Community Bankers of Michigan Regulatory Dispatch

March 1, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

Joint Agencies Issue Joint Statement on Liquidity Risks Resulting from Crypto-Asset Market Vulnerabilities

Federal bank regulatory agencies today issued a joint statement highlighting liquidity risks to banking organizations associated with certain sources of funding from crypto-asset-related entities and some effective practices to manage those risks.

Recent events in the crypto-asset sector have underscored the potential heightened liquidity risks presented by certain sources of funding from crypto-asset-related entities. The joint statement highlights key liquidity risks and some effective practices to monitor and appropriately manage those risks. The statement reminds banking organizations to apply existing risk management principles; it does not create new risk management principles.

Banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation.

Comment: The agencies noted that the statement "does not create new risk management principles … [and that] banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation."

CBM Insights

Q. Have you heard of or seen other banks who send a Rate Lock Agreement simultaneously with a Loan Estimate indicating the rate is locked in anticipation of receiving the executed Rate Lock Agreement back from the applicant?

A. After reading thru the preamble and the comments / commentary, the logical approach is that sending an unexecuted written Rate Lock Agreement out with a Loan Estimate would NOT allow the bank to indicate on that Loan Estimate that the rate was locked or NEGATE the necessity to send a revised Loan Estimate upon receipt of the executed Rate Lock Agreement.

From the rule adoption Preamble:

Regarding the situation where the creditor has a policy to honor the rate quoted without a rate lock agreement, both proposed §1026.37(a)(13) and comment 37(a)(13)-1 expressly contemplate a rate that is locked for a specific period of time pursuant to a rate lock agreement. Accordingly, where a creditor has a policy to honor the quoted rate, <u>but does not lock the rate pursuant to a written agreement with the consumer, the creditor would disclose "no" pursuant to § 1026.37(a)(13)(i).</u> The Bureau believes this disclosure is appropriate to aid the consumer's understanding of the transaction, because the creditor would not be bound by an agreement to provide the interest rate to the consumer at consummation.

Below is from the commentary at §1026.19(e)(3)(iv)D).

1. Requirements. If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, then, no later than three business days after the date the interest rate is subsequently locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed under § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith under § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, <u>then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than three business days after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.</u> Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed under § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith under § 1026.19(e)(3)(i).

Source link.

Items of Interest

Bank Management

FDIC Proposed Revisions to the Consolidated Reports of Condition and Income (Call Reports) and the FFIEC 002 Report (02/22/2023) - On February 21, 2023, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (collectively, the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published proposed regulatory reporting changes in the Federal Register for public comment. These proposed changes apply to all three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as applicable, and are proposed to take effect as of the June 30, 2023, report date.

As described more fully in the attached Federal Register notice, the proposed revisions to the reporting forms and instructions for the Call Reports and the FFIEC 002 relate primarily to the statutorily mandated review of the Call Reports. Section 604 of the Financial Services Regulatory Relief Act of 2006 requires that the agencies review information collected in the Call Reports to reduce or eliminate any requirement to file certain information or schedules if the continued collection of such information or schedules is no longer necessary or appropriate. The changes to eliminate and consolidate items in the Call Reports included in the attached proposal result from the agencies' evaluation of responses to a user survey covering all the Call Report schedules, similar to the group of surveys the agencies conducted as part of the previous statutorily mandated review.

Additionally, the agencies are requesting comment on certain technical clarifications made in June 2022 related to the reporting of certain debt securities issued by the Federal Home Loan Mortgage Corporation and proposed Call Report process revisions.

The agencies encourage you to review the proposed regulatory reporting revisions and comment on those aspects of interest to you. You may send comments on this reporting proposal to any or all of the agencies by the methods described in the attached Federal Register notice.

Redlined copies of the FFIEC 031, FFIEC 041, and FFIEC 051 Call Report forms showing the proposed changes and the related draft reporting instructions will be available on the FFIEC's webpages for these reports, which can be accessed from the FFIEC's Reporting Forms webpage.

Please share this letter with individuals responsible for preparing Call Reports at your institution. For further information about the proposed Call Report changes, 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, while 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) or email to FDICInfoReq@fdic.gov.

	Comment: Comments must be submitted on or before April 24, 2023.

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	FTC The Top Scams of 2022 - What are scammers up to these days? Every day, people just like you tell the FTC what they've spotted, and maybe even lost money to. Then, every year, the FTC rolls up all those millions of reports about fraud, scams, and bad business practices to tell the story: what ARE scammers up to these days? ***Comment: The FTC, which is in charge of stopping scams, sounds the alarm on new and established scams year-round through its "Consumer Alerts."***

Human Resources

	No news to report this week.

Lending

	Joint Agencies Issue 2022 Shared National Credit Program Review (02/24/2023) - The federal bank regulatory agencies reported in the 2022 Shared National Credit (SNC) report that credit quality associated with large syndicated bank loans improved in 2022, but noted the results do not fully reflect increasing interest rates and softening economic conditions that began to impact borrowers in the second half of 2022. Overall, the report finds that credit risks for syndicated loans—large loans originated by multiple banks—were moderate at the end of the review period. While risks to borrowers impacted by COVID-19 have declined, they remain high for leveraged loans, as well as the entertainment, recreation, and transportation services industries. The 2022 review, which evaluates the quality of large, syndicated loans, was conducted by the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, and reflects the examination of SNC loans originated on or before June 30, 2022. Consistent with the approach taken in 2021, it focused on borrowers in five industries that were affected significantly by the pandemic: entertainment and recreation; oil and gas; commercial real estate; retail; and transportation services. The 2022 SNC portfolio included 6,214 borrowers, totaling $5.9 trillion in commitments, an increase of 13.9 percent from a year ago. The percentage of loans that deserve management's close attention (loans rated non-pass, including special mention and

	classified SNC commitments) decreased from 10.6 percent of total commitments to 7.0 percent year over year. Nearly half of total SNC commitments are leveraged loans, and commitments to borrowers in industries affected by COVID-19 represent about one-fifth of total SNC commitments. For leveraged borrowers that also operate in COVID-19 affected industries, non-pass loans decreased to 18.9 percent, but remain above the 13.5 percent observed in 2019. While U.S. banks hold nearly 45 percent of all SNC commitments, they hold only 21 percent of non-pass loans. ***Comment: A SNC is defined as any loan or commitment to extend credit, or group of commitments, aggregating $100 million or more at origination; and committed under a formal lending arrangement; and shared by three or more unaffiliated supervised institutions.***
	CFPB Orders TitleMax to Pay a $10 Million Penalty for Unlawful Title Loans and Overcharging Military Families (02/23/2023) - The Consumer Financial Protection Bureau (CFPB) took action against a web of corporate entities operating under TMX Finance, broadly known as TitleMax, for violating the financial rights of military families and other consumers in providing auto title loans. The CFPB found that TitleMax violated the Military Lending Act by extending prohibited title loans to military families and, oftentimes, by charging nearly three times over the 36% annual interest rate cap. TitleMax tried to hide their unlawful activities by, among other things, altering the personal information of military borrowers to circumvent their protected status. The CFPB also found that TitleMax increased loan payments for borrowers by charging unlawful fees. The CFPB's order ends TitleMax's illegal activities, and requires the company to pay more than $5 million in consumer relief and a $10 million civil money penalty. "The CFPB's order stops TitleMax's illegal predatory lending to military families – sometimes even taking steps to hide evidence of its wrongdoing," said CFPB Director Rohit Chopra. "Our legal action is the CFPB's first against a nonbank lender for providing title loans to military families." TitleMax is made up of TMX Finance LLC and numerous subsidiaries across the United States with both in-person and online locations. TitleMax's headquarters is in Savannah, Georgia, and it is engaged in the business of extending short-term, high-cost consumer loans that are secured by borrowers' vehicle titles. According to TitleMax, consumers can receive a title loan of up to $10,000. TitleMax is privately owned, and currently has more than 1,000 locations in 18 states: Alabama, Arizona, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Mississippi, Missouri, Nevada, New Mexico, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin. TitleMax claims to have almost 4,000 employees and to serve thousands of people every day. TitleMax is a repeat offender. TitleMax has been under a CFPB Order since September 26, 2016, for its lending and debt-collection practices. In the 2016 Order, the CFPB found that store employees, as part of their sales pitch for the company's 30-day loans, offered consumers a "monthly option" for making loan payments and misrepresented the true cost of its loans if the consumers renewed them multiple times. The CFPB also found that

	the company engaged in illegal high pressure debt collection practices. The CFPB ordered the company to stop its unlawful practices and pay a $9 million penalty.

Technology / Security

	CISA Cisco Releases Security Advisories for Multiple Products (02/23/2023) - Cisco has released security advisories for vulnerabilities affecting multiple Cisco products. A remote attacker could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review the following advisories and apply the necessary updates. • Cisco Application Policy Infrastructure Controller and Cisco Cloud Network Controller Cross-Site Request Forgery Vulnerability cisco-sa-capic-csrfv-DMx6KSwV • Cisco Nexus 9000 Series Fabric Switches in ACI Mode Link Layer Discovery Protocol Memory Leak Denial of Service Vulnerability cisco-sa-aci-lldp-dos-ySCNZOpX ***Comment: Ensure your IT department is familiar with these updates.***

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

12.21.2022 FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Log The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. **DATES: Originally set for February 21, the comment deadline is extended to April 7, 2023.**

01.05.2023 FTC Non-Compete Clause Rulemaking About one in five American workers—approximately 30 million people—are bound by a non-compete clause and are thus restricted from pursuing better employment opportunities. A non-compete clause is a contractual term between an employer and a worker that blocks the worker from working for a competing employer, or starting a competing business, typically within a certain geographic area and period of time after the worker's employment ends. Because non-compete clauses prevent workers from leaving jobs and decrease competition for workers, they lower wages for both workers who are subject to them as well as workers who are not.

Non-compete clauses also prevent new businesses from forming, stifling entrepreneurship, and prevent novel innovation which would otherwise occur when workers are able to broadly share their ideas. The Federal Trade Commission proposes preventing employers from entering into non-compete clauses with workers and requiring employers to rescind existing non-compete clauses. The Commission estimates that the proposed rule would increase American workers' earnings between $250 billion and $296 billion per year. The Commission is asking for the public's opinion on its proposal to declare that non-compete clauses are an unfair method of competition, and on the possible alternatives to this rule that the Commission has proposed. **The comment period is open through Mar 10, 2023.**

02.01.2023 CFPB Credit Card Penalty Fees (Regulation Z) The Consumer Financial Protection Bureau (Bureau) proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are "reasonable and proportional" to the late payment as required under TILA. The proposal would (1) adjust the safe harbor dollar amount for late fees to $8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25 percent of the required payment. **DATES: Comments should be received on or before April 3, 2023, or 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER, whichever is later.**