Community Bankers of Michigan Regulatory Dispatch

July 6, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Agencies Release List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies

Federal bank regulatory agencies made available the 2022 list of distressed or underserved nonmetropolitan middle-income geographies. These are geographic areas where revitalization or stabilization activities are eligible to receive Community Reinvestment Act (CRA) consideration under the law's community development definition. Visit the Federal Financial Institutions Examination Council (FFIEC) website to see the 2022 list, previous years' lists, and criteria for designating these areas.

Distressed or underserved nonmetropolitan middle-income geographies are designated by the agencies in accordance with their CRA regulations. The designations continue to reflect local economic conditions, including unemployment, poverty, and population changes.

The 2022 list uses the County Intercensal Estimates for 2000-2010 for population estimates because the County Intercensal Estimates for 2010-2020 are not yet available.

Revitalization or stabilization activities in these geographies are eligible to receive CRA consideration under the community development definition for 12 months after publication of the current list. As with past lists, the agencies apply a one-year lag period for geographies that were included in 2021 but are no longer designated as distressed or underserved in the current list.

Attachments:

- 2022 List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies
- Source Information and Methodology

Comment: These are geographic areas where revitalization or stabilization activities are eligible to receive Community Reinvestment Act (CRA) consideration under the community development definition.

CBM Insights

Q: We do not lock the rates on our mortgage loans. We operate off a rate matrix, so when the WSJ Prime changes, our matrix changes. The Loan Estimate is issued as of the application date using the rate matrix rate as of that date. I am thinking even though the Loan Estimate says we do not lock in our rates, we would have to issue a revised Loan Estimate quoting the new rate, correct?

A: No. If you do not lock rates, and there is a subsequent rate change - either up or down - and regardless of the amount of the rate change, you are not required to issue a revised Loan Estimate. You can rely on providing the current rate on the Closing Disclosure and would still be in compliance with §1026.19(e).

Items of Interest

Bank Management

	FDIC Office of the Ombudsman Publishes 2021 Services and Activities Report (07/01/2022)
	The Federal Deposit Insurance Corporation's (FDIC) Office of the Ombudsman published a report highlighting its activities and the services provided to stakeholders during 2021.
	
	The role of FDIC Ombudsman was created by Congressional action in 1995 to provide an informal alternative to the regulatory appeals process. The Office of the Ombudsman operates independent of the agency's divisions that issue supervisory determinations and reports directly to the office of the FDIC Chairman. The Office serves as an impartial liaison to facilitate effective communication of relevant information between parties, with a focus on providing a fair and transparent resolution process. To encourage external parties to consult an Ombudsman, the Office has safeguards that preserve the confidentiality of those seeking its assistance. The FDIC encourages bankers and other stakeholders to use the Office of the Ombudsman as an independent, neutral, and confidential resource for informally discussing disagreements with findings or conclusions of the agency, and for identifying strategies and options to facilitate fair and unbiased outcomes.
	
	The 2021 Office of the Ombudsman Services and Activities Report can be found on the FDIC's website.
	
	Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.
	
	Highlights:
	• During 2021, the Office of the Ombudsman continued to work towards fulfilling its mission by actively engaging with stakeholders through the use of technology and virtual platforms. The accomplishments and results outlined in the Report include:
	• Providing liaison services to facilitate productive communications between bankers and the FDIC;
	• Discussing options for resolving disagreements with supervisory findings or conclusions;
	• Engaging with stakeholders to initiate or strengthen relations with the Office;
	• Responding to requests for information about the FDIC's regulatory or resolution-related activities.
	• The Report also shares:
	  ○ Notable requests for regulatory or supervisory changes received from bankers.
	  ○ Common themes of candid stakeholder feedback provided to Regional Ombudsmen.

	• To share your thoughts and feedback, or if you need the Office's confidential, neutral, independent, and informal service, please contact your Regional Ombudsman or submit an anonymous inquiry using the Ombudsman's online form. Attachment: 2021 Office of Ombudsman Services and Activities Report ***Comment: For information on the Regional Ombudsmen, click here.***
	OCC Hosts Compliance and Operational Risk Workshops in St. Louis (06/30/2022) - WASHINGTON — The Office of the Comptroller of the Currency (OCC) will host two workshops July 26-27 in St. Louis for directors of community banks and federal savings associations supervised by the OCC. The Compliance Risk: What Directors Need to Know workshop on July 26 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 July 27 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."***
	Joint Agencies Issue Host State Loan-to-Deposit Ratios (06/28/2022) - Federal bank regulatory agencies issued the host state loan-to-deposit ratios that are used to evaluate compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. These ratios replace those from June 2021. By law, a bank is generally prohibited from establishing or acquiring branches outside of its home state primarily for the purpose of acquiring additional deposits. This prohibition seeks to ensure that interstate bank branches will not take deposits from a community without the bank also reasonably helping to meet the credit needs of that community. Attachment: Section 109 Host State Loan-To-Deposit Ratios

	OCC Reports on Key Risks Facing Federal Banking System (06/23/2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) reported the key issues facing the federal banking system in its Semiannual Risk Perspective for Spring 2022. As banks continue to navigate the operational- and market-related impacts of the pandemic along with substantial government stimulus, current geopolitics have tightened financial conditions and increased downside risk to economic growth. The OCC highlighted operational, compliance, interest rate, and credit risks, among the key risk themes in the report. Highlights from the report include: • Bank financial performance faces challenges from inflation, a rising interest rate environment, and other implications related to the pandemic and geopolitical events. • Operational risk is elevated as banks respond to an evolving and increasingly complex operating environment. Cyber risk remains elevated. • Compliance risk is heightened as banks navigate the current operational environment, regulatory changes, and policy initiatives. • Credit risk remains moderate as banks face some areas of weakness and potential longer-term implications related to the pandemic, inflation, and direct and indirect impacts of the war in Ukraine. • Across key risk areas, banks are experiencing challenges retaining and replacing staff with specialized experience due to increasing turnover. During this period of increasing volatility, these staffing challenges present increased risk. The report also highlights an OCC initiative to act on climate-related financial risks to the federal banking system. The report covers risks facing national banks, federal savings associations, and federal branches and agencies based on data as of December 31, 2021. The report presents information in five main areas: the operating environment, bank performance, a special section on climate-related topics in emerging risks, trends in key risks, and supervisory actions. The report focuses on issues that pose threats to those financial institutions regulated by the OCC and is intended as a resource to the industry, examiners, and the public. Related Link OCC Semiannual Risk Perspective for Spring 2022 (PDF) ***Comment: Consider reviewing this report as part of your own risk assessment and strategic planning.***

BSA / AML

	FinCEN and BIS Issue Joint Alert on Potential Russian and Belarusian Export Control Evasion Attempts (06/28/2022) - The Financial Crimes Enforcement Network (FinCEN) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued a joint alert to financial institutions advising them to be vigilant against efforts by individuals or entities to evade BIS export controls implemented in connection with the Russian Federation's further invasion of Ukraine.

	Comment: The alert identifies key red flags and 'commodities of concern.' Failing to report as and when required can carry severe penalties (up to five years in prison for willful violations and substantial fines for negligent violations).

Deposit / Retail Operations

	FRB Announces Final Timeline and Implementation Details for Adoption of New Fedwire Funds Service Message Format (06/27/2022) - The Federal Reserve Board on Monday announced the final timeline and implementation details for the adoption of a new Fedwire Funds Service message format. The final details are broadly similar to the proposal issued last year. The Board confirmed that the new message format, ISO 20022, will be adopted on a single day as proposed last year, rather than in three separate phases. The Board also provided a new timeline for implementation based on review of public comments, with the new message format to be adopted on March 10, 2025. In addition, the Board provided further information regarding customer testing and other implementation details. The Fedwire Funds Service is a real-time gross settlement system owned and operated by the Federal Reserve Banks, which enables businesses and financial institutions to transfer funds quickly and securely. Adopting the new message format for the Fedwire Funds Service will allow for enhanced efficiency of both domestic and cross-border payments due to greater interoperability among global payment systems, and a richer set of payment data that may help banks and other entities comply with sanctions and anti-money laundering requirements. The new message format is an industry standard that many global payment and messaging systems are adopting. The new message format was developed by the International Organization for Standardization, which is an independent, non-governmental organization that publishes standards for a broad range of industries. For media inquiries, e-mail media@frb.gov or call 202-452-2955. Federal Register notice: New Message Format for the Fedwire Funds Service (PDF)

Human Resources

	DOL Final Rule Overtime Update (07/01/2022) – Based upon review of the Spring Regulatory Agenda, the Department of Labor signaled that the proposed overtime rule will be issued in October 2022. ***Comment: The U.S. Department of Labor (DOL) rules on the white-collar exemption from the Fair Labor Standards Act (FLSA) minimum wage requirements became effective Jan. 1, 2020.***

Lending

CFPB Moves to Reduce Junk Fees Charged by Debt Collectors (06/29/2022) - Washington, D.C. –The Consumer Financial Protection Bureau (CFPB) issued an advisory opinion affirming that federal law often prohibits debt collectors from charging "pay-to-pay" fees. These charges, commonly described by debt collectors as "convenience fees," are imposed on consumers who want to make a payment in a particular way, such as online or by phone.

"Federal law generally forbids debt collectors from imposing extra fees not authorized by the original loan," said CFPB Director Rohit Chopra. "Today's advisory opinion shows that these fees are often illegal and provides a roadmap on the fees that a debt collector can lawfully collect."

Debt collectors play a critical role in the consumer finance ecosystem, and the CFPB wants to ensure that law-abiding debt collectors are not disadvantaged by their competitors that impose unlawful fees. While most debt collectors allow consumers to make payments by phone or online without charging additional fees, some debt collectors impose additional fees for those types of payments. These debt collectors do so even if it is cheaper and less time-consuming for them to process phone and online payments than it is to process the paper-check payments delivered by mail or in person that debt collectors typically process for free. These types of fees are often illegal, and today's advisory opinion and accompanying analysis seek to stop these violations of law and assist consumers who are seeking to hold debt collectors accountable for illegal practices.

The advisory opinion interprets the language in Section 808 of the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from collecting any amount that is not expressly authorized by the underlying agreement or permitted by law. The FDCPA was passed in 1977 in response to widespread abuses in the debt collection industry, which Congress acknowledged was not subject to appropriate regulation under existing laws at the time. In 2010, the Consumer Financial Protection Act transferred primary responsibility for the FDCPA, including issuing regulations and ensuring compliance, to the CFPB.

The advisory opinion covers the following on debt collection practices:

- Identifies scope of illegal fees: The collection of any fee is prohibited unless the fee amount is in the consumer's contract or affirmatively permitted by law.

- Affirms that silence in the law is not an authorization: A debt collector may only collect a fee when it is authorized by the agreement creating the debt or is "permitted by law." Where no law expressly authorizes a fee, it is not "permitted by law," even if no law expressly prohibits it.

- Clarifies role of payment processors: Debt collectors violate the FDCPA when using payment processors who charge unauthorized fees at a minimum if the debt collector receives a kickback from the payment processor.

Read the advisory opinion.

Comment: The federal FDCPA does not directly apply to creditors collecting their own debts. However, be sure that any collector retained by your bank is aware of this advisory.

	Joint 2022 Interagency Flood Insurance Q&As (06/30/2022) - Outlook Live Webinar Wednesday, July 27, 2022 Times: 11:00 a.m. - 12:00 p.m. Pacific 12:00 p.m. - 1:00 p.m. Mountain 1:00 p.m. - 2:00 p.m. Central 2:00 p.m. - 3:00 p.m. Eastern The federal financial regulatory agencies are hosting an interagency discussion of recent updates to the Interagency Questions and Answers Regarding Flood Insurance (Q&As), which were released on May 11, 2022. Staff from the Board of Governors of the Federal Reserve System, Farm Credit Administration, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency will provide an overview of the revisions to the Q&As, which were updated to reflect significant changes to the federal flood insurance requirements in recent years. We will follow the presentation with a Questions and Answers segment. Please send in questions via email in advance of the event to facilitate the Q&A segment. Registration Please click on the URL or copy and paste it into your browser to register for this webinar: https://www.webcaster4.com/Webcast/Page/577/45801. This event has been submitted to ABA Professional Certifications for CE credit review and is pending approval. This webinar is part of the ongoing series of events focused specifically on consumer compliance topics. The “Outlook Live” webinar series is a Federal Reserve System initiative produced in conjunction with the Federal Reserve System’s newsletter Consumer Compliance Outlook. ***Comment: The new FAQs are extremely helpful in solving thorny flood insurance questions. Consider signing up for this webcast.***
	OCC Reports Improvement in Overall Mortgage Performance (06/27/2022) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) reported that the performance of first-lien mortgages in the federal banking system improved during the first quarter of 2022. The OCC Mortgage Metrics Report, First Quarter 2022 showed that 96.9 percent of mortgages included in the report were current and performing at the end of the quarter, compared to 94.2 percent a year earlier. The percentage of seriously delinquent mortgages – mortgages that are 60 or more days past due and all mortgages held by bankrupt borrowers whose payments are 30 or more days past due - was 1.8 percent in the first quarter of 2022, compared to 2.3 percent in the prior quarter and 4.6 percent a year ago. Servicers initiated 19,524 new foreclosures in the first quarter of 2022, an increase from the prior quarter and a year earlier. The new foreclosure volume in the first quarter of

2022 is comparable to pre-COVID-19 pandemic foreclosure volumes and reflects the expiration of federal foreclosure moratoria.

Servicers completed 42,427 modifications in the first quarter of 2022, a decrease of 10.7 percent from the previous quarter. Of the 42,427 mortgage modifications, 80.8 percent reduced borrowers' monthly payments, and 41,318, or 97.4 percent, were "combination modifications" - modifications that included multiple actions affecting the affordability and sustainability of the loan, such as an interest rate reduction and a term extension.

The first-lien mortgages included in the OCC's quarterly report comprise 22 percent of all residential mortgage debt outstanding in the United States or approximately 12.2 million loans totaling $2.6 trillion in principal balances.

This report provides information on mortgage performance through March 31, 2022, and is available on the OCC's website, www.occ.gov.

Related Link
OCC Mortgage Metrics Report, First Quarter 2022 (PDF)

Comment: Mortgage performance is currently excellent. The thorny issue is whether the US economy will fall into recession with adverse impact on this segment.

FRB Ask the Fed®: Commercial Real Estate (06/27/2022) - NEW – Wednesday, July 13, 2022, at 2:00 p.m.- 3:15 p.m. ET: Commercial Real Estate (CRE): The Good, the Bad and the Risky?

Will higher inflation, a rising interest rate environment, and growing uncertainty combine to derail a thriving commercial real estate market? In 2020 and 2021, U.S. CRE market conditions could have been categorized as fast and furious, as alternative real estate classes rose and a number of traditional sectors experienced epic declines. Fast forward to 2022, the industry is now experiencing changing market conditions, greater inflation, and uncertainty is growing as the interest rate environment shifts away from the accommodative policy associated with the Covid-19 pandemic. Will economic and demographic conditions accelerate, detract or support these accelerated changes? Is working from home here to stay? Will the changing rate environment result in more lending volatility? Will rising CRE cap rates and declining values resulting in greater risk?

On July 13, please join Subject Matter Expert and Senior Policy Advisor, Brian Bailey, CCIM, CRE as he discusses trends and emerging risks in the CRE and CRE finance industries from a supervisory perspective.

Registration is open now at www.askthefed.org. As always, we want your questions. You can email your questions in advance of each session at questions@askthefed.org .We'll take questions during each session as well, but questions received in advance will receive priority.

We strongly encourage participants to use the webinar audio on their computer for the best experience. Webinar materials will be archived for future viewing.

We hope you can join us.

The Ask the Fed® Team

	Comment: These webinars are always beneficial. Remember that if you can't attend on July 13, you can always review the taped version later.

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.**