDI designation, among other changes.

The revised policy statement is effective 30 days after date of publication in the Federal Register.

##### Board Briefing: Q4 2023 Share Insurance Fund Performance

The Chief Financial Officer [briefed](#) the NCUA Board on the performance of the Share Insurance Fund for the quarter ending on December 31, 2023. The Share Insurance Fund reported a net income of \$71.7 million, \$21.4 billion in assets, and \$126.2 million in total income for the fourth quarter of 2023. As of the fourth quarter of 2023, the equity ratio was 1.30 percent. At the end of the fourth quarter of 2023, three federally insured credit union failures cost the Share Insurance Fund approximately \$1.4 million in losses. Additionally, for the fourth quarter of 2023:

- The number of composite CAMELS code 3 credit unions decreased from 777 to 776 at the end of the fourth quarter. Assets for these credit unions increased from the third quarter to \$160.2 billion from \$131.7 billion.
- The number of composite CAMELS codes 4 and 5 credit unions decreased from 131 to 125 at the end of the fourth quarter. Assets for these credit unions increased from \$5.4 billion to \$5.5 billion.

The NCUA's Board Meeting [schedule](#) notes that the March meeting is cancelled.

2/15/24

#### The Agency Issues Regulatory Alert (24-RA-01) Home Mortgage Disclosure Act Data Requirements

[Read More](#)

##### HMDA Data Collection Requirements for Calendar Year 2024

Regulation C requires you to collect HMDA data associated with mortgage loan applications processed during 2024 if:

1. Your credit union's total assets as of December 31, 2023, exceeded \$56 million;
2. Your credit union had a home or branch office in a Metropolitan Statistical Area on December 31, 2023;
3. Your credit union originated at least one home purchase loan (other than temporary financing such as a construction loan) or refinanced a home purchase loan, secured by a first lien on a one-to-four-unit dwelling during 2023; and
4. Your credit union originated at least 25 covered closed-end mortgage loans in each of the 2 preceding calendar years (2022 and 2023) or at least 200 covered open-end lines of credit in each of the 2 preceding calendar years (2022 and 2023).

If your credit union meets all four criteria, you must collect HMDA data during calendar year 2024 and submit the data to the CFPB no later than March 3, 2025.

2/15/24

### CFPB

#### CFPB Secures \$12 Million From Ringleaders of Foreclosure Relief Scam

[Read More](#)

The Consumer Financial Protection Bureau (CFPB) today announced that it resolved an appeal in a long-running enforcement suit against a foreclosure relief scam operation for \$12 million in consumer redress and penalties. Consumer First Legal Group, LLC, along with 4 individual attorneys, charged millions of dollars in illegal advance fees to financially-distressed homeowners for legal representation the defendants promised but did not provide. Under the resolution, the defendants will pay \$10.9 million in consumer redress and a \$1.1 million penalty into the CFPB's victims relief fund. The individual defendants are covered by 5- or 8-year bans from the mortgage assistance industry, under the district court's original order.

2/8/24

## CFPB to distribute more than \$10.9 million to consumers harmed by student loan debt-relief business

[Read More](#)

The Bureau has announced that 8,571 consumers affected by Performance SLC, a student loan debt relief business, and Performance Settlement, a debt settlement company, will receive refunds via mail. Performance SLC unlawfully charged consumers \$9.2 million in upfront fees from 2015 to 2022, violating the Telemarketing Sales Rule. Performance Settlement used deceptive tactics from 2018 to 2022, violating the Consumer Financial Protection Act. The CFPB took legal action against both companies in 2020, resulting in civil penalties and restitution for affected consumers. The refunds, totaling \$10,936,618, are sourced from the CFPB's victims relief fund.

2/15/24

## CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions

[Read More](#)

The Bureau recently released a report shedding light on the differences in credit card interest rates between large banks and smaller financial institutions like credit unions. The report reveals that on average, large banks tend to charge higher interest rates on credit cards compared to smaller banks and credit unions. This finding underscores the importance of consumers exploring their options when it comes to credit card providers, as smaller institutions may offer more favorable terms and lower interest rates. By being aware of these disparities, consumers can make informed decisions to potentially save money and manage their finances more effectively.

2/16/24

## FinCEN

### FinCEN Proposes Rule to Combat Money Laundering and Promote Transparency in Residential Real Estate

[Read More](#)

FinCEN issued a Notice of Proposed Rulemaking to combat and deter money laundering in the U.S. residential real estate sector by increasing transparency. The proposed rule would require certain professionals involved in real estate closings and settlements to report information to FinCEN about non-financed transfers of residential real estate to legal entities or trusts. FinCEN's proposal is tailored to target residential real estate transfers considered to be high-risk for money laundering, while minimizing potential business burden, and it would not require reporting of transfers made to individuals.

Additional information available in the [Open Comment Calls](#) section.

2/7/24

### FinCEN Sees Increase in BSA Reporting Involving the Use of Convertible Virtual Currency for Online Child Sexual Exploitation and Human Trafficking

[Read More](#)

FinCEN issued a Financial Trend Analysis (FTA) reflecting an increase in Bank Secrecy Act (BSA) reporting associated with the use of convertible virtual currency (CVC) and online child sexual exploitation (OCSE) and human trafficking. This FTA is based on BSA reporting filed between January 2020 and December 2021 and the analysis detailed therein furthers Treasury efforts to combat human trafficking as well as the illicit uses of CVC., as well as highlighting the value of BSA reporting filed by regulated financial institutions.

[Financial Trend Analysis](#)

2/13/24

## CDFI Fund

### The Fund Warns of Fictitious CDFI Social Media Accounts

[Read More](#)

Although the precise platforms and messages vary, these imposters provide false CDFI Fund employee and contact information, false links to a website alleged to be the CDFI Fund website, and a false telephone number. One social media profile scam identifies a nonexistent grant program, tells the public that it can receive free federal government grant money, and even displays a fictitious monetary disbursement. Therefore, please be cautious when clicking on links attributed to the CDFI Fund. The CDFI Fund is actively working to have these accounts deactivated.

2/9/24

## FFIEC

### FFIEC Issues Statement on Examination Principles Related to Valuation Discrimination and Bias in Residential Lending

[Read More](#)

The Federal Financial Institutions Examination Council issued a statement of principles related to valuation discrimination and bias for member entities to consider in their consumer compliance and safety and soundness examinations. The principles aid member entities in assessing whether their supervised institutions' compliance and risk management practices are appropriate to identify and mitigate discrimination or bias in their residential property valuation practices.

#### Also see:

- ACU – [FFIEC addresses residential lending discrimination, bias principles](#)
- Washington Credit Union Daily – [Biden Administration: Credit Unions and Banks Responsible for Policing Appraisal Bias](#)

2/12/24

## Michigan

## DIFS

### DIFS Recovers More than \$19.5 Million for Michigan Consumers in 2023

[Read More](#)

The department reports that it has helped recover more than \$19.5 million for Michigan consumers in 2023. In addition, DIFS staff answered nearly 140,000 consumer phone calls, a single year record, and handled more than 7,500 consumer complaints.

2/12/24

## Other Points of Interest

### Credit unions talk interchange proposal, liquidity with Fed vice chair

[Read More](#)

Staff from America's Credit Unions, Leagues, and credit unions met with the Federal Reserve Board of Governors' Vice Chair Philip Jefferson to discuss the pending rulemaking on Regulation II. Vice Chair Jefferson voted in favor of issuing the NPRM at the October meeting. During the meeting we highlighted the failings of the rulemaking process and the proposed rule including the necessity of the rulemaking, issues with the data used to support the NPRM, and the impact of the regulation on credit unions. Credit unions in attendance spoke to the reality of operating a debit card program today in an environment of skyrocketing fraud and serious capital and liquidity challenges—all while continuing to prioritize the financial well-being of their members.

Because this is an open rulemaking, Vice Chair Jefferson was unable to provide feedback on their comments, but he was very engaged throughout the meeting and asked insightful follow up questions.

2/6/24

## Relevant Blog Pages/Posts

- [America's Credit Unions Compliance Blog](#)
  - [2/8/24](#) – TCPA One-to-One Consent Rule, Effective January 2025

- [2/13/24](#) – Board of Director: Delegable vs. Non-delegable Duties
- [2/15/24](#) – Fair Lending

## Submitted Regulatory Comment Letters

### Regulatory Response Letters

- [FCC](#): Draft Revocation Order, re.: Telephone Consumer Protection Act of 1991
  - [ACU Letter](#)
- [Dept. of Veterans Affairs](#): Minimum Property Requirements for VA-Guaranteed and Direct Loans
  - [ACU Letter](#)

### Other Letters to Regulators

- n/a

### Browse All Industry Comment Letters

- [MCUL](#)
- [America's Credit Unions](#)
- [NASCUS](#)

## Open Comment Calls

If you have input on any comment calls below that you would like to provide for consideration, please direct them to [Bradley.Willett@mcul.org](mailto:Bradley.Willett@mcul.org) no later than 3 weeks prior to the comment due date.

<p><b>NCUA Request for Comment:</b> Overhead Transfer Rate Methodology</p> <p><b>Docket No.</b> NCUA-2023-0142</p> <p>The NCUA Board (Board) is inviting comment on the methodology used to determine the Overhead Transfer Rate (OTR). The Board applies the OTR to the NCUA's operating budget to determine the portion of the budget that will be funded from the National Credit Union Share Insurance Fund (Share Insurance Fund). In response to industry recommendations, the Board has provided more detail, clarity, and transparency so the public can better understand the OTR methodology. No changes to the existing OTR methodology are being proposed as part of this request for comment. The added transparency and clarity do not constitute a change in methodology.</p>	<p><b>Comments Due:</b> February 20, 2024</p> <p><a href="#">Agency Announcement</a></p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
<p><b>FTC Proposed Rule:</b> Children's Online Privacy Protection Rule</p> <p><b>Docket No.</b> FTC-2024-0003</p> <p>The Commission proposes to amend the Children's Online Privacy Protection Rule, consistent with the requirements of the Children's Online Privacy Protection Act. The proposed modifications are intended to respond to changes in technology and online practices, and where appropriate, to clarify and streamline the Rule. The proposed modifications, which are based on the FTC's review of public comments and its enforcement experience, are intended to clarify the scope of the Rule and/or strengthen its protection of personal information collected from children.</p>	<p><b>Comments Due:</b> March 11, 2024</p> <p><a href="#">Agency Announcement</a></p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
<p><b>CFPB Proposed Rule:</b> Nonsufficient Funds (NSF) Fees for Instantaneously Declined Transactions</p> <p><b>Docket No.</b> CFPB-2024-0003</p> <p>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.</p> <p><u>Additional relevant information</u></p> <ul style="list-style-type: none"> <li>• <a href="#">ACU Summary of Proposed Rule</a></li> <li>• <a href="#">ACU: Shape Comments on CFPB NSF Fee Proposal</a></li> </ul>	<p><b>Comments Due:</b> March 25, 2024</p> <p><a href="#">Agency Announcement</a></p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
<p><b>CFPB Proposed Rule:</b> Overdraft Lending: Very Large Financial Institutions</p> <p><b>Docket No.</b> CFPB-2024-0002</p> <p>The CFPB is proposing several amendments to Regulation Z, as well as to Regulation E, which would limit the per-item amount of overdraft fees to a potential maximum of \$14. In the commentary to the proposal, the CFPB discusses several regulatory exemptions that the Federal Reserve Board implemented in the 70's and 80's which exempted overdraft plans from Reg Z coverage. The proposal modifies those exceptions, along with several definitions, to shift overdraft from a non-covered to a covered status under Reg Z. First, the proposal updates an exception that currently provides that overdraft fees are not finance charges. This exception is being modified so that it will no longer apply to fees that were above a breakeven amount. This modification adds several ways for financial institutions to determine if a fee is above the breakeven amount, by either 1) calculating its own costs/losses, or 2) relying on a benchmark fee set by the CFPB. For the latter, the proposal provides four options based on four different calculation methods, resulting in possible benchmark fees set at \$3, \$6, \$7, or \$14. Second, the proposal updates an exception related to fees to transfer funds from an overdraft line of credit. The modifications here will result in fees for such transfers being finance charges. Additionally, the proposal would require that deposit accounts no longer be brought negative and that offset is prohibited, instead requiring that financial institutions provide separate credit accounts so that consumers have more control over when and how they repay the overdraft credit. Finally, the CFPB proposes to remove overdraft credit as an exception from regulatory provisions of the CARD Act, indicating that a debit card with access to overdraft credit is a "credit card" per the Act. This would mean these debit cards would be subject to things like ability-to-repay underwriting requirements, limitations on penalty fees, and so on, and have proposed a new definition for "hybrid debit-credit card" as a result. Finally, the proposal would only apply to "very large institutions" \$10B in assets or more, but the CFPB acknowledges that the rule, if implemented, could result in wider market changes as large players evolve their business models and as smaller institutions modify their own as a result.</p> <p><b>Proposed Rule Text:</b> <a href="https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf">https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf</a></p> <p>Additional Information:</p> <ul style="list-style-type: none"> <li>• MCUL is seeking input and feedback on this proposed rule. Contact Brad Willett for more information.</li> <li>• <a href="#">ACU</a> is seeking CU data and feedback on this proposed rule.</li> </ul>	<p><b>Comments Due:</b> April 1, 2024</p> <p><a href="#">Agency Announcement</a></p> <p>Federal Register</p> <p>Regulations.gov</p>



<p><b>FinCEN Notice and Request for Comment:</b> Agency Information Collection Activities; Proposals, Submissions, and Approvals: Beneficial Ownership Information Requests</p> <p><b>Docket No.</b> FinCEN-2024-0002</p> <p>FinCEN is seeking comments on the information to be collected from certain authorized recipients requesting access to beneficial ownership information, consistent with the requirements of the final Access and Safeguards rule. The Corporate Transparency Act authorizes law enforcement, government agencies, and financial institutions and their regulators to obtain beneficial ownership information under certain specified circumstances for national security and law enforcement purposes.</p> <p>The public has an opportunity to comment on: (1) the information to be collected from certain persons requesting beneficial ownership information from FinCEN; and (2) FinCEN’s estimate of the burden involved in the information collection.</p>	<p><b>Comments Due:</b> April 1, 2024</p> <p>Agency Announcement</p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
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<p><b>FinCEN Proposed Rule:</b> Anti-Money Laundering Regulations for Residential Real Estate Transfers</p> <p><b>Docket No.</b> FinCEN-2024-0005</p> <p>FinCEN is issuing a proposed rule to require certain persons involved in real estate closings and settlements to submit reports and keep records on identified non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. Transfers made directly to an individual would not be covered by this proposed rule. The proposed rule describes the circumstances in which a report must be filed, who must file a report, what information must be provided, and when a report is due. These reports are expected to assist the U.S. Department of the Treasury; Federal, State, and local law enforcement; and national security agencies in addressing illicit finance vulnerabilities in the U.S. residential real estate sector and to curtail the ability of illicit actors to anonymously launder illicit proceeds through the purchase of residential real property, which threatens U.S. economic and national security.</p> <p><b>Additional Information:</b></p> <ul style="list-style-type: none"> <li>• FinCEN <a href="#">Fact Sheet</a></li> </ul>	<p><b>Comments Due:</b> April 16, 2024</p> <p><a href="#">Agency Announcement</a></p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
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<p><b>Federal Reserve Board Proposed Rule:</b> Debit Card Interchange Fees and Routing</p> <p><b>Docket No.</b> R-1818</p> <p>This proposed rule would make significant revisions to Regulation II’s interchange fee cap. Specifically, the proposed revisions would update all three components of the interchange fee cap based on the latest data reported to the Board by covered issuers regarding debit card transactions performed in 2021. Under the proposal:</p> <ul style="list-style-type: none"> <li>• The base component would be 14.4 cents (down from 21.0 cents)</li> <li>• The ad valorem component would be 4.0 basis points (down from 5.0 basis points)</li> <li>• The fraud-prevention adjustment would be 1.3 cents (up from 1.0 cents)</li> </ul> <p>Additionally, the proposal would codify in Reg II an approach for updating the three components of the interchange fee cap every other year going forward based on the latest data reported to the Board by covered issuers, without opportunity for public comment.</p> <p><b>Related Materials:</b> <a href="#">2021 Interchange Fee Revenue Report</a></p> <p><u>Additional relevant information:</u></p> <ul style="list-style-type: none"> <li>• <a href="#">Governor Bowman Dissent</a></li> <li>• NAFCU, CUNA and other trades have submitted a <a href="#">letter</a> to the FRB requesting an extension of an additional 90 days to comment.</li> <li>• FRB <a href="#">approves</a> comment extension to May 12, 2024.</li> <li>• 2/6/24 – ACU met with the Board of Governors’ Vice Chair to discuss the impact of this NPRM.</li> </ul>	<p><b>Comments Due:</b> May 12, 2024</p> <p><a href="#">Agency Announcement</a></p> <p><a href="#">Federal Register</a></p> <p><a href="#">Regulations.gov</a></p>
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**Relevant Federal Rulemaking Links**

Agency	Unified Rulemaking Agenda (Fall 2023 Update)	Agency Rulemaking Tracker	Federal Register	Regulations.gov
NCUA	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>
CFPB	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>
Treasury <i>CDFI Fund</i> <i>FinCEN</i>	<a href="#">LINK</a> n/a n/a	n/a <a href="#">LINK</a> <a href="#">LINK</a>	<a href="#">LINK</a> <a href="#">LINK</a> <a href="#">LINK</a>	<a href="#">LINK</a> <a href="#">LINK</a> <a href="#">LINK</a>
Federal Reserve System	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>
FHFA	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>
FTC	<a href="#">LINK</a>	n/a	<a href="#">LINK</a>	<a href="#">LINK</a>
HUD	<a href="#">LINK</a>	n/a	<a href="#">LINK</a>	<a href="#">LINK</a>
FCC	n/a	<a href="#">LINK</a>	<a href="#">LINK</a>	<a href="#">LINK</a>