Community Bankers of Michigan Regulatory Dispatch

June 29, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CBM Insights

Q. Our bank entered into a 314(b) information sharing agreement with another bank. Can we note that in our SAR?

A. You can—and probably should—mention that you have shared information via 314(b) communications with another bank. It would probably be beneficial to include a separate paragraph in the narrative that reviews what information was shared and how it is relevant to the SAR being filed.

See the SAR Activity Review issue 23, starting on p.41 for a discussion on this by FinCEN.

More SAR filings, Greater Variety of Participants Over the last decade, information sharing via "314(b) communications" or "314(b) requests" has wrought substantial benefits for law enforcement and industry alike. FinCEN has received over 19,500 SARs explicitly referencing the sharing or attempted sharing of information through the 314(b) process since 2002.44 It should be noted here that an undetermined number of SARs may also have been filed as a result of the filing institution's involvement in a 314(b) communication, even though there is no specific mention of 314(b) in the SAR narratives.

Source link.

Items of Interest

Bank Management

	FRB Responsive and Responsible Bank Regulation and Supervision Governor Michelle W. Bowman (06/25/2023) - *Responsive Regulation and Supervision -* *This year, we have seen the failures of Silicon Valley Bank (SVB), Signature Bank (Signature), and First Republic Bank, and the merger of Credit Suisse into UBS. In the United States, the bank failures of SVB and Signature were accompanied by government intervention in the form of a guarantee on uninsured deposits at these institutions, and the*

	creation of a new, broad-based, emergency liquidity facility designed to calm markets and provide reassurance about the underlying strength of the U.S. banking system. These bank failures also highlighted the need for regulators to consider reform efforts to make the financial system stronger and more resilient. *Many of the problems we have seen at these banks—interest rate risk, liquidity risk, poor risk management—are not caused by any evolution in banking. These bank failures and recent stress in the banking system have highlighted key deficiencies in risk management practices, and key deficiencies in supervisory priorities. The Federal Reserve and other banking agencies have been trying to determine what more can be done to respond to the recent stress, but we also need to reflect on how reform efforts can lead to the best results, while minimizing unintended consequences.* ***Comment: In May, Gov. Bowman cautioned against using recent turmoil in the banking sector caused by SVB and Signature Bank failures as a 'pretext' for aggressive new banking rules, calling the current system 'fundamentally strong.'***
	FDIC Consolidated Reports of Condition and Income for Second Quarter 2023 (06/23/2023) The attached materials pertain to the Consolidated Reports of Condition and Income (Call Report) for the June 30, 2023, 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). Starting your preparation early will help you identify and resolve any edit exceptions before the submission deadline. If you later find that certain information needs to be revised, please make the appropriate changes to your Call Report data and promptly submit the revised data file to the CDR. Except for certain institutions with foreign offices, your completed Call Report must be received by Sunday, July 30, 2023, in accordance with the filing requirements discussed below. An institution with more than one foreign office, other than a "shell" branch or an International Banking Facility, is permitted an additional five calendar days to submit its Call Report data. Such an institution must electronically file its data to the CDR no later than Friday, August 4, 2023. There are no new data items that take effect this quarter in the FFIEC 031, FFIEC 041 or FFIEC 051 Call Report. In addition, there are no updates to the Call Report instructions this quarter. Institutions that have adopted Accounting Standards Update No. 2022-02, "Financial Instruments - Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures" should continue referring to the topic "Accounting for Loan Modifications to Borrowers Experiencing Financial Difficulty" in the Supplemental Instructions. This topic provides guidance on how an institution should report its loan modifications to borrowers experiencing financial difficulty in the Call Report. Institutions should refer to the attached Supplemental Instructions for June 2023, for additional guidance on certain reporting issues. The Call Report forms for June 30, 2023, are available for printing and downloading from the FFIEC's Reporting Forms webpage for each version of the Call Report. These forms can

also be accessed from the Federal Deposit Insurance Corporation (FDIC) Bank Financial Reports webpage.

Each institution must file its June 30, 2023, Call Report data in one of two ways:

- By using computer software to prepare and edit its report data and then electronically submitting the data directly to the CDR; or

- By completing its report in paper form and arranging with a software vendor or another party to convert the paper report to the electronic format that can be processed by the CDR. The software vendor or other party then must electronically submit the institution's Call Report data file to the CDR.

Electronic submission of second quarter 2023 Call Report data will be considered timely if the data are received by the CDR no later than Sunday, July 30, 2023, or Friday, August 4, 2023, as applicable, and pass FFIEC-published criteria for validity and quality edits or, where necessary, contain explanations for any quality edits that are not passed.

The CDR Help Desk is available from 9:00 a.m. until 8:00 p.m., Eastern Time, Monday through Friday, and Saturday, July 29, 2023, to provide assistance with user accounts, passwords, and other CDR system-related issues. The CDR Help Desk can be reached by telephone at (888) CDR-3111, by fax at (703) 774-3946, or by email at cdr.help@cdr.ffiec.gov. For all other Call Report issues, institutions should contact their assigned Call Report analyst. If you do not know the analyst assigned to your institution, state member institutions should contact their Federal Reserve District Bank; national institutions, FDIC-supervised banks, and savings associations should contact the FDIC's Data Collection and Analysis Section in Washington, D.C., by telephone at (800) 688-FDIC (3342).

Comment: Share with those individuals responsible for preparing you bank's Call Report.

Joint **Agencies Release List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies** (06/23/2023) - Federal bank regulatory agencies made available the 2023 list of distressed or underserved nonmetropolitan middle-income geographies.

The Community Reinvestment Act (CRA) encourages banks to help meet the credit needs of their local communities, including low- and moderate- income communities, in a safe and sound manner. Distressed or underserved nonmetropolitan middle-income geographies are census tracts where revitalization or stabilization activities are eligible to receive CRA consideration. The designations reflect local economic conditions, including unemployment, poverty, and population changes. Previous years' lists and criteria for designating these areas are available here.

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 2022 but are no longer designated as distressed or underserved in the current list.

Comment: The agencies designated the identified distressed or underserved nonmetropolitan middle-income geographies in accordance with their CRA regulations

	that continue to "reflect local economic conditions, including unemployment, poverty, and population changes."
	FRB Opening Remarks Governor Michelle W. Bowman At "Fed Listens: Transitioning to the Post-Pandemic Economy," (06/22/2023) – *I supported the FOMC's decision last week to hold the federal funds rate target range steady and to continue to reduce the Fed's securities holdings; however, I believe that additional policy rate increases will be necessary to bring inflation down to our target over time. Although tighter monetary policy has had some effect on economic activity and inflation to date, we have seen core inflation essentially plateau since the fall of 2022, and I expect that we will need to increase the federal funds rate further to achieve a sufficiently restrictive stance of monetary policy to meaningfully and durably bring inflation down. I will continue to monitor the incoming data and to look for signs that inflation is on a consistent downward path as I consider appropriate monetary policy at future meetings.* *I'm pleased to see that today's agenda for the Policy Summit includes a discussion of small businesses, which are a critical component of a thriving economy. One of the most dramatic changes in the economy since the pandemic has been a sustained increase in the creation of new businesses, most of them small. Small businesses were severely tested during the pandemic, and many stayed in business with substantial help from the Paycheck Protection Program. In the early stages of the pandemic, new business formation plunged and then surged as the economy reopened. This surge was followed by another sharp drop in the second half of 2020, and it seemed like business creation was headed back toward its long-term trend. Instead, new business formation again accelerated and now runs about 30 percent above its pre-pandemic trend.3 Often, a tight labor market is associated with elevated rates of new business formation, but the extent of business startups has been highly unusual. Some have speculated that the shift to more remote work has encouraged more experimentation. Whatever the reason, entrepreneurship is the lifeblood of the U.S. economy, and I consider this to be a positive development.*
	CSBS Opposes Vance Amendment #10 (06/20/2023) - Washington, D.C. – Statement from CSBS President and CEO James M. Cooper on Opposition to Vance Amendment #10 "The Conference of State Bank Supervisors strongly opposes Senator Vance's amendment to the RECOUP Act, which would fundamentally undermine our nation's dual banking system by automatically converting state-chartered banks of a certain size into national banks. If enacted, the provision would dramatically and immediately increase banking industry concentration within a single federal regulatory agency. Choice of charter, state or federal, is the foundational principle of the U.S. banking industry, which is the most diverse and dynamic in the world. Policymakers have repeatedly affirmed our dual banking system – and the critical role of state regulators – by rejecting time and again efforts to federalize the U.S. banking industry or concentrate authority in a single federal regulatory agency. We urge members of the Senate Banking Committee to recognize the importance of preserving the dual banking system by opposing this amendment." ***Comment: We agree with the CFPB – the Vance Amendment is a clear threat to the dual-banking system.***

BSA / AML

	No news to report this week.

Deposit / Retail Operations

CFPB Digital Payment Apps Present Risks to Servicemembers (06/20/2023) – The Consumer Financial Protection Bureau (CFPB) released its annual report highlighting the alarming growth of digital payment app usage within the servicemember community and the associated risks they face. The report also analyzed complaint trends among servicemembers, veterans, and members of the Reserves and National Guard.

The report identifies the top financial concerns for military families including:

- Servicemembers submit complaints related to payment apps at a higher percentage than the general population. In 2022, servicemembers submitted more than 1,100 payment app complaints, one of the fastest-growing complaint types submitted to the CFPB.
- Members of the military are more susceptible to identity theft which can heighten the risk of unauthorized access to their payment app accounts. A steady income may make servicemembers a target for identity thieves looking to tap into bank accounts that are often linked to a payment app.
- Servicemembers and their families reported that being scammed online using payment apps can result in serious issues such as jeopardized housing, lost life savings, financial distress, emotional distress, and embarrassment.
- Complaints suggest that the companies and financial institutions that provide payment apps often fail to provide timely and substantive resolutions to servicemembers. In the complaints submitted to the CFPB, even when they have a path to recovering lost money, servicemembers stated that they had trouble getting in contact with a customer representative.

To address these emerging risks, the report recommends digital payment app providers:

- Improve the safety and security of their networks to prevent fraud.
- Improve responsiveness in the event fraud does occur.
- Tailor policies on refunds for fraud losses that recognize the unique experiences of military families.

The report follows earlier research from the CFPB that found that funds stored on digital payment apps may not be safe in the event of financial distress, since the funds may not be held in accounts with federal deposit insurance coverage. The CFPB also issued a consumer advisory for consumers holding funds in these apps and how they can make sure their funds remain safe.

Comment: The report cites to the Federal Reserve's 2021 annual Diary of Consumer Payment Choice, which found that 66.4% of all consumers had adopted one or more payment apps, a 2022 Pew Research Center poll that found that over three-quarters (76%) of adult consumers in the U.S. have used one of the four large common payment app providers, and a 2022 FDIC survey that found that almost half of all households (46.4%) used a non-bank payment app in 2021.

Human Resources

	No news to report this week.

Lending

	FRB Senior Credit Officer Opinion Survey on Dealer Financing Terms (06/22/2023) – 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.
	Joint Quality Control Standards for Automated Valuation Models: Notice of Proposed Rulemaking (06/22/2023) - The Office of the Comptroller of the Currency (OCC), along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Federal Housing Finance Agency (collectively, the agencies) are proposing a rule designed to implement quality control standards for automated valuation models (AVM) used by mortgage originators and secondary market issuers in valuing residential real estate. Note for Community Banks The proposed rule would apply to all national banks and all FSAs, including community banks. Highlights Under the proposed rule, the OCC would require banks that use AVMs in certain credit decisions or securitization determinations to: • adopt policies, practices, procedures, and control systems to ensure that AVMs adhere to quality control standards designed to • ensure a high level of confidence in the estimates produced by AVMs, • protect against the manipulation of data, • avoid conflicts of interest, • require random sample testing and reviews, and • promote compliance with applicable nondiscrimination laws. The proposed rule would not set specific requirements for how banks should structure these policies, practices, procedures, and control systems. This approach would give banks the flexibility to set quality controls for AVMs as appropriate based on the size of the bank and the risk and complexity of transactions in which AVMs are used. As modeling technology continues to evolve, this flexible approach would allow banks to refine their policies, practices, procedures, and control systems as appropriate.

	Comment: Banks would need to have policies, practices, procedures, and control systems to ensure that use of AVMs in the origination of 'Covered Transactions' adhere to quality-control standards to (1) ensure high-level confidence in estimates; (2) protect against manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) comply with applicable nondiscrimination laws.

Technology / Security

	CISA Apple Releases Security Updates for Multiple Products (06/22/2023) – Apple has released security updates to address vulnerabilities in multiple products. An attacker could exploit some of these vulnerabilities to take control of an affected device. CISA encourages users and administrators to review the following advisories and apply the necessary updates. ***Comment: Many community banks use Apple products. Be sure to share this with your IT department.***

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

05.01.2023 CFPB Residential Property Assessed Clean Energy Financing (Regulation Z) - SUMMARY: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Consumer Financial Protection Bureau (CFPB or Bureau) to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. PACE financing is financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. In this notice of proposed rulemaking, the Bureau proposes to implement EGRRCPA section 307 and to amend Regulation Z to address how TILA applies to PACE transactions to account for the unique nature of PACE. **DATES: Comments must be received on or before July 26, 2023.**

05.22.2023 Special Assessment Pursuant to Systemic Risk Determination - SUMMARY: The FDIC is seeking comment on a proposed rule that would impose special assessments to recover the loss to the Deposit Insurance Fund (DIF or Fund) arising from the protection of uninsured depositors in connection with the systemic risk determination announced on March 12, 2023, following the closures of Silicon Valley Bank, Santa Clara, CA, and Signature Bank, New York, NY, as required by the Federal Deposit Insurance Act (FDI Act). The assessment base for the special assessments would be equal to an insured depository institution's (IDI) estimated uninsured deposits, reported as of December 31, 2022, adjusted to exclude the first $5 billion in estimated uninsured deposits from the IDI, or for IDIs that are part of a holding company with one or more subsidiary IDIs, at the banking organization level. The FDIC is proposing to collect special assessments at an annual rate of approximately 12.5 basis points, over eight quarterly assessment periods, which it estimates will result in total revenue of $15.8 billion. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, the

FDIC would retain the ability to cease collection early, extend the special assessment collection period one or more quarters beyond the initial eight-quarter collection period to collect the difference between actual or estimated losses and the amounts collected, and impose a final shortfall special assessment on a one-time basis after the receiverships for Silicon Valley Bank and Signature Bank terminate. The FDIC is proposing an effective date of January 1, 2024, with special assessments collected beginning with the first quarterly assessment period of 2024 (i.e., January 1 through March 31, 2024, with an invoice payment date of June 28, 2024). **DATES: Comments must be received on or before July 21, 2023.**

06.21.2023 Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations- SUMMARY: The OCC, Board, FDIC, NCUA, CFPB, and FHFA (collectively, the agencies) invite comment on a proposed rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws. **DATES: Comments must be received by August 21, 2023.**