



## Community Bankers of Michigan Regulatory Dispatch

February 23, 2023

*Timely news and resources community bankers can use*

*to better stay on top of a rapidly changing world.*

### **Governor Bowman Addresses Inaugural Midwest Cyber Workshop Hosted by the Federal Reserve Banks of Chicago.**

*Cyberattacks threaten businesses and consumers everywhere—none of us is beyond the reach of those that initiate these attacks. Community banks have been the target of cyber and ransomware attacks, and they frequently name cybersecurity as one of the top risks facing the banking industry. In my conversations with bankers, some note the difficulty in attracting and retaining the staff needed to mitigate cyber risks. While there are no easy solutions in the defense against cyberattacks, close coordination among all of the groups represented at this conference is a good first step.*

*As I consider the Federal Reserve's role in supervising cybersecurity, it is important to identify where our engagement can be most effective to enhance the security of our regulated entities. Our efforts must be focused on both banks and their third-party service providers.*

*In my remarks today, I will briefly discuss four topics. First are the implications of evolving technologies and their impacts on the cyber risk landscape. Second, I will discuss how customer demand for innovation and personalized products has increased reliance on third parties. Third, I will cover the recently effective computer security notification rule, and how that rule can benefit regulators through notification of cyber incidents and banks in monitoring their third-party service providers. And finally, I will briefly address some of the Federal Reserve's recent actions related to cyber risk.*

***Comment: Last December, both Vice Chair for Supervision Michael Barr and Fed Gov. Michelle Bowman voiced concerns about the growing volume of financial activity taking place outside the traditional banking system.***

### **CBM Insights**

Q. Is the HMDA purpose for the permanent financing of a construction only loan that originated at another institution reported as a purchase or a refinance?

A. The commentary to §1003.2(j)(iii) provides that separate permanent financing that replaces a construction only loan is reported as a ‘Purchase.’

3. *Construction and permanent financing. A home purchase loan includes both a combined construction/permanent loan or line of credit, and the separate permanent financing that replaces a construction-only loan or line of credit for the same borrower at a later time. A home purchase loan does not include a construction-only loan or line of credit that is designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time or that is extended to a person exclusively to construct a dwelling for sale, which are excluded from Regulation C as temporary financing under § 1003.3(c)(3).*

Source [link](#).

That logic would hold true regardless of which financial institution provides the permanent financing.

## **Items of Interest**

### **Bank Management**

	<p><b>OCC</b> <a href="#">Change in Bank Control: Revised Comptroller's Licensing Manual Booklet</a> (02/16/2023) - The Office of the Comptroller of the Currency (OCC) issued the “Change In Bank Control” booklet of the Comptroller’s Licensing Manual. The revised booklet replaces the booklet of the same title issued September 2017, 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>• removes references to outdated guidance and provides current references.</li><li>• makes other minor modifications and corrections throughout.</li></ul> <p><b>Comment: This is a routine technical update.</b></p>
	<p><b>FRB</b> <a href="#">Industrial Production and Capacity Utilization - G.17</a> (02/15/2023) - Industrial production was unchanged in January after falling 0.6 percent and 1.0 percent in November and December, respectively. In January, manufacturing output moved up 1.0 percent and mining output rose 2.0 percent following two months with substantial decreases for each sector. The output of utilities fell 9.9 percent in January, as a swing from unseasonably cool weather in December to unseasonably warm weather in January depressed the demand for heating. At 103.0 percent of its 2017 average, total industrial production in January was 0.8 percent above its year-earlier level. Capacity utilization declined 0.1 percentage point in January to 78.3 percent, a rate that is 1.3 percentage points below its long-run (1972–2022) average.</p> <p><b>Comment: Industrial production refers to the output of industrial establishments and covers sectors such as mining, manufacturing, electricity, gas and steam and air-conditioning. This indicator is measured in an index based on a reference period that expresses change in the volume of production output.</b></p>

**FRB [Lael Brainard submits resignation as Vice Chair and a member of the Federal Reserve Board, effective on or around February 20, 2023](#)** (02/14/2023) - Lael Brainard submitted her resignation February 14, 2023 as Vice Chair and a member of the Federal Reserve Board, effective on or around February 20, 2023. She has been a member of the Board since June 16, 2014, and Vice Chair of the Board since May 23, 2022.

"Lael has brought formidable talent and superb results to everything she has done at the Federal Reserve," Chair Jerome H. Powell said. "That lengthy list includes her thought leadership on monetary policy and economic research, her stewardship of financial stability and the payments system, strengthening the financial system both domestically and globally, and helping to manage the immense operational agency challenges during the pandemic. My colleagues and I will truly miss her."

Dr. Brainard was nominated to the Board by President Obama and then re-nominated as Vice Chair by President Biden. During her time at the Board, she chaired multiple committees, including the Committee on Financial Stability, the Committee on Economic and Monetary Affairs, the Committee on Payments, Clearing, and Settlement, and the Committee on Board Affairs, among others. She also served as chair of the Federal Open Market Committee's communication subcommittee.

Dr. Brainard played a vital role during the response to the pandemic and has provided wise counsel on monetary policy, as well as contributing to the creation of the Fed Listens initiative. The Board published its first financial stability report under her leadership. She has led the interagency process to strengthen the Community Reinvestment Act, as well as the Board's work to establish the FedNow real-time payments network.

***Comment: Let's hope Governor Mickey Bowman – a strong advocate for community banking - somehow ends up as Vice Chair.***

**FRB [Speech by Governor Bowman on Independence, Predictability, and Tailoring in Banking Supervision and Regulation](#)** (02/13/2023) *It is a pleasure to be with you and to have the opportunity to share some of my views on banking regulation and supervision. Of course, as you know, the Federal Open Market Committee (FOMC) recently held its first meeting of the year. So, before getting into the substance of my remarks, I'll provide some brief thoughts on the economic outlook and monetary policy.*

#### *Tailoring*

*Finally, I would like to emphasize the role of tailoring in regulation and supervision. Tailoring was a core feature of the response to the 2008 financial crisis and since then has been the subject of a concerted effort to refine and improve the regulatory and supervisory framework based on experience since the framework was implemented.<sup>5</sup> Tailoring has proven to be an effective and efficient way to regulate and supervise banks of all sizes.*

*Of course, all of you here today are very familiar with risk-based supervision, which is itself a form of tailoring, focusing supervisory attention on areas that pose the greatest risks. But tailoring also helps us adopt meaningful differences in regulatory requirements and supervisory expectations, depending on the size and complexity of the regulated institution, from the largest G-SIBs to the smallest community banks. This tailored approach manifests itself across the spectrum from the stringency of capital requirements, the regulatory reporting obligations, and the frequency of examination, among many others.*

*Time has demonstrated the virtues of this tailored approach. The U.S. banking system entered the early days of the COVID-19 pandemic with high levels of capital and liquidity, and banks of all sizes supported the economy during the darkest days of the pandemic and have continued to support the economy ever since. This tailored approach should continue to feature prominently in upcoming proposed revisions to the capital framework. While I expect the Board will propose new capital requirements for the largest institutions, including the Basel III "endgame" reforms, I do not expect every tier of firms to be subject to*

*the same changes. And my understanding is that there are no plans to propose changes to the community bank capital framework as part of this capital review.*

*This tailored approach is sensible not only by matching regulation to risk, but it is embedded in the statutory framework. For example, the bipartisan Economic Growth, Regulatory Relief and Consumer Protection Act included several elements designed to tailor regulatory requirements. For the largest firms, this law instructs the Board to tailor its "enhanced prudential standards" framework—the strictest standards—to firms based on the risks they pose. This statute also reduced the burden on smaller institutions, including through the community bank leverage ratio, the creation of short-form call reports for smaller community banks and a longer examination cycle for small, well-capitalized banks. In my view, the current community bank capital requirements, including the community bank leverage ratio, are functioning well.*

*In practice, tailoring requires a framework that both distinguishes firms by size, risk, and complexity, and imposes appropriate regulatory requirements in light of these differences. The largest institutions are classified by a number of factors including size, cross-jurisdictional activity, reliance on short-term wholesale funding, off-balance sheet exposures, and nonbank assets. These factors, and the G-SIB scoring methodology more broadly, help contrast the largest firms that pose the greatest risks with the smaller and less systemic firms. This translates into a regulatory regime where the G-SIBs are subject to the most stringent standards, incorporating enhancements like a GSIB-specific risk-based capital surcharge and the enhanced supplementary leverage ratio. Even the smallest banks are subject to size and risk considerations in their supervisory expectations, like a longer examination cycle, and straight forward capital and liquidity requirements and expectations.*

*This very intentional approach accomplishes utility and efficiency, for both regulators and the regulated institutions, that would be otherwise impossible. Tailoring our regulatory approach enables us to strike an appropriate balance for each relevant bank tier, with requirements that address risks, including financial stability risks, while recognizing the costs of over-regulation.*

**FRB [Thoughts on the Crypto Ecosystem Governor Christopher J. Waller](#) (02/10/2023) - Thanks to the conference organizers for inviting me to participate. It is great to be back at a Global Interdependence Center conference. Given recent events in crypto, it is certainly timely to have a day of discussions related to digital assets.<sup>1</sup>**

*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.*

## **BSA / AML**

**CSBS BLOG [State Bank Regulators Need Access to Beneficial Ownership Information](#) (02/14/2023) - FinCEN should be more explicit in its inclusion of state regulators as agencies that can request access to its**

forthcoming beneficial ownership information database, the Conference of State Bank Supervisors (CSBS) said in a comment letter submitted February 14.

The Corporate Transparency Act requires a wide range of entities to report their beneficial ownership information to FinCEN. It also tasks FinCEN with developing a beneficial ownership information database that other law enforcement and regulatory agencies, including state regulators, can access for compliance, investigative and enforcement purposes. This new system would help improve and enforce anti-money laundering and countering the financing of terrorism (AML/CFT) standards. It would also help prevent the use of privacy to hide illicit activity from law enforcement and government authorities.

State regulators strongly support these improvements to the AML/CFT framework. However, CSBS asks that FinCEN's final rule explicitly define state regulators so that there is no confusion about their ability to access BOI when examining state-chartered banks and non-depository trust companies for compliance with customer due diligence requirements under the Bank Secrecy Act (BSA). State regulators play a critical role in BSA supervision, conducting more than 1,200 BSA exams in 2021 alone.

CSBS also described how state regulators would be authorized to request beneficial ownership information on an as needed basis to aid their investigative and enforcement responsibilities for both state-chartered banks and state-licensed nonbank financial services providers.

***Comment: We agree. The Beneficial Ownership Information NPRM has received a tidal wave of criticism with some going so far as to suggest that FinCEN should scrap the proposed rule and start from scratch. FinCEN wants to finalize this part before issuing any revision to the Customer Due Diligence rule that would, hopefully, provide community banks with relief from having to collect beneficial ownership information.***

## Deposit / Retail Operations

**[FDIC Demands Four Entities Cease Making False or Misleading Representations about Deposit Insurance](#)** (02/15/2023) - WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) issued letters demanding two entities, CEX.IO Corp. (a cryptocurrency exchange) and Zera Financial (a non-bank financial service provider) cease and desist from making false and misleading statements about FDIC deposit insurance and take immediate corrective action to address these false or misleading statements. Additionally, the FDIC directed two websites, Captainaltcoin.com and Banklesstimes.com, to remove similar false and misleading statements about the FDIC-insured status of CEX.IO.

Based upon evidence collected by the FDIC, these entities made false representations, stating or suggesting that CEX.IO and Zera Financial are FDIC-insured, that FDIC insurance will protect customers' cryptocurrency, or that that FDIC-insurance would protect customers in the event of Zera Financial's failure. These representations are false and misleading.

FDIC Chairman Martin J. Gruenberg commented on an observed increase in these kinds of misrepresentations and their impacts on consumers. "These practices not only harm those who are targeted with the false promise of deposit insurance, but, if left unchecked, could also undermine confidence in the FDIC, FDIC-insured banks, and the U.S. banking system."

The Federal Deposit Insurance Act (FDI Act) prohibits any person from representing or implying that an uninsured product is FDIC-insured or from knowingly misrepresenting the extent and manner of deposit insurance. The FDI Act further prohibits companies from implying that their products are FDIC-insured by using "FDIC" in the company's name, advertisements, or other documents. The FDIC is authorized by the FDI Act to enforce this prohibition against any person.

FDIC deposit insurance protects customers in the unlikely event of the failure of an FDIC-insured bank. To determine if an institution is FDIC-insured, you can ask a representative of the institution, look for the FDIC sign at the institution, or use the FDIC's [BankFind](#) tool. For general information about FDIC deposit insurance, read the following [frequently asked questions](#). For more information about FDIC insurance and crypto companies, read the following [fact sheet](#).

***Comment: Remember, the FDIC extended the comment period for comments on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions until April 7, 2023.***

## Human Resources

No news to report this week.

## Lending

No news to report this week.

## Technology / Security

CISA [Apple Releases Security Updates for Multiple Products](#) (02/14/2023) - Apple has released security updates to address vulnerabilities in multiple products. An attacker could exploit these vulnerabilities to take control of an affected device.

CISA encourages users and administrators to review the Apple security updates page for the following products and apply the necessary updates as soon as possible:

- Safari 16.3.1
- iOS 16.3.1 and iPadOS 16.3.1
- macOS 13.2.1

***Comment: Ensure your IT department is familiar with these updates.***

CISA [Microsoft Releases February 2023 Security Updates](#) (02/14/2023) - Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker can exploit some of these vulnerabilities to take control of an affected system.

CISA encourages users and administrators to review Microsoft's February 2023 Security Update Guide and Deployment Information and apply the necessary updates.

***Comment: Ensure your IT department is familiar with these updates.***

## 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

**12.21.2022** [FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Log](#) The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. **DATES: Originally set for February 21, the comment deadline is extended to April 7, 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.**

**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.**