Community Bankers of Michigan Regulatory Dispatch

July 13, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CSBS Q2 2022 Community Bank Sentiment Index

The Community Bank Sentiment Index is an index derived from quarterly polling of community bankers across the nation. As community bankers answer questions about their outlook on the economy, their answers are analyzed and compiled into a single number. An index reading of 100 indicates a neutral sentiment, while anything above 100 indicates a positive sentiment, and anything below 100 indicates negative sentiment.

The 2022 Q2 Community Bank Sentiment Index Number is: **84**

This represents a negative reading in economic sentiment by community bankers and is four points below the index reading for last quarter.

Key Highlights:

- The CBSI dropped to 84 points, falling 31 points lower than a year ago and setting a record low for the index that began in early 2019.
- Expectations that the Federal Reserve's monetary policy decisions will impact market conditions declined the most, dropping 62 points from 95 in Q1 2022 to 33 in Q2 2022.
- The outlook for future business conditions also declined significantly, falling 45 points from 83 in Q1 2022 to 38 in Q2 2022.
- At 101, the profitability component had the greatest quarterly improvement for the second straight survey, rising 33 points from 68 in Q1 2022 and above the neutral level of 100 for the first time since Q2 2021.
- The regulatory burden component (19 points) remains the lowest among the seven components, tumbling another nine points from last quarter to its lowest historical level.

Comment: Studies have shown that communities cannot reach their full potential without the local presence of a bank—an independent community bank that understands the financial and credit needs of its citizens, business, and government. The regulatory burden imposed on community banks contributes to mergers and acquisitions, which often leaves rural communities without a local bank and will sadly increase the number of unbanked and underbanked Americans.

CBM Insights

Q: What information is permissible to share as to reasons for forced account closure? Subject account is a startup business deposit account, walk-in client, no referral or history. Investigation gave BSA Officer concerns but nothing specific to policy our banks policy.

A: Having a deposit relationship with your bank is a privilege and not a right. That concept was recently reiterated in the latest Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence.

In addition, the Agencies recognize that banks choose whether to enter into or maintain business relationships based on their business objectives and other relevant factors, such as the products and services sought by the customer, the geographic locations where the customer will conduct or transact business, and banks' ability to manage risks effectively.

What does your deposit contract say? Typically, your deposit contract includes language that the account can be closed at any time with or without reason.

Still, it is wise to provide at least ten days' notice. That notice should be clear that once the account is closed, any checks or other items presented will be returned. This is important in order to limit the potential for a claim of wrongful dishonor. However, the notice need not provide a reason for the closure. It is prudent to include the name of a person to contact with any questions.

Recently, the CFPB has amended its exam procedures to provide that discrimination with regard to all bank products and services (including deposit accounts) could constitute an unfair practice. Therefore, be sure that any account closing is not attributable to a protected class.

Items of Interest

Bank Management

	FRB Crypto-Assets and Decentralized Finance through a Financial Stability Lens Vice Chair Lael Brainard (07/08/2022) - *Recent volatility has exposed serious vulnerabilities in the crypto financial system. While touted as a fundamental break from traditional finance, the crypto financial system turns out to be susceptible to the same risks that are all too familiar from traditional finance, such as leverage, settlement, opacity, and maturity and liquidity transformation. As we work to future-proof our financial stability agenda, it is important to ensure the regulatory perimeter encompasses crypto finance.* ***Comment: Between April and June, Bitcoin's value more than halved, from just over $45,000 to around $20,000; and other coins have fallen even more. The Terra-UST ecosystem, which paired a crypto coin with one designed to be pegged to the dollar, collapsed in May, wiping out $60 billion worth of value and leading to cascading failures among crypto lenders.***
	FDIC Consumer News (07/01/2022) - FDIC Consumer News is the FDIC's monthly newsletter to consumers, providing practical guidance on how to become a smarter, safer user of financial services, including helpful hints, quick tips, and common-sense strategies to protect and stretch your hard-earned dollars. This issue addresses financial concerns for newly-weds. ***Comment: Consider using FDIC Consumer News as part of your bank's financial literacy outreach.***

BSA / AML

	Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence (07/06/2022) - The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, the Agencies) are issuing this joint statement to remind banks of the risk-based approach to assessing customer relationships and conducting customer due diligence (CDD). This statement does not alter existing Bank Secrecy Act/ Anti-Money Laundering (BSA/AML) legal or regulatory requirements, nor does it establish new supervisory expectations. ***Comment: This statement addresses a persistent problem for businesses with perceived high risk, like money service businesses and independently owned ATMs. The statement applies to all customer types referenced in the Federal Financial Institutions Examination Council (FFIEC) Bank Secrecy Act/Anti-Money Laundering Examination Manual. Don't pre-judge, rather perform appropriate due diligence.***

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	FRB Consumer Credit - G.19 (07/08/2022) - May 2022: In May, consumer credit increased at a seasonally adjusted annual rate of 5.9 percent. Revolving credit increased at an annual rate of 8.1 percent, while nonrevolving credit increased at an annual rate of 5.2 percent.
	CFPB Issues Advisory Opinion on FCRA Permissible Purposes for Credit Reports (07/07/2022) - The Bureau issued an Advisory Opinion to highlight the Fair Credit Reporting Act's permissible purpose requirements. This Advisory Opinion explains that the FCRA's permissible purpose requirements are consumer specific. It highlights that, under certain permissible purpose provisions, a consumer reporting agency may not provide a consumer report to a user unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. It also discusses certain industry practices, such as poor matching procedures and disclaimers, as they relate to these FCRA requirements. For users of consumer reports, the Advisory Opinion also explains that the FCRA strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose. You can access the Advisory Opinion here: www.consumerfinance.gov/compliance/advisory-opinion-program/.

	This advisory opinion will help to hold responsible any company, or user of credit reports, that violates the permissible purpose provisions of the Fair Credit Reporting Act. Specifically, the advisory opinion makes clear: • Insufficient matching procedures can result in credit reporting companies providing reports to entities without a permissible purpose, which would violate consumers' privacy rights: For example, when a credit reporting company uses name-only matching procedures, the items of information appearing on a credit report may not all correspond to a single individual. That means the user of a credit report could be provided a report about a person for whom the user does not have a permissible purpose. • It is unlawful to provide credit reports of multiple people as "possible matches": Credit reporting companies may not provide reports on multiple individuals where the requester only has a permissible purpose to obtain a report on one individual. They must have adequate procedures to find the right person, or else the result may be that they provide a report on at least one wrong person. • Disclaimers about insufficient matching procedures do not cure permissible purpose violations: Disclaimers will not cure a failure to take reasonable steps to ensure the information contained in a credit report is only about the individual for whom the user has a permissible purpose. • Users of credit reports must ensure that they do not violate a person's privacy by obtaining a credit report when they lack a permissible purpose for doing so: The Fair Credit Reporting Act strictly prohibits anyone from using or obtaining credit reports without a permissible purpose. ***Comment: Although much of this advisory appears aimed at credit bureaus, don't overlook the critical importance of only requesting reports for a "permissible purpose." This includes legitimate business purpose for a consumer-requested transaction—like opening a new checking account. Also, be sure that your requests for reports accurately identify the correct consumer.***

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

05.05.2022 Joint Agency Community Reinvestment Act - The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. **DATE: Comments must be received on or before August 5, 2022.**

06.06.2022 FinCEN No Action Letter Process - FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on questions relating to the implementation of a no-action letter process at FinCEN. Given that the addition of a no-action letter process at FinCEN may affect or overlap with other forms of regulatory guidance and relief that FinCEN already offers, including administrative rulings and exceptive or exemptive relief, this ANPRM, among other things, seeks public input on whether a no-action letter process should be implemented and, if so, how the no-action letter process should interact with those other forms of relief. **DATES: Written comments on this ANPRM must be received on or before August 5, 2022.**

06.24.2022 Tx Comptroller of Public Accounts proposes new §3.16, concerning delinquent taxpayer financial records; information exchange. The new section implements House Bill 1258, 87th Legislature, 2021, which enacted Tax Code, §111.025 (Delinquent Taxpayer Financial Records). You may submit comments on the proposal to James D. Arbogast, Chief Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. **Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.**