



## Community Bankers of Michigan Regulatory Dispatch

*February 1, 2022*

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

### **CSBS BLOG Post - Cyberattacks Tops List of Community Bankers' Concerns**

Using a 4-point Likert scale with 1 as “not at all” concerned and 4 as “extremely” concerned, the weighted-average calculations show that these four responses are all rated 3.25 or higher, indicating a much higher percentage of “moderately concerned” and “extremely concerned” responses. Indeed, 48% of community bankers are “extremely concerned” about cyberattacks. When combining the “moderately concerned” and “extremely concerned” responses, nearly 95% of community bankers rate cyberattacks as their top concern, compared to 82% one year ago.

***Comment: Smaller community banks often lack sufficient cybersecurity resources and are dependent on third-party providers that are held to different security standards. Community banks should be certain data security is addressed in third-party contracts. Additionally, a bank's cybersecurity program should be based on industry-accepted frameworks (such as the [Federal Financial Institutions Examination Council \(FFIEC\) IT Examination Handbook](#), the [National Institute of Standards and Technology \(NIST\) Cybersecurity Framework \(CSF\)](#) and/or the [Center for Internet Security \(CIS\) Top 20 Critical Security Controls \(CSC\)](#)). And cybersecurity policies and procedures should be updated annually (or more frequently) based upon risk assessments and the overall cybersecurity environment.***

### **CBM Insights**

Q: We need a definitive answer on whether an appraisal is needed when we are filing collateral assignments, but we are not going to be the lender on the real estate for a loan. We are taking a Collateral Assignment of the Deeds of Trust. It's a note receivables-type of loan. Our borrower is a builder, and he will be selling the loans.

A: From the perspective of the appraisal rule, you may be able to rely on appraisals obtained by a qualified original lender. See the FAQ below. However, from a credit risk perspective, the only value in the collateral assignment is the underlying value of the real property being assigned. For that reason, you need either an appraisal or an evaluation (based on the amount being lent) to support the extension of credit. If a qualified appraisal was obtained by your bank or another bank, and there has been no

material change, you could rely upon an existing appraisal after your review determined that it remained valid.

Below is from the 2010 Interagency Appraisal and Evaluation Guidelines.

#### *8. Transactions Involving Real Estate Notes*

*This exemption applies to appraisal requirements for transactions involving the purchase, sale, investment in, exchange of, or extension of credit secured by a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities. If each note or real estate interest meets the Agencies' regulatory requirements for appraisals at the time the real estate note was originated, the institution need not obtain a new appraisal to support its interest in the transaction. The institution should employ audit procedures and review a representative sample of appraisals supporting pooled loans or real estate notes to determine that the conditions of the exemption have been satisfied.*

*Principles of safe and sound banking practices require an institution to determine the suitability of purchasing or investing in existing real estate-secured loans and real estate interests. These transactions should have been originated according to secondary market standards and have a history of performance. The information from these sources, together with original documentation, should be sufficient to allow an institution to make appropriate credit decisions regarding these transactions.*

*An institution may presume that the underlying loans in a marketable, mortgage-backed security satisfy the requirements of the Agencies' appraisal regulations whenever an issuer makes a public statement, such as in a prospectus, that the appraisals comply with the Agencies' appraisal regulations. A marketable security is one that may be sold with reasonable promptness at a price that corresponds to its fair value.*

*If the mortgages that secure the mortgage warehouse loan are sold to Fannie Mae or Freddie Mac, the sale itself may be used to demonstrate that the underlying loans complied with the Agencies' appraisal regulations. In such cases, the Agencies expect an institution to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increasing sampling and auditing of the loans and the supporting documentation, if the borrower experiences more than a minimal rate of loans being put back by an investor.*

Source [link](#).

## **Items of Interest**

### **Bank Management**

**FRB [Announces Members of its Community Depository Institutions Advisory Council for 2022](#)** (01.28.2022) - The Federal Reserve Board announced the members of its Community Depository Institutions Advisory Council, or CDIAC, and the president and vice president of the council for 2022.

CDIAC advises the Board on the economy, lending conditions, and other issues of interest to community depository institutions. Members are selected from representatives of commercial banks, thrift institutions, and credit unions serving on local advisory councils at

the 12 Federal Reserve Banks. One member of each of the Reserve Bank councils serves on CDIAC, which meets twice a year with the Federal Reserve Board in Washington, D.C. Further information on the CDIAC can be found [here](#).

David R. Melville III, chief executive officer and president of b1BANK, Baton Rouge, La., will serve as CDIAC president in 2022. Jeane M. Vidoni, president and chief executive officer of Penn Community Bank, Perkasio, Pa., will serve as vice president.

**The other members of CDIAC in 2022 are:**

Melodie Carlson  
Chief Operating Officer  
Sunrise Banks  
St. Paul, MN

Kim DeVore  
President and Chief Executive Officer  
Jonah Bank of Wyoming  
Casper, WY

Dabney T.P. Gilliam, Jr.  
President and Chief Executive Officer  
The Bank of Charlotte County  
Phenix, VA

Tracy Harris  
President and Chief Executive Officer  
National Bank and Trust  
La Grange, TX

Kent A. Liechty  
President and Chief Executive Officer  
First Bank of Berne  
Berne, IN

Faheem A. Masood  
President and Chief Executive Officer  
ESL Federal Credit Union  
Rochester, NY

Margaret Oldner  
Chief Executive Officer  
Stone Bank  
Little Rock, AK

Janet Silveria  
President and Chief Executive Officer  
Community Bank of Santa Maria  
Santa Maria, CA

Chuck Sulerzyski  
President and Chief Executive Officer  
Peoples Bank  
Marietta, OH

Kathryn G. Underwood  
President and Chief Executive Officer  
Ledyard National Bank  
Hanover, NH

***Comment: Congratulations to all the members of the CDIAC. Thank you all for your service to community banks across the country.***

**CFPB [Launches Initiative To Save Americans Billions In Junk Fees](#)** (01.26.2020) -  
WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) launched an initiative to save households billions of dollars a year by reducing exploitative junk fees charged by banks and financial companies. This request is a chance for the public to share input that will help shape the agency’s rulemaking and guidance agenda, as well as its enforcement priorities in the coming months and years.

“Many financial institutions obscure the true price of their services by luring customers with enticing offers and then charging excessive junk fees,” said CFPB Director Rohit Chopra. “By promoting competition and ridding the market of illegal practices, we hope to save American’s billions.”

Companies across the U.S. economy are increasingly charging inflated and back-end fees to households and families. This new “fee economy” distorts our free market system by concealing the true price of products from the competitive process. For example, hotels and concert venues advertise rates, only to add “resort fees” and “service fees” after the fact. And fees purportedly charged to cover individual expenses, like paperwork processing, can often greatly exceed the actual cost of that service.

The CFPB’s research has found several areas where back-end fees might obscure the true cost of a product and undermine a competitive market:

- In 2019, the major credit card companies charged over \$14 billion each year in punitive late fees.
- In 2019, bank revenue from overdraft and non-sufficient funds (NSF) fees surpassed \$15 billion.

The CFPB will strive to strengthen competition in consumer finance by using its authorities to reduce these kinds of junk fees. To craft rules, issue industry guidance, and focus supervision and enforcement resources to achieve this goal, the CFPB is seeking input from

	<p>the public. Public comments provide valuable insights that allow the CFPB to target the most pressing needs and concerns, including uncovering potential illegal practices or fees.</p> <p>The CFPB is interested in hearing about people’s experiences with fees associated with their bank, credit union, prepaid or credit card account, mortgage, loan, or payment transfers, including:</p> <ul style="list-style-type: none"> <li>• Fees for things people believed were covered by the baseline price of a product or service</li> <li>• Unexpected fees for a product or service</li> <li>• Fees that seemed too high for the purported service</li> <li>• Fees where it was unclear why they were charged</li> </ul> <p>The CFPB is also interested in hearing from small business owners, non-profit organizations, legal aid attorneys, academics and researchers, state and local government officials, and financial institutions, including small banks and credit unions. Read today’s Request for Information Regarding Excessive Fees Imposed in Consumer Financial Products and Services.</p> <p><b><i>Comment: Both TILA and TISA (enforced under Regulations Z and DD) mandate simple, clear disclosures of all costs prior to a loan being made or a deposit account being opened. Loan Estimates and Closing Disclosures are required in advance of a mortgage loan. Additionally, the RFI questions seem to be specifically written with a conclusion already in mind – and that is that all bank fees on deposit accounts, remittances, credit cards and mortgage loans are unfair and unreasonable.</i></b></p>
	<p><b>CSBS <a href="#">Community Bankers Expect Declining Profitability Yet Plan to Expand</a> (01.25.2022) -</b> The CSBS fourth quarter 2021 Community Bank Sentiment Index (CBSI) indicates that community bankers are slightly more optimistic than they were in the previous quarter, but expectations on future profitability have fallen to the lowest level recorded since the survey’s inception in 2019.</p> <p>Similar to the previous three 2021 quarterly CBSI surveys, over the next year community bankers continue to expect better business conditions, higher capital spending plans, expanded operations and market presence and greater franchise values. They also continue to be very concerned that the regulatory environment will become more heavy-handed and that the Federal Reserve’s monetary policy decisions could negatively impact their market outlook. Just one of the seven indicators—expectations on future profitability—started the year with some optimism and has ended in pessimism.</p>

**BSA / AML**

	<p><b>FinCEN <a href="#">Issues Proposed Rule for Suspicious Activity Report Sharing Pilot Program to Combat Illicit Finance Risks</a> (01.24.2022) -</b> WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking (NPRM) that proposes and solicits public comment on the establishment of a limited-duration pilot</p>
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program for sharing suspicious activity reports (SARs), in accordance with Section 6212 of the Anti-Money Laundering Act of 2020.

The pilot program would permit a financial institution with a SAR reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks, subject to approval and conditions set by FinCEN. The proposed rule aims to ensure that the sharing of information is limited by the requirements of federal and state law enforcement, takes into account potential concerns of the intelligence community, and is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information.

"This NPRM builds on the experience that FinCEN has gained in administering existing pilot programs and once finalized, will assist financial institutions in further combating illicit finance risks. We expect that the pilot program will provide valuable feedback to FinCEN as longer-term approaches towards SAR sharing with foreign affiliates are considered," said FinCEN Acting Director Himamauli Das. "We urge stakeholders to provide input to assist us in developing a program that will help combat illicit finance risks and promote enterprise-wide risk management, while ensuring adequate safeguards are in place to protect SAR confidentiality."

FinCEN's previously issued guidance on sharing SARs within a corporate organizational structure stated that financial institutions may share SARs with foreign head offices, controlling companies (whether domestic or foreign), and domestic affiliates. If finalized, the proposed rule would establish a limited-duration pilot program to allow SAR sharing with foreign affiliates, which would also provide FinCEN with valuable feedback about the value of such SAR sharing for participating financial institutions and for FinCEN and law enforcement.

The proposed rule seeks public comment on questions related to the establishment of a SAR sharing pilot program, such as expected costs and benefits, technical challenges, the merits of quarterly reporting, and how to protect SAR confidentiality. Answers to these questions will help inform the final rule that FinCEN issues and the annual Congressional briefings that FinCEN is required to provide.

FinCEN strongly encourages all interested parties, including those that may want to participate in the SAR sharing pilot program when it is finalized, to submit written comments.

Comments on the NPRM should be submitted by March 28, 2022.

***Comment: Few community banks have foreign branches, subsidiaries or affiliates limiting the impact of any rule, if adopted.***

## Deposit / Retail Operations

**FRB [Pricing Approach And Credit Transfer Limit for the FedNow<sup>sm</sup> Service](#) (01.27.2022) -**

The Federal Reserve has announced the anticipated pricing approach for its upcoming instant payments offering, the FedNow Service.

“We are providing broad information about our pricing approach well in advance of our 2023 launch to support financial institutions and their service providers as they plan for the implementation of the FedNow Service,” said Ken Montgomery, Federal Reserve Bank of Boston interim president, chief executive officer and FedNow program executive. “Industry input will help us respond to instant payment needs as we continue to frame out our pricing approach and move toward launch.”

The 2023 FedNow Service fee schedule to be published later in 2022 is currently expected to include the following fees and other pricing information:

- A \$25 monthly FedNow Service participation fee for each routing transit number (RTN) that enrolls in the service to receive credit transfers.
- A fee of \$0.045 per transaction to be paid by its sender, including returns.
- A fee of \$0.01 for a request for payment (RFP) message to be paid by the requestor, including both requests for a new payment or funds to be returned. A participating financial institution can send an RFP through the FedNow Service to another participating financial institution to request payment of a bill, invoice or other amount owed by the receiving financial institution’s customer.
- Standard fees will apply for those financial institutions accessing the FedNow Service via FedLine<sup>®</sup> Solutions.

Additionally, the FedNow Service’s initial credit transfer transaction value limit will be a maximum of \$500,000. However, the default limit is set at \$100,000, and financial institutions will be able to adjust it based on their needs. The Federal Reserve will evaluate the credit transfer limit on an ongoing basis.

“Insights from our financial institution customers and FedNow Pilot Program participants continue to help us define pricing and transfer limits that ensure an accessible, competitive service that supports a wide array of use cases and innovation,” said Montgomery.

***Comment: For more information about FedNow and how it will work, check out the [FedNow Service Product Sheet here](#).***

## Human Resources

**OSHA [Statement on the Status of the COVID-19 Vaccination and Testing ETS](#) (01.25.2022) -**

The U.S. Department of Labor’s Occupational Safety and Health Administration is withdrawing the vaccination and testing emergency temporary standard issued on Nov. 5, 2021, to protect unvaccinated employees of large employers with 100 or more employees from workplace exposure to coronavirus. The withdrawal is effective January 26, 2022.

	<p>Although OSHA is withdrawing the vaccination and testing ETS as an enforceable emergency temporary standard, the agency is not withdrawing the ETS as a proposed rule. The agency is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard.</p> <p>OSHA strongly encourages vaccination of workers against the continuing dangers posed by COVID-19 in the workplace.</p> <p><b><i>Comment: "Notwithstanding the withdrawal of the [ETS], OSHA continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace," the agency said in the statement. If you decide to require either vaccination, masking or negative test, remember to comply with the Americans with Disabilities Act and provide appropriate accommodations. In addition, respect religious exemption requests in order to comply with the Equal Employment Opportunity Act.</i></b></p>
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## Lending

	<p><b>CFPB</b> Updates the Rural and Underserved Areas and Counties List and Tool for 2022 (01.28.2022) - The Bureau has updated the Rural and Underserved Areas and Counties lists published on its website to include the lists for areas determined to be “rural or underserved” and counties determined to be “rural” in 2021 for purposes of applying certain regulatory provisions in 2022.</p> <p>The Bureau has also updated the rural or underserved areas website tool with areas determined to be “rural” or “underserved” in 2021 for purposes of applying certain regulatory provisions in 2022.</p> <p>The lists and the tool help creditors determine the rural or underserved status of a property for purposes of applying certain regulatory provisions related to mortgage loans.</p> <p>The lists for use in 2022 can be found <a href="#">here</a>. The rural and underserved areas tool can be found <a href="#">here</a>.</p> <p><b><i>Comment: The final lists help banks determine whether a property is located in a rural or underserved area for purposes of applying certain regulatory provisions related to mortgage loans.</i></b></p>
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## Technology / Security

	No news to report this week.
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## [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**

**01.26.2022** [Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services](#) - The Consumer Financial Protection Bureau (Bureau or CFPB) is seeking comments from the public related to fees that are not subject to competitive processes that ensure fair pricing. The submissions to this request for information will serve to assist the CFPB and policymakers in exercising its enforcement, supervision, regulatory, and other authorities to create fairer, more transparent, and competitive consumer financial markets. **DATES: Comments must be received on or before March 31, 2022.**

**01.25.2022** [Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates](#) - FinCEN is issuing this notice of proposed rulemaking to seek public comment on the proposed establishment of a limited-duration pilot program, subject to conditions set by FinCEN, to permit a financial institution with a suspicious activity report (SAR) reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risk, in accordance with Section 6212(a) of the Anti-Money Laundering Act of 2020 (AML Act). **DATES: Written comments on this proposed rule must be received on or before March 28, 2022.**

**12.08.2021** [Beneficial Ownership Information Reporting Requirements](#) - FinCEN is promulgating proposed regulations to require certain entities to file reports with FinCEN that identify two categories of individuals: The beneficial owners of the entity; and individuals who have filed an application with specified governmental authorities to form the entity or register it to do business. The proposed regulations would implement Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), and describe who must file a report, what information must be provided, and when a report is due. Requiring entities to submit beneficial ownership and company applicant information to FinCEN is intended to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity. Once finalized, these proposed regulations will affect a large number of entities doing business in the United States. This document also invites comments from the public regarding all aspects of the proposed regulations as well as comments in response to specific questions. **DATES: Written comments on this proposed rule may be submitted on or before February 7, 2022.**