Community Bankers of Michigan Regulatory Dispatch

January 25, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Fed Wants Climate Risk Analysis From 6 Largest U.S. Banks By July 31, 2023

The Federal Reserve Board on Tuesday provided additional details on how its pilot climate scenario analysis exercise will be conducted and the information on risk management practices that will be gathered over the course of the exercise.

As described in the instruction document released, the six largest U.S. banks will analyze the impact of scenarios for both physical and transition risks related to climate change on specific assets in their portfolios. To support the exercise's goals of deepening understanding of climate risk-management practices and building capacity to identify, measure, monitor, and manage climate-related financial risks, the Board will gather qualitative and quantitative information over the course of the pilot, including details on governance and risk management practices, measurement methodologies, risk metrics, data challenges, and lessons learned. "The Fed has narrow, but important, responsibilities regarding climate-related financial risks – to ensure that banks understand and manage their material risks, including the financial risks from climate change," Vice Chair for Supervision Michael S. Barr said. "The exercise we are launching today will advance the ability of supervisors and banks to analyze and manage emerging climate-related financial risks."

Comment: While this exercise is limited to the nations six largest banks, it none the less will provide information on the thought process of the FRB. The FRB noted that the outcomes "…are neither forecasts nor policy prescriptions. They do not necessarily represent the most likely future outcomes."

CBM Insights

Q. We have recently implemented AML software and are seeing so much activity that was not hitting our radar before. I am struggling with determining when customer transactions are "designed to evade a BSA requirement". We have several customers that have activity that the software flags as structuring. They have all had 2 or more transactions within a 7-day period that total more than $10,000. However, it has happened one time. Do I automatically assume they are structuring their transaction to avoid filing a CTR or can I watch the account to see if it happens again?

A. Congratulations on obtaining and implementing AML software. Many banks are surprised (overwhelmed may be a better word) by all the 'activity' the program picks-up. With the speed and complexity of various delivery channels, it is all but impossible to get everything on your 'radar' relying on manual processes and reviews.

The software alerts you to activity that needs investigating – that's all. You still need to come to a 'reasonable belief' that a crime (like structuring) is being committed. Below is from Appendix G of the FFIEC Exam Manual.

Remember to document the process for handling those 'alerts' why and how you arrived at a decision to file a SAR and just as importantly why and how you decided not to file a SAR.

The definition of structuring, as set forth in 31 CFR 1010.100 (xx) (which was implemented before a USA PATRIOT Act provision extended the prohibition on structuring to geographic targeting orders and BSA recordkeeping requirements), states, "a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the [CTR filing requirements]." "In any manner" includes, but is not limited to, breaking down a single currency sum exceeding $10,000 into smaller amounts that may be conducted as a series of transactions at or less than $10,000. The transactions need not exceed the $10,000 CTR filing threshold at any one bank on any single day in order to constitute structuring.

However, two transactions slightly under the $10,000 threshold conducted days or weeks apart may not necessarily be structuring. For example, if a customer deposits $9,900 in currency on Monday and deposits $9,900 in currency on Wednesday, it should not be assumed that structuring has occurred. Instead, further review and research may be necessary to determine the nature of the transactions, prior account history, and other relevant customer information to assess whether the activity is suspicious. Even if structuring has not occurred, the bank should review the transactions for suspicious activity.

Source link.

Items of Interest

Bank Management

	FRB Staying the Course to Bring Inflation Down - Vice Chair Lael Brainard (01/19/2023) - *Inflation has declined in recent months, which is important for American households, businesses, and consumers. Inflation is high, and it will take time and resolve to get it back down to 2 percent. We are determined to stay the course.* *Financial conditions have tightened considerably over the last year as the Federal Reserve and foreign central banks have tightened policy. Real yields have risen significantly across the curve over the past year: 2-year yields on Treasury Inflation-Protected Securities (TIPS) have risen more than 4-1/2 percentage points to 2.1 percent, and 10-year TIPS yields have risen more than 2-1/4 percentage points to 1.2 percent. Short-term real interest rates have moved into decidedly positive territory. Mortgage rates have doubled.* *Inflation has been declining over the past several months against a backdrop of moderate growth. Yesterday's industrial production index points to a significant weakening in the manufacturing sector, and the retail sales report points to a further moderation in consumer spending. Looking forward, weaker readings on real income, wealth, and sentiment, along with indicators of spending on services, such as the ISM services index, point to subdued growth in 2023.[4] Real disposable personal income*

declined, on net, at an annual rate of 4.1 percent in the first three quarters of 2022, suggesting that recent consumption has been supported by running down pandemic savings and greater reliance on credit. In particular, savings among low-income households appear to be lower and to have declined more rapidly than was previously appreciated.

The widespread expectation for U.S. growth to be below potential over 2022 and 2023 reflects significant tightening in both fiscal and monetary policy in an environment of broader global tightening. The expiration of previous fiscal stimulus imposed a substantial drag on real U.S. gross domestic product (GDP) growth in 2022, whereas fiscal policy is expected to make a modest contribution over the next few years, in line with its longer-run average.

To continue reading, click here.

Comment: The slowing economy is likely to bring the yearly rate down to a projected 3.2% by the end of 2023. However, this will still be higher than the Federal Reserve's target of 2-2.5%, so the Fed will not be cutting short-term interest rates this year.

FRB Beige Book (01/18/2023) - Overall Economic Activity

Overall economic activity was relatively unchanged since the previous report. Five Districts reported slight or modest increases in overall activity, six noted no change or slight declines, and one cited a significant decline. On balance, contacts generally expected little growth in the months ahead. Consumer spending increased slightly, with some retailers reporting more robust sales over the holidays. Other retailers noted that high inflation continued to reduce consumers' purchasing power, particularly among low- and moderate-income households. Auto sales were flat on average, but some dealers noted that increased vehicle availability had boosted sales. Tourism contacts reported moderate to robust activity augmented by strong holiday travel. Manufacturers indicated that activity declined modestly on average, and, in many Districts, reported that supply chain disruptions had eased. Housing markets continued to weaken, with sales and construction declining across Districts. Commercial real estate activity slowed slightly, on average, with more notable weakening in the office market. Nonfinancial services firms experienced stable demand on balance. Most bankers reported that residential mortgage demand remained weak, and some said higher borrowing costs had begun to dampen commercial lending. Energy activity continued to increase moderately, and agriculture conditions were generally unchanged or improving.

Labor Markets
Employment continued to grow at a modest to moderate pace for most Districts. Only one District reported a slight decline in employment, and one other reported no change in employment levels. While some Districts noted that labor availability had increased, firms continued to report difficulty in filling open positions. Many firms hesitated to lay off employees even as demand for their goods and services slowed and planned to reduce headcount through attrition if needed. With persistently tight labor markets, wage pressures remained elevated across Districts, though five Reserve Banks reported that these pressures had eased somewhat. Some employers noted they have continued to offer bonuses and enhanced benefits to attract and retain workers.

Prices
Selling prices increased at a modest or moderate pace in most Districts, though many said that the pace of increases had slowed from that of recent reporting periods. Manufacturers in many Districts reported continued easing in freight costs and prices for commodities, including steel and lumber, though some said input costs remained elevated. Many retailers noted increased difficulty in passing through cost increases, suggesting greater price sensitivity on the part of consumers. In addition, some retailers offered more discounts and promotions than they had a year ago in order to move

	merchandise and clear out excess inventories. On balance, contacts across Districts said they expected future price growth to moderate further in the year ahead. ***Comment: In the latest CSBS Community Bank Sentiment Survey, inflation was described as a persistent but manageable challenge.***
	FRB G.17 Industrial Production (01/18/2023) - Industrial production decreased 0.7 percent in December and 1.7 percent at an annual rate in the fourth quarter. In December, manufacturing output fell 1.3 percent amid widespread declines across the sector. The index for utilities jumped 3.8 percent, as cold temperatures boosted the demand for heating, while the index for mining moved down 0.9 percent. At 103.4 percent of its 2017 average, total industrial production in December was 1.6 percent above its year-earlier level. Capacity utilization dropped 0.6 percentage point in December to 78.8 percent, a rate that is 0.8 percentage point below its long-run (1972–2021) average.
	CSBS Community Bankers Expect a Challenging 2023 (01/18/2023) - The CSBS fourth quarter 2022 Community Bank Sentiment Index (CBSI) indicates that community bankers are more pessimistic than they were in the previous quarter and near its lowest level recorded in the second quarter of 2022. Alarmingly, 96% of community bankers responding to a special question in this quarter's survey believe the U.S. economy is in a recession, with 79% signaling that the recession started at the end of 2022. As shown in Chart 1, the headline number from the fourth quarter 2022 CBSI was 85. All of the quarterly survey readings in 2022 were below the neutral level of 100, indicating community bankers held a pessimistic outlook throughout the year. The second and fourth quarter assessments, however, were the two lowest readings of the CBSI in its four-year history. ***Comment: From the survey – 'Compliance costs at community banks continued at levels that have persisted for several years.' And that level is high and not expected to decrease any time soon.***

BSA / AML

	FinCEN Announces Inflation Adjustments to BSA Civil Monetary Penalties (01/19/2023) - The Financial Crimes Enforcement Network (FinCEN) is issuing a final rule on January 19, 2023, to reflect annual inflation adjustments to its civil monetary penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This rule adjusts certain maximum civil monetary penalties within the jurisdiction of FinCEN to the amounts required by that Act. ***Comment: This is a routine adjustment.***
	FinCEN Identifies Virtual Currency Exchange Bitzlato as a Primary Money Laundering Concern in Connection with Russian Illicit (01/18/2023) - The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an order that identifies the virtual currency exchange Bitzlato Limited (Bitzlato) as a "primary money laundering concern" in connection with Russian illicit finance. This is the first order issued pursuant to section 9714(a) of the Combating Russian Money Laundering Act, as amended, and highlights the serious threat that business operations that facilitate and support Russian illicit finance pose to U.S. national security and the integrity of the U.S. financial sector. The order prohibits certain transmittals of funds involving Bitzlato by any covered financial institution.

	Comment: FinCEN recommends that banks continue to implement appropriate AML/CFT procedures and systems, including traditional compliance screening and blockchain tracing software, to identify their customers and determine whether they are involved in a transmittal of funds involving Bitzlato.
	FinCEN Requests Comments on the Proposed Application that Individuals Will Use to Obtain a FinCEN Identifier in Connection with the Beneficial Ownership Information Reporting Requirements (01/13/2022) - On January 17, 2023, the Financial Crimes Enforcement Network (FinCEN) published a Paperwork Reduction Act notice (the "notice") seeking comments to the application that FinCEN proposes to require individuals to use to obtain a FinCEN identifier, consistent with the Beneficial Ownership Information Reporting Requirements final rule (the "rule"). Obtaining a FinCEN identifier is voluntary. The rule, however, requires individuals who seek to obtain a FinCEN identifier to complete the application and submit it to FinCEN, and to update the information provided on the application as required by the rule. The notice gives the public an opportunity to comment on: (1) the FinCEN identifier application that FinCEN proposes to require individuals to use; and (2) FinCEN's estimate of the burden involved in completing the application. The notice requests feedback on or before March 20, 2023. FinCEN encourages the public to review this notice and provide comment. ***Comment: In December, FinCEN issued a proposed rule on who can access BOI information collected by FinCEN and under what circumstance. This proposal deals with the specific application process for accessing that information.***

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	No news to report this week.

Technology / Security

	CISA Mozilla Releases Security Updates for Firefox (01/18/2023) - Mozilla has released security updates to address vulnerabilities in Firefox ESR and Firefox. An attacker could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review Mozilla's security advisories for Firefox ESR 102.7 and Firefox 109 for more information and apply the necessary updates. ***Comment: Share this with your IT security folks.***

	CISA Microsoft Releases January 2023 Security Updates (01/10/2023) - Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review Microsoft's January 2023 Security Update Guide and Deployment Information and apply the necessary updates. ***Comment: Share this with your IT security folks.***

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.**