Community Bankers of Michigan Regulatory Dispatch

August 9, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS Worse Than Dismal: Community Banker Sentiment at Another Record Low

With the CSBS second quarter 2023 Community Bank Sentiment Index (CBSI) dropping again to another record low, community banker pessimism on the outlook for the U.S. economy appears to have fallen into a dark abyss. All seven components that comprise the index fell from the previous quarter, with three indicators setting record lows: regulatory burden, monetary policy, and operations expansion. And like the last two surveys, 95% of community bankers say the U.S. economy is already in a recession.

Chart 1 shows that the headline number from the second quarter 2023 CBSI was 73, down 10 points from the first quarter 2023 survey and 11 points lower than one year ago. The neutral level is 100, with values below 100 indicating community bankers hold a negative sentiment and values above 100 signaling a positive outlook.

The second quarter 2023 reading is the sixth consecutive quarterly reading below 100, with the overall index down 42 points from two years ago when it reached a cyclical peak of 115 in the second quarter of 2021. Since that time, the war in Ukraine, higher inflation, rapid interest rate increases, a few high-profile bank failures and the federal debt borrowing limit have dominated news headlines.

Comment: Not surprising that the sentiment index continues to fall. At last Wednesday's Federal Open Market Committee meeting, the federal funds benchmark rate went up by a quarter of a percentage point, bringing the new range to 5.25% to 5.50%, the highest level in over two decades.

CBM Insights (Ask CBM Anything)

Q. Our customer had a 'check' clear her account last month for $7,000 that she claims she did not write. The 'check' has a notation that the signature is 'on file.' We are now well past the midnight deadline, so is the customer liable for this 'check' or is our bank?

A. Examine the item and compare it with the definition in Regulation CC section 229.2(fff) (below) of a "remotely created check." If it meets that definition, the 'check' comes with transfer and presentment warranties under section 229.34(d) (below) that protect you as the paying bank.

If you received the 'check' via the Federal Reserve, there is an adjustment return entry your bank can make to return the check well after the midnight deadline. But first, you need to get from your customer an affidavit that the customer (1) did not authorize the issuance of the item (2) payable to the person named as payee on the check (3) in the amount stated on the check. All three of those facts need to be stated. Then you can follow the instructions provided by Federal Reserve Check Services for completing the claim.

If you don't meet the criteria for the Fed's claim service (if too much time has passed, for example), you have a claim against the depositary bank directly, which you can pursue in correspondence with that bank (without entry claim) or in court if necessary for up to one year. The depositary bank in such circumstances may attempt to raise a defense that your customer's claim that the check wasn't authorized was made too late to compel your bank to reimburse your customer (based on the Texas Business and Commerce Code and your bank's deposit agreement).

(fff) *Remotely created check means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, "account" means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.*

Returned check warranties

(1) Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to return the check;

(iii) The check has not been materially altered; and

(iv) In the case of a notice in lieu of return, the check has not and will not be returned.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

Items of Interest

Bank Management

	FRB Brief Remarks on the Economy and Monetary Policy - Governor Michelle W. Bowman (08/06/2023) - *Before we turn to our conversation, I'll offer a few thoughts on the economy and monetary policy. As you likely know, at our most recent meeting in July, the Federal Open Market Committee (FOMC) raised the target range for the federal funds rate by 25 basis points—to a range of 5-1/4 to 5-1/2 percent—and we continue to reduce the Fed's securities holdings. Since March 2022, the FOMC has been tightening monetary policy as part of our ongoing effort to lower unacceptably high inflation. Since then, we have seen some progress, and inflation has declined from last year's very high level. Most recently, after more than six months of stubbornly high readings, the June consumer price index showed lower core inflation, a measure that excludes food and energy prices. While this development is a positive sign that monetary*

	policy is contributing to lower inflation, both total and core inflation remain well above our 2 percent target. *At the same time, the economy and the labor market have remained strong as the FOMC has tightened monetary policy. Real gross domestic product grew slightly more than 2 percent at an annual rate in the first half of the year, well above many forecasters' expectations. Consumer spending has been robust, and the housing sector appears to be rebounding with accelerating growth in house prices and a pickup in new housing starts. The most recent employment report showed a strong labor market with low unemployment and solid job gains. The pace of job gains has slowed, which is a sign that labor market demand and supply are coming into better balance. But the demand for workers continues to exceed the supply of available job seekers, adding upward pressure on prices.* *The banking system continues to be strong and resilient. While banks have tightened lending standards in response to higher interest rates and funding costs, there have not been signs of a further sharp contraction in credit from the stress earlier this year that would slow economic activity. Though loan balance growth has slowed, banks have continued to increase lending to households and businesses.* *Given the strong economic data and still elevated inflation, I supported the FOMC's decision in July to further increase the target range for the federal funds rate. I also expect that additional rate increases will likely be needed to get inflation on a path down to the FOMC's 2 percent target.* ***Comment: "My colleagues and I will make our decisions based on the incoming data and its implications for the economic outlook," she added. She also said the Fed remains willing to raise the FRED rates if incoming data showed that progress on inflation has stalled.***

BSA / AML

	FFIEC Announcement 2023-02: Federal and State Regulators Release Updates to the BSA/AML Examination Manual (08/02/2023) - The Federal Financial Institutions Examination Council, on behalf of its members, released updates to the following sections of the Bank Secrecy Act/Anti-Money Laundering Examination Manual. • Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity • Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions • Due Diligence Programs for Private Banking Accounts • Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process • Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process • Reporting Obligations on Foreign Bank Relationships with Iranian-Linked Financial Institutions The updates should not be interpreted as new instructions or increased focus on certain areas; instead, they offer further transparency into the examination process and support risk-focused examination work. Details are available at https://bsaaml.ffiec.gov. ***Comment: As usual, the agencies say that banks should not interpret the updates as new instructions or an increased focus on certain areas. The updates instead are intended to offer further transparency into the examination process and support risk-focused examination work.***

FinCEN 2022 SAR Filing Trend Data Now Available on FinCEN's Website (07/31/2023) – The Financial Crimes Enforcement Network's (FinCEN) Interactive SAR Stats webpage now includes Filing Trend Data by industry updated through the 2022 calendar year. The new downloadable data is arranged by industry type and includes rankings by states/territories and suspicious activities. It is available at https://www.fincen.gov/reports/sar-stats/sar-filings-industry.

Interactive SAR Stats is an application that enables users to view FinCEN's trend data for aggregated counts of defined suspicious activities that financial institutions file with FinCEN as required by the Bank Secrecy Act.

This announcement underscores FinCEN's commitment to safeguarding the financial system from illicit use, combatting money laundering, and promoting national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

2022 SAR Filing Trend Data: https://www.fincen.gov/reports/sar-stats/sar-filings-industry

Comment: More than 3.6 million SARs were filed in 2022, an 18% increase over 2021. The 3.1 million SARs filed in 2021 represented a 22.5% increase over 2020. Cannabis banking in multiple states, including Michigan, contribute to much of this increased SAR activity.

Deposit / Retail Operations

No news to report this week.

Human Resources

No news to report this week.

Lending

CFPB Takes Action to Address False Information on Credit Reports (08/03/2023) – Consumer Financial Protection Bureau (CFPB) issued guidance to consumer reporting companies about their obligation to screen for and eliminate obviously false "junk data" from consumers' credit reports. Companies need to take steps to reliably detect and remove inconsistent or impossible information from consumers' credit profiles.

When consumer reporting companies include inconsistent, incorrect, or conflicting account information, consumers can suffer real-world consequences. Junk data in reports can lead to consumers being denied credit, housing, or employment, or paying more for credit.

- Learn more about the actions being taken by the CFPB to ensure consumer reporting companies comply with consumer financial protection law.
- Consumers can submit complaints about consumer or credit reporting or other financial products and services, by visiting the CFPB's website or by calling (855) 411-CFPB (2372).
- If you work for a consumer reporting company, and you believe your company violated federal consumer financial protection laws, including the Fair Credit Reporting Act, you can send information to whistleblower@cfpb.gov.

	Comment: While this report largely is directed at the various reporting agencies, its always a good idea to keep updated on reporting issues.
	FRB Senior Loan Officer Opinion Survey on Bank Lending Practices (07/31/2023) – The July 2023 Senior Loan Officer Opinion Survey on Bank Lending Practices (SLOOS) addressed changes in the standards and terms on, and demand for, bank loans to businesses and households over the past three months, which generally correspond to the second quarter of 2023. Regarding loans to businesses, survey respondents reported, on balance, tighter standards and weaker demand for commercial and industrial (C&I) loans to firms of all sizes over the second quarter. Meanwhile, banks reported tighter standards and weaker demand for all commercial real estate (CRE) loan categories. For loans to households, banks reported that lending standards tightened across all categories of residential real estate (RRE) loans, especially for RRE loans other than government-sponsored enterprise (GSE)-eligible and government loans. Meanwhile, demand weakened for all RRE loan categories. In addition, banks reported tighter standards and weaker demand for home equity lines of credit (HELOCs). Furthermore, standards tightened for all consumer loan categories; demand weakened for auto and other consumer loans, while it remained basically unchanged for credit card loans. The July SLOOS included two sets of special questions, which inquired about the current level of lending standards relative to the midpoint of the range over which banks' standards have varied since 2005, as well as questions about banks' expectations for changes in lending standards over the second half of 2023 and reasons for these changes. In response to the first set of special questions regarding the level of standards, banks reported that, on balance, levels of standards are currently on the tighter end of the range for all loan categories. Compared with the July 2022 survey, banks reported tighter levels of standards in every loan category. Regarding banks' outlook for the second half of 2023, banks reported expecting to further tighten standards on all loan categories. Banks most frequently cited a less favorable or more uncertain economic outlook and expected deterioration in collateral values and the credit quality of loans as reasons for expecting to tighten lending standards further over the remainder of 2023.

Technology / Security

	CISA NSA, FBI, and International Partners Release Joint CSA on Top Routinely Exploited Vulnerabilities of 2022 (08/03/2023) - The U.S. Cybersecurity and Infrastructure Security Agency (CISA), National Security Agency (NSA), Federal Bureau of Investigation (FBI), and international partners are releasing a joint Cybersecurity Advisory (CSA), 2022 Top Routinely Exploited Vulnerabilities. This advisory provides details on the top Common Vulnerabilities and Exposures (CVEs) routinely exploited by malicious cyber actors in 2022, and the associated Common Weakness Enumeration(s) (CWE), to help organizations better understand the impact exploitation could have on their systems. International partners include: Australian Signals Directorate's Australian Cyber Security Centre (ACSC), Canadian Centre for Cyber Security (CCCS), New Zealand National Cyber Security Centre (NCSC-NZ), New Zealand Computer Emergency Response Team (CERT-NZ), and the United Kingdom's National Cyber Security Centre (NCSC-UK), and the United Kingdom's National Cyber Security Centre (NCSC-UK). The authoring agencies urge all organizations to review and implement the recommended mitigations detailed in this advisory. The advisory provides vendors, designers, and developers recommendations on implementing secure-by-design and -default principles and tactics to reduce the prevalence of

	vulnerabilities in their software and end-user organizations' recommendations to reduce the risk of compromise by malicious cyber actors. Organizations should share information about incidents and unusual cyber activity with their respective cybersecurity authorities because when cyber incidents are reported quickly, it can contribute to stopping further attacks. In the U.S., organizations should inform CISA's 24/7 Operations Center at report@cisa.gov or (888) 282-0870, or an FBI field office. ***Comment: Be sure to share with your IT and risk 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.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

06.21.2023 Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations- SUMMARY: The OCC, Board, FDIC, NCUA, CFPB, and FHFA (collectively, the agencies) invite comment on a proposed rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws. **DATES: Comments must be received by August 21, 2023.**