Community Bankers of Michigan Regulatory Dispatch

June 22, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Active Shooter Policy?

In the wake of recent tragic events nationwide, a number of banks have asked if they need an 'active shooter policy.' Such a policy is certainly not a requirement under either federal or state law, and there is no indication the various regulatory agencies are expecting community banks to draft such a policy. Having said that, active shooter preparedness – policy or not - should be a priority for every company concerned about employee safety.

In 2015, CISA released Planning and Response to an Active Shooter: An Interagency Security Committee Policy and Best Practices Guide. While the guide really targets government agencies, section 7 entitled 'Response' outlines important considerations and could be used to draft an 'active shooter policy' as either a stand-alone policy or part of a banks overall security policy.

CBM Insights

Q: We have a lender that wants to invoke an exemption from High Volatility Commercial Real Estate (HVCRE) requirements because the borrower has gross annual revenue less than $1MM. Does that make a loan exempt from the HVCRE requirements?

A: Maybe. Here is a very helpful tool from the CSBS on HVCRE that your bank may find helpful. Notice that a loan may qualify for an exemption from the HVCRE requirements if it qualifies as an investment in a 'community development project.'

That HVCRE exemption looks to the Community Reinvestment Act for the definition of 'community development projects.'

What Is Community Development?

Under the CRA, community development activities

- *support affordable housing for low- or moderate-income (LMI) individuals, including multifamily rental housing.*

- *target community services to LMI individuals.*

• promote economic development by financing businesses or farms that have gross annual revenues of $1 million or less or that meet the size eligibility requirements of the U.S. Small Business Administration's (SBA) Small Business Development Company or Small Business Investment Company (SBIC) programs.

• revitalize or stabilize LMI geographies; designated disaster areas; or distressed or underserved nonmetropolitan middle- income geographies designated by the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

Source link.

Items of Interest

Bank Management

FRB Industrial Production and Capacity Utilization - G.17 (06/17/2022) - Total industrial production moved up 0.2 percent in May. Output has increased in every month of the year so far, with an average monthly gain of nearly 0.8 percent. In May, manufacturing output declined 0.1 percent after three months when growth averaged nearly 1 percent; the indexes for utilities and mining rose 1.0 percent and 1.3 percent, respectively, in May. At 105.7 percent of its 2017 average, total industrial production in May was 5.8 percent above its year-earlier level. Capacity utilization edged up to 79.0 percent, 0.5 percentage point below its long-run (1972–2021) average.

FRB Issues FOMC Statement (06/15/2022) - Overall economic activity appears to have picked up after edging down in the first quarter. Job gains have been robust in recent months, and the unemployment rate has remained low. Inflation remains elevated, reflecting supply and demand imbalances related to the pandemic, higher energy prices, and broader price pressures.

The invasion of Ukraine by Russia is causing tremendous human and economic hardship. The invasion and related events are creating additional upward pressure on inflation and are weighing on global economic activity. In addition, COVID-related lockdowns in China are likely to exacerbate supply chain disruptions. The Committee is highly attentive to inflation risks.

The Committee seeks to achieve maximum employment and inflation at the rate of 2 percent over the longer run. In support of these goals, the Committee decided to raise the target range for the federal funds rate to 1-1/2 to 1-3/4 percent and anticipates that ongoing increases in the target range will be appropriate. In addition, the Committee will continue reducing its holdings of Treasury securities and agency debt and agency mortgage-backed securities, as described in the Plans for Reducing the Size of the Federal Reserve's Balance Sheet that were issued in May. The Committee is strongly committed to returning inflation to its 2 percent objective.

In assessing the appropriate stance of monetary policy, the Committee will continue to monitor the implications of incoming information for the economic outlook. The Committee would be prepared to adjust the stance of monetary policy as appropriate if risks emerge that could impede the attainment of the Committee's goals. The Committee's assessments will take into account a wide range of information, including readings on public health, labor market conditions, inflation pressures and inflation expectations, and financial and international developments.

	Voting for the monetary policy action were Jerome H. Powell, Chair; John C. Williams, Vice Chair; Michelle W. Bowman; Lael Brainard; James Bullard; Lisa D. Cook; Patrick Harker; Philip N. Jefferson; Loretta J. Mester; and Christopher J. Waller. Voting against this action was Esther L. George, who preferred at this meeting to raise the target range for the federal funds rate by 0.5 percentage point to 1-1/4 percent to 1-1/2 percent. Patrick Harker voted as an alternate member at this meeting. ***Comment: This 75 bp increase is the largest since 1994.***
	CSBS States of the Economy - June 2022 (06/14/2022) - "States of the Economy" is a monthly look at the economic picture across the country. In this episode CSBS Chief Economist Tom Siems and host Matt Longacre discuss what the latest inflation and jobs numbers, business confidence measures and more are telling us about the current trajectory of the U.S. economy. ***Comment: CSBS is currently collecting responses for the Q2 2022 Community Bank Sentiment Index. Your responses help economists and state regulators understand the state of community banking.***

BSA / AML

	FinCEN Issues Advisory on Elder Financial Exploitation (06/15/2022) - WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) is issuing an advisory to alert financial institutions to the rising trend of elder financial exploitation (EFE). EFE involves the illegal or improper use of an older adult's funds, property, or assets, and is often perpetrated either through theft or scams. The advisory highlights new EFE typologies and red flags since FinCEN issued its first advisory on the issue in 2011. "FinCEN is proud to support World Elder Abuse Awareness Day and call attention to a concerning and tragic rise in elder financial exploitation. Older adults should not have to endure abuse by criminals who seek to defraud them of their lifelong savings, or who wish to lure them into scams or schemes under false pretenses," said FinCEN Acting Director Himamauli Das. "Financial institutions serve on the frontlines in protecting their older customers' finances and can play a critical role in helping to identify, prevent, and report suspected elder financial exploitation. Financial institutions' vigilance matters. Their reporting matters." In 2021, financial institutions filed 72,000 Suspicious Activity Reports (SARs) related to EFE. As referenced in the advisory, this represents an increase of 10,000 SARs over the previous year's filings. The Consumer Financial Protection Bureau (CFPB)'s estimate of the dollar value of suspicious transactions linked to EFE has similarly increased—from $2.6 billion in 2019 to $3.4 billion in 2020. This is the largest year-to-year increase since 2013. FinCEN's EFE advisory highlights behavioral and financial red flags to aid financial institutions with identifying, preventing, and reporting suspected EFE. In line with the risk-based approach to compliance with the Bank Secrecy Act, financial institutions should perform additional due diligence where appropriate and remain alert to any suspicious activity that could indicate that their customers are perpetrators, facilitators, or victims of EFE.

In addition to filing a SAR, FinCEN recommends that financial institutions refer their older customers who may be victims of EFE to the Department of Justice's National Elder Fraud Hotline at 833-FRAUD-11 or 833-372-8311 for assistance with reporting suspected fraud to the appropriate government agencies. For educational resources on EFE and scams targeting older adults, please see the CFPB's Office for Older Americans.

Comment: The case studies and red flags in this advisory are extremely helpful. Consider using them in training your front-line staff in identifying elder financial exploitation. Also, be sure your BSA officer receives this advisory as it includes important information on SAR and other filings in response to EFE.

Deposit / Retail Operations

CFPB Blog Measuring the Impact of Financial Institution Overdraft Programs on Consumers (06/16/2022) - In December 2021, the CFPB released two research reports on checking account overdraft fees, detailing how banks continue to rely on these fees as a major source of revenue and how they do not compete on transparent, upfront pricing. At that time, CFPB Director Rohit Chopra announced that financial institutions with a higher share of frequent over drafters or a higher average fee burden for overdrafts should expect the Bureau to be paying them close supervisory attention. These often exploitative and hidden fees can have a significant impact on a family's bank account, and as a result, we have been closely monitoring those institutions.

Since the beginning of the year, we have been piloting a supervision effort to collect key metrics from some supervised institutions regarding the consumer impact of their overdraft and non-sufficient fund (NSF) practices. We have asked over 20 institutions for data on five consumer-impact metrics:

- Total annual dollar amount consumers receive in overdraft coverage compared to the amount of fees charged.
- Annual dollar amount of overdraft fees charged per active checking account.
- Annual dollar amount of NSF fees charged per active checking account.
- Prevalence of frequent over drafters: the share of active checking accounts with more than 6 and more than 12 overdraft and/or NSF fees per year.
- Share of active checking accounts that are opted into overdraft programs for ATM and one-time debit transactions

In addition to these metrics, our Supervision team is seeking detailed information about entities' overdraft practices, including how they assess their fees, their grace periods, the dollar thresholds above which fees are assessed, and caps on the number of fees charged per day, or per statement period. View the complete set of questions on overdraft practices.

We intend to use this information to identify institutions for further examination and review. We also plan to provide feedback to each institution, as well as to share this information with other regulators. This supervisory information will not be made public but is intended to support our ongoing work.

We're encouraged that some banks and credit unions are competing for consumers' business by changing their overdraft and NSF programs. We will evaluate how these changes are implemented. Many banks have yet to improve their practices. Our hope is

	that by the Bureau collecting and sharing these metrics, institutions can better understand the impact of their overdraft practices on their consumers relative to their peers, and that this knowledge further boosts competition and improves outcomes for American families. If you have a problem with a consumer financial product or service, you can submit a complaint to the CFPB online or by calling (855) 411-2372. You can also try reaching out to the company. Companies can usually answer questions unique to your situation and more specific to the products and services they offer. ***Comment: Clearly, the CFPB is intent on dismantling ODP! Review your program (if any) and be sure that you have appropriate caps in place along with good disclosures.***

Human Resources

	No news to report this week.

Lending

	FFIEC Announces Availability of 2021 Data on Mortgage Lending (06/16/2022) - Washington, D.C. – The Federal Financial Institutions Examination Council (FFIEC) announced the availability of data on 2021 mortgage lending transactions reported under the Home Mortgage Disclosure Act (HMDA) by 4,338 U.S. financial institutions. Covered institutions include banks, savings associations, credit unions, and mortgage companies. The HMDA data are the most comprehensive publicly available information on mortgage market activity. The data are used by industry, consumer groups, regulators, and others to assess potential fair lending risks and for other purposes. The data help the public assess how financial institutions are serving the housing needs of their local communities and facilitate federal financial regulators' fair lending, consumer compliance, and Community Reinvestment Act examinations. The Snapshot National Loan-Level Dataset (Snapshot) contains the national HMDA datasets as of May 1, 2022.

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.**

03.22.2021 Rules to Enhance and Standardize Climate-Related Disclosures for Investors - The Securities and Exchange Commission today proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposing release will be published on SEC.gov and in the Federal Register. **DATES: Comments should be received on or before June 17, 2022 (the comment period was extended on Monday, May 9th.)**