



Community Bankers of Michigan Regulatory Dispatch

January 3, 2024

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC ADVISORY: MANAGING COMMERCIAL REAL ESTATE CONCENTRATIONS IN A CHALLENGING ECONOMIC ENVIRONMENT

The FDIC is issuing this advisory to reemphasize the importance of strong capital, appropriate credit loss allowance levels, and robust credit risk-management practices for institutions with commercial real estate (CRE) concentrations. It also conveys several key risk management practices for institutions to consider in managing CRE loan concentrations in the current challenging economic environment. Additionally, the advisory reemphasizes the importance of effectively managing liquidity and funding risks, which can compound lending risks, particularly for CRE-concentrated institutions. This advisory replaces the 2008 advisory: Managing Commercial Real Estate Concentrations in a Challenging Environment (issued March 17, 2008).

Comment: With interest rates still at historically high levels and credit portfolios starting to demonstrate signs of weakness in the system, the FDIC is reiterating its focus on credit quality, capital adequacy/management, allowance for credit losses, portfolio monitoring, credit concentrations, and maintaining liquidity and diversity in funding sources. It seems industrial, and hotels are doing ok - retail doesn't look terrible either, unless you are talking malls and strip centers. The repricing of those struggling office space loans and the lingering effects from 'work-from-home' will take months and months to work out.

CBM Insights

Q. We have a customer that is wanting to obtain a HELOC loan on their duplex. The applicant occupies one half as their primary residence and rents the other half out. Can we make a HELOC against the entire property?

A: Best to discuss with the title company to be sure. The issue is that 'renting' is not considered a business calling for urban homesteads rather as an investment. Meaning the half they rent out does not qualify as homestead and would be 'additional collateral.'

Items of Interest

Bank Management

FDIC [Proposed Revisions to the Consolidated Reports of Condition and Income \(Call Reports\) and the FFIEC 002 Report](#) (12/27/2023) – The Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency, under the auspices of the

Federal Financial Institutions Examination Council (FFIEC), published proposed regulatory reporting changes in the Federal Register for public comment. These proposed changes apply to all three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as applicable.

Comment: Share with those individuals in your bank that prepare your Call Report.

FRB [G.17 Industrial Production](#) (12/15/2023) – In November, industrial production increased 0.2 percent, and manufacturing output rose 0.3 percent. The increase in manufacturing output was more than accounted for by a 7.1 percent bounce back in motor vehicles and parts production following the resolution of strikes at several major automakers. The index for manufacturing excluding motor vehicles and parts decreased 0.2 percent. The output of utilities moved down 0.4 percent, and the output of mines moved up 0.3 percent. Total industrial production in November was 0.4 percent below its year-earlier level. Capacity utilization moved up 0.1 percentage point to 78.8 percent in November, a rate that is 0.9 percentage point below its long-run (1972–2022) average.

BSA / AML

Joint [Statement for Banks on the Issuance of the Beneficial Ownership Information Access Rule](#)

(12/21/2023) – The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, State bank and credit union regulators, and the Financial Crimes Enforcement Network (FinCEN) are issuing an interagency statement for banks regarding the beneficial ownership information Access Rule.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:

The interagency statement addresses banks' access to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to the Corporate Transparency Act (CTA) and stored in the Beneficial Ownership Information Technology (BO IT) System (the "Access Rule").

- The Access Rule does not create a new regulatory requirement for banks to access BOI from the BO IT System or a supervisory expectation that they do so.
- Therefore, the Access Rule does not necessitate changes to Bank Secrecy Act (BSA)/anti-money laundering (AML) compliance programs designed to comply with the 2016 Customer Due Diligence rule and other existing BSA requirements, such as customer identification program requirements, and suspicious activity reporting.
- The CTA directs FinCEN to revise the 2016 Customer Due Diligence rule to bring the 2016 rule into conformity with the Anti-Money Laundering Act of 2020 and the CTA.
- To date, the 2016 Customer Due Diligence rule has not been revised and remains unchanged.

Comment: The BOI Rule completed the first of three phases of implementing the requirements of Section 6403 of the CTA. FinCEN is currently engaged in two additional rulemakings as follows: (i) a rulemaking to implement the statute's protocols for access to and disclosure of beneficial ownership information and (ii) a rulemaking to revise the existing CDD requirements for financial institutions at 31 C.F.R. § 1010.230 (CDD Rule). FinCEN has not yet amended the CDD Rule, including protocols FinCEN will use to verify the accuracy of the information reported by reporting companies and how financial institutions may access and use reported information to fulfill their diligence obligations under the CDD Rule.

	<p>FinCEN Invites Nominations for Membership on the Bank Secrecy Act Advisory Group (12/15/2023) – The Financial Crimes Enforcement Network (FinCEN) is inviting nominations for membership on the Bank Secrecy Act Advisory Group (BSAAG). BSAAG membership is open to financial institutions subject to the Bank Secrecy Act (BSA), trade groups with members that are subject to the BSA, and federal and non-federal regulators and law enforcement agencies that are located within the United States. Membership is granted to organizations, not to individuals. Organizational members will be selected to serve a three-year term. Please see the Federal Register Notice for important details about the nominations process.</p> <p><i>Comment: We encourage banks to get involved with this group. The CBM plans to nominate ourselves and join if we are able.</i></p>
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Deposit / Retail Operations

	<p>FTC Hang up on PCH impersonators (12/22/2023) – Have you gotten a call about a prize for a contest you never entered? It might be a scam. We’ve been hearing about scammers calling to say you’ve won a boatload of money from Publishers Clearing House (PCH) through a multi-state lottery. They tell you to call a number and press 1 to learn more. If you don’t, you supposedly won’t get the money. What would you do?</p> <p><i>Comment: Continue to find ways to share these practical alerts with your accountholders.</i></p>
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	<p>FTC Proposes Strengthening Children’s Privacy Rule to Further Limit Companies’ Ability to Monetize Children’s Data (12/20/2023) – Proposed COPPA Rule would require targeted advertising to be off by default, limit push notifications, restrict surveillance in schools, and strengthen data security.</p> <p>The Federal Trade Commission has proposed changes to the Children’s Online Privacy Protection Rule (COPPA Rule) that would place new restrictions on the use and disclosure of children’s personal information and further limit the ability of companies to condition access to services on monetizing children’s data.</p> <p><i>Comment: if ‘COPPA 2.0’ is adopted, community banks and fintech companies will need to transition their websites and apps to comply with COPPA regulations, or partner with vendors who have these compliance measures already built in. These businesses will also have to produce disclaimers and acknowledgements of how they’re using consumer data.</i></p>
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	<p>CFPB Issues Report Showing Many Americans are Surprised by Overdraft Fees (12/19/2023) – The CFPB issued a new report finding that many consumers are still being hit with unexpected overdraft and nonsufficient fund (NSF) fees, despite recent changes implemented by banks and credit unions that have eliminated billions of dollars in fees charged each year.</p> <p>In a recent CFPB Making Ends Meet survey, more than a quarter of consumers responded that someone in their household was charged an overdraft fee or NSF fee within the past year, and that only 22% of households expected their most recent overdraft. Many consumers who were charged overdraft fees had access to a cheaper alternative, such as available credit on a credit card.</p> <p><i>Comment: Overdraft and NSF fees have been under attack as so-called “junk fees” by the Biden Administration and federal regulators. The CFPB has frequently reported on overdraft and NSF fee</i></p>
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revenues and practices. Overdraft and NSF fees were addressed in the CFPB's Supervisory Highlights issues focused on "junk fees" in October and March of 2023.

Human Resources

No news to report this week.

Lending

FRB [Senior Credit Officer Opinion Survey on Dealer Financing Terms](#) (12/21/2023) – The Senior Credit Officer Opinion Survey on Dealer Financing Terms (SCOOS) is a quarterly survey providing information about the availability and terms of credit in securities financing and over-the counter (OTC) derivatives markets. The SCOOS is modeled after the long-established Senior Loan Officer Opinion Survey on Bank Lending Practices, which provides qualitative information about changes in supply and demand for loans to households and businesses at commercial banks. The SCOOS collects qualitative information on credit terms and conditions in securities financing and OTC derivatives markets, which are important conduits for leverage in the financial system. The survey panel for the SCOOS began by including 20 dealers and over time has been expanded. These firms account for almost all of the dealer activity in dollar-denominated securities financing and OTC derivatives markets. The survey is directed to senior credit officers responsible for maintaining a consolidated perspective on the management of credit risks.

Joint [Agencies Release Annual Asset-Size Thresholds Under Community Reinvestment Act Regulations](#) (12/20/2023) – The Federal Reserve Board and the Federal Deposit Insurance Corporation announced the 2024 updated asset-size thresholds used to define “small bank” and “intermediate small bank” under their current Community Reinvestment Act (CRA) regulations.

The CRA regulations establish the framework and criteria by which the relevant agencies assess a financial institution’s record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification. The asset-size thresholds are adjusted annually based on the average change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), which is a measure of inflation.

As a result of the 4.06 percent increase in the CPI-W for the period ending in November 2023, the definitions of small banks and intermediate small banks for CRA examinations will change as follows:

- Small bank means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.564 billion.
- Intermediate small bank means a small institution with assets of at least \$391 million as of December 31 of both of the prior two calendar years and less than \$1.564 billion as of December 31 of either of the prior two calendar years.

These asset-size thresholds are effective January 1, 2024. A list of the current and historical asset-size thresholds is [available here](#). The asset-size thresholds defined by the agencies’ October 2023 joint final rule to strengthen and modernize their CRA regulations will apply on January 1, 2026, and are not reflected in today’s announcement.

Comment: Routine threshold adjustment. Be sure to update your policies and procedures. Remember that the new thresholds under the recently release Final Rule do not go into effect until January 1, 2026.

	<p>Joint Agencies Release 2022 Small Business, Small Farm, and Community Development Lending Data (12/20/2023) – The federal bank regulatory agencies, as members of the Federal Financial Institutions Examination Council (FFIEC), released data on small business, small farm, and community development lending during 2022. The Community Reinvestment Act regulations require the agencies to annually disclose these data.</p> <p>The FFIEC also prepared aggregate disclosure statements of small business and small farm lending for all of the metropolitan statistical areas and non-metropolitan counties in the United States and its territories. The statements are available here.</p> <p>Related Links</p> <ul style="list-style-type: none"> ▪ Fact Sheet on 2022 Data (PDF) ▪ Tables (PDF)
	<p>CFPB Announces Asset-Size Threshold Adjustments Under HMDA (Regulation C) and TILA (Regulation Z) (12/18/2023) – The CFPB has issued two annual threshold adjustment final rules.</p> <p>First, the CFPB has announced the asset-size exemption thresholds for depository institutions under Regulation C. Second, the CFPB has announced the asset-size exemption thresholds for certain creditors under the escrow requirements and small creditor portfolio and balloon-payment qualified mortgage requirements, and the small creditor exemption from the prohibition against balloon-payment high-cost mortgages under Regulation Z.</p> <p>These adjustments are effective on January 1, 2024, consistent with relevant statutory or regulatory provisions.</p> <p>You can access the Regulation C notice at: http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-adjustment-asset-size-exemption-threshold/.</p> <p>You can access the Regulation Z notice at: http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-act-regulation-z-adjustment-asset-size-exemption-threshold/.</p> <p><i>Comment: Routine threshold adjustment. Be sure to update your policies and procedures.</i></p>

Technology / Security

	<p>CISA Apple Releases Security Updates for Multiple Products (12/20/2023) – Apple has released security updates to address vulnerabilities in Safari, iOS, iPadOS, and macOS Sonoma. A cyber threat actor could exploit one of these vulnerabilities to obtain sensitive information.</p> <p>CISA encourages users and administrators to review Apple security releases and apply necessary updates.</p> <p><i>Comment: Share these alerts with your IT staff.</i></p>
	<p>CISA FBI and ASD's ACSC Release Advisory on Play Ransomware (12/18/2023) – The Federal Bureau of Investigation (FBI), Cybersecurity and Infrastructure Security Agency (CISA), and the Australian Signals Directorate's Australian Cyber Security Centre (ASD's ACSC) released a joint Cybersecurity Advisory (CSA),</p>

#StopRansomware: Play Ransomware, to disseminate Play ransomware group’s tactics, techniques, and procedures (TTPs) and indicators of compromise (IOCs) identified through FBI investigations as recently as October 2023.

Play ransomware actors employ a double-extortion model, encrypting systems after exfiltrating data and have impacted a wide range of businesses and critical infrastructure organizations in North America, South America, Europe, and Australia.

FBI, CISA, and the ASD’s ACSC encourage organizations review and implement the recommendations provided in the joint CSA to reduce the likelihood and impact of Play and other ransomware incidents. For more information, see CISA’s #StopRansomware webpage, which includes the updated #StopRansomware Guide.

Comment: Share these alerts with your IT staff.

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 RULES WITH REQUEST FOR PUBLIC COMMENT

10.25.2023 **FRB [Requests Comment on a Proposal to Lower the Maximum Interchange Fee That a Large Debit Card Issuer Can Receive For a Debit Card Transaction](#)** SUMMARY: Regulation II implements a provision of the Dodd-Frank Act that requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Under the current rule, for a debit card transaction that does not qualify for a statutory exemption, the interchange fee can be no more than the sum of a base component of 21 cents, an ad valorem component of 5 basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of 1 cent if the issuer meets certain fraud-prevention-standards. The Board developed the current interchange fee cap in 2011 using data voluntarily reported to the Board by large debit card issuers concerning transactions performed in 2009. Since that time, data collected by the Board every other year on a mandatory basis from large debit card issuers show that certain costs incurred by these issuers have declined significantly; however, the interchange fee cap has remained the same. For this reason, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers. Further, the Board proposes to update the interchange fee cap every other year going forward by directly linking the interchange fee cap to data from the Board’s biennial survey of large debit card issuers. Initially, under the proposal, the base component would be 14.4 cents, the ad valorem component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board also proposes a set of technical revisions to Regulation II. **DATES: Comments must be received on or before February 12, 2024.**

10.11.2023 **FTC [Trade Regulation Rule on Unfair or Deceptive Fees](#)** - SUMMARY: The Federal Trade Commission commences a rulemaking to promulgate a trade regulation rule entitled “Rule on Unfair or Deceptive Fees,” which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The Commission finds these unfair or deceptive practices relating to fees to be prevalent based on prior enforcement, the comments it received in response to an Advance Notice of Proposed Rulemaking, and other information discussed in this proposal. The Commission now solicits written comment, data, and arguments concerning the

utility and scope of the trade regulation rule proposed in this Notice of Proposed Rulemaking to prevent the identified unfair or deceptive practices. **DATES: Comments must be received on or before February 7, 2024. (Extended from January 8, 2024)**

10.11.2023

FDIC [Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \\$10 Billion or More](#) - SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on proposed corporate governance and risk management guidelines (Guidelines) that would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of \$10 billion or more on or after the effective date of the final Guidelines. These proposed Guidelines would be issued as Appendix C to FDIC's standards for safety and soundness regulations in part 364, pursuant to Section 39 of the FDI Act, and would be enforceable under Section 39. The FDIC also proposes to make corresponding amendments to parts 308 and 364 of its regulations to implement the proposed Guidelines. **DATES: Comments on the proposed Guidelines must be received by February 9, 2024. (Extended from December 11, 2023)**