



Regulatory Dispatch

April 13, 2022

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

CSBS Community Bankers Begin Year with Dim Economic Outlook

Washington, D.C. – Community bankers have a pessimistic view of the economy driven by diminished expectations of future business conditions, according to the most recent [Community Bank Sentiment Index](#) (CBSI).

The Conference of State Bank Supervisors (CSBS) released the first quarter 2022 CBSI results today, collecting data from community banks across the nation during the month of March. The results showed a negative sentiment index of 97 points, dropping four points from the last quarter and in stark contrast from 115 points one year ago.

The CBSI captures on a quarterly basis what community bankers nationwide think about the future. Participant answers are analyzed and compiled into a single number; an index reading of 100 indicates a neutral sentiment. Anything above 100 indicates a positive sentiment, and anything below 100 indicates a negative sentiment.

In an open-ended question in the first quarter CBSI, community bankers expressed concern over rising inflation, mounting geopolitical tensions and government regulations that could slow domestic economic growth.

“Community bankers are concerned about rising inflation and negative economic consequences from escalating geopolitical risks.” said CSBS Chief Economist Tom Siems. “Higher oil and gas prices and concern about regulatory burdens are adding to the apprehension.”

Key findings from the first quarter 2022 results include:

- The CBSI dropped to 97, four points lower than the level of 101 recorded in the fourth quarter of 2021 and 18 points lower than Q1 2021.

- Community bankers have become pessimistic about future business conditions, as that indicator dropped to 83 points, down 27 points below its level last quarter and 61 points below its reading from one year ago.
- The profitability component had the greatest quarterly improvement, rising 17 points to 68 points from its nadir of 51 in Q4 2021; however, it still remains below the neutral level of 100.
- The regulatory burden component (28 points) remains the lowest among the seven components, although it improved 6 points from 22 recorded in Q4 2021.

Comment: Of note in the survey, 73 percent of respondents expected the regulatory burden to be worse than today. The other major drag on the index was profitability, with 55 percent of respondents expecting profitability will be worse than today.

CBM Insights

Q: We received a subpoena on a former customer requesting various records including SARs filed and supporting documentation. This is the first time we received a request for this type of information. What steps do we take now?

A: Short answer – SARS are not subject to ‘discovery.’

Long answer - If the subpoena does not specifically ask for the production of SARs, but the production of the documents could lead to the existence of a SAR, the bank’s legal counsel should object to the subpoena on the grounds that the production of the documents would result in the prohibited release of confidential supervisory information.

If the subpoena does specifically ask for the production of SARs, the bank’s legal counsel should contact both the bank’s primary regulator and FinCEN. The bank’s primary regulator should be able to offer guidance on drafting a written objection to the issuer referring to the regulations that have been promulgated by FinCEN and the federal regulatory agencies that state that all SARS are confidential and not subject to ‘discovery.’

Notice the underlined passages below from the final rule that became effective January 2011.

The federal district court in Whitney sided with the majority of courts that have interpreted the safe harbor provision to afford unqualified protection to financial institutions and their employees from civil suit. In the Whitney case, individuals filed a defamation suit against a bank, claiming that the bank wrongfully accused them of illegal lending activity when it filed a SAR. In the suit, the individuals sought discovery of any oral or written communications the bank may have had with law enforcement concerning their suspected illegal conduct. The individuals did not seek a copy of the SAR because a clear provision of the Bank Secrecy Act prohibits such disclosure to the people who are reported in the SAR, so instead they sought information from the bank about any disclosures it may have made to law enforcement surrounding the possible filing of a SAR. Several of the federal financial institutions supervisory agencies jointly filed a brief with the court arguing that a financial institution that reports suspected crimes should not be subject to discovery of its communications with law enforcement.

The Whitney court ruled that a bank may not produce documents in discovery evidencing:

- the existence or contents of a SAR;
- communications pertaining to the filing of a SAR or its contents;
- communications with government authorities that led to the filing of a SAR or in preparation for the filing of a SAR;
- communications that follow the filing of a SAR intending to explain or clarify the SAR; or
- the existence or content of oral communications to authorities regarding suspected or possible violations of laws or regulations that did not lead to the filing of a SAR.

The court noted, however, that the safe harbor protections do not apply to documents upon which a SAR was based that a bank may have generated or received in its ordinary course of business, unless producing these documents would confirm the existence of a SAR.

Source [link](#).

Items of Interest

Bank Management

	<p>OCC “Thoughts on the Architecture of Stablecoins” (04/08/2022) - I would like to add to the discourse on stablecoins, which has become a hot topic here in Washington recently. In my conversations with policymakers and other stakeholders, the desire to learn, explore issues, and drill down into the details is encouraging.</p> <p>For my remarks, though, I want to take a step back and discuss why stablecoins matter and pose three policy questions that speak to the architecture of stablecoins.</p> <p>Why do stablecoins matter?</p> <p>Getting stablecoins right from a regulatory policy perspective is important because getting them wrong could result in ordinary people getting hurt. Policy errors could also impede the potential for the dollar to serve as the base currency in a future digital economy.</p> <p>To read all of Acting Director Hsu’s comments, click here.</p> <p><i>Comment: Acting Director Hsu maintained the President's Working Group's proposal that any new law should limit stablecoin issuance to "insured depository institutions."</i></p>
	<p>OCC Revised Licensing Booklets: Revised Comptroller’s Licensing Manual Booklets (04/07/2022) - The Office of the Comptroller of the Currency (OCC) issued the “General Policies and Procedures,” “Management Interlocks,” and “Public Notice and Comments” booklets of the Comptroller’s Licensing Manual. The revised booklets replace booklets of the same title issued between January 2017 and October 2019. The revised booklets</p>

	<p>reflect recent changes to 12 CFR 5, make corrections where necessary, and contain updated guidance.</p> <p>Note for Community Banks: These booklets apply to all national banks, federal savings associations, and federal branches and agencies of foreign banking organizations.</p> <p>Highlights: The revised licensing booklets</p> <ul style="list-style-type: none">• reflect recent updates to 12 CFR 5 and other regulations, as applicable.• remove references to outdated guidance and provide current references.• make other minor modifications and corrections throughout. <p>Related Links: General Policies and Procedures Management Interlocks Public Notice and Comments</p> <p><i>Comment: The Comptroller’s Licensing Manual (linked in General Policies and Procedures) includes helpful sample forms.</i></p>
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	<p>FDIC Notification of Engaging in Crypto-Related Activities (04/07/2022) - All FDIC-supervised institutions that intend to engage in, or that are currently engaged in, any activities involving or related to crypto assets (also referred to as “digital assets”) should notify the FDIC. FDIC-supervised institutions are requested to provide information described in this letter. The FDIC will review the information and provide relevant supervisory feedback.</p> <p>A copy of the letter can be found on the FDIC’s website.</p> <p>Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.</p> <p>Highlights:</p> <ul style="list-style-type: none">• While the FDIC supports innovations that are safe and sound, in compliance with laws and regulations, and fair to consumers, the FDIC is concerned that crypto assets and crypto-related activities are rapidly evolving, and risks of this area are not well understood given the limited experience with these new activities.• Crypto-related activities may pose significant safety and soundness risks as well as financial stability concerns.• Crypto-related activities present risks to consumers, and insured depository institutions face risks in effectively managing the application of consumer protection laws and regulations to new and changing crypto-related activities.
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	<ul style="list-style-type: none"> • Pursuant to Section 39 of the Federal Deposit Insurance Act (FDI Act), the FDIC has established in Part 364 (including Appendices A and B) safety and soundness standards for all FDIC-supervised institutions. • An FDIC-supervised institution that engages, or intends to engage in, any crypto-related activities should notify the FDIC and provide any information requested by the FDIC that will allow the agency to assess the safety and soundness, consumer protection, and financial stability implications of such activities. • The FDIC will review the relevant information submitted by the FDIC-supervised institution related to crypto-related activities and provide relevant supervisory feedback to the institution, as appropriate. <p>Related Resources:</p> <p>Standards for Safety and Soundness, Section 39 of the Federal Deposit Insurance Act 12 U.S.C. 1831p--1(a), 12 CFR Part 364</p> <p><i>Comment: The OCC has issued several interpretations authorizing federally chartered banks to provide custody services for crypto assets.</i></p>
	<p>CFPB Director Chopra’s Opening Remarks to the Community Bank and Credit Union Advisory Councils (04/07/2022) - Since arriving at the CFPB, I grew concerned that the agency was highly responsive to the large banks we supervise, but less attuned to the needs of local businesses financial institutions who are impacted by changes in consumer financial markets and regulations.</p> <p>That needs to change, and I have welcomed the opportunity to directly engage with state banker associations and credit union leagues across the country to make sure entities with relationship banking models are not shut out of the CFPB’s work. The Community Bank Advisory Council and the Credit Union Advisory Council are going to be just one of the many ways we change course when it comes to listening to local businesses affected by our work.</p> <p>To read all of Director Chopra’s comments, click here.</p> <p><i>Comment: Chopra acknowledges the service of community banks. Now we just need a cost/benefit analysis requirement on all CFPB rules to avoid excessive burden on them.</i></p>
	<p>FRB Variation in the Inflation Experiences of Households - Governor Lael Brainard (04/05/2022) - It is a pleasure to join you to discuss differences in how households at different income levels experience inflation. I look forward to hearing from the panelists, who are doing important and interesting research on this topic.</p> <p>By law, the Federal Reserve is assigned the responsibility to pursue price stability and maximum employment. The Federal Open Market Committee (the Committee) has long recognized the connection between stable, low inflation and maximum employment. Forty years ago, Paul Volcker noted that the dual mandate is not an either-or proposition and</p>

that runaway inflation "would be the greatest threat to the continuing growth of the economy... and ultimately, to employment."

Maximum employment and stable, low inflation benefit all Americans, but are particularly important for low- and moderate-income families. The combination of good job opportunities and stable, low inflation provides purchasing power to fill up gas tanks and grocery carts and pay housing and medical costs, leaving room to build emergency cushions and invest in education; retirement; and, for some, small businesses. Indeed, the Employment Act of 1946 called on the federal government to promote "maximum employment, production, and purchasing power."

To read all of Governor Leal's remarks, click [here](#).

Comment: "Currently, inflation is much too high and is subject to upside risks," Governor Brainard said. "The committee is prepared to take stronger action if indicators of inflation and inflation expectations indicate that such action is warranted."

OCC [Interest Rate Risk: Interest Rate Risk Statistics Report](#) (04/04/2022) - The Office of the Comptroller of the Currency (OCC) published the spring 2022 edition of the Interest Rate Risk Statistics Report. The report presents interest rate risk data gathered during examinations of OCC-supervised midsize and community banks and federal savings associations (collectively, banks). The statistics are for informational purposes only and do not represent OCC-suggested limits or exposures.

Rescissions:

This bulletin rescinds OCC Bulletin 2021-47, "Interest Rate Risk: Interest Rate Risk Statistics Report," which transmitted the fall 2021 report. This bulletin also rescinds OCC Bulletin 2021-18, "Interest Rate Risk: Interest Rate Risk Statistics Report," which transmitted the spring 2021 report.

Note for Community Banks:

The publication contains information collected from banks supervised by the OCC's Midsize and Community Bank Supervision department. The report is for informational purposes only.

Highlights:

The spring 2022 report provides statistics on interest rate risk exposures and risk limits for different midsize and community bank populations, including

- all OCC-supervised midsize and community banks with reported data.
- banks by asset size.
- banks by charter type.
- minority depository institutions.

The publication is intended as a resource to the industry, examiners, and the public.

Related Link:

[Interest Rate Risk Statistics Report Spring 2022](#)

Comment: The report provides statistics on projected changes in 12-month net interest income in parallel interest rate shock scenarios ranging from –100 basis points to +400 basis points; projected changes in economic value of equity in parallel interest rate shock scenarios ranging from –100 basis points to +400 basis points; banks’ policy limits for changes in NII and EVE in parallel interest rate shock scenarios ranging from –100 basis points to +400 basis points; and non-maturity deposit repricing rates and average lives for different account types.

CSBS [The Bank Service Company Examination Coordination \(BSCA\) Act, Explained](#)

(04/01/2022) - State regulators strongly support the Bank Service Company Examination Coordination Act. The BSCA, a bill first introduced in the 114th Congress, is commonsense, bipartisan legislation that makes state and federal supervision more efficient and more effective.

About Technology Service Providers:

More and more, banks are outsourcing their core business functions to Technology Service Providers, or TSPs. TSPs can be used by banks to fulfill a wide range of functions; hardware management, software development, cybersecurity, payments processing, and even outsourcing tellers are all examples of TSP services. Using a TSP does not free a bank from meeting its regulatory requirements, and TSPs are expected to comply with the same applicable laws and regulations as the bank using their services.

Limitations of Current Law:

Currently, the Bank Service Company Act, or BSCA, authorizes federal regulators to examine TSPs, but is silent about the authority and role of state regulators. However, many states have laws allowing state bank regulators to examine TSPs.

The Bank Service Company Examination Coordination (BSCA) Act would amend the BSCA to permit federal banking agencies and state banking agencies to coordinate examinations of TSPs and share results of examinations.

State Regulators’ Position:

State regulators strongly support the BSCA Act. The BSCA Act is commonsense, bipartisan legislation that makes state and federal supervision more efficient and more effective.

- Oversight of the businesses providing chartered institutions their bank and technology services is key to ensuring a safe and productive financial system.
- This legislation will enable state and federal regulators to better coordinate their supervision.
- This legislation will also help streamline the supervisory process for third party providers.
- This legislation helps regulatory agencies better safeguard individual institutions, the banking system, and consumers. Sharing supervisory information increases the

likelihood of regulators revealing risks and weaknesses in individual institutions and in the greater financial system.

Related Topics:

[BANK SERVICE COMPANY EXAMINATION COORDINATION ACT \(BSCA\)](#)

BSA / AML

No news to report this week.

Deposit / Retail Operations

No news to report this week.

Human Resources

No news to report this week.

Lending

OCC [Publication Focuses on Bank Partnerships in Community Reinvestment and Resilience](#) (04/07/2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) published the latest edition of its Community Developments Investments newsletter, “Partners in Recovery: Community Reinvestment and Resilience.”

This edition of Community Developments Investments highlights how banks can collaborate with community development financial institutions, minority depository institutions, and other community-based groups to help rebuild communities recovering from the COVID-19 pandemic and natural disasters.

The newsletter explains three federal emergency programs that have provided loans, grants, and other resources for low- and moderate-income and minority communities and businesses recovering from the disproportionate effects of the pandemic. The newsletter highlights bank-community partnerships that have helped communities rebuild following disasters and the pandemic. These partnerships offer lessons on how such bank collaborations can help communities better prepare for future crises through climate resilience planning and investment.

This edition of Community Developments Investments is part of a group of resources available to banks interested in exploring community development and economic inclusion opportunities in their communities. These resources are available on <http://www.occ.gov/communityaffairs>. Banks interested in learning more about these opportunities may contact the OCC’s District Community Affairs Officers located throughout the nation.

	<p>Related Links: Community Developments Investments: “Partners in Recovery: Community Reinvestment and Resilience” Community Affairs Publications District Community Affairs Officers</p> <p><i>Comment: These must read for CRA Officers.</i></p>
	<p>CFPB Issues Proposed Rule to Prohibit the Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking under Regulation V (04/07/2022) - The CFPB has issued a proposed rule that would prohibit consumer reporting agencies from providing consumer reports containing adverse information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking. The CFPB is issuing this proposed rule under Regulation V to implement a recent amendment to the Fair Credit Reporting Act (FCRA).</p> <p><i>Comment: According to the CFPB, the proposal “...would protect survivors of human trafficking by preventing CRAs from including negative information resulting from abuse.”</i></p>
	<p>FRB Consumer Credit - G.19 (04/07/2022) - Beginning with the April 2022 G.19 Consumer Credit release, scheduled to be published on June 7, 2022, the release will no longer report the Commercial Bank Interest Rates for 48-month New Car Loans. Instead, the release will report the Commercial Bank Interest Rates for 72-month New Car Loans. For more information, please see the announcement posted on March 7, 2022.</p> <p>February 2022: In February, consumer credit increased at a seasonally adjusted annual rate of 11.3 percent. Revolving credit increased at an annual rate of 20.7 percent, while nonrevolving credit increased at an annual rate of 8.4 percent.</p>
	<p>CFPB Finds Payday Borrowers Continue to Pay Significant Rollover Fees Despite State-Level Protections and Payment Plans (04/06/2022) - A report published by the Consumer Financial Protection Bureau (CFPB) shows few payday loan borrowers are benefiting from no-cost extended payment plans, which are required to be offered to borrowers in the majority of states that do not prohibit payday lending. Instead of using the payment plans, borrowers continue to pay for costly loan rollovers. While no-cost extended payment plans are meant to help borrowers exit the cycle of rollovers and fees, the payday business model continues to depend on high rollover rates and fees.</p> <p><i>“Our research suggests that state laws that require payday lenders to offer no-cost extended repayment plans are not working as intended,” said CFPB Director Rohit Chopra. “Payday lenders have a powerful incentive to protect their revenue by steering borrowers into costly re-borrowing.”</i></p>

Every year, more than twelve million borrowers take out payday loans in the 26 states where payday lending is not prohibited. Sixteen of those states require payday lenders to offer no-cost extended payment plans. A payment plan allows a borrower to repay only the principal and fees already incurred, splitting the remaining balance over several months. A borrower's other, costlier option, if they do not repay their loan, is to rollover their loan. Essentially, a rollover renews the borrower's loan for another pay-period and the borrower is charged an additional payday loan fee.

To read the entire report, click [here](#).

Technology / Security

[CISA Secure Tomorrow Series Toolkit: Using Strategic Foresight to Prepare for The Future \(04/06/2022\)](#) - The world is constantly changing and while predicting the future with 100 percent accuracy is impossible, we can use strategic foresight to be prepared for possible futures. For CISA, identifying the risks of tomorrow is essential to managing them before they affect the Nation's critical infrastructure. As CISA's center for collaborative risk management, the National Risk Management Center (NRMCC) is leading the Secure Tomorrow Series effort which uses strategic foresight to develop risk mitigation strategies that, if taken today, can strengthen the security and resiliency of critical infrastructure systems.

The Secure Tomorrow Series is a unique platform that brings together SMEs, thought leaders, and others from academia, think tanks, the private sector, and National Labs to think proactively about future risks. In June 2020, the NRMCC began conducting research and analyses and engaging with them to examine three topics— anonymity and privacy, trust and social cohesion, and data storage and transmission—likely to have highly disruptive impacts across multiple National Critical Functions (NCFs) in the next 5-20 years. The knowledge gained from these engagements provided the foundation for the first iteration of the Secure Tomorrow Series Toolkit which empowers individuals, departments and agencies, and organizations on how to use strategic foresight in their long-term planning.

The Secure Tomorrow Series Toolkit is a diverse array of interactive and thought-provoking products uniquely designed to assist stakeholders across the critical infrastructure community to self-facilitate and conduct foresight activities that will enable them to derive actionable insights about the future, identify emerging risks, and proactively develop corresponding risk management strategies to implement now.

NRMCC designed the Toolkit's various activities to: (1) encourage systems thinking, (2) identify emerging risks, (3) develop corresponding risk management strategies, and (4) stress-test these strategies against multiple alternative futures. The Toolkit materials include facilitator, player, and controller guides; scenarios workshops; matrix games; and more.

	<p>Moving forward, the NRMCM will continue progress to advance the knowledge on strategic foresight for new topics in the next iteration of the Secure Tomorrow Series Toolkit. In the face of future uncertainty, we must always be thinking ahead in order to stay ahead.</p> <p>Visit the Secure Tomorrow Series Toolkit webpage.</p>
	<p>CISA Officially Designates April as Emergency Communications Month (04/04/2022) - WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA) kicks off its inaugural Emergency Communications Month. Through its emergency communications mission, CISA supports and promotes the ability of emergency response providers across the nation to communicate in the event of a natural disaster, terrorist act, or other hazard. CISA also provides various resources and guidance for stakeholders to establish emergency communications infrastructure and protocols.</p> <p>“At CISA, our Emergency Communications mission is focused on ensuring that emergency response providers and critical partners can communicate across jurisdictions, disciplines, and every level of government to protect our homeland during time of crisis,” said CISA Director Jen Easterly. “To highlight the critical role of emergency communications, we are officially designating April as Emergency Communications Month. To all of the emergency communicators out there, the folks who are on the front lines every day, we are proud to be your partner and teammate. Thank you for everything you do to keep us all safer.”</p> <p>CISA’s emergency communications mission was established in 2007 in response to the communications challenges faced during 9/11 and Hurricane Katrina. This mission has only grown in importance. CISA provides resources to support our government and industry partners to help them build up and strengthen their emergency communications capabilities.</p> <p>Throughout the month, CISA will highlight the role of emergency communications in CISA’s mission, the role of cybersecurity in emergency communications, and the role our partnerships and stakeholders play in helping the agency achieve its goals.</p> <p>To learn more about Emergency Communications Month and how to amplify our resources, visit cisa.gov/emergency-communications-month.</p>

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 RULE WITH REQUEST FOR PUBLIC COMMENT

03.25.2022 [FDIC Request for Information on Bank Merger Act](#) - The Federal Deposit Insurance Corporation sent for publication in the Federal Register a Request for Information (RFI) seeking information and comments regarding the application of the laws, practices, rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to merger transactions involving

one or more insured depository institution, including the merger between an insured depository institution and a noninsured institution. **Dates: Comments are due May 31, 2022.**

03.22.2021 [Rules to Enhance and Standardize Climate-Related Disclosures for Investors](#) - The Securities and Exchange Commission proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposing release will be published on SEC.gov and in the Federal Register. **The comment period will remain open for 30 days after publication in the Federal Register, or 60 days after the date of issuance and publication on sec.gov, whichever period is longer.**