Community Bankers of Michigan Regulatory Dispatch

July 22, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CBM Insights

Q: We are doing a loan on some acreage with a couple of old sheds showing up on the survey. They are supposedly going to be torn down. The property is in zone AE. Does the borrower have to get flood insurance on the sheds? Does the fact that the sheds will be torn down affect anything?

A: The sheds could be a problem. There was a FDIC Teleconference back in 2012 in which the following question was asked:

22. We have a loan secured by property that is not in a flood zone, but a shed that is also part of our collateral is in a flood zone. The original appraisal gave no value to the shed. However, an updated appraisal valued the shed at $500. The shed is insured for $500 but the deductible is $1,000. Is this the appropriate way to insure the shed?

If the bank has taken the shed as collateral, then flood insurance would be required. However, the shed appears to have no insurable value based on the original appraisal. A flood insurance policy for $500 with a deducible of $1,000 provides no benefit to the borrower or the bank. Even with a $500 deductible there is no benefit. In this case, the bank should document the lack of insurable value that was in the first appraisal. While the second appraisal shows $500, the deductible is larger than the policy and further supports the lack of value for the building.

The preamble to the October 17, 2011, Federal Register states that insuring non-residential buildings to 100 percent of replacement cost value may not be practical in all cases. The bank, either by itself or in conjunction with the flood insurance provider or other appropriate professional, is permitted to use different methods to determine insurable value for non-residential property such as an appraisal based on a cost-value approach, the insurable value used in the hazard insurance policy (recognizing that adjustments may be needed since hazard policies do not cover foundations), a construction-cost calculation, or any other reasonable approach provided it can be supported. It is important for lenders to recognize that, when calculating the minimum amount of insurance that is required to be purchased, the insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP.

Source link.

The minimum deductible amount under the NFIP is $1,000. The agencies have taken the position that it is a potential UDAAP violation to require a borrower to obtain flood insurance in an amount that exceeds the value of the structures being insured.

Bottom line – get them torn down before 'origination' or prove-up that the deductible is more than the insurable value.

Items of Interest

Bank Management

	FRB Releases Results of Survey of Senior Financial Officers at Banks About Their Strategies and Practices for Managing Reserve Balances (07/15/2022) - The Federal Reserve Board last Friday released results of a survey of senior financial officers at banks about their strategies and practices for managing reserve balances. The Senior Financial Officer Survey is used by the Board to obtain information about deposit pricing and behavior, bank liability management, the provision of financial services, and reserve management strategies and practices. The most recent survey was conducted in collaboration with the Federal Reserve Bank of New York between May 6, 2022, and May 20, 2022, and includes responses from banks that held approximately three quarters of total banking system reserve balances at the time of the survey.
	OCC Hosts Compliance and Operational Risk Workshops in Denver (07/14/2022) - WASHINGTON — The Office of the Comptroller of the Currency (OCC) will host two workshops August 9-10 in Denver for directors of community banks and federal savings associations supervised by the OCC. The Compliance Risk: What Directors Need to Know workshop on August 9 is focused on the critical elements of an effective compliance risk management program. The workshop also emphasizes major compliance risks and critical regulations. Topics of discussion include the Bank Secrecy Act, Equal Credit Opportunity Act, and other compliance hot topics. The Operational Risk: Navigating Rapid Changes workshop on August 10 covers key risk management processes, oversight roles and governance responsibilities, fraud, risk-based audit programs, and cyber threats. The workshop fee is $99 and limited to the first 35 registrants. Participants receive course materials, supervisory materials, and lunch. To register online, and view the schedule and locations of other workshops, visit the OCC's website. For additional questions about the workshops, please contact the OCC Bank Director Workshop Team at (202) 649-6490 or bankdirectorworkshop@occ.treas.gov. ***Comment: "Community Bank Director Workshops are designed to meet the needs of new directors as well as experienced directors who want to review the fundamentals or get critical updates. These dynamic sessions, led by some of the OCC's most experienced professionals, provide training related to the challenges that directors face every day."***
	FRB Monetary Policy in a World of Conflicting Data Governor Christopher J. Waller (07/14/2022) **-** *Thank you, Mike, and thank you to the Global Interdependence Center for the invitation to speak to you today. Let me start at the place that all remarks about U.S.*

	monetary policy should start, which is with the Federal Reserve's dual mandate of maximum employment and price stability. *As I discuss below, we have a very strong labor market, with an unemployment rate that is below the median of policymakers' expected longer-run level, and high inflation that is far above our target. We are achieving our mandate when it comes to maximum employment, but we are far from achieving our goal of stable prices. Consequently, while any monetary policy decision has implications for achieving maximum employment, and I will address those implications in a moment, the FOMC is now, and must be, utterly focused on moving inflation down toward our 2 percent target.* *We must be focused on reducing inflation because, despite a lot of talk about recession lately, the evidence from the labor market indicates the economy is on track, while inflation continues to be far too high. It must be our focus because high inflation is the biggest challenge to sustaining our employment goal, and the greatest burden for individuals and families, especially lower- and moderate-income households that dedicate a larger share of their spending to necessities. Inflation has to be our focus, every meeting and every day, because the spending and pricing decisions people and businesses make every day depend on their expectations of future inflation, which in turn depend on whether they believe the Fed is sufficiently committed to its inflation target.* *So let me be clear: I am going to vote to set policy in a manner that will reduce inflation and achieve our price stability goal, and today I will explain why I don't see that progress conflicting with our maximum-employment goal. Let me start with my view of the labor market and inflation, then turn to the implications for monetary policy, and conclude with where I think the economy is headed.* To keep reading the speech, click here. ***Comment: Back in June, Gov. Waller made the statement that the 'massive' fear of recession 'a bit overblown.'***
	FRB Beige Book (07/13/2022) – This report was prepared at the Federal Reserve Bank of Atlanta based on information collected on or before July 13, 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. Overall Economic Activity: Economic activity expanded at a modest pace, on balance, since mid-May; however, several Districts reported growing signs of a slowdown in demand, and contacts in five Districts noted concerns over an increased risk of a recession. Most Districts reported that consumer spending moderated as higher food and gas prices diminished households' discretionary income. Due to continued low inventory levels, new auto sales remained sluggish across most Districts. Hospitality and tourism contacts cited healthy leisure travel activity with some noting an uptick in business and group travel. Manufacturing activity was mixed, and many Districts reported that supply chain disruptions and labor shortages continued to hamper production. Non-financial services firms experienced stable to slightly higher demand, and some firms reported that revenues exceeded expectations. Housing demand weakened noticeably as growing concerns about affordability contributed to non-seasonal declines in sales, resulting in a slight increase in inventory and more moderate price appreciation. Commercial real estate conditions slowed. Loan demand was mixed across most Districts; some financial institutions reported increased

	customer usage of revolving credit lines, while others reported weakening residential loan demand amid higher mortgage interest rates. Demand for transportation services was mixed and reports on agriculture conditions across reporting Districts varied. While demand for energy products was robust and oil and gas drilling activity picked up, production remained constrained by labor availability and supply chain bottlenecks for critical components. Similar to the previous report, the outlook for future economic growth was mostly negative among reporting Districts, with contacts noting expectations for further weakening of demand over the next six to twelve months. • 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 ***Comment: Surging prices for gas, food and rent catapulted U.S. inflation to a new four-decade peak in June. Meanwhile, the Fed continues to wield its major tool—interest rates—to try to tame inflation. An increase of up to 1% is expected.***
	FDIC Consolidated Reports of Condition and Income for Second Quarter 2022 (07/12/2022) - The attached materials pertain to the Consolidated Reports of Condition and Income (Call Report) for the June 30, 2022, report date and provide guidance on certain reporting issues. This Financial Institution Letter and the attached Supplemental Instructions should be shared with the individual responsible for preparing the Call Report at your institution. Please plan to complete as early as possible the preparation, editing, and review of your institution's Call Report data and the submission of these data to the agencies' Central Data Repository (CDR). Statement of Applicability: This Financial Institution Letter (FIL) apply to all FDIC-insured financial institutions.

BSA / AML

	FinCEN Requests Comments on Renewal of the OMB Control Number for Bank Secrecy Act Regulations Requiring Information Sharing Between Government Agencies and Financial Institutions (07/11/2022) - On July 11, 2022, the Financial Crimes Enforcement Network (FinCEN) published in the Federal Register a 60-day notice to renew the Office of Management and Budget (OMB) control number assigned to existing Bank Secrecy Act regulations at 31 CFR 1010.520. Specifically, the regulations require that, upon receiving an information request from FinCEN, a financial institution must search its records to determine whether it maintains or has maintained any account or engaged in any transaction with an individual, entity, or organization named in the request. If a financial institution identifies an account or transaction named in the request, it must report such

	information to FinCEN in the manner and timeframe specified in the request. The notice is required to give the public an opportunity to comment on existing regulatory requirements and burden estimates. The notice requests feedback from industry on or before September 9, 2022. FinCEN encourages the public to review this notice and provide comment. ***Comment: This is a technical amendment to renew the OMB number but does give interested parties an opportunity to comment on 'existing regulatory requirements and burden estimates.'***

Deposit / Retail Operations

	FDIC Updates on Brokered Deposits (07/15/2022) - The Federal Deposit Insurance Corporation (FDIC) is issuing a statement, adding a new Question and Answer (Q&A), and updating public information on the Banker Resource Center Brokered Deposits Page, to remind FDIC-insured depository institutions (IDIs) that deposits swept from broker dealers with a primary purpose exception to unaffiliated IDIs must be reported as brokered if there are any additional third parties involved that qualify as a deposit broker, as defined by Section 337.6 –Brokered Deposits, of the FDIC's Rules and Regulations.
	
	The FDIC Statement can be found on the FDIC website.
	
	See FDIC's Banker Resource Center Brokered Deposits Page for the new Q&A and additional information.
	
	Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.
	
	Highlights:
	• A Statement, new Q&A (D.10) in the Questions and Answers Related to Brokered Deposit Rule, and an update to the Public Report of Entities Submitting Notices for a Primary Purpose Exception asterisk note, are being issued to remind IDIs that:
	    ○ An IDI receiving sweep deposits from an unaffiliated broker dealer with a primary purpose exception for that business line should be aware of any additional third parties involved in the deposit placement arrangement that qualify as a deposit broker;
	    ○ If an additional third party is involved that would qualify as a deposit broker, for example, the third party is engaging in matchmaking activities, then the sweep deposits received from the broker dealer must be reported as brokered deposits on the IDI's quarterly filings of the Consolidated Report of Condition and Income (Call Report), even if the broker dealer has a primary purpose exception for the relevant business line;
	    ○ In conjunction with new Q&A D.10, IDIs should review Q&A C.6 for an example of services that constitute matchmaking activities when provided by a third party to a broker-dealer in an unaffiliated sweep program; and
	    ○ The IDI is responsible for accurately reporting deposits on its Call Report. However, the FDIC will not require an IDI to refile Call Reports that predate

the issuance of the attached Statement, if, after good faith efforts, certain deposits were not previously reported as brokered by the IDI due to a misunderstanding of how the facilitation aspect of the deposit broker definition applies when additional third parties are involved.

- Call Report instructions have been updated to provide that IDIs that receive deposits from a person with a primary purpose exception should be aware if any additional third parties that qualify as deposit brokers are involved in the deposit placement arrangement, and if so, those deposits must be reported as brokered.

- The Public Report of Entities Submitting Notices for a Primary Purpose Exception has also been updated to include filings received through June 24, 2022.

Interested parties can sign up to receive alerts when the Brokered Deposits page is updated through the FDIC Subscription Service.

Attachment:

Questions and Answers Related to Brokered Deposits Rule – As of July 15, 2022

Comment: Be sure to implement compliance with this latest alert. Brokered deposits have been identified as critical issues in past bank failures and are a hot button for examiners.

Human Resources

No news to report this week.

Lending

CFPB Court Case Sets Section 1071 Rulemaking Deadline (07/11/2022) – In a court ruling, the bureau has agreed to issue a final rule implementing Section 1071 of the Dodd-Frank Act by March 31, 2023.

Comment: A final rule could still be issued by year end 2022. And while the rule can be issued no later than the end of March 2023 for an 'effective date,' banks can expect 12 to 18 months to implement the rule and begin collecting and reporting data.

Our comment letter on this proposal highlighted a number of concerns, including the significant increase in data points over those actually required by law as well as the proposal to identify an applicant's race or ethnicity by observation if not provided by the applicant.

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.**