



Community Bankers of Michigan Regulatory Dispatch

June 28, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CBM Insights

Q: We are having a discussion regarding the Military Lending Act (MLA) and the modifications of loans. If we are modifying a consumer loan to change the payment date from the 15th to the 25th and it effectively changes the maturity date since it is an installment loan, If MLA was originally pulled at time the credit was extended to the customer, do you have to pull it again if you are doing this type of modification?

A: Likely 'No.' Section 232.3(g)(1) defines a covered borrower as a consumer who, at the time the consumer becomes obligated on a consumer credit transaction..." Additionally, the FDIC's Consumer Compliance Examination Manual stresses the DoD's intention to align MLA with Regulation Z in the underlined passage below.

Consumer Credit Consumer credit is "credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

- *Subject to a finance charge; or*
- *Payable by a written agreement in more than four installments."*

The MLA regulation's definition of "consumer credit" has been amended to align more closely with the definition of the same term in Regulation Z. It is DoD's intent that the term as used in the MLA regulation should wherever possible be interpreted consistently with Regulation Z.

Source [link](#).

Logically, that means extensions and modification agreements are not covered. Using the definitions in Regulation Z, if you provide new disclosures and or have a new promissory note, you have a new 'covered' transaction.

Items of Interest

Bank Management

CSBS [Community Bankers' Business Conditions Outlook Tied to Yield Curve](#) (06/22/2022) - The slope of the U.S. yield curve, or the difference between the yield on the 10-year Treasury note and the 2-year Treasury bill, appears to be an important indicator of community bankers' expectations for future business conditions. As shown in the nearby chart, turning points in community bankers' outlook for future business conditions

strengthened when the yield curve widened and has weakened again as the yield curve has narrowed.

The business conditions indicator is one of seven components that comprise the CSBS community bank sentiment index (CBSI). Each of the seven indicators and the overall index are computed by subtracting the percentage of negative, or unfavorable, responses from the percentage of positive, or favorable, responses and then adding 100 so that 100 is the neutral level. For the business conditions indicator, values less than 100 indicate that community bankers expect a contracting, or slowing, economy whereas values above 100 signify future expansion.

This interesting relationship between the business conditions sentiment indicator and the yield curve suggests that the soon-to-be-released second quarter 2022 CBSI will likely show further deterioration in the business conditions component. Even though interest rates have increased markedly in recent weeks, the yield curve has stayed razor thin, with the difference between 10-year and 2-year Treasury securities now around 10 basis points. With the yield curve essentially flat, the historical relationship would infer that the next business conditions component of the CBSI will likely be 60 or less and may fall to the lowest level recorded since CSBS launched the CBSI in early 2019.

Comment: This is probably a good time to recount what the slope of the curve telegraphs about investor sentiment. If long and short rates have very little difference, it indicates investors are relatively satisfied that inflation is not a threat. Two-year buyers will almost always take their cue from the Fed, while 10-year buyers, are quick to retreat if inflation is a problem.

FRB [The Outlook for Inflation and Monetary Policy - Governor Michelle W. Bowman](#) (06/23/2022) - *Inflation is the highest we have seen in the United States in 40 years and so far it shows little sign of moderating. At the same time, the economy is growing at a moderate pace, and the labor market is extremely tight, as indicated by a variety of measures including reports of many employers unable to find workers despite significantly raising wages. That tightness is contributing to inflation, because labor is the largest input cost for producing goods and providing services. Inflation is a significant challenge for everyone, but it hits lower- and moderate-income people the hardest, since they spend a larger share of their incomes on necessities and often have less savings to fall back on. Inflation is also a burden for businesses that must somehow balance unpredictable costs while setting prices that aren't so high that they discourage customers from purchasing. Inflation that continues at these levels is a threat to sustained employment growth and to the overall health of the economy.*

The inflation data show that, after moderating slightly for a short time, price increases for motor vehicles have picked up again, energy prices rose sharply in May, and prices for food have risen more than 10 percent from a year ago. The inflationary effect from the invasion of Ukraine has proven to be lasting for both energy and food commodity prices, with little prospect of the conflict or those price pressures abating very soon. More broadly, global supply chain issues continue, in part because of the effect of ongoing COVID-19 lockdown policies in China that have slowed production and shipping.

OCC [Hosts Credit and Operational Risk Workshops in Pittsburgh](#) (06/21/2022) - WASHINGTON — The Office of the Comptroller of the Currency (OCC) will host two

workshops July 12-13 in Pittsburgh for directors of community banks and federal savings associations of OCC-supervised institutions.

The Credit Risk: Directors Can Make a Difference workshop on July 12 covers the roles of the board and management, credit risk within the loan portfolio, and how to stay informed of changes in credit risk.

The Operational Risk: Navigating Rapid Changes workshop on July 13 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 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."

[FDIC Board of Directors Amends Restoration Plan and Issues a Proposed Rule on Assessments, Revised Deposit Insurance Assessment Rates](#) (06/21/2022) - WASHINGTON –

The Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board) issued a notice of proposed rulemaking to increase deposit insurance assessment rates by 2 basis points for all insured depository institutions in order to increase the likelihood that the reserve ratio of the Deposit Insurance Fund (DIF) reaches the statutory minimum of 1.35 percent by the statutory deadline of September 2028. The Board also adopted an Amended Restoration Plan, which incorporates the increase in assessment rates.

"Better to take prudent but modest action earlier in the statutory 8-year period to reach the minimum reserve ratio of the Deposit Insurance Fund than to delay and potentially have to consider a larger increase in assessments at a later time when banking and economic conditions may be less favorable," said Acting Chairman Martin Gruenberg.

The proposed assessment rate schedules would begin with the first assessment period of 2023 and remain in effect unless and until the reserve ratio meets or exceeds 2 percent.

Extraordinary growth in insured deposits during the first and second quarters of 2020 caused the Deposit Insurance Fund (DIF) reserve ratio to decline below the statutory minimum of 1.35 percent. The reserve ratio is the ratio of the DIF to all insured deposits in the United States. As of June 30, 2020, the reserve ratio stood at 1.30 percent. As required by the Federal Deposit Insurance Act, the Board adopted a Restoration Plan on September 15, 2020, to restore the DIF reserve ratio to at least 1.35 percent by September 30, 2028. The Plan also requires the FDIC to update its analysis and projections for the fund balance and reserve ratio at least semiannually, which enables the FDIC to evaluate whether the reserve ratio is likely to reach 1.35 percent within the 8-year period.

Insured deposits continued to grow and, as of March 31, 2022, the reserve ratio declined by 4 basis points to 1.23 percent. The Amended Restoration Plan and proposed increase in

assessment rates intend to increase the likelihood that the reserve ratio will reach the statutory minimum of 1.35 percent by September 30, 2028, as required by statute. The proposal would also support growth in the DIF in progressing toward the FDIC's long-term goal of a 2 percent Designated Reserve Ratio (DRR).

The proposed rule provides opportunity for public comment through August 20, 2022.

Attachments:

[Fact Sheet: Amended Restoration Plan and Notice of Proposed Rulemaking on Assessments, Revised Deposit Insurance Assessment Rates](#)

[Memorandum to the Board of Directors: Restoration Plan Semiannual Update and Amended Restoration Plan](#)

[Federal Register Notice: Amendment of Federal Deposit Insurance Corporation Restoration Plan](#)

[Federal Register Notice: Notice of Proposed Rulemaking on Assessments, Revised Deposit Insurance Assessment Rates](#)

Comment: Community banks continue to see deposit growth. Coupled with deposit growth, this proposed change would increase costs for banks.

BSA / AML

FinCEN [Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies](#) (06/23/2022)

- WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) is informing U.S. financial institutions that the Financial Action Task Force (FATF), an intergovernmental body that establishes international standards for anti-money laundering, countering the financing of terrorism, and countering the financing of proliferation of weapons of mass destruction (AML/CFT/CPF), has issued public statements updating its lists of jurisdictions with strategic AML/CFT/CPF deficiencies following its plenary meeting this month. U.S. financial institutions should consider the FATF's stance toward these jurisdictions when reviewing their obligations and risk-based policies, procedures, and practices.

News Release: <https://www.fincen.gov/news/news-releases/financial-action-task-force-identifies-jurisdictions-anti-money-laundering-and-2>

Comment: Be sure your BSA Officer is aware of these changes.

FinCEN [Statement on Bank Secrecy Act Due Diligence for Independent ATM Owners or Operators](#) (06/22/2022) - The Financial Crimes Enforcement Network (FinCEN) issued a statement to provide clarity to banks on how to apply a risk-based approach to conducting customer due diligence (CDD) on independent Automated Teller Machine (ATM) owners or operators, consistent with the requirements set out in FinCEN's 2016 CDD Rule. Some independent ATM owners and operators have reported difficulty in obtaining and maintaining access to banking services, which jeopardizes the important financial services they provide, including to persons in underserved markets.

FinCEN is issuing this statement to remind banks that not all independent ATM owner or operator customers pose the same level of money laundering, terrorist financing, or other illicit financial activity risk, and not all independent ATM owner or operator customers are automatically higher risk. Further, banks that operate in compliance with applicable Bank Secrecy Act/anti-money laundering regulatory requirements and reasonably manage and mitigate risks related to the unique characteristics of customer relationships are neither prohibited nor discouraged from providing banking services to independent ATM owner or operator customers, including those that are Independent Sales Organizations.

Statement: <https://www.fincen.gov/news/news-releases/statement-bank-secrecy-act-due-diligence-independent-atm-owners-or-operators>

Comment: The statement includes a helpful checklist of items for appropriate due diligence review of these independent ATM owners/operators.

Deposit / Retail Operations

FRB [New FedNow Video and Details on Risk Management Capabilities](#) (06/21/2022) -

Combating instant payments-related fraud is top of mind for many in the payments industry as they get ready for the FedNowSM Service. When it comes to payments – new or traditional – fighting fraud is nothing new. However, it’s important that financial institutions and others in the payments ecosystem understand the unique characteristics of instant payments, so they can take appropriate steps to strengthen their defenses.

Interested in learning about the capabilities that will be available to help support and complement participating financial institutions' own fraud mitigation programs? [Read this article](#) about network and participant transaction limits, negative lists and more.

Human Resources

No news to report this week.

Lending

CFPB [Issues a Final Rule on Blocking Adverse Information Due to Trafficking](#) (06/24/2022) -

The CFPB has issued a Final Rule amending Regulation V, which implements the Fair Credit Reporting Act (FCRA), to address recent legislation that assists consumers who are victims of trafficking. This Final Rule prohibits consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information and establishes a method for victims of trafficking to submit documentation to consumer reporting agencies. The Bureau has also released a Fast Facts summary of the Final Rule.

You can access the Final Rule here:

<https://consumerfinance.gov/rules-policy/final-rules/prohibition-on-inclusion-of-adverse-information-in-consumer-reporting-in-cases-of-human-trafficking-regulation-v/>

You can access the Fast Facts summary here:

<https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/fair-credit-reporting-act/>

Comment: The CFPB gives the following examples of information that could be excluded from a credit report: “records containing derogatory information, such as payment delinquencies or defaults, reported to a consumer reporting agency on a loan or large purchase, records of coerced debt where a loan is taken out by a trafficking victim under force or threat, records of criminal arrests and convictions, and records of evictions or non-payment of rent.”

[FRB Senior Credit Officer Opinion Survey on Dealer Financing Terms \(06/23/2022\)](#) - 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. The HTML links below include the full report; the PDF links include the summary only.

[CFPB Initiates Review of Credit Card Company Penalty Policies Costing Consumers \\$12 Billion Each Year \(06/22/2022\)](#) - WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) is taking the first step toward addressing credit card company penalty policies costing consumers \$12 billion each year, starting by looking at excessive late fees. In an Advance Notice of Proposed Rulemaking, the CFPB asks for information on the Federal Reserve Board of Governors’ 2010 immunity provision for excessive late fees that allows credit card companies to escape enforcement scrutiny. The CFPB is seeking data about credit card late fees and late payments, assessing whether those fees are “reasonable and proportional.” We are also seeking data about card issuers’ revenue and expenses, the potential deterrent effect of late fees, and the role late fees play in credit card companies’ profitability.

“Credit card late fees are big revenue generators for card issuers. We want to know how the card issuers determine these fees and whether existing rules are undermining the reforms enacted by Congress over a decade ago,” said CFPB Director Rohit Chopra. “This effort is particularly timely since current rules might give companies the incentive to impose big hikes based on inflation.”

Advanced Notice of Proposed Rulemaking

Under the Consumer Financial Protection Act, Congress transferred the authority to adjust the late fee provisions from the Fed to the CFPB. Today, the CFPB has published an Advanced Notice of Proposed Rulemaking to review the Fed’s immunity provision and determine whether adjustments are needed to address late fees. Late fee penalties are charged in addition to interest when a cardholder does not make the minimum payment by the due date.

Over 175 million Americans hold at least one credit card. In March, the CFPB issued a report, Credit Card Late Fees, that found that many major issuers charge the maximum late

fee allowed under the immunity provisions; 18 of the top 20 issuers set late fees at or near the established maximum level. The report also found that the credit card market continues to generate sizable profit from late fees. Credit card companies charged \$12 billion in late fee penalties in 2020. This makes up 10 percent of the total cost of credit cards to customers. And that revenue comes disproportionately from people living in low-income neighborhoods.

This Advance Notice of Proposed Rulemaking asks card issuers, consumer groups, and the public to comment on the following:

- How do credit card issuers set late fee amounts? How is the fee determined to be considered reasonable or proportionate or at least related to the actual costs to the card issuer? How is the fee related to the statement balance?
- Are revenue goals a factor in determining late fees? How do they figure into profitability for the card issuers?
- What are card issuers' costs and losses associated with late payments?
- Do late fees have a deterrent effect? Does the amount have a deterrent effect? Do card issuers impose other consequences other than late fees when payments are late?
- What methods are card issuers using to encourage timely payments, including autopay and notifications?
- How many calendar days after the due date do consumers make the late payment? For example, what percentage of accounts is less than 24 hours late versus 30 days late?
- For card issuers, what annual income is coming from interest and fees? What are annual expenses?

[Read the Advance Notice of Proposed Rulemaking regarding Credit Card Late Fees and Late Payments.](#)

Comment: It appears that the CFPB does not believe that creditors should make a profit on certain operations. Rather, fees should be limited to costs. We are concerned that this philosophy will also be applied to overdraft and NSF fees.

Technology / Security

[CISA Releases Second Version of Guidance for Secure Migration to the Cloud](#) (06/23/2022) - WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA) published the second version of “Cloud Security Technical Reference Architecture (TRA)”, which strengthens guidance to fulfill a key mandate under President Biden’s Executive Order (EO) 14028 - "Improving the Nation's Cybersecurity." The Cloud Services TRA is designed to guide agencies’ secure migration to the cloud by defining and clarifying considerations for shared services, cloud migration, and cloud security posture management.

As the Federal Government, along with organizations across sectors, continues to migrate to the cloud, it is paramount that agencies implement measures to protect it. The Cloud Security TRA, co-authored by CISA, the United States Digital Service (USDS), and the Federal Risk and Authorization Management Program (FedRAMP), provides foundational guidance for organization to use public cloud more security and improve the ability of the federal government to identify, detect, protect, respond, and recover from cyber incidents.

“As the nation’s cyber defense agency, CISA works collaboratively with our interagency partners to implement improvements that make our federal civilian agencies more resilient to cyber threats,” said Eric Goldstein, Executive Assistant Director for Cybersecurity, CISA. “The updated Cloud Security TRA is a key step forward for each agency’s transition to the cloud environment. CISA and our partners will continue to provide expert, coherent, and timely guidance to help agencies modernize their networks with sound cybersecurity and resilience to protect against evolving cyber adversaries. While the TRA was developed for federal agencies, all organizations using or migrating to cloud environments should review this document and adopt the practices therein as applicable to most effectively manage organizational risk.”

In consultation with the Office of Management and Budget, the three agencies adjudicated more than 300 public comments received [in September 2021](#). This feedback helped to further strengthen the Cloud Security TRA and fully address a host of considerations for secure cloud migration. A summary of the feedback received, as well as a Response to Comments (RTC), is available in the [Response to Comments for Cloud Security Technical Reference Architecture](#).

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.**