



Community Bankers of Michigan Regulatory Dispatch

April 5, 2023

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

CFPB Issues 1071 Small Business Lending Rule

The CFPB has issued the small business lending final rule to implement the collection of small business lending data under section 1071 of the Dodd-Frank Act. The CFPB has also issued a Filing Instructions Guide and other resources to assist with the implementation of the final rule.

The final rule is available here: www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

The Filing Instructions Guide is available here: www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/.

The regulatory implementation resources are available here: www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements.

Comment: There are certainly 'potholes' in this rule. The first step is to look at 2022 and 2023 business loans to see if, in fact, they are 'small business loans.' If banks can't ascertain that with any certainty, annualizing loans originated in the fourth quarter of 2023 will be a solution that will be critical for determining if and when your bank must begin reporting. More information will be coming in the coming weeks and months on the topic to help educate bank staff.

CBM Insights

Q. We charge an incoming wire fee for customers receiving wires. This fee is waived sometimes depending on the relationship. An 'insider' under Regulation O wired in several deposits to his account and an account that he is joint on with his mother and the fees were waived. Can we waive those fees?

A. The term 'extension of credit' is specifically and broadly defined by Regulation O (12 CFR 215.3) and includes loan renewals, extensions of credit made via credit card advances, and other transactions. A wire fee is not an 'extension of credit.'

Regulation O does not address deposit accounts and related fees that are not an 'extension of credit' with the exception for overdrafts of executive officers and directors of the bank or of an affiliate.

It is worth noting that the Federal Reserve Act at 12 USC 376 reads: "No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank."

While you can waive certain deposit fees, for example, wire fees, and those waivers wouldn't be per se Regulation O violations or of 12 USC 376, having comparable transactions that show similar waivers for non-insiders removes doubts as to loose ethics and preferential treatment of insiders and waiving the fees are done so in accordance with your bank's internal policies and procedures and are not based on their status as an 'insider.'

Items of Interest

Bank Management

	<p>FDIC UPDATE: Consolidated Reports of Condition and Income for First Quarter 2023 (03/29/2023) - Summary: The attached materials pertain to the Consolidated Reports of Condition and Income (Call Report) for the March 31, 2023, report date and provide guidance on certain reporting issues. This Financial Institution Letter and the attached Supplemental Instructions should be shared with the individual responsible for preparing the Call Report at your institution. Please plan to complete as early as possible the preparation, editing, and review of your institution's Call Report data and the submission of these data to the agencies' Central Data Repository (CDR). Starting your preparation early will help you identify and resolve any edit exceptions before the submission deadline. If you later find that certain information needs to be revised, please make the appropriate changes to your Call Report data and promptly submit the revised data file to the CDR.</p> <p>Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.</p> <p><i>Comment: Some technical amendments. As noted, there are no new data items that take effect this quarter in the FFIEC 051, FFIEC 041 or FFIEC 031 Call Report.</i></p>
	<p>FRB Remarks by Vice Chair for Supervision Barr on the Community Reinvestment Act (03/29/2023) - As you are well aware, the Federal Reserve is working in partnership with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to release a final rule for the CRA. The CRA is one of the seminal laws enacted to address systemic inequities in access to credit and one of the best tools that we, as regulators, have to help ensure banks meet their affirmative obligation to serve the credit needs of the communities in which they do business, including low- and moderate-income communities.</p>

CRA has been an area of focus for me for over 25 years. As many of you know, I have had the opportunity to research and write about the CRA and its impact long before joining the Federal Reserve Board. Therefore, I was pleased to be asked by Chair Powell to lead the Fed's efforts, taking the baton from Vice Chair Brainard, as the agencies work together to finalize much-needed updates to the CRA.

The three agencies have been inclusive and analytical in their approach to CRA reform. Extensive stakeholder engagement and policy deliberations directly informed our proposal last year. What I will lay out as priorities for CRA reform align with the priorities you have heard previously from the Federal Reserve, OCC, and FDIC.

First, successful reform of CRA must advance the core purpose of the statute. The law was intended to address inequities in access to credit and promote community engagement and financial inclusion in low- and moderate-income communities.

Second, the new CRA rule should address the significant changes in the banking sector since the regulations were last substantially revised more than a quarter century ago. This involves the evaluation of online and mobile banking, branchless banking, and hybrid models.

Third, the new CRA rule should provide greater clarity, consistency, and transparency so that everyone—the public, community groups, and banks—understands what counts for CRA consideration and how a bank's rating is determined. As you saw in the proposal, the agencies are working to develop a metrics-based approach to CRA evaluations for retail lending and community development financing to bring greater clarity and consistency to CRA examinations, while still ensuring that there is an opportunity to consider qualitative factors to encourage activities that are particularly impactful or responsive.

And fourth, the new CRA rule should align evaluations and data collection to bank size and type. One of the strengths of the banking sector is its diversity of institutions, so a modern CRA must accommodate banks of different sizes and business models and ensure that smaller banks do not have the same requirements as large banks with much greater capacity.

Comment: We are all still waiting...

FRB [Industrial Production and Capacity Utilization - G.17](#) (03/28/2023) - The Federal Reserve has revised its index of industrial production (IP) and the related measures of capacity and capacity utilization.[1] On net, revisions to total IP pushed its growth rates slightly lower in recent years; the rates of change for total IP have revised no more than 0.6 percentage point in any year.[2] Similarly, the utilization rates for total industry are little changed from previous estimates.

This revision incorporated detailed data for manufacturing from the U.S. Census Bureau's 2021 Annual Survey of Manufactures (ASM). The aggregate effect of those data was slightly slower growth in overall IP in 2021. The overall picture of the last three years of performance in the industrial sector, however, is unchanged. After contracting sharply in the first half of 2020 because of the pandemic, the industrial sector rebounded later in the year and in 2021, and then exhibited more modest growth in 2022.

Comment: This is largely unchanged since February.

FRB [Testimony by Vice Chair for Supervision Barr on Bank Oversight](#) (03/27/2023) - *Chairman Brown, Ranking Member Scott, and other members of the Committee, thank you for the opportunity to testify today on the Federal Reserve's supervisory and regulatory oversight of Silicon Valley Bank (SVB).1*

Our banking system is sound and resilient, with strong capital and liquidity. The Federal Reserve, working with the Treasury Department and the Federal Deposit Insurance Corporation (FDIC), took decisive actions to protect the U.S. economy and to strengthen public confidence in our banking system. These actions demonstrate that we are committed to ensuring that all deposits are safe. We will continue to closely monitor conditions in the banking system and are prepared to use all of our tools for any size institution, as needed, to keep the system safe and sound.

At the same time, the events of the last few weeks raise questions about evolving risks and what more can and should be done so that isolated banking problems do not undermine confidence in healthy banks and threaten the stability of the banking system as a whole. At the forefront of my mind is the importance of maintaining the strength and diversity of banks of all sizes that serve communities across the country.

SVB failed because the bank's management did not effectively manage its interest rate and liquidity risk, and the bank then suffered a devastating and unexpected run by its uninsured depositors in a period of less than 24 hours. SVB's failure demands a thorough review of what happened, including the Federal Reserve's oversight of the bank. I am committed to ensuring that the Federal Reserve fully accounts for any supervisory or regulatory failings, and that we fully address what went wrong.

Our first step is to establish the facts—to take an unflinching look at the supervision and regulation of SVB before its failure. This review will be thorough and transparent, and reported to the public by May 1. The report will include confidential supervisory information, including supervisory assessments and exam material, so that the public can make its own assessment.² Of course, we welcome and expect external reviews as well.

Comment: “Whenever you have a bank failure like this, bank management clearly failed, supervisors failed, and our regulatory system failed.” Community banks don’t need to be saddled with additional ‘oversight.’

[FDIC Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response Before the Committee on Banking, Housing, and Urban Affairs, United States Senate](#) (03/27/2023) – On March 10, 2023, just over two weeks ago, Silicon Valley Bank (SVB), Santa Clara, California, with \$209 billion in assets at year-end 2022, was closed by the California Department of Financial Protection and Innovation (CADFPI), which appointed the FDIC as receiver. The failure of SVB, following the March 8, 2023 announcement by Silvergate Bank that it would wind down operations and voluntarily liquidate, signaled the possibility of a contagion effect on other banks. On Sunday, March 12, 2023, just two days after the failure of SVB, another institution, Signature Bank, New York, New York, with \$110 billion in assets at year-end 2022, was closed by the New York State Department of Financial Services (NYSDFS), which also appointed the FDIC as receiver. With other institutions experiencing stress, serious concerns arose about a broader economic spillover from these failures.

After careful analysis and deliberation, the Boards of the FDIC and the Federal Reserve voted unanimously to recommend, and the Treasury Secretary, in consultation with the President, determined that the FDIC could use emergency systemic risk authorities under the Federal Deposit Insurance Act (FDI Act) to fully protect all depositors in winding down SVB and Signature Bank]

BSA / AML

FinCEN [Analysis of Business Email Compromise in the Real Estate Sector Reveals Threat Patterns and Trends](#) (03/30/2023) - The Financial Crimes Enforcement Network (FinCEN) issued a Financial Trend Analysis on patterns and trends identified in Bank Secrecy Act (BSA) data relating to business email

compromise (BEC) in the real estate sector in 2020 and 2021. The report contains relevant information for the public, particularly individual homebuyers and the multiple entities involved in real estate transactions.

News Release: <https://www.fincen.gov/news/news-releases/fincen-analysis-business-email-compromise-real-estate-sector-reveals-threat>

Financial Trend Analysis:

https://www.fincen.gov/sites/default/files/shared/Financial_Trend_Analysis_BEC_FINAL.pdf

Comment: It is always worth staying abreast of 'patterns and trends' in connection with BSA / AML. Share with your appropriate staff in compliance and lending.

Deposit / Retail Operations

No news to report this week.

Human Resources

No news to report this week.

Lending

CFPB [Issues Determination that State Disclosure Laws on Business Lending are Consistent with the Truth in Lending Act](#) (03/28/2023) - WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) announced it has determined that state disclosure laws covering lending to businesses in California, New York, Utah, and Virginia are not preempted by the federal Truth in Lending Act. The CFPB examined the state disclosure laws to determine if they were inconsistent with and preempted by the Truth in Lending Act. After analyzing public comments on its preliminary determination, the CFPB affirms there is no conflict because the state laws extend disclosure protections to businesses and entrepreneurs that seek commercial financing.

The Truth in Lending Act is intended to ensure that credit terms are disclosed in a meaningful way to consumers, so they can better compare lending options. In recent years, California, New York, Utah, and Virginia have enacted laws that require lenders to include disclosures in their commercial financing transactions with businesses. Commercial financing transactions are not covered by the federal Truth in Lending Act.

FRB [Senior Credit Officer Opinion Survey on Dealer Financing Terms](#) (03/30/2023) - The Senior Credit Officer Opinion Survey on Dealer Financing Terms (SCOOS) is a quarterly survey providing information about the availability and terms of credit in securities financing and over-the counter (OTC) derivatives markets. The SCOOS is modeled after the long-established Senior Loan Officer Opinion Survey on Bank Lending Practices, which provides qualitative information about changes in supply and demand for loans to households and businesses at commercial banks. The SCOOS collects qualitative information on credit terms and conditions in securities financing and OTC derivatives markets, which are important conduits for leverage in the financial system. The survey panel for the SCOOS began by including 20 dealers and over time has been expanded. These firms account for almost all of the dealer activity in dollar-denominated securities financing and OTC derivatives markets. The survey is directed to senior credit officers responsible for maintaining a consolidated perspective on the management of credit risks.

Technology / Security

CISA [Apple Releases Security Updates for Multiple Products](#) (03/27/2023) - Apple has released security updates to address vulnerabilities in multiple products. An attacker could exploit some of these vulnerabilities to take control of an affected device.

CISA encourages users and administrators to review the following advisories and apply the necessary updates.

macOS Ventura 13.3
Safari 16.4
Studio Display Firmware Update 16.4
iOS 15.7.4 and iPadOS 15.7.4
tvOS 16.4
macOS Big Sur 11.7.5
iOS 16.4 and iPadOS 16.4
macOS Monterey 12.6.4
watchOS 9.4

Comment: Share these alerts with your IT staff accordingly.

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

12.21.2022 [FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Log](#) The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. **DATES: Originally set for February 21, the comment deadline is extended to April 7, 2023.**

01.05.2023 [FTC Non-Compete Clause Rulemaking](#) About one in five American workers—approximately 30 million people—are bound by a non-compete clause and are thus restricted from pursuing better employment opportunities. A non-compete clause is a contractual term between an employer and a worker that blocks the worker from working for a competing employer, or starting a competing business, typically within a certain geographic area and period of time after the worker's employment ends. Because non-compete clauses prevent workers from leaving jobs and decrease competition for workers, they lower wages for both workers who are subject to them as well as workers who are not. Non-compete clauses also prevent new businesses from forming, stifling entrepreneurship, and prevent novel innovation which would otherwise occur when workers are able to broadly share their ideas. The Federal Trade Commission proposes preventing employers from entering into non-compete clauses with workers and requiring employers to rescind existing non-compete clauses. The Commission estimates that the proposed rule would increase American workers' earnings between \$250 billion and \$296 billion per year. The Commission is asking for the public's opinion on its proposal to declare that non-compete clauses are an unfair method of competition, and on the possible alternatives to this rule that the Commission has proposed. **The comment period is extended through April 19, 2023.**

02.01.2023 [CFPB Credit Card Penalty Fees](#) (Regulation Z) The Consumer Financial Protection Bureau (Bureau) proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are “reasonable and proportional” to the late payment as required under TILA. The proposal would (1) adjust the safe harbor dollar amount for late fees to \$8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25 percent of the required payment. **Comments should be received on or before May 3, 2023.**