Community Bankers of Michigan Regulatory Dispatch

January 18, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS Community Bankers' Economic Outlook Inches Up Amid Ongoing Concerns

Washington, D.C. – Community bankers are slightly more optimistic about future business conditions and the economic outlook than they were at the end of last year but are more concerned about future profitability than at any point since the pandemic began, according to the most recent Community Bank Sentiment Index (CBSI).

The Conference of State Bank Supervisors (CSBS) released the fourth quarter 2021 CBSI results today, collecting data from community banks across the nation during the month of December. The results showed a positive sentiment index of 101 points, inching up only one point from the last quarter.

"There are likely several possible explanations for community bankers' concerns about future profitability," said CSBS Senior Economist Tom Siems. "They may be concerned that Paycheck Protection Program loans will not provide recurring income or excess liquidity means significantly curtailed loan demand. The score may also reflect concerns of higher inflation expectations or heavier regulatory burdens."

The CBSI captures on a quarterly basis what community bankers nationwide think about the future. Participant answers are analyzed and compiled into a single number; an index reading of 100 indicates a neutral sentiment. Anything above 100 indicates a positive sentiment, and anything below 100 indicates a negative sentiment.

Key findings from the fourth quarter 2021 results include:

- The CBSI improved to 101, just one point higher than the level of 100 recorded in the third quarter of 2021. The current value is three points higher than Q4 2020.

- Expectations for higher capital expenditures increased the most, rising 13 points from 134 in Q3 2021 to 147 in Q4 2021.

- At 51, the profitability component is lower than its previous record low of 55 in Q2 2020, falling 15 points this quarter, which follows a drop of 41 points from Q2 2021 to Q3 2021.

- The regulatory burden component (22 points) remains the greatest concern among community bankers, remaining in the low 20s throughout 2021, and down 19 points when compared to a year prior.

For more on the CBSI, visit https://www.csbs.org/cbindex.

CBM Insights

Q: Our ID theft red flag program only covers accounts for 'personal family or household use.' Should business accounts be included as well?

A: It is not so simple as to say any account not used exclusively 'personal family or household use' is exempt from the identity theft red flag programs. In fact, the agencies specifically point out that "…accounts of small businesses or sole proprietorships may be particularly vulnerable to identity theft."

Below is from Frequently Asked Questions: Identity Theft Red Flags and Address Discrepancies. Notice the underlined passages added here for emphasis.

1. What is a "covered account?"

The term "account" is defined in the Red Flags Rules as "a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household, or business purposes." The definition of "covered account" is divided into two parts. The first part refers to "an account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions." An account that meets this part of the definition is always a covered account.

The second part of the definition refers to "any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks." Therefore, an account that does not meet the first part of the definition may still be a "covered account" if it poses a reasonably foreseeable risk to consumers or to the financial institution or creditor from identity theft. Due to the risk-based nature of this part of the definition, each financial institution or creditor must determine which of its accounts, if any, meet this definition and, therefore, must be covered by its Identity Theft Prevention Program. This determination should be based upon a risk evaluation that includes consideration of the methods the institution or creditor provides to open its accounts, the methods it provides to access such accounts, and its previous experience with identity theft.

2. Under what circumstances are business accounts "covered accounts?"

Business accounts are "accounts" if they establish a continuing relationship between a person and a financial institution or creditor to obtain a product or service for business purposes. The FCRA definition of person, 15 U.S.C. § 1681a(b), is not limited to individuals. However, business accounts are not covered by the first part of the definition of "covered account" (set out above under II.B.1) because they are not primarily for personal, family, or household purposes.

Instead, each financial institution or creditor must determine which of its business accounts, if any, present a reasonably foreseeable risk of identity theft under the second part of the definition of a "covered account." For example, the accounts of small businesses or sole proprietorships may be particularly vulnerable to identity theft.

Source link.

Comment: These CSBS podcasts are an excellent resource for getting the pulse – and concerns of community bankers across the country.

Items of Interest

Bank Management

	FRB Industrial Production and Capacity Utilization - G.17 (01.14.2022) - Release Date: January 14, 2022 Revision of Industrial Production and Capacity Utilization Notice Below Industrial production declined 0.1 percent in December. Losses of 0.3 percent for manufacturing and 1.5 percent for utilities were mostly offset by a gain of 2.0 percent for mining. For the fourth quarter as a whole, total industrial production rose at an annual rate of 4.0 percent. At 101.9 percent of its 2017 average, total industrial production in December was 3.7 percent higher than it was at the end of 2020 and 0.6 percent above its pre-pandemic (February 2020) reading. Capacity utilization for the industrial sector edged down 0.1 percentage point in December to 76.5 percent, a rate that is 3.1 percentage points below its long-run (1972–2020) average.
	FRB Nomination Hearing - Governor Lael Brainard (01.13.2022) - *Chairman Brown, Ranking Member Toomey, and other members of the Committee, thank you for this opportunity to appear before you. I am greatly honored to be nominated by President Biden to serve as Vice Chair of the Board of Governors of the Federal Reserve System. If confirmed to this position, I look forward to continuing to work with members of this Committee.* *We are seeing the strongest rebound in growth and decline in unemployment of any recovery in the past five decades. Over the past year, unemployment has fallen by 2.8 percentage points, and growth is estimated to be around 5 1/2 percent, according to a variety of private forecasts.*

	But inflation is too high, and working people around the country are concerned about how far their paychecks will go. Our monetary policy is focused on getting inflation back down to 2 percent while sustaining a recovery that includes everyone. This is our most important task. *When the pandemic struck in 2020, I worked closely alongside Chair Powell and Secretary Mnuchin and many others, with the support of Congress, to calm financial market turmoil and save American jobs and businesses. When markets stabilized, I worked to responsibly wind down the emergency facilities we established. Today the economy is making welcome progress, but the pandemic continues to pose challenges. Our priority is to protect the gains we have made and support a full recovery.* ***Comment: Brainard may have tough sledding with the Democrats on the committee. In the past, she has championed liberal issues including climate change risk assessment.***
	OCC Acting Comptroller Discusses Crypto-Assets and Regulation (01.13.2022) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu today discussed the regulation of stablecoins and other crypto-assets before the British American Business Transatlantic Finance Forum 2021-2022 Executive Roundtable. Related Links Remarks (PDF) ***Comment: Based on these and other regulators' speeches, it seems very likely that the United States will see some regulatory regime imposed on crypto-assets.***
	CSBS State Regulators Withdraw OCC Litigation After Applicant Amends Bank Charter Application (01.13.2022) - Washington, D.C. – The Conference of State Bank Supervisors today withdrew its complaint from the U.S. District Court for the District of Columbia challenging the Office of the Comptroller of the Currency's (OCC) nonbank charter program and Figure Technologies' application for an OCC nonbank charter. CSBS took this voluntary action after Figure amended its application to include seeking FDIC deposit insurance, thus complying with the legal requirement that national banks obtain federal deposit insurance before operating as a bank. "The federal banking laws are clear. Financial service companies, like Figure, that send and receive customers' money or lend money, must obtain FDIC insurance in order to operate under a federal bank charter," said Margaret Liu, CSBS executive vice president. "State regulators are prepared to revisit this issue should the OCC take any future action to entertain a bank charter application from a company that will not be FDIC-insured." CSBS's complaint asserted that by creating a national bank charter for nonbank companies, the OCC exceeded the limited authority granted to it by Congress under the National Bank Act and other federal banking laws. Those laws authorize the OCC to only charter institutions that lawfully engage in the "business of banking," which under federal law requires an institution, at minimum, to receive deposits and become FDIC-insured.

Key points

- Many fintechs that do not take deposits operate as nonbank financial service companies licensed at the state level.
- States charter 79% of banks and are the primary supervisor of non-depository financial services, including mortgage, money transmission, consumer finance and debt industries.
- The National Bank Act and other federal banking laws authorize the OCC to charter only institutions that lawfully engage in the "business of banking," which requires an institution to receive deposits and obtain FDIC insurance.
- Congress has not granted the OCC authority to charter uninsured national banks.

Background

2020 court complaint and CSBS Statement
Previous CSBS court complaint and CSBS Statement

FRB Beige Book (01.12.2022) - This report was prepared at the Federal Reserve Bank of Kansas City based on information collected on or before January 3, 2022. This document summarizes comments received from contacts outside the Federal Reserve System and is not a commentary on the views of Federal Reserve officials.

- Federal Reserve Bank of Boston
- Federal Reserve Bank of New York
- Federal Reserve Bank of Philadelphia
- Federal Reserve Bank of Cleveland
- Federal Reserve Bank of Richmond
- Federal Reserve Bank of Atlanta
- Federal Reserve Bank of Chicago
- Federal Reserve Bank of St. Louis
- Federal Reserve Bank of Minneapolis
- Federal Reserve Bank of Kansas City
- Federal Reserve Bank of Dallas
- Federal Reserve Bank of San Francisco

Overall Economic Activity
Economic activity across the United States expanded at a modest pace in the final weeks of 2021. Contacts from many Districts indicated growth continued to be constrained by ongoing supply chain disruptions and labor shortages. Despite the modest pace of growth, demand for materials and inputs, and demand for workers, remained elevated among businesses. Lending activity picked up slightly toward the end of the year, led by commercial real estate borrowers. Consumer spending continued to grow at a steady pace ahead of the rapid spread of the Omicron COVID-19 variant. Most Districts noted a sudden pull back in leisure travel, hotel occupancy and patronage at restaurants as the number of new cases rose in recent weeks. Although optimism remained high generally, several

	Districts cited reports from businesses that expectations for growth over the next several months cooled somewhat during the last few weeks. The manufacturing sector continued to expand nationally, with some regional differences in the pace of growth. Overall activity in the transportation sector expanded at a moderate pace. While farm incomes were elevated throughout 2021, agricultural conditions were marred by drought conditions across several Districts. **Employment and Wages** Employment grew modestly in recent weeks, but contacts from most Districts reported that demand for additional workers remains strong. Job openings were up but overall payroll growth was constrained by persistent labor shortages. Tightness in labor markets drove robust wage growth nationwide, with some Districts highlighting additional growth in labor costs associated with non-wage benefits. While many contacts noted that wage gains among low-skill workers were particularly strong, compensation growth remained well above historical averages across industries, across worker demographics, and across geographies. Besides wage gains, many contacts indicated adjustments to job demands – such as accommodating part-time work or adjusting qualification requirements – to attract more applicants and retain existing workforces. **Prices** Contacts from most Federal Reserve Districts reported solid growth in prices charged to customers, but some also noted that price increases had decelerated a bit from the robust pace experienced in recent months. Wholesale and materials prices contributed to pricing pressures across a wide range of industries, spanning service providers and goods producers. Many contacts attributed the high cost of inputs to ongoing supply chain disruptions. Some Districts reported that transportation bottlenecks had stabilized in recent weeks, though procurement costs remained elevated. Ongoing labor shortages and associated wage growth also added cost pressures to businesses.
	FRB Nomination Hearing - Chair Jerome H. Powell (01.10.2022) - *Four years ago, when I sat before this Committee, few could have predicted the great challenges that would soon become ours to meet.* *On the eve of the pandemic, the U.S. economy was enjoying its 11th year of expansion, the longest on record. Unemployment was at 50-year lows, and the economic benefits were reaching those most on the margins. No obvious financial or economic imbalances threatened the ongoing expansion. But this attractive picture turned virtually overnight as the virus swept across the globe.* *The initial contraction was the fastest and deepest on record, but the pain could have been much worse. As the pandemic arrived, our immediate challenge was to stave off a full-scale depression, which would require swift and strong policy actions from across government.* *Congress provided by far the fastest and largest response to any postwar economic downturn. At the Federal Reserve, we used the full range of policy tools at our disposal. We moved quickly to restore vital flows of credit to households, communities, and businesses and to stabilize the financial system.*

	These collective policy actions, the development and availability of vaccines, and American resilience worked in concert, first to cushion the pandemic's economic blows and then to spark a historically strong recovery. *Today the economy is expanding at its fastest pace in many years, and the labor market is strong.* ***Comment: Powell's confirmation appears less controversial. Certainly retaining his leadership will facilitate stability.***

BSA / AML

	FinCEN Acting Director Addresses Annual ABA/ABA Conference (01.13.2022) - Him Das, Acting Director of the Financial Crimes Enforcement Network (FinCEN), today virtually addressed the annual Financial Crimes Enforcement Conference, hosted by the American Bankers Association and American Bar Association (ABA/ABA). He discussed how FinCEN is helping to transform the nation's anti-money laundering/counter-terrorist financing (AML/CFT) regime from the post-9/11 era to the post-pandemic era, and how financial institutions fit into that process. Prepared Remarks: https://www.fincen.gov/news/speeches/prepared-remarks-fincen-acting-director-him-das-delivered-virtually-american-bankers ***Comment: According to Acting Director Das, FinCEN is considering new approaches to customer risk ratings and institutional risk assessments, digital identity tools and utilities, and automating the adjudication and filing of suspicious activity reports related to certain types of activity.***
	FDIC and **FinCEN** Launch Digital Identity Tech Sprint (01.11.2022) - WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) and the Financial Crimes Enforcement Network (FinCEN) today announced a Tech Sprint to develop solutions for financial institutions and regulators to help measure the effectiveness of digital identity proofing—the process used to collect, validate, and verify information about a person. Through the Tech Sprint, FDIC's tech lab (FDITECH) and FinCEN seek to increase efficiency and account security; reduce fraud and other forms of identity-related crime, money laundering, and terrorist financing; and foster customer confidence in the digital banking environment. Digital identity proofing is a foundational element to enable digital financial services to function properly. This element is challenged by the proliferation of compromised personally identifiable information (PII), the increasing use of synthetic identities, and the presence of multiple, varied approaches for identity proofing. The FDIC and FinCEN ask Tech Sprint participants to answer the following question:

	"What is a scalable, cost-efficient, risk-based solution to measure the effectiveness of digital identity proofing to ensure that individuals who remotely (i.e., not in person) present themselves for financial activities are who they claim to be?" In the coming weeks, FDIC and FinCEN will open registration for this Tech Sprint. Interested individuals will have approximately two weeks to submit applications. The Tech Sprint will encompass a review of applications, grouping of individuals into teams that will work together over approximately three weeks to develop solutions to this challenge question, and invitations to participate in a virtual "Demo Day" of short team presentations to a panel of experts for evaluation. At the conclusion of the Tech Sprint, the FDIC will publish all team presentations and recognize teams based on several criteria detailed in the forthcoming prize notice. Neither the FDIC nor FinCEN are offering monetary prizes associated with the Tech Sprint. Additional questions about the Tech Sprint can be sent to Innovation@FDIC.gov. Read more about FDIC and FinCEN's Tech Sprint, Measuring the Effectiveness of Digital Identity Proofing for Digital Financial Services. ***Comment: The pandemic emphasized the importance of online account opening. It also brought home the critical need for better digital ID verification.***

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	FTC Dun & Bradstreet to Clean Up Small Business Credit Reporting Process and Refund Customers (01.13.2022) - To settle Federal Trade Commission charges that it engaged in deceptive and unfair practices, Dun & Bradstreet (D&B) has agreed to an order requiring substantial changes in the firm's operations that will benefit small- and mid-sized businesses. Under the proposed order, D&B will also provide refunds to certain businesses that purchased the company's products in the belief that using the products would improve their business credit scores and ratings. D&B is a leading provider of business credit reports, which can impact firms' ability to build relationships with vendors and other counterparties. But many businesses have complained of errors in these reports that have cost them time, expense, and opportunities. As detailed in the FTC's administrative complaint, D&B failed to give these businesses a clear, consistent, and reliable process to get these errors fixed. Moreover, D&B profited from businesses' pain by selling them a line of products that purported to

	help them improve their reports. In fact, for many businesses, these benefits proved illusory, while the costs were all too real. "A faulty D&B credit report can be a huge burden on a small business, raising costs and choking off opportunities," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "This order arms businesses with new tools to ensure a fair shake, stops D&B from profiting illegally from businesses' pain, and returns funds to firms that got fleeced." ***Comment: The order requires D&B to enact substantial changes in the firm's operations that will benefit small- and mid-sized businesses. The company will also provide refunds to certain businesses that purchase the company's products in the belief that using them would improve their business credit scores and ratings.***

Technology / Security

	CISA Alert (AA22-011A) Understanding and Mitigating Russian State-Sponsored Cyber Threats to U.S. Critical Infrastructure (01.11.2022) - This joint Cybersecurity Advisory (CSA)—authored by the Cybersecurity and Infrastructure Security Agency (CISA), Federal Bureau of Investigation (FBI), and National Security Agency (NSA)—is part of our continuing cybersecurity mission to warn organizations of cyber threats and help the cybersecurity community reduce the risk presented by these threats. This CSA provides an overview of Russian state-sponsored cyber operations; commonly observed tactics, techniques, and procedures (TTPs); detection actions; incident response guidance; and mitigations. This overview is intended to help the cybersecurity community reduce the risk presented by these threats. ***Comment: CISA, the FBI, and NSA strongly urge 'network defenders' to implement the recommendations listed and detailed in the Mitigations section. These mitigations will help organizations improve their functional resilience by reducing the risk of compromise or severe business degradation.***

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

12.08.2021 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.**