



## Community Bankers of Michigan Regulatory Dispatch

August 23, 2023

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

### **FDIC Publishes 2023 Risk Review - Report Highlights Risks in Banking System**

WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) published its 2023 Risk Review. The report summarizes conditions in the U.S. economy, financial markets, and banking industry.

The 2023 Risk Review provides a comprehensive summary of key developments and risks in the U.S. banking system, as in prior reports, and includes a new section focused on crypto-asset risk. The report focuses on the effects of key risks on community banks in particular, as the FDIC is the primary federal regulator for the majority of community banks in the U.S. banking system.

The FDIC's Risk Review is an annual publication based on year-end banking data from the prior year. This year's expanded report incorporates data and insights related to the recent stress to the banking sector through first quarter 2023. FDIC intends to publish its next Risk Review in the spring of 2024.

*Comment: The FDIC stated that weaker economic conditions and higher interest rates in 2022 continued through early 2023, and "financial market conditions tightened considerably starting in 2022 on rising interest rates, high inflations, and concerns over a potential recession." Overall, the FDIC said that "despite these challenges and the market stress in early 2023, the banking industry demonstrated resilience, but industry performance moderated from 2022."*

### **Items of Interest**

#### **Bank Management**

**FRB [Industrial Production and Capacity Utilization - G.17](#)** (08/16/2023) - In July, total industrial production increased 1.0 percent following declines in the previous two months. Manufacturing output rose 0.5 percent in July; the production of motor vehicles and parts jumped 5.2 percent, while factory output elsewhere edged up 0.1 percent. The index for mining moved up 0.5 percent, and the index for utilities climbed 5.4 percent as very high temperatures in July raised demand for cooling. At 102.9 percent of its 2017 average, total industrial production in July was 0.2 percent below its year-earlier level. Capacity utilization moved up to 79.3 percent in July, a rate that is 0.4 percentage point below its long-run (1972–2022) average.

	<p><b>CFPB <a href="#">Protecting the Public from Data Brokers in the Surveillance Industry</a> (08/15/2023)</b> - During a White House Roundtable, Director Chopra announced that the CFPB will be developing rules to prevent misuse and abuse by data brokers that track, collect, and monetize information about people. Many of these firms assemble data to feed “artificial intelligence” (AI) that makes decisions about our daily lives.</p> <p>After conducting a <a href="#">public inquiry</a> into data brokers and assessing today’s uses of AI that are often powered by data from the surveillance industry, the CFPB will be issuing proposed rules under the Fair Credit Reporting Act to address business practices used by companies that assemble and monetize our data.</p> <p>Small businesses interested in participating as a panelist should contact the CFPB within the next week: <a href="mailto:CFPB_consumerreporting_rulemaking@cfpb.gov">CFPB_consumerreporting_rulemaking@cfpb.gov</a>.</p> <p><b><i>Comment: In March of this year, the CFPB launched an inquiry into the business practices of data brokers. The potential rules apparently coming from that inquiry could bar data brokers from selling certain types of consumer information — including a person’s income or their criminal and payment history — except in specific circumstances.</i></b></p>
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**BSA / AML**

	<p>OCC <a href="#">Formal Agreement with National Iron Bank</a> (08/17/2023) – The OCC entered into a Formal Agreement with National Iron Bank (\$240 million in TA) in July.</p> <p>Enforcement actions provide an both an opportunity for education and corrective action. See below for some of the agreement language:</p> <p><i>(2) Within ninety (90) days of this Agreement, and no less than annually thereafter, the Board shall review the adequacy of the Bank’s BSA Officer and supporting staff, and shall document its determinations in writing. The review shall evaluate and consider the effectiveness of the Bank’s BSA/AML Program, as well as the leadership, knowledge, training, and skills of the BSA Officer and staff, appropriate oversight and governance structures for BSA/AML staff, and appropriate staffing levels for the BSA/AML compliance function consistent with the Bank’s money laundering, terrorist financing and other illicit financial activity risk assessment, including anticipated risks from new or expanded lines of business, products, and services. The Board shall promptly take action to correct any deficiencies identified following each review.</i></p> <p><b><i>Comment: Seldom do we include formal agreements unless they seem relevant to community banks – like this one. How would your bank’s BSA/AML program fair under such a written review outlined in the agreement?</i></b></p>
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**Deposit / Retail Operations**

	<p><b>FRB <a href="#">The Nature of a Scam: Fraudulent, Deceptive, Dishonest</a> (08/15/2023)</b> - In recent years, scams have become an <a href="#">increasingly prevalent and costly problem</a>, targeting both consumers and businesses.</p> <p>Despite their pervasiveness, there is a clear consensus that more can be done to address scams. Read about common approaches to <a href="#">putting scams out of business</a>, including education, technology and information sharing.</p> <p>The Federal Reserve is taking steps to improve scam mitigation by continuing engagement with the industry through the launch of two work groups this year.</p>
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	<p><b>Scams Definition and Classification Work Group</b> This work group is dedicated to creating an industry-recommended operational definition of the term “scam” and building a classification structure. <a href="#">Learn More</a></p> <p><b>Scams Information Sharing Work Group</b> The focus of this work group is on fostering collaboration among the industry to bring about voluntary and collective change in the fight against scams. <a href="#">Learn More</a></p>
	<p><b>FTC <a href="#">Do You Use Payment Apps Like Venmo, CashApp, or Zelle? Read This!</a> (08/14/2023)</b> – Ever send money through an app like Venmo, CashApp, or Zelle? They make it easy to send money fast to friends or family. But what happens when it’s a scammer on the other end?</p> <p><i>Comment: Most of the P2P apps expressly warn consumers to avoid using P2P payments for purchasing goods or services. Even a legitimate transaction can go wrong by entering an incorrect phone number or misspelling a recipient's name, resulting in the funds going to the wrong person. Once the funds are transferred, the money is likely lost. Some scammers are asking for fake charitable donations using P2P apps. Before donating with a P2P app, remind your customers to check the charity's website to verify that they accept donations through that app.</i></p>
	<p><b>FTC <a href="#">Lawsuit Reminds Businesses: CAN-SPAM Means CAN'T Spam</a> (08/14/2023)</b> - Oh, the joy of clicking “unsubscribe” when your email inbox overflows with spam messages trying to sell you stuff you DO NOT WANT! But what if there’s no “unsubscribe” link and the emails won’t stop?</p> <p>The FTC says that’s what happened to people who set up “Free Membership” accounts with Experian to manage access to their Experian credit report information online. The accounts let people “freeze” their credit to make it difficult for identity thieves to open new accounts in their name and “unfreeze” their credit to apply for a mortgage or other new credit.</p> <p><i>Comment: Despite its name, the CAN-SPAM Act doesn’t apply just to bulk email either. It covers all commercial messages, which the law defines as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service,” including email that promotes content on commercial websites. So that means it includes all your commercial marketing emails for products.</i></p>

## Human Resources

	No news to report this week.
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## Lending

	<p><b>CFPB <a href="#">Releases Update to Small Business Lending Rule Filing Instructions Guide</a> (08/17/2023)</b> – The CFPB released an update to the Filing Instructions Guide for Small Business Lending Data. The updates include:</p> <ul style="list-style-type: none"> <li>• Reordering certain demographic information codes to better correlate with Home Mortgage Disclosure Act data, per request from industry,</li> <li>• Minor wording clarifications to the pricing information data point, and</li> <li>• Minor administrative updates to the validation IDs.</li> </ul>
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The changes were also incorporated into the Small Business Lending Rule Data Points Chart.

Details about these changes to the Filing Instructions Guide can be found in the Small Business Lending Data Updates page, available at: [www.consumerfinance.gov/data-research/small-business-lending/small-business-lending-data-updates/](http://www.consumerfinance.gov/data-research/small-business-lending/small-business-lending-data-updates/).

You can access the updated Small Business Lending Rule Data Points Chart here:

[www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/](http://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/).

***Comment: There are a lot of moving parts around the 1071 rule now. The court ruling gives no instruction on what a delayed implementation schedule will look like. It only instructs the bureau to provide a new implementation timeline after the pending case is decided. In the meantime, the bureau seems to be moving forward.***

**CFPB [Penalizes Freedom Mortgage and Realty Connect for Illegal Kickbacks](#) (08/18/2023) - WASHINGTON, D.C.** — The Consumer Financial Protection Bureau (CFPB) took action against Freedom Mortgage Corporation (Freedom) for providing illegal incentives to real estate brokers and agents in exchange for mortgage loan referrals. Freedom provided real estate agents and brokers with numerous incentives — including cash payments, paid subscription services, and catered parties — with the understanding they would refer prospective homebuyers to Freedom for mortgage loans. This conduct violated the Real Estate Settlement Procedures Act and its implementing regulation. The CFPB is ordering Freedom to cease its illegal activities and pay \$1.75 million into the CFPB’s victim relief fund. The CFPB separately issued an order against a real estate brokerage firm, Realty Connect USA Long Island (Realty Connect), for accepting numerous illegal kickbacks from Freedom. Realty Connect will pay a \$200,000 penalty and cease its unlawful conduct.

“Freedom provided kickbacks to real estate brokers and agents — including those at Realty Connect — in return for mortgage referrals, a clear violation of federal law,” said CFPB Director Rohit Chopra. “The CFPB will be vigilant in rooting out anti-competitive behavior that interferes with consumers’ ability to choose financial products and services.”

***Comment: A friendly reminder that RESPA Section 8 has not gone away!***

## Technology / Security

**CISA [Cisco Releases Security Advisories for Multiple Products](#) (08/17/2023) - Cisco has released security advisories for vulnerabilities affecting multiple Cisco products. A cyber threat actor can exploit some of these vulnerabilities to take control of an affected system or cause a denial-of service condition.**

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

ThousandEyes Enterprise Agent  
Duo Device Health Application  
Unified CM  
ClamAV HFS+  
ClamAV

***Comment: Be sure to share these threat updates with your IT staff.***

## **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.

**NO NEW RULES OUT FOR COMMENT THIS WEEK.**