Acting Comptroller of the Currency Michael J. Hsu
Remarks at the National Community Reinvestment Coalition
Just Economy Conference 2024
"Elevating Fairness, 2024"
April 4, 2024

I am honored to join you today for the Just Economy Conference.

Last year, I spoke about elevating fairness as a top priority for the Office of the Comptroller of the Currency (OCC). I am proud that commitment continues.

Today, I want to highlight several developments since we last met, as well as look ahead and share some thoughts on fairness as it relates to artificial intelligence and fraud.

Overdrafts

At this conference last March, I highlighted the OCC's commitment to promoting safe, sound, and fair bank overdraft protection programs. Shortly after, in April 2023, the OCC released guidance, based on our supervisory experience, to assist banks in managing the various risks associated with overdrafts.[1] The guidance identifies two practices—" authorize positive, settle negative" and representment—that may result in heightened risk exposure. It also highlights sound risk management and pro-consumer practices that banks can employ to strengthen their overdraft protection programs.

As we approach the first anniversary of the overdraft guidance, it is worth reflecting on what progress has been made and what gaps remain.

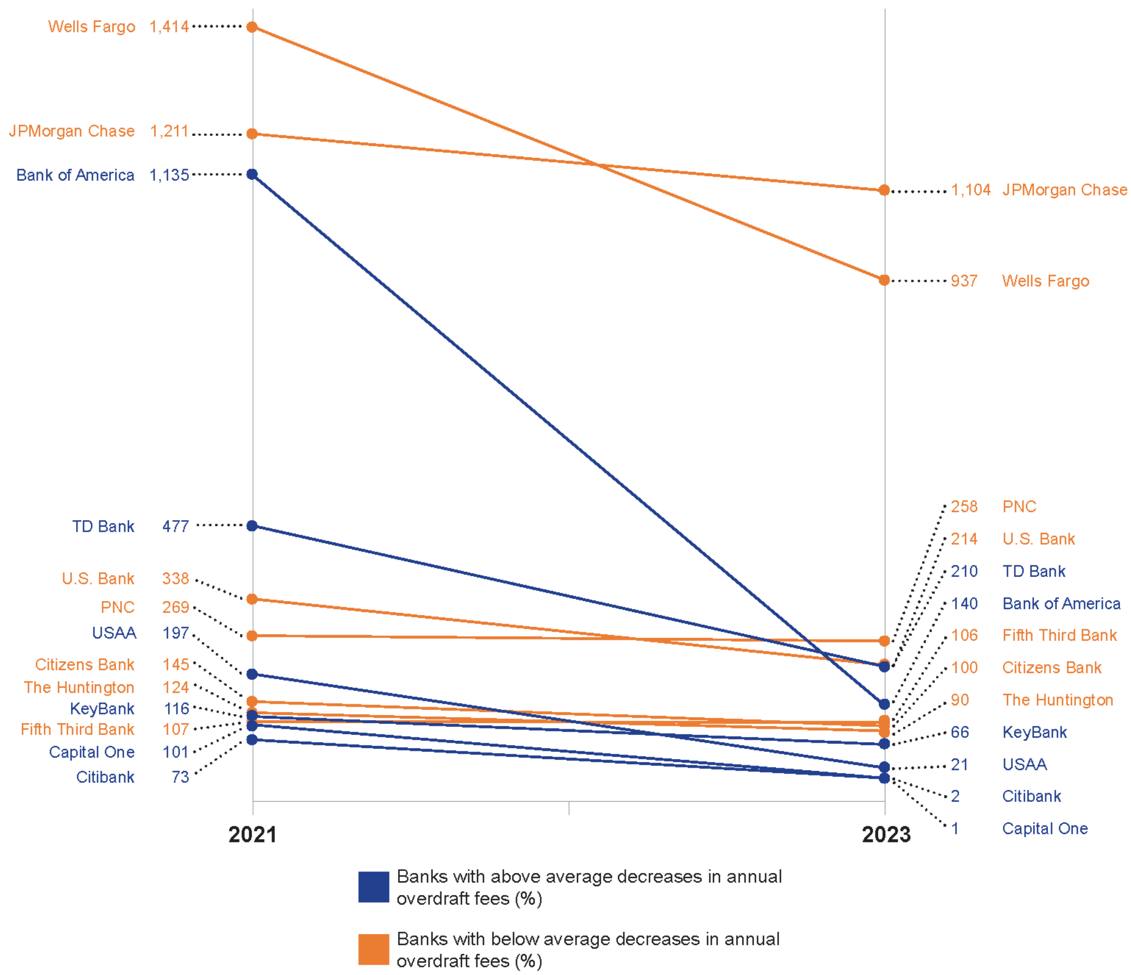
[1] See OCC Bulletin 2023-12, "Overdraft Protection Programs: Risk Management Practices," April 26, 2023.

Since the OCC's heightened attention on overdrafts began, the overdraft fees charged by OCC-regulated banks in aggregate have fallen over 40%, from $6.5 billion in 2021 to $4 billion in 2023.[2] And supervisory data continue to show declines in overdraft fees quarter over quarter.[3] Among large banks, several have outperformed their peers in terms of reducing fees and adopting pro-consumer features, such as grace periods, while others have reduced overdraft fees only modestly.

[2] Call report data are available on the Federal Financial Institutions Examination Council (FFIEC) Central Data Repository's Public Data Distribution site. Call report data exclude overdraft-related service charges generated by banks with assets of $1 billion or less as of the reporting quarter, which are not required to report overdraft-related service charges as a separate line item in their call report data. The data also exclude overdraft-related service charges generated by all credit unions.

[3] Banks under $1 billion in assets do not report overdraft fee income on the call report, so the data presented do not include those banks.

Annual Overdraft-Related Fees ($M)
OCC-Regulated Banks With Total Assets Greater Than $100 Billion



Source: Call report data.

Importantly, all OCC-supervised large banks have stopped assessing authorize positive, settle negative fees or insufficient funds fees and most have discontinued collecting sustained overdraft fees.

OCC-regulated midsize and community banks have made or are in the process of making various pro-consumer changes to their overdraft protection programs. For instance, most have eliminated representment fees or started offering de minimis grace amounts or grace periods. This includes those community banks that derive an outsized amount of revenue from overdrafts.

Progress with regard to representment has been more challenging due to the critical role played by the core processors. I have had the opportunity to share community bankers' concerns on this issue with representatives of the core processors and encouraged them to continue to enhance their systems to facilitate transparency and pro-consumer practices. We understand the largest core processors are taking steps that will allow banks to identify and address representment practices. As those plans develop, we will continue to encourage banks and the core processors to take steps to protect and empower consumers.

Fair Lending

Another core element of elevating fairness at the OCC is our continued effort to strengthen fair lending supervision. Last year I highlighted the OCC's comprehensive update to the "Fair Lending" booklet of the *Comptroller's Handbook*, which remains an important resource for transparency and detail regarding the OCC's supervisory practices.[4]

The OCC has continued to deploy an enhanced risk-based supervision process. This includes the fair lending risk assessment, as well as an annual statistical screening process that leverages Home Mortgage Disclosure Act data. We run several screens on the data for each OCC-supervised bank, including for redlining. In the past year, we have developed new screening methods that can identify potentially discriminatory Community Reinvestment Act (CRA) assessment areas by using census and geographic data to detect when communities of color are located near – but excluded from – the boundaries of an assessment area. We remain focused on efforts to efficiently deploy supervisory resources to identify weaknesses and potential discrimination.

[4] See OCC Bulletin 2023-2, "Fair Lending: Revised *Comptroller's Handbook* Booklet and Rescissions," January 12, 2023.

Internally, we have implemented a program to provide more advanced, real-time support to fair lending reviews. Fair lending experts from our legal, policy, and economics departments now work proactively with OCC supervisory offices to identify and address complex fair lending issues to enhance and expedite the examination process. This includes deploying staff skilled in the analysis of complex models to support examinations involving banks that have begun to incorporate advanced analytics, such as machine learning and artificial intelligence, into underwriting systems and fair lending risk management programs.

Ensuring that the federal banking system is free of discrimination is part of our mission and critical to safeguarding trust in banks. That is why we are committed to continuing to strengthen our supervision of fair lending, especially as banking practices and technologies change.

Project REACh

The OCC has also elevated fairness through the work of Project REACh—which stands for the Roundtable for Economic Access and Change. Project REACh brings together leaders in banking, civil rights, community advocacy, business, and technology to identify and reduce key barriers to financial inclusion for underserved and minority communities. It is a unique program with enormous potential.

I would like to provide an update on three Project REACh focus areas, starting with credit invisibles.

Credit Invisibles

Tens of millions of consumers in America are unable to access credit because they lack a credit file and do not have a FICO score. Many of these so-called "credit invisibles" pay their rent and utility bills on time and are otherwise creditworthy. Making them visible to the banking system helps get them onto the first rung of the economic ladder.

As part of Project REACh, several national banks have undertaken a pilot program to use alternative, non-FICO data – primarily from deposit accounts – to qualify consumers for first-time credit cards. As of October 31, 2023, over 110,000 accounts were established under this pilot. Participating banks have been monitoring key performance metrics to track customers' credit progression after account opening. The initial reports are promising. After 12 months, the average FICO score was 680. Recall, this population initially was credit invisible and had no FICO score at all.

The success of this pilot shows how fairness outcomes can be accelerated through collaboration and engagement. Success can also inspire. Some REACh participants have begun discussing tackling similar credit invisible challenges for veterans and justice-involved individuals.

Minority Depository Institutions

Another key focus of Project REACh participants has been revitalizing minority depository institutions (MDIs).

Twenty-six banks have signed a pledge to support MDIs with over $500 million in financial support and technical assistance to help these institutions grow and expand in safe, sound, and sustained ways.[5] Participants created an MDI Fintech Playbook and an online portal through which MDI employees can receive specialized training and information to help them better serve their communities.

In addition, several large banks have assigned senior executives to spend a year working on site with MDIs to share best practices and strengthen the operational and managerial aspects

[5] The 26 signatories of the Project REACh Pledge to Strengthen MDIs are Bank of America; Bank of Oklahoma; BMO Harris Bank; b1BANK; Cadence Bank; Citi; Fifth Third Bank; First National Bank of Omaha; First National Bank of Pennsylvania; Flagstar Bank; Fulton Bank; Huntington National Bank; InveStar Bank; South State Bank; Stearns Bank; TCF Bank; TD Bank; Texas Capital Bank; The First, A National Banking Association; Trustmark; Valley National Bank; WaFd Bank; Webster Bank; Wells Fargo; WSFS Bank; and Zions Bancorporation.

of successfully running a bank. MDI feedback has been overwhelmingly positive, and all participants have noted the mutual benefits of collaborating as partners and building relationships, not just relying on transactions.

Affordable Housing

Project REACh participants have also helped to expand access to housing for low- and moderate-income communities.

This includes homeownership on tribal lands, which has distinct challenges. To address these complexities, REACh participants hosted a national webinar for bankers to demystify the process and support opportunities for home finance in Indian Country. The group also sponsored deal-making sessions among tribal leaders and banking officials that focused on affordable housing.

Project REACh also helped facilitate several banks' launches of special purpose credit programs focused on providing mortgage financing for minority communities, as permitted under the Equal Credit Opportunity Act.

Another group of REACh participants has worked on expanding the supply of affordable housing through accessory dwelling units (ADUs). Focusing on California, where zoning laws for ADUs had recently changed, they developed a white paper and piloted a loan pool to facilitate ADU financing.

These and other Project REACh efforts have sought to tap into the creative energies of bankers, civil rights and community organizers, and technology leaders to collaborate and craft novel solutions to key fairness challenges. I am proud of what Project REACh has been able to accomplish and am looking forward to what REACh participants will do in the future.

Looking Ahead at AI and Fraud

Fairness is not self-enforcing—i.e., it does not happen on its own. Achieving fairness requires work. We must be just as vigilant about ensuring fairness with new technologies and emerging issues as we are with traditional banking products and services, like overdrafts and mortgages.

Today, two emerging areas stand out: artificial intelligence and fraud.

From a fairness perspective, AI holds both promise and peril. AI has the potential to reduce bias and enable fair access to credit and banking services in ways that humans have been challenged to do. We should welcome this and create spaces to safely explore and develop this potential.

At the same time, however, AI has the potential to perpetuate and exacerbate the biases, discrimination, and unfairness that are deeply embedded in the data feeding AI systems. The challenge is that there can be strong echoes of race, gender, and other characteristics in large data sets, even when race data are removed. This means that even if a data set were "color blind," the redundant encodings in the other variables would likely reflect and reveal race as a factor.

To guard against this, banks need to have appropriate oversight and governance of the models they use. This includes monitoring for fair lending impacts as credit models are developed, validated, monitored, and tested.

The intersection of AI and fraud also warrants close attention. The Federal Trade Commission (FTC) estimates consumer fraud losses in 2023 exceeded $10 billion—a 14 percent increase over 2022.[6] The rise can be attributed to increasingly sophisticated digital tools used by fraudsters. The accessibility of AI tools is making it easier to generate deepfakes, to clone voices, and to otherwise defraud individuals and businesses. I am concerned about a potential explosion in AI-driven fraud, with elders and members of vulnerable communities being disproportionately preyed upon.

To successfully fight AI-driven fraud will likely require AI-driven solutions. Banks and AI companies are best positioned to deliver those. In the United Kingdom, the Payment Systems Regulator (PSR) recently issued a new reimbursement requirement for authorized push payment fraud, where criminals trick an individual to send money to a fraudulent account.[7] Under the new requirement, the customer's bank and the receiving bank must reimburse the customer for losses, with the reimbursement cost split 50/50 between each bank.[8] In addition to making the consumer whole, the requirement incentivizes both banks to develop and implement more effective fraud controls.

This liability model deserves greater discussion and debate here in the United States, as noted by some consumer advocacy groups.[9] In cases where AI plays a role in the fraud, splitting the liability evenly between the customer's bank, the receiving bank, and the AI platform would

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[6] Federal Trade Commission, "As Nationwide Fraud Losses Top $10 Billion in 2023, FTC Steps Up Efforts to Protect the Public," (February 9, 2024). The FTC recently proposed extending liability for AI-generated impersonation fraud to the companies that are providing the AI platforms to increase industry participation in fighting fraud. Federal Trade Commission, "FTC Proposes New Protections to Combat AI Impersonation of Individuals," (February 15, 2024).

[7] U.K. Payment Systems Regulator, Policy Statement 23/4, Fighting Authorised Push Payment Scams: Final Decision, (December 2023).

[8] Ibid. Banks can make the consumer liable for the first 100 British pounds (GBP), and total liability is capped at 415,000 GBP per transaction, unless the bank can prove gross customer negligence.

[9] Written testimony of Carla Sanchez-Adams, National Consumer Law Center, before the United States Senate Committee on Banking, Housing, and Urban Affairs (February 1, 2024).

seem to be a good starting point for consideration. Such a liability split would protect consumers while creating strong incentives for those best positioned to develop effective defenses.

In addition, the gap between large and community banks when it comes to fraud data and AI capabilities must be addressed. Large banks can develop and train anti-fraud models using their own internal data. Community banks cannot. Large banks can also invest in AI talent and IT systems in ways that are impractical for community banks. A significant part of the solution lies (again) with the core processors, upon which most community banks rely.[10] The OCC has recently deepened its engagement with the core processors and intends to expand this engagement going forward. In the provision of financial services, fairness rests as much with the core processors as it does with community banks.[11]

Conclusion

In conclusion, I want to reemphasize how integral fairness is to the OCC's mission: "To ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations."

We have made a lot of progress in elevating fairness in the federal banking system since I spoke to you last year. Rest assured, we will continue to focus our efforts on fairness going forward.

[10] U.S. Department of the Treasury, "Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector," (March 2024) (Treasury Report). The Treasury Report recognizes the role core processors play, noting that, "Treasury will seek to facilitate conversations between FSSCC [Financial Services Sector Coordinating Council] members and critical providers, along with their direct and indirect oversight agencies and consumer advocate organizations, to better understand how core providers are working toward developing AI-enhanced capabilities for financial institutions in the cybersecurity and anti-fraud space" (page 34).

[11] Julian Alcazar, Sam Baird, Emma Cronenweth, Fumiko Hayashi, and Ken Isaacson, "Market Structure of Core Banking Services Providers," Federal Reserve Bank of Kansas City (March 27, 2024).