

Regulatory Dispatch

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

OCC Report Identifies Key Risks Facing Federal Banking System

WASHINGTON—The Office of the Comptroller of the Currency (OCC) today reported the key issues facing the federal banking system in its Semiannual Risk Perspective for Fall 2023.

The OCC reported that the overall strength of the federal banking system remains sound. The OCC expects banks to remain diligent and adhere to prudent risk management practices across all risk areas. Banks should continue to guard against complacency to ensure they maintain the ability to withstand potential future economic challenges.

The OCC highlighted credit, market, operational, and compliance risks, as the key risk themes in the report. Highlights from the report include:

Credit risk is increasing due to higher interest rates, increasing risk in commercial real estate lending, prolonged inflation, declining corporate profitability, and potential for slower economic growth. Key performance indicators are beginning to show signs of borrower stress across asset classes.

Rising deposit rates, broader market liquidity contraction, and increased reliance on wholesale funding started to impact net interest margins through the first half of 2023. Competition for deposits and higher interest rates are raising deposit rates. Deposit and liquid asset trends stabilized in the latter half of 2023, but these levels were supported by increased reliance on wholesale funding. Increases in interest rates are negatively impacting investment portfolio values.

Operational risk is elevated. Cyber threats continue. Banks continue to leverage new technology to further digitalization efforts, offering innovative products and services to meet customer demands. Increasing digitalization efforts can also heighten risk of fraud and error, including fraud targeting peer-to-peer and other faster payment platforms.

Compliance risk remains elevated. This is due to the heightened focus on ensuring equal access to credit and fair treatment of consumers, the expanded use of innovative technologies for product and service delivery, and expanded partnerships with third parties, such as financial technology firms, and increases in Bank Secrecy Act/Anti-Money Laundering risk.

The report highlights artificial intelligence (AI) in banking as an emerging risk. The potential for further benefits as AI gains more widespread adoption could be significant. Developments in

the technology may reduce costs and increase efficiencies; improve products, services, and performance; strengthen risk management and controls; and expand access to credit and other banking services. Widespread adoption of AI, however, may also present significant challenges relating to compliance risk, credit risk, reputation risk, and operational risk.

The report covers risks facing national banks, federal savings associations, and federal branches and agencies based on data as of June 30, 2023, unless otherwise indicated. The report presents information in five main areas: the operating environment, bank performance, special topics in emerging risks, trends in key risks, and supervisory actions. The report focuses on issues that pose threats to those financial institutions regulated by the OCC and is intended as a resource to the industry, examiners, and the public.

Related Link

[OCC Semiannual Risk Perspective for Fall 2023](#) (PDF)

Comment: The report labels AI's interaction with banking specifically as "an emerging risk", and emphasizes that despite the benefits of widespread adoption, namely in reduced costs, improved services and increased efficiencies, banks could also face the adversity of compliance, credit, reputational and operational risks associated with AI. In addition to a rise in both credit risk and operational risk, the report says that compliance risk "remains elevated" as a result of trends in adopting technology applications and partnerships with third parties.

Community Banker Q&A

Q. I have a few questions regarding CTR requirements and joint accounts. If we have a joint account and only one of the account holders is at the bank conducting the transaction, are you required to get the information on the other owner that's not here?

A: The answer depends on the type of transaction – deposits or withdrawals.

When a deposit is made into a joint account, it is presumed to be made on the behalf of all account holders because they all have access to the funds. So, multiple Part I's are required.

...snip

23. How do I properly complete Part I on the FinCEN CTR for deposits into a joint account? What amounts do we show in Item 21 for each Part I? For example, John and Jane Smith have a joint account together. John Smith deposited \$5,000 into the account; later in the same business day, Jane Smith deposited \$7,000 into the account.

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When a deposit is made into a joint account, the deposit is presumed to be made on the behalf of all account holders because all account holders have potential access to the account balance, and multiple Part Is are required. In this example, the financial institution would complete four Part Is, two for John Smith and two for Jane Smith since each person has more than one Item 2 role.

One of the Part Is for John Smith would be completed by checking 2a "Person conducting transaction on own behalf" and entering \$5,000 into Item 21 and the account number of the joint account. The other Part I for John Smith would be completed by checking 2c "Person on whose behalf transaction was conducted" and entering \$7,000 into Item 21 and the account number of the joint account. One of the Part Is for Jane Smith would be completed by checking 2a "Person conducting transaction on own behalf" and entering \$7,000 into Item 21 and the account number of the joint account. The other Part I for Jane would be completed by checking 2c "Person on whose behalf transaction was conducted" and entering \$5,000 into Item 21 and the account number of the joint account.

Note: If Jane Smith did not conduct a deposit, but John Smith deposited \$12,000 into the joint account, there would only be two Part Is. One Part I would be for John Smith as 2a "Person conducting transaction on own behalf" and entering \$12,000 in Item 21 and the account number affected. The other Part I would be for Jane Smith, checking 2c "Person on whose behalf transaction was conducted," entering \$12,000 in Item 21, and providing the account number affected.

For withdrawals, FinCEN resolved the issue in the CTR FAQs as well:

...snip

24. How do I properly complete Part I on the FinCEN CTR for withdrawals from a joint account? What amounts do we show in Item 22 for each Part I? For example, John and Jane Smith have a joint account together. During one business day, John Smith withdrew \$12,000 from the account.

Since John Smith made a withdrawal from the joint account in excess of \$10,000, then the financial institution would list Jane Smith's information only if it has knowledge that the transaction was also being conducted on her behalf. If the financial institution does not have knowledge that the withdrawal was conducted on behalf of Jane Smith, then it would neither be required to nor prohibited from listing Jane Smith in a second Part I.

Therefore, if the financial institution does not have knowledge that the withdrawal was conducted on behalf of Jane Smith, the financial institution would complete a Part I on John Smith. For Item 2 of Part I, the financial institution would check 2a "Person conducting transaction on own behalf" and complete the applicable information for John Smith. Item 22 for Part I on John Smith would be completed by entering \$12,000 and providing the account number affected.

However, if the financial institution does have knowledge the withdrawal was completed on behalf of both John Smith and Jane Smith, the financial institution must complete two Part Is. In completing a Part I on John Smith, the financial institution would check 2a "Person conducting transaction on own behalf" and complete the applicable information for John Smith. In completing a Part I on Jane Smith, the financial institution would check 2c "Person on whose behalf transaction was conducted" and complete the applicable information for Jane Smith. Item 22 for each Part I would be completed similarly by entering \$12,000 and providing the account number affected.

Source [link](#).

That means for withdrawals, if you have ‘knowledge’ that the other owner(s) benefited from the withdrawal, you must include them. If you are unsure or its simply easier, you may include them.

Items of Interest

Bank Management

FDIC [Board of Directors Released Semiannual Update on Restoration Plan](#) (12/07/2023) - WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) Board of Directors today released its second semiannual update of 2023 on the Restoration Plan for the agency’s Deposit Insurance Fund (DIF). The Federal Deposit Insurance Act (FDI Act) requires that the FDIC Board adopt a restoration plan when the DIF’s reserve ratio—the ratio of the fund balance relative to insured deposits—falls below 1.35 percent.

As of June 30, 2023, the DIF balance stood at \$117.0 billion. Increased loss provisions, including for the bank failures that occurred in March and May, coupled with strong insured deposit growth, resulted in a decline in the reserve ratio from 1.25 percent as of December 31, 2022, to 1.10 percent as of June 30, 2023. Despite this decline, the FDIC projects that the reserve ratio is likely to reach the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028.

On September 15, 2020, the FDIC established the Restoration Plan to restore the DIF reserve ratio to at least 1.35 percent by the statutory deadline, after extraordinary deposit growth during the first half of 2020 caused the DIF’s reserve ratio to decline below the statutory minimum of 1.35 percent. The Plan maintained the assessment rate schedules in place at the time. On June 21, 2022, based on projections indicating that the reserve ratio was at risk of not reaching the required minimum by the statutory deadline, the FDIC Board amended the Restoration Plan (Amended Restoration Plan). In conjunction with the Amended Restoration Plan, the FDIC Board increased deposit insurance assessment rates by 2 basis points for all insured depository institutions, effective in the first quarterly assessment period of 2023.

The increase in assessment rate schedules that became effective on January 1, 2023, resulted in additional assessment revenue that slightly offset the decline in the DIF in the first half of 2023. “Had this rate increase not already been in effect, the Board might have

	<p>been faced with a different projected path for the reserve ratio, and potential need for further current action, given the period of stress and the bank failures earlier this year,” said FDIC Chairman Martin J. Gruenberg.</p> <p><i>Comment: According to the FDIC, the fund is ‘at risk of not reaching the minimum’ leaving the door open to the ‘potential need for further action.’ In other words, stay tuned.</i></p>
	<p>FRB Speech by Governor Bowman on Building a More Inclusive Financial System Through Collaboration and Action (12/05/2023) – Why Financial Inclusion Is Important</p> <p><i>An inclusive financial system offers access and choices that enhance consumers' and businesses' financial well-being. From checking and savings accounts to credit and insurance, consumers benefit from having financial products and services that are affordable, safe, and responsive to their needs. Without them, consumers may turn to alternative financial services, which can often be more costly or may lead to consumer harm.</i></p> <p><i>An inclusive financial system recognizes that consumers come from a wide range of economic circumstances; have varied perceptions of and experiences with the banking system; and most importantly, different needs for financial products and services. And despite the general availability of online financial services, geography, location, and accessibility matter. Financial inclusion may look very different, for instance, in rural communities, compared to the suburbs of Washington, D.C., or the islands of Hawaii. The entire economy gains when more households achieve financial stability. That said, the benefits of financial inclusion do not necessarily result in the same outcomes for everyone.</i></p> <p>Federal Reserve Activities and Promising Developments</p> <p><i>The road to fostering a more inclusive financial system is long and winding and may, at times, seem daunting. We have been on this road for some time, and the Federal Reserve and many others have already taken many promising steps. So, I'd like to share a few examples of the Fed's recent efforts to promote financial inclusion that will help to provide some context to our ongoing efforts.</i></p> <p>Supporting access to responsive products: small-dollar lending</p> <p><i>For many years, a variety of surveys have indicated that consumers use small-dollar credit to address temporary cash-flow imbalances, unexpected expenses, or income shortfalls during periods of economic stress or natural disasters. So, we began to consider the ways in which the Federal Reserve and other financial regulators could be helpful. Shortly after I joined the Federal Reserve, in 2019 and through 2020, we issued two interagency statements meant to provide clarity to banks on the use of alternative data for underwriting and on principles for offering responsible small-dollar loans.³ Our guidance clarified that with a consumer's permission, banks can use alternative data, like checking account balance activity, to qualify them for credit. Our guidance also underscored that small-dollar lending products that support successful repayment outcomes and that avoid continuous cycles of debt due to rollover and reborrowing can help facilitate financial inclusion. We have seen some evidence that suggests the release of these small-dollar Interagency Lending Principles correlated with a subsequent increase in bank consumer</i></p>

	<p><i>lending.4 Ensuring that small-dollar lending is available through depository institutions rather than through other non-depository lenders could increase the credit opportunities available to consumers at lower cost and with fewer fees.</i></p> <p><i>Banks may also pursue expanding their lending opportunities through technology innovations that provide mechanisms for more effective risk modelling or enhancing their online access to financial services for consumers. These advancements can result in faster loan decision making, more convenient customer access, and reduced costs and risks for both banks and borrowers. Over time, we are seeing more banks incorporating these approaches to better serve clients with credit, including the use of alternative data to support underwriting. We will continue to monitor these promising developments to better understand the impact on consumers.</i></p>
	<p>OCC Releases Virtual Workshop Schedule for Community Bank Directors and Senior Management (12/05/2023) – WASHINGTON—The Office of the Comptroller of the Currency (OCC) today announced its 2024 schedule of free, virtual workshops for directors, senior management, and other key executives of national community banks and federal savings associations.</p> <p>The OCC examiner-led workshops provide practical training and guidance to directors and senior management of national community banks and federal savings associations in a virtual learning environment to support the safe and sound operation of community-based financial institutions.</p> <p>The virtual workshops will be held from 1:00 – 4:00 p.m. EST on the dates indicated:</p> <p>January 9: Credit Risk: Recognizing and Responding to Risk workshop covers the roles of the board and management, credit risk within the loan portfolio, and how to stay informed of changes in credit risk.</p> <p>January 18: Operational Risk: Navigating Rapid Changes workshop covers key risk management processes, oversight roles and governance responsibilities, fraud, risk-based audit programs, third-party vendor oversight, establishing a strong ethical culture, and regulatory expectations to address cyber threats.</p> <p>February 15: Building Blocks: Developing Strong Management workshop focuses on strategy, people, and oversight. Participants will learn about current issues impacting bank supervision; board responsibilities, duties, and governance; and risk management, succession planning, and matters requiring attention in a report of examination.</p> <p>February 22: Risk Governance: Improving Effectiveness workshop focuses on providing practical information for participants to effectively identify, measure,</p>

	<p>monitor, and control risk. The workshop also focuses on the OCC's approach to risk-based supervision and major risks in the financial industry.</p> <p>March 5: Compliance Risk: Understanding the Rules workshop focuses on the critical elements of an effective compliance risk management program. Participants will review major compliance risks and critical regulations, identify compliance red flags, and learn about common OCC examination findings related to compliance risk.</p> <p>To register, visit the OCC's website. For questions or other assistance about the workshops, please contact the OCC Bank Director Workshop Team at (202) 649-6490 or BankDirectorWorkshop@occ.treas.gov.</p> <p><i>Comment: These 'virtual' workshops are an excellent training opportunity for national bank directors and senior management without the need to travel.</i></p>
	<p>OCC Acting Deputy Comptroller Testifies on Financial Technology (12/05/2023) – WASHINGTON—Deputy Comptroller for Compliance Policy and Acting Deputy Comptroller for the Office of Financial Technology Donna Murphy today testified on the activities and initiatives of the Office of the Comptroller of the Currency's (OCC) Office of Financial Technology before the Subcommittee on Digital Assets, Financial Technology and Inclusion, Committee on Financial Services of the U.S. House of Representatives.</p> <p>In her testimony, Ms. Murphy discussed the OCC's supervision and regulation related to banks use of new and emerging financial technologies. She also highlighted the OCC's work to engage with banks as they navigate rapid financial technology developments to balance safety, soundness and fairness with innovation and growth.</p> <p><i>Comment: In October 2022 the OCC revealed plans to enlarge its Office of Innovation and establish the Office of Financial Technology originally headed by Prashant Bhardwaj. When the office was created, the OCC said the goal was to increase expertise and keep pace with the rapid technological progress in the banking space while overseeing fintech partnerships and shifts in technologies and business models within OCC-regulated banks.</i></p>
	<p>FRB Innovation - Michael S. Gibson, Director, Division of Supervision and Regulation (12/05/2023) – <i>In keeping with these principles, the Federal Reserve recently announced the creation of a novel activities supervision program to focus on the supervision of risks posed by novel, technology-driven activities at banks.¹ These activities include those involving crypto-assets, distributed ledger technology, and complex technology-driven bank partnerships with nonbank fintechs. We expect this program to evolve as new technologies emerge. By dedicating a team of supervisory experts to the oversight of novel, technology-driven activities, our aim is to provide clarity as well as timely, consistent, and relevant feedback to the institutions we supervise. We want banks to continue to take advantage of innovations, while also operating in a safe and sound manner.</i></p>

	<p><i>As I noted previously, distributed ledger technology and crypto-asset-related activities are a focus of the novel activities supervision program. Distributed ledger technology offers the potential to increase efficiencies, lower costs, and increase access to financial products and services. Crypto-assets leverage the technology and are generally issued on open, public, decentralized networks. Both crypto-assets and the technology underlying them also present risks, including those related to governance and risk management of the network, and legal uncertainties around issues such as settlement finality and ownership rights. And crypto-assets' pseudonymous nature can create heightened illicit finance risks. As with all of their activities, banks engaging with the crypto-asset sector are expected to do so in a manner that is safe and sound. For example, banks with a high concentration in crypto-asset-related deposits may face heightened liquidity risks, given the significant volatility and interconnectedness in the sector, and should appropriately manage such risk.²</i></p> <p><i>Beyond crypto-assets, some banks have expressed interest in more directly engaging in distributed ledger technology and tokenization of traditional assets, such as currency or securities, to expedite and automate payment, clearing, and settlement services.</i></p> <p><i>Digital tokens that aim to maintain a stable value relative to a government-issued currency—often referred to as "stablecoins" or "dollar tokens"—have rightly garnered significant attention, given their implications for payments and financial stability. To provide clarity for banks interested in engaging with dollar tokens, we recently issued guidance on the process by which a Federal Reserve-supervised bank can seek to obtain a supervisory non-objection before issuing, holding, or transacting in dollar tokens.³ This process will allow the Federal Reserve to verify that a bank has appropriate risk management systems in place to identify and control potential risks with respect to dollar tokens, including those related to operations, cybersecurity, liquidity, illicit finance, and consumer compliance.</i></p> <p><i>Novel banking activities involving complex partnerships between banks and technology-intensive third parties have also been an important area of focus. Third-party relationships can offer banks, particularly community banks, access to new technologies and innovation but can also introduce risks that need to be managed, such as, for example, operational risks and consumer compliance risks. As I mentioned, the novel activities supervision program will be helping to oversee complex technology-driven bank partnerships with nonbank financial technology companies.</i></p>

BSA / AML

	<p>FinCEN Extends Deadline for Companies Created or Registered in 2024 to File Beneficial Ownership Information Reports (11/29/2023) – WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued a final rule today that extends the deadline for</p>
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certain reporting companies to file their initial beneficial ownership information (BOI) reports with FinCEN. Reporting companies created or registered in 2024 will have 90 calendar days from the date of receiving actual or public notice of their creation or registration becoming effective to file their initial reports. FinCEN will not accept BOI reports from reporting companies until January 1, 2024—no reports should be submitted to FinCEN before that date.

“This deadline extension will have significant benefits and will provide valuable extra time for company applicants and for reporting companies created or registered in 2024 to understand this new regulatory obligation and obtain the required information to file their BOI reports,” said FinCEN Director Andrea Gacki.

This extension will give reporting companies created or registered in 2024 more time to become familiar with the guidance and educational materials located at <https://www.fincen.gov/boi>, and to resolve questions that may arise in the process of completing their initial BOI reports. FinCEN also anticipates that this deadline extension will make compliance easier for these first filers under the new reporting requirement and will promote the creation of a highly useful BOI database, as required by Congress.

Reporting companies created or registered before January 1, 2024, will continue to have until January 1, 2025, to file their initial BOI reports with FinCEN, and reporting companies created or registered on or after January 1, 2025, will continue to have 30 calendar days to file their initial BOI reports with FinCEN.

Comment: The final rule adopts changes proposed by FinCEN in September. Guidance and educational materials can be found at FinCen's [BOI webpage](#). Businesses with questions about the upcoming reporting requirements may contact FinCEN online.

Deposit / Retail Operations

CFPB Orders Atlantic Union Bank to Pay \$6.2 Million for Illegal Overdraft Fee Harvesting (12/07/2023) – WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) today took action against Atlantic Union Bank for illegally enrolling thousands of customers in checking account overdraft programs. The CFPB found that Atlantic Union misled consumers who enrolled in this overdraft service by phone and failed to provide proper disclosures. The CFPB is ordering Atlantic Union to refund at least \$5 million in illegal overdraft fees and pay a \$1.2 million penalty to the CFPB’s victims relief fund.

“Atlantic Union Bank harvested millions of dollars in overdraft fees through a host of illegal practices,” said CFPB Director Rohit Chopra. “Americans are fed up with junk fee scams and the CFPB will continue its work to ensure families are treated fairly.”

Atlantic Union Bank (NYSE: AUB) is a subsidiary of Atlantic Union Bankshares Corporation, a bank holding company headquartered in Richmond, Virginia. As of March 31, 2023, Atlantic Union had over \$20 billion in total assets.

	<p>The Electronic Fund Transfer Act and its implementing regulation require banks to describe their overdraft service in writing before getting a consumer to opt-in to overdraft coverage for ATM withdrawals and one-time debit card transactions.</p> <p>The CFPB's order describes the bank's illegal conduct and how it improperly communicated with and enrolled consumers in its overdraft program. Specifically, the bank violated federal law by:</p> <ul style="list-style-type: none"> • Charging fees without proper consent: At Atlantic Union Bank branches, employees gave oral descriptions of the bank's overdraft coverage to new customers who opened checking accounts. Employees sought oral confirmation from customers to enroll in overdraft coverage before providing them with the required written disclosures describing the terms of service. • Misleading customers about the terms and costs of overdraft coverage: For customers who enrolled in overdraft coverage by phone, Atlantic Union Bank employees did not clearly explain which transactions were covered by the service, and made other misleading statements about the terms and conditions of the service. In some calls, bank employees also omitted key information about the cost of the service and the fact that consumers could incur a hefty overdraft fee for each transaction covered by the service. <p>Enforcement Action</p> <p>Under the Consumer Financial Protection Act (CFPA), the CFPB has the authority to take action against institutions violating consumer financial laws, including engaging in unfair, deceptive, or abusive acts or practices. The CFPB found Atlantic Union Bank violated the Electronic Fund Transfer Act's opt-in requirements for overdraft services, and it found the bank engaged in deceptive acts or practices in violation of the CFPA.</p> <p>The order requires Atlantic Union to end its unlawful practices and:</p> <ul style="list-style-type: none"> • Refund \$5 million to thousands of consumers: The bank must pay at least \$5 million in redress to thousands of affected consumers illegally charged overdraft fees. • Pay a \$1.2 million fine: Atlantic Union will pay a \$1.2 million penalty to the CFPB's victims relief fund. <p><i>Comment: We don't usually include enforcement actions, but in cases like this, there are lessons to be learned. Given that the process for phone interactions required by the consent order, banks may want to reconsider their own procedures. For example, consideration might be given to eliminating phone opt-ins in favor of online opt-ins where the information given to customers can be completely controlled and the disclosure and consent process can be clearly documented.</i></p>
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Human Resources

	<p>XXX XXX (11/13/2023) – XXX</p> <p><i>Comment: XXX</i></p>
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Lending

	<p>HousingWire Mortgage Rates Fell Nearly 80 Basis Points in the Last Six Weeks (12/07/2023) – Mortgage rates continued their downward trajectory this week as the 10-year Treasury yield dropped below 4.2% for the first time since September, according to new data from Freddie Mac.</p> <p>The 30-year, fixed mortgage rate averaged 7.03% for the week ending Dec. 7, according to Freddie Mac’s Primary Mortgage Market Survey. That’s down significantly from last week’s 7.22% and up from 6.33% the same week a year ago.</p> <p>Meanwhile, HousingWire’s Mortgage Rates Center showed Optimal Blue’s average 30-year fixed rate on conventional loans at 6.96% on Thursday.</p> <p>The 30-year, fixed-rate mortgage fell by almost 80 basis points in six weeks, Sam Khater, Freddie Mac’s chief economist, said in a statement.</p> <p>He noted that while the drop in mortgage rates initially prompted an uptick in mortgage demand, it’s not enough to attract more homebuyers to the housing market.</p> <p>“Although these lower rates remain a welcome relief, it is clear they will have to further drop to more consistently reinvigorate demand,” Khater added.</p> <p>Meanwhile, investors continue to be confident in the fact that the Federal Reserve is done with its rate hikes, especially after the release of cooler October job openings data on Tuesday.</p> <p>Realtor.com Economist Jiayi Xu predicts that sustained improvement in inflation will bring average mortgage rates down to 6.5% by the end of 2024.</p> <p><i>Comment: That’s good news. Will mortgage rates fall in 2024? According to USA Today, “Mortgage rates are likely to remain elevated near 20-year highs that will be between 7% and 8% for a 30-year fixed purchase loan. Fannie Mae has estimated an average rate of 7.3% for 2024 while the MBA has a more aggressive rate prediction as low as 6.1% at the end of 2024.”</i></p>
	<p>FRB G. 19 Consumer Credit (12/07/2023) – October 2023 - In October, consumer credit increased at a seasonally adjusted annual rate of 1.2 percent. Revolving credit increased at an annual rate of 2.7 percent, while nonrevolving credit increased at an annual rate of 0.7 percent.</p>

Technology / Security

[CISA NSA, FBI and International Cybersecurity Authorities Publish Guide on The Case for Memory Safe Roadmaps](#) (12/06/2023) – WASHINGTON – Today, the Cybersecurity and Infrastructure Security Agency (CISA), in partnership with the National Security Agency (NSA), Federal Bureau of Investigation (FBI), and international cybersecurity authorities from Australia, Canada, New Zealand, and the United Kingdom, published a joint guide, The Case for Memory Safe Roadmaps: Why both C-Suite Executives and Technical Experts Need to Take Memory Safe Coding Seriously, as part of our collective Secure by Design campaign to address the critical issue of memory safety vulnerabilities in programming languages.

Memory safety vulnerabilities are the most prevalent type of disclosed software vulnerability; they affect how memory can be accessed, written, allocated, or deallocated in unintended ways in programming languages. As the most prevalent vulnerability, software manufacturers are consistently releasing updates that their customers must continually patch. Previous attempts at solving the problem have made only partial gains, and currently, two-thirds of reported vulnerabilities in memory unsafe programming languages still relate to memory issues.

“Research shows that roughly 2/3 of software vulnerabilities are due to a lack of ‘memory safe’ coding. Removing this routinely exploited security vulnerability can pay enormous dividends for our nation’s cybersecurity but will require concerted community effort and sustained investment at the executive level,” said CISA Director Jen Easterly. “It’s way past time for us to get serious about protecting all software customers and implement Secure by Design principles into baseline product development to eliminate these types of threats once and for all.”

The guide strongly encourages executives of software manufacturers to prioritize using memory safe programming languages, write and publish memory safe roadmaps and implement changes to eliminate this class of vulnerability and protect their customers. Software developers and support staff should develop the roadmap, which should detail how the manufacturer will modify their software development life cycle (SDLC) to dramatically reduce and eventually eliminate memory unsafe code in their products. This guidance also provides a clear outline of elements that a memory safe roadmap should include.

By creating a memory safe roadmap, manufacturers will signal to customers that they are embracing key Secure by Design principles of (1) taking ownership of their security outcomes, (2) adopting radical transparency, and (3) taking a top-down approach.

With our partners, CISA encourages stakeholders, partners, and software manufacturers to review the guide and implement recommended action. To learn more about Security by Design, visit cisa.gov/SecureByDesign.

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

- 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.**
- 10.19.2023** **CFPB** [Required Rulemaking on Personal Financial Data Rights \(1033\)](#) - SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to establish 12 CFR part 1033, to implement section 1033 of the Consumer Financial Protection Act of 2010 (CFPA). The proposed rule would require depository and nondepository entities to make available to consumers and authorized third parties certain data relating to consumers' transactions and accounts; establish obligations for third parties accessing a consumer's data, including important privacy protections for that data; provide basic standards for data access; and promote fair, open, and inclusive industry standards. **DATES: Comments must be received on or before December 29, 2023.**
- 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 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)**