Community Bankers of Michigan Regulatory Dispatch

August 3, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS BLOG Post: Are We in a Recession Yet?

With the nation's economic output in 2022 contracting for a second consecutive quarter, the simple rule of thumb for calling it a recession has been satisfied. However, several other economic indicators used to track the nation's business cycle have not shrunk, including the relatively strong jobs market. So, what is going on? Are we in a recession? What economic indicators should be monitored to know when the economy is in a recession?

The official arbiter for calling U.S. economic recessions is the National Bureau of Economic Research's (NBER's) Business Cycle Dating Committee. Their definition of a recession is "a significant decline in economic activity that is spread across the economy and that lasts more than a few months." To gauge economic activity, the NBER Committee examines a range of monthly indicators such as nonfarm payroll employment, real personal income less transfer payments, industrial production, real manufacturing and trade industries sales, employment based on the household survey and real personal consumption expenditures.

Comment: "While GDP declined for the second consecutive quarter, the official definition of recession is a judgmental mix of levels and rates-of-change across several variables, most of which continued to expand in the first half of the year." – Jan Hatzius, chief economist, Global Investment Research Division at Goldman Sachs

CBM Insights

Q: How long is an ACH stop payment order effective?

A: It depends on if it is a non-consumer or consumer entry. Stop payment orders are effective for six months for checks and non-consumer ACH entries. For consumer ACH entries, that six-month time period does not comply with the ACH rules.

In particular, Nacha Rule: Subsection 3.7.1.4 Effective Period of Stop Payment Orders states 'A stop payment order will remain in effect until the earlier of:'

(a) the withdrawal of the stop payment order by the Receiver; or

(b) the return of the debit Entry, or, where a stop payment order applies to more than one debit Entry relating to a specific authorization involving a specific Originator, the return of all such debit Entries.'

While your core system may default stop payment orders to expire in six months, consumer ACH entries need to extend beyond six months to comply with the RDFIs responsibilities regarding recurring ACH entries.

Items of Interest

Bank Management

	OCC Solicits Research on Implications of Financial Technology for Banking (07/25/2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) is soliciting academic- and policy-focused research on the impact of financial technology (fintech) entities and nonbanks on banking and the markets for lending, deposit-taking, and payment services through August 21, 2022. The OCC will invite authors of selected papers to present to OCC staff and invited guests at OCC Headquarters in Washington, D.C., on November 7-8, 2022. These presentations will serve as a platform for interested academic, regulatory, and other experts to discuss research that explores how the banking system, and community banks in particular, leverage technology and respond to the growth of new providers of banking services, whether competitive or cooperative. Interested parties are invited to submit papers to EconFINTECHSymposium@occ.treas.gov. Submitted papers must represent original and unpublished research. Additional information about submitting a paper or research, and participating in the November meeting as a discussant, is available below and on the OCC's website. Related Link Call for Papers (PDF) ***Comment: It's worth noting that back in April 2022, the OCC overhauled its supervision of small and midsize banks adding 'FinTech Supervision Specialists.'***
	FDIC Trust Examination Manual (07/27/2022) - July 2022 Update Section 1 – Management: Enhancements were made to Section 1 of the manual, these include: • Reorganization to improve flow, clarity, and expansion of discussions about trust department policies, strategic planning, incentive compensation, dominant managers, management information systems, account reviews, and meetings between examiners and trust department management. The Trust Manual provides FDIC examiners information relating to trust concepts, principles, common and statutory laws, and regulations that govern the behavior of fiduciaries. The FDIC conducts examinations at financial institutions to ensure public confidence in the banking system and to protect the Deposit Insurance Fund. The Trust Manual promotes consistency in trust and fiduciary examination activities, which center on

evaluating an institution trust department's management, operations, earnings, asset management, and adherence to laws and regulations.

Read the Manual

Comment: The FDIC's Trust Examination Manual is designed to assist regulators in planning and conducting regulatory examinations of trust departments.

FDIC Risk Management Manual of Examination Policies (07/26/2022) - July 2022 Update

Section 1 – Management: Enhancements were made to Section 1 of the manual, these include:

- Reorganization to improve flow, clarity, and expansion of discussions about trust department policies, strategic planning, incentive compensation, dominant managers, management information systems, account reviews, and meetings between examiners and trust department management.

The Trust Manual provides FDIC examiners information relating to trust concepts, principles, common and statutory laws, and regulations that govern the behavior of fiduciaries. The FDIC conducts examinations at financial institutions to ensure public confidence in the banking system and to protect the Deposit Insurance Fund. The Trust Manual promotes consistency in trust and fiduciary examination activities, which center on evaluating an institution trust department's management, operations, earnings, asset management, and adherence to laws and regulations.

Read the Manual

Comment: For resources the FDIC provides to understand how banks are examined, click here.

FDIC Updates its Enforcement Actions Manual regarding Minimum Standards for Termination of Cease-and-Desist and Consent Orders (07/25/2022) - The FDIC has updated chapters one and four of its Formal and Informal Enforcement Actions Manual (manual), entitled *Overview and Administrative Matters* and *Cease-and-Desist Actions*, respectively, regarding the agency's minimum standards for terminating cease and desist and consent orders issued under Section 8(b) of the Federal Deposit Insurance (FDI) Act. The manual provides direction for professional staff related to the work necessary to pursue formal and informal enforcement actions. It is also intended to support the work of the field, regional, and Washington office's staff involved in processing and monitoring enforcement actions.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:

Section 8(b) of the FDI Act authorizes the FDIC to issue a cease-and-desist order, which is titled a "consent order" if the action is not contested, when the facts reasonably support the conclusion that an insured depository institution has engaged, or is about to engage, in

- An unsafe or unsound practice in conducting the business of the institution, or

- A violation of a law and/or regulation, written agreement with the FDIC, or written condition imposed by the FDIC in connection with the granting of any application or other request.

Section 8(b) orders may be terminated under any of the following conditions:

- The institution is in full compliance with all the provisions of the order and has fully corrected the violations of laws and regulations, unsafe and unsound practices, or conditions that led to the issuance of the order.
- Any provisions deemed "not in compliance" have become outdated or irrelevant to the institution's current circumstances, including situations in which the institution is closed.
- Deterioration or any provisions deemed "not in compliance" leads to issuance of a new or revised formal action.

There may be limited exceptions in which replacing an enforcement action with a less severe or less comprehensive action may be appropriate. Requests for use of this limited exception must be presented to the appropriate Division Director and the General Counsel and require consultation with the Chairman. Use of the limited exception is expected to be rare.

Formal and Informal Enforcement Actions Manual

Comment: For a list of the FDIC's Enforcement Decisions and Orders by type, click here.

BSA / AML

No news to report this week.

Deposit / Retail Operations

FDIC Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Dealings with Crypto Companies (07/29/2022) - To address certain misrepresentations about FDIC deposit insurance by some crypto companies, the FDIC is issuing an Advisory to FDIC-insured institutions Regarding Deposit Insurance and Dealings with Crypto Companies (FDIC Crypto Advisory). Additionally, a Fact Sheet on What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies (Deposit Insurance Fact Sheet) has been posted to FDIC's website to provide additional information about deposit insurance coverage.

The Advisory and Fact Sheet are linked below.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.

Highlights:
Over the past several months, some crypto companies have suspended withdrawals or halted operations. In some cases, these companies have represented to their customers that their products are eligible for FDIC deposit insurance coverage, which may lead customers to believe, mistakenly, that their money or investments are safe.

	The FDIC seeks to address misconceptions about the scope of deposit insurance coverage and related concerns. By federal law, the FDIC only insures deposits held in insured banks and savings associations (collectively, “insured banks”) in the unlikely event of an insured bank’s failure. The FDIC does not insure assets issued by non-bank entities, such as crypto companies. The FDIC Crypto Advisory reminds insured banks that they need to be aware of how FDIC insurance operates and need to assess, manage, and control risks arising from third-party relationships, including those with crypto companies. In dealings with crypto companies, FDIC-insured banks should confirm and monitor that these companies do not misrepresent the availability of deposit insurance. Simultaneous with issuance of this Crypto Advisory, the FDIC issued a Press Release announcing the posting of a Deposit Insurance Fact Sheet to the FDICC’s webpage to clarify for customers of non-bank entities, such as crypto companies, and the public generally, that deposit insurance does not cover non-deposit products, including crypto assets. The FDIC Crypto Advisory and Deposit Insurance Fact sheet provide a listing of useful resources for bankers and members of the public for more information. Advisory to FDIC-Insured Institutions Regarding FDIC Deposit Insurance and Dealings with Crypto Companies Fact Sheet: What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies ***Comment: The bottom line is that the FDIC is urging banks that deal with cryptocurrency companies to make sure that bank customers know which of their funds will be insured. The Fact sheet is an excellent tool to educate customers about crypto. Consider posting it on your website.***

Human Resources

	No news to report this week.

Lending

	OCC Issues Infographics on CRA NPR (07/27/2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) released a series of infographics to promote comment on the interagency notice of proposed rulemaking (NPR) to modernize and strengthen the Community Reinvestment Act (CRA). The infographics include key information from the CRA NPR on performance standards; data collection, maintenance and reporting; assessment areas; community development; and retail lending products. The infographics are specific to small banks, intermediate banks, large banks, and wholesale or limited purpose banks. The large bank infographic includes an additional section on data reporting.

	The OCC, Federal Reserve Board, and FDIC issued a joint CRA proposal intended to promote increased lending and investment in low- and moderate-income communities; reflect changes in the banking industry; provide greater clarity and consistency; tailor requirements to bank size, business model, and local conditions; and promote transparency and public engagement. Comments on the proposal will be accepted on or before August 5, 2022. **Related Links** • CRA Fact Sheet (PDF) • Small Bank Infographic (PDF) • Intermediate Bank Infographic (PDF) • Large Bank Infographic (PDF) • Wholesale or Limited Purpose Bank Infographic (PDF) • OCC's Community Reinvestment Act page ***Comment: While community banks are appreciative of the information, note that the Retail Lending Test Info Graphic provides a very oversimplified example to gauge bank performance. For example, it addresses only computations for a single assessment area.***
	CFPB Added a New Section to the Debt Collection Rule Frequently Asked Questions (FAQs) (07/27/2022) - The CFPB has added a new section to the Debt Collection Rule Frequently Asked Questions (FAQs). The new FAQs address questions related to the electronic communication and unusual or inconvenient time and place provisions in the Debt Collection Rule. You can find the Debt Collection Rule FAQs here: www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/debt-collection/debt-collection-rule-faqs/. ***Comment: The new FAQs address questions related to electronic communications, electronic communication opt-out notices and unusual or inconvenient time and place provisions in Reg F.***

Technology / Security

	No news to report this week.

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

05.05.2022 Joint Agency Community Reinvestment Act - The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. **DATE: Comments must be received on or before August 5, 2022.**

06.06.2022 FinCEN No Action Letter Process - FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on questions relating to the implementation of a no-action letter process at FinCEN. Given that the addition of a no-action letter process at FinCEN may affect or overlap with other forms of regulatory guidance and relief that FinCEN already offers, including administrative rulings and exceptive or exemptive relief, this ANPRM, among other things, seeks public input on whether a no-action letter process should be implemented and, if so, how the no-action letter process should interact with those other forms of relief. **DATES: Written comments on this ANPRM must be received on or before August 5, 2022.**