



# Community Bankers of Michigan Regulatory Dispatch

February 1, 2023

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

## **CBM Insights**

Q. We have a loan in the amount of \$1,200,000 secured by six single family residences. Is an evaluation or appraisal required on each property?

A. The final rule, issued in April 2018, that increased the appraisal threshold on commercial real estate transactions from \$250,000 to \$500,000 also clarified that a loan not secured by a SINGLE 1-to-4 residential property meets the definition of a commercial real estate transaction and the \$500,000 appraisal threshold would apply in those situations.

Remember that when multiple properties secure a single transaction, it is the estimated value of each property that determines if an evaluation or appraisal is required and not the value of the transaction itself. If multiple properties secure a loan, that threshold is \$500,000 for each property.

*SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are adopting a final rule to amend the agencies' regulations requiring appraisals of real estate for certain transactions. The final rule increases the threshold level at or below which appraisals are not required for commercial real estate transactions from \$250,000 to \$500,000. The final rule defines commercial real estate transaction as a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property. It excludes all transactions secured by a single 1-to-4 family residential property, and thus construction loans secured by a single 1- to-4 family residential property are excluded. For commercial real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.*

Source [link](#).

## **Items of Interest**

### **Bank Management**

**FRB [Issues Policy Statement to Promote a Level Playing Field For All Banks With a Federal Supervisor, Regardless of Deposit Insurance Status](#) (01/27/2023)** - The Federal Reserve Board issued a policy statement to promote a level playing field for all banks with a federal supervisor, regardless of deposit insurance status. The statement makes clear that uninsured and insured banks supervised by the Board

will be subject to the same limitations on activities, including novel banking activities, such as crypto-asset-related activities.

The statement also makes clear that uninsured and insured banks supervised by the Board would be subject to the limitations on certain activities imposed on national banks, which are overseen by the Office of the Comptroller of the Currency. The equal treatment will promote a level playing field and limit regulatory arbitrage.

In addition, the statement reiterates that banks must both ensure that the activities they engage in are allowed under the law, and conduct their business in a safe and sound manner. For instance, a bank should have in place risk management processes, internal controls, and information systems that are appropriate and adequate for the nature, scope, and risks of its activities.

In recent years, the Board has received a number of inquiries, notifications, and proposals from banks regarding potential engagement in novel and unprecedented activities, including those involving crypto-assets. In response, the Board's statement specifies how it will evaluate such inquiries, consistent with longstanding practice. Today's action would not prohibit a state member bank, or prospective applicant, from providing safekeeping services, in a custodial capacity, for crypto-assets if conducted in a safe and sound manner and in compliance with consumer, anti-money laundering, and anti-terrorist financing laws.

***Comment: The FRB is telegraphing their supervisory intentions with this one statement – ‘For instance, a bank should have in place risk management processes, internal controls, and information systems that are appropriate and adequate for the nature, scope, and risks of its activities.’***

**CSBS [Recession? Economists Versus Community Bankers](#) (01/24/2022)** - Don't ask an economist if you want a timely prognosis on whether the nation's economy is in a recession. Ask a community banker instead.

Four years ago, CSBS launched its Community Bank Sentiment Index (CBSI), which is now available on the federal Reserve Economic Data, known as the FRED. The CBSI consists of seven components designed to capture the economic and business outlook from the perspective of community bankers nationwide. While the overall index has moved generally in tandem with economic activity, the most recent quarterly survey included a special question for respondents to opine on the business cycle. As reported in my previous blog: "Alarming, 96% of community bankers ... believe the U.S. economy is in a recession."

Now, if you ask an economist if the U.S. economy is in a recession, you will likely hear, "Well, it depends." And then you will get an "on the one hand" story quickly followed by an "on the other hand" claim. Why is that? And what information are community bankers considering that economists might not?

Generally speaking, an economist makes data-driven decisions based mainly on statistics and figures that are backward-looking and subject to revision. By contrast, a community banker's conclusions are based primarily on real-time information about the economy and the economic outlook of consumers and businesses in their local communities.

So, how these two professions currently assessing the strength of the U.S. economy?

***Comment: While the sentiment might be gloomy, the actual indicators remain mixed. Unemployment levels are almost the lowest they've been in 20 years, and consumer spending has yet to decline in a meaningful way. In fact, retail sales increased substantially during the last two months of 2022***

	<p><i>compared to the same time the previous year. And while part of that was due to inflation, the fact of the matter is that consumers clearly still have money to spend.</i></p>
	<p><b>OCC <a href="#">Solicits Research on Emerging Risks in the Banking System</a></b> (01/23/2023) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) is soliciting academic research papers on emerging risks in the banking system or related policy and supervisory issues for submission by March 3, 2023.</p> <p>The OCC will invite authors of selected papers to present to OCC staff and invited academic and government researchers at OCC Headquarters in Washington, D.C., on June 12-14, 2023. Authors of selected papers will be notified by April 14, 2023 and will have the option of presenting their papers virtually.</p> <p>Interested parties are invited to submit papers to <a href="mailto:EconomicsSymposium@occ.treas.gov">EconomicsSymposium@occ.treas.gov</a>. Submitted papers must represent original and unpublished research. Those interested in acting as a discussant may express their interest in doing so in their submission email.</p> <p>Additional information about submitting a paper or research, and participating in the June meeting as a discussant, is available below and on the OCC’s website.</p> <p>Related Link  <a href="#">Call for Papers</a> (PDF)</p>
	<p><b>OCC <a href="#">Branches and Relocations: Revised Comptroller’s Licensing Manual</a></b> Booklet (01/19/2023) - The Office of the Comptroller of the Currency (OCC) issued the “Branches and Relocations” booklet of the Comptroller’s Licensing Manual. The revised booklet replaces the booklet of the same title issued October 2019, reflects recent changes to 12 CFR 5, makes corrections where necessary, and contains updated guidance.</p> <p><b>Note for Community Banks</b>  This booklet applies to all national banks, federal savings associations, and federal branches and agencies of foreign banking organizations.</p> <p>Highlights  The revised licensing booklet</p> <ul style="list-style-type: none"> <li>• reflects recent updates to 12 CFR 5 and other regulations, as applicable.</li> <li>• removes references to outdated guidance and provide current references.</li> <li>• makes other minor modifications and corrections throughout.</li> </ul> <p>Related Links  <a href="#">Branches and Relocations</a></p>

**BSA / AML**

	<p><b>FinCEN <a href="#">Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies</a></b> (01/25/2023) - The Financial Crimes Enforcement Network (FinCEN) is issuing an alert to financial institutions on potential investments in the U.S. commercial real estate sector by sanctioned Russian elites, oligarchs, their family members, and the entities through which they act. The alert lists potential red flags and typologies involving attempted sanctions evasion in the</p>
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commercial real estate sector, and reminds financial institutions of their Bank Secrecy Act (BSA) reporting obligations. The new alert complements ongoing U.S. government efforts to isolate sanctioned Russian elites, oligarchs, and their proxies from the international financial system, and is part of a broader effort by the U.S. Department of the Treasury to increase transparency in the U.S. real estate market to prevent corrupt elites and other illicit actors from hiding their ill-gotten wealth.

“Thanks to international pressure and the economic restrictions that more than 30 countries have imposed on Russia for its brutal war against Ukraine, sanctioned Russian elites are increasingly left with fewer options for moving and hiding their ill-gotten wealth,” said FinCEN Acting Director Himamauli Das. “FinCEN is committed to exposing the channels that Russian elites, oligarchs, and their proxies may use to move or hide funds. Today we are identifying red flags and typologies in commercial real estate transactions that financial institutions can use to remain vigilant in monitoring, detecting, and reporting suspicious activity that may be indicative of sanctions evasion by sanctioned Russia elites, oligarchs and their proxies.”

FinCEN assesses that sanctioned Russian elites and their proxies are likely attempting to evade sanctions by exploiting vulnerabilities in the U.S. commercial real estate market. Commercial real estate transactions routinely involve highly complex financing methods and opaque ownership structures that diminish transparency in a way that can allow bad actors to hide illicit funds in commercial real estate investments. Additionally, the relative stability of the U.S. commercial real estate market and the high value of commercial real estate properties can provide illicit actors with a way to generate a steady income and store large amounts of wealth.

This alert, which builds on FinCEN’s March 2022 alert identifying real estate, luxury goods, and other high value assets involving sanctions Russian and elites, is the fourth alert issued by FinCEN on potential Russian illicit financial activity since Russia’s invasion of Ukraine in February 2022.

Financial institutions with questions about the content of today’s alert should contact the FinCEN Regulatory Support Section at [frc@fincen.gov](mailto:frc@fincen.gov).

***Comment: The report used as the basis for the alert notes that several Russian oligarchs sent large wire transfers to their children, and points out that these wires frequently went to children studying in the United States.***

## Deposit / Retail Operations

No news to report this week.

## Human Resources

No news to report this week.

## Lending

**CFPB [Seeks Public Input on Consumer Credit Card Market](#) (01/24/2023)** - The Consumer Financial Protection Bureau (CFPB) issued a request for information seeking public feedback on how the consumer credit market is functioning as part of a biennial review of the industry. The CFPB is seeking more and current information on various aspects of the consumer experience with credit cards. Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) to establish fair and transparent practices related to the extension of credit in the credit card market. The

CARD Act mandates the CFPB to conduct a review of the credit card industry every two years and report to Congress.

“The CFPB undertakes a biennial review of the consumer credit card market to ensure guidelines and guardrails to protect consumers are working as intended,” said CFPB Director Rohit Chopra. “This request for information is a meaningful data point that will inform our decision-making on any potential changes, and the CFPB invites consumers, credit card issuers, industry analysts, consumer groups, and the general public to submit information and comments relevant to the topic.”

The CARD Act directs the CFPB to undertake a comprehensive review of the entire industry to help determine whether regulatory adjustments are needed. This review includes seeking public feedback as well as issuing market-monitoring orders to major credit card issuers to collect information on their business practices. The CFPB publishes a report to Congress of its biennial review of the credit card market, and will publish its sixth report later in 2023.

The CFPB is interested in hearing about people’s overall experiences with credit card products. In particular, the request is seeking information on:

- Terms of credit card agreements and the practices of credit card issuers
- Effectiveness of disclosure of terms, fees, and other expenses of credit card plans
- Adequacy of protections against unfair or deceptive acts or practices relating to credit card plans
- Cost and availability of consumer credit cards
- Safety and soundness of credit card issuers
- Use of risk-based pricing for consumer credit cards
- Consumer credit card product innovation

This list of topics should not be viewed as exhaustive. The request for information will be published in the Federal Register, and the public will have until April 24, 2023 to submit their comments.

The CFPB has also issued market-monitoring orders to a diverse group of major and specialized credit card issuers. The orders seek information that no other data-gathering mechanisms currently address, such as the practices of major credit card issuers relating to, among other topics, applications and approvals, debt collection, and digital account servicing.

For more information, read the [Request for Information Regarding Consumer Credit Card Market](#).

## 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

#### 12.16.2022 FinCEN [Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities](#)

FinCEN is promulgating proposed regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National

Defense Authorization Act for Fiscal Year 2021 (NDAA). The proposed regulations would implement the strict protocols on security and confidentiality required by the CTA to protect sensitive personally identifiable information (PII) reported to FinCEN. The NPRM explains the circumstances in which specified recipients would have access to BOI and outlines data protection protocols and oversight mechanisms applicable to each recipient category. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security. FinCEN is also proposing regulations to specify when and how reporting companies can use FinCEN identifiers to report the BOI of entities. **DATES: Written comments on this proposed rule may be submitted on or before February 14, 2023.**

**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.**