Community Bankers of Michigan Regulatory Dispatch

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Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Thoughts on the Crypto Ecosystem - Governor Christopher J. Waller

Before diving into today's talks, which will touch on various parts of the crypto ecosystem, I'd like to clearly define some concepts to ensure we're all talking about the same things. I think of the crypto ecosystem as consisting of three parts:

- *a crypto asset, which generally refers to any digital asset implemented using cryptographic techniques that is being traded;*
- *a database management protocol used to record trades, commonly referred to as the blockchain, which includes both permissioned and permissionless distributed ledger technologies; and*
- *technology that directly facilitates trading crypto assets; this includes smart contracts and tokenization as a form of data privacy.*

This leaves us with the crypto assets themselves. The question is, why would someone hold such an asset? What is the value proposition of such an asset? The answer isn't new or unique, but rather is based on economic relationships that result in objects having value. One reason objects have value is because of their intrinsic properties. For example, the value of corn derives in part from the fact that it can be used for food or fuel, or in some cases for Thanksgiving centerpieces. Intuition suggests that if an object has no intrinsic value, then the price of that object should be zero—why pay for something that has no fundamental value? Shockingly, it turns out that objects may be valued well above what their intrinsic properties would suggest. Since Paul Samuelson's seminal work in 1958 on intertemporal consumption smoothing, economists have known that an intrinsically useless object can trade at a positive price. Such an object's value is driven purely by belief. If I believe someone will pay a positive price for this object in the future, then I may be willing to pay a positive price now, carry it across time, and sell it when I need to consume other goods and services. Samuelson referred to this concept as "the social contrivance of money."

While an intrinsically useless object can trade at a positive price, we also know that there is always a second equilibrium price for this object, which is zero. What if one day, beliefs change, and I no longer believe that someone will pay me for this object in the future? Then I clearly shouldn't pay anything for it today, so its price goes to zero.

Comment: Governor Waller compared 'speculative' crypto to baseball cards and had a stark warning for owners: 'Don't expect taxpayers to socialize your losses.'

CBM Insights

Q. Our LE has two fee lines for the lenders title policies, $1100 and $450 respectively because at the time we thought we would need two title policies. The title company says they will only issue a single title policy. The CD will now only show a single fee line for $1350. Our Loan software is stating this is a tolerance cure since we changed the $1100 fee line to $1350, but the total title fees reduced from $1550 to $1350. Is there anything in the regulations or guidance that would allow us to consider the original $450 fee in the tolerance calculation even though it isn't applied at the closing?

A. This is analogous to the pest inspection example in the commentary at §1026.19(e)(3)(ii)(5).

5. Calculating the aggregate amount of estimated charges. In calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed. For example, assume that the creditor included a $100 estimated fee for a pest inspection in the disclosures provided pursuant to § 1026.19(e)(1)(i), and the fee is included in the category of charges subject to § 1026.19(e)(3)(ii), but a pest inspection was not obtained in connection with the transaction, <u>then for purposes of the good faith analysis required under § 1026.19(e)(3)(ii), the sum of all charges subject to § 1026.19(e)(3)(ii) paid by or imposed on the consumer is compared to the sum of all such charges disclosed pursuant to § 1026.19(e), minus the $100 estimated pest inspection fee.</u>

Source link.

The removal of a fee or charge that is disclosed but later not imposed on the borrower resets the 'sum of all charges' (the tolerance bucket) for the purpose of the good faith comparison. The removal of the $450 fee will reduce the tolerance bucket by that same $450 amount.

Items of Interest

Bank Management

	OCC Chief Counsel Discusses Bank Mergers (02/10/2023) - WASHINGTON—Senior Deputy Comptroller and Chief Counsel Ben W. McDonough discussed the need to evaluate the framework for evaluating bank mergers in remarks delivered on behalf of Acting Comptroller Michael J. Hsu at the Office of the Comptroller of the Currency's Bank Merger Symposium. The remarks included a discussion of the future of bank merger policy in the context of competition, financial stability, and the convenience and needs of communities. Related Link Remarks (PDF) ***Comment: The agencies and the DOJ typically review mergers in the context of market concentrations. Many critics of the current process say it has been too lenient, with few bank mergers rejected over the last few decades.***

	FRB [Speech by Governor Waller on the Economic Outlook](#) (02/08/2023) - *The big picture is that the U.S. economy is adjusting well so far to the higher interest rates that are necessary to rein in inflation. But inflation remains quite elevated, and so more needs to be done. Although economic activity slowed in 2022, I expect the Fed will need to keep a tight stance of monetary policy for some time to slow activity further in 2023. That is what I believe is needed to bring demand and supply into better alignment and lower inflation toward the Federal Open Market Committee's (FOMC) 2 percent target. Some believe that inflation will come down quite quickly this year. That would be a welcome outcome. But I'm not seeing signals of this quick decline in the economic data, and I am prepared for a longer fight to get inflation down to our target.* *So, what is my take on the recent data? It looks like the economy grew at a solid pace in the final quarter of the year, the labor market remained tight, and inflation continued to retreat. After adjusting for inflation, personal consumption grew at around a 2 percent rate, though it contracted in the last two months of the year amid some pretty significant headwinds.* *One of those headwinds was high inflation, including for food and agricultural products. After accounting for inflation, spending on food consumed at home fell in 2022 after rising strongly in 2020 and 2021, the effect of both large price increases over the past year and the normalization of spending on groceries, which surged when people stayed home during the pandemic and reversed when they returned to restaurants.* ***Comment: In late January, Tom Barkin, President of the FRB Richmond, noted "If you change the target before it is achieved, as some have recently advocated, you put the Fed's credibility at risk, which in turn increases the sacrifice required in order to control inflation."***

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	FRB [Watch Now: Overview of an Exchange Framework](#) (02/07/2023) - With the Business Payments Coalition's E-invoice Exchange Market Pilot officially complete as of December 2022, participants are now preparing for the launch of the electronic invoice (e-invoice) exchange framework. When live, this virtual network will enable businesses in the United States to connect and exchange e-invoices with one another. Are you curious to see how an exchange framework works?
	FDIC [Consumer News Tax Refund Time!](#) (02/03/2023) - Manage your refund safely and easily. Here are a few tips to ensure that your money arrives as quickly and safely as possible, once you have submitted your federal taxes and know you have a refund coming to you. It is also a good time to consider how to get the most out of your money. ***Comment: Worth sharing with your accountholders. Consider a link on your webpage during tax season.***

Human Resources

	No news to report this week.

Lending

	CFPB Publishes HMDA Regulatory and Reporting Overview Reference Chart for Data Collected in 2023 (02/09/2023) - The CFPB published the Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023. You can access the 2023 Reference Chart here: www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/. ***Comment: Be sure to update your HMDA resources accordingly.***
	CFPB Consumer Credit - G.19 (02/07/2023) - December 2022 - In 2022, consumer credit increased 7.8 percent, with revolving and nonrevolving credit increasing 14.8 percent and 5.6 percent, respectively. During the fourth quarter, consumer credit increased at a seasonally adjusted annual rate of 6.5 percent, while in December it increased at a seasonally adjusted annual rate of 2.9 percent.
	FRB Senior Loan Officer Opinion Survey on Bank Lending Practices (02/06/2023) - The January 2023 Senior Loan Officer Opinion Survey (SLOOS) on Bank Lending Practices 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 fourth quarter of 2022.1 Regarding loans to businesses, survey respondents on balance reported tighter standards and weaker demand for commercial and industrial (C&I) loans to large, middle-market, and small firms over the fourth quarter.2 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 or remained basically unchanged across all categories of residential real estate (RRE) loans and demand for these loans weakened. In addition, banks reported tighter standards and weaker demand for home equity lines of credit (HELOCs). Standards tightened and demand weakened, on balance, for credit card, auto, and other consumer loans. The January SLOOS survey also included a set of special questions inquiring about banks' expectations for changes in lending standards, borrower demand, and loan performance over 2023. Banks, on balance, reported expecting lending standards to tighten, demand to weaken, and loan quality to deteriorate across all loan types. ***Comment: Lending officers from the major banks told the Federal Reserve that in the final three months of last year they tightened standards and saw reduced demand across a wide array of business and consumer credit fronts.***

Technology / Security

	CISA #StopRansomware - Ransomware Attacks on Critical Infrastructure Fund DPRK Espionage Activities (02/09/2023) - CISA, the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Department of Health and Human Services (HHS), and Republic of Korea's Defense Security Agency and National Intelligence Service have released a joint Cybersecurity Advisory (CSA), Ransomware Attacks on Critical Infrastructure Fund DPRK Espionage Activities, to provide information on ransomware activity used

	by North Korean state-sponsored cyber to target various critical infrastructure sectors, especially Healthcare and Public Health (HPH) Sector organizations. The authoring agencies urge network defenders to examine their current cybersecurity posture and apply the recommended mitigations in this joint CSA, which include: Train users to recognize and report phishing attempts. Enable and enforce phishing-resistant multifactor authentication. Install and regularly update antivirus and antimalware software on all hosts. See Ransomware Attacks on Critical Infrastructure Fund DPRK Espionage Activities for ransomware actor's tactics, techniques, and procedures, indicators of compromise, and recommended mitigations. Additionally, review StopRansomware.gov for more guidance on ransomware protection, detection, and response. For more information on state-sponsored North Korean malicious cyber activity, see CISA's North Korea Cyber Threat Overview and Advisories webpage. ***Comment: In October 2022, the Minneapolis FRB published 'Cybersecurity trends and best practices for community banks' that is worth regular reviewing and adopting the best practices in that update.***

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

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 open through Mar 10, 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. **DATES: Comments should be received on or before April 3, 2023, or 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER, whichever is later.**