



Community Bankers of Michigan Regulatory Dispatch

March 22, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CBM Insights

Q. We have two borrowers that do not guarantee each other's debts but are in a partnership that is a common source of repayment for both. Do we combine the debt of each for determining compliance with legal lending limits?

A. If there is either a direct benefit or a common enterprise because of the partnership, the loans to each of the individual partners would be aggregated for determining compliance with legal lending limits.

Here is the rule in question 12 USC 32.5. Note the underlined passages below.

(c) Common enterprise. A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made –

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and

expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a national bank or savings association to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the appropriate Federal banking agency determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) Special rule for loans to a corporate group.

(1) Loans or extensions of credit by a national bank or savings association to a corporate group may not exceed 50 percent of the bank's or savings association's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) Special rules for loans to partnerships, joint ventures, and associations –

(1) Partnership loans. Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) Loans to partners.

(i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

Source [link](#).

Items of Interest

Bank Management

	<p>CFPB Issues Rule Updating and Correcting Agency Contact Information (03/17/2023) - The CFPB issued a Final Rule, which among other non-substantive changes, corrects and updates CFPB and other Federal agency contact information found at certain locations in Regulations B, E, F, J, V, X, Z, and DD.</p> <p>Of note, the Rule updates and corrects addresses included in requirements for the following notices:</p> <ul style="list-style-type: none">• The list of Federal agencies' contact information in Appendix A to Regulation B, which must be included in adverse action notices under the Equal Credit Opportunity Act.• The Sample Receipt, Agent Certification and Cancellation Page in Appendix A to Regulation J, which must be delivered to prospective lot purchasers under the Interstate Land Sales Full Disclosure Act.• The model form of the Summary of Consumer Rights in Appendix K to Regulation V, which consumer reporting agencies and other persons must provide to consumers under certain circumstances (as described in the Fair Credit Reporting Act). The CFPB has updated the Summary of Consumer Rights that appears on its website for both the English and Spanish versions. <p>You can access the Final Rule here: https://www.consumerfinance.gov/rules-policy/final-rules/agency-contact-information/.</p> <p>You can access the updated FCRA notices, in both English and Spanish, here: www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/fair-credit-reporting-act/model-forms-and-disclosures/.</p> <p>Comment: Update 'contact information' accordingly.</p>
	<p>FRB G. 17 Industrial Production (03/17/2023) - Industrial production was unchanged in February, and manufacturing output edged up 0.1 percent. The index for mining fell 0.6 percent, while the index for utilities rose 0.5 percent. At 102.6 percent of its 2017 average, total industrial production in February was 0.2 percent below its year-earlier level. Capacity utilization was unchanged in February at 78.0 percent, a rate that is 1.6 percentage points below its long-run (1972–2022) average.</p> <p>Comment: Industrial Production is a leading economic indicator (LEI.) Taken as a whole, while US LEI's may be bottoming, they continue to signal a recession over the next 12 months.</p>
	<p>FRB The Innovation Imperative: Modernizing Traditional Banking (03/14/2023) - <i>I would like to thank the ICBA for the invitation to speak with you today. It is a pleasure to be with you to discuss innovation in the U.S. financial system, the emerging trends that are shaping the industry, and the influence of regulatory approach on this evolution.</i></p> <p><i>Before turning to the main theme of my remarks, I would like to take a moment to acknowledge the events of the past week, and the actions taken by regulators in response. As you are aware, last Friday, March 10, the California Department of Financial Protection</i></p>

and Innovation closed Silicon Valley Bank. On March 12, the New York Department of Financial Services closed Signature Bank. In both cases, the Federal Deposit Insurance Corporation (FDIC) has been appointed as receiver. One significant factor leading to the stress and subsequent closure at each institution was the rapid outflow of deposits, specifically uninsured deposits above the FDIC-guaranteed amount of \$250,000 per depositor, per account type.

On Sunday, several specific actions were announced that are intended to limit the direct and indirect risks to the U.S. financial system resulting from the closure of these two financial institutions. The Federal Reserve Board announced that it will make additional funding available to eligible depository institutions through a newly created Bank Term Funding Program. This program will offer one-year loans to institutions that pledge U.S. Treasury securities, agency debt and mortgage-backed securities, and other qualifying assets as collateral. The facility will provide an additional source of liquidity to banks and eliminate the need for institutions to quickly sell these securities during a time of stress. The FDIC also took action to protect all depositors, including uninsured depositors, of both Silicon Valley Bank and Signature Bank. Beginning Monday morning, these depositors were able to access all of their funds on deposit with these banks. The federal regulators, including the FDIC, the Federal Reserve Board and U.S. Treasury Secretary Janet Yellen approved the actions to protect depositors.

The U.S. banking system remains resilient and on a solid foundation, with strong capital and liquidity throughout the system. The Board continues to carefully monitor developments in financial markets and across the financial system.

Now, turning to the main theme of my remarks today, I will discuss the imperative of fostering innovation in the banking system.

Often, when innovation is discussed within the context of the banking system, the focus is not on traditional banks engaged in core banking activities, like taking retail deposits and making loans. I think this perception misses the mark. Innovation has always been a priority for banks of all sizes and business models, from small community banks to the largest global systemically important banks (G-SIBs), and for good reason. Banks in the U.S. have a long history of developing and implementing new technologies. Innovation has the potential to make the banking and payments systems faster and more efficient, to bring new products and services to customers, and even to enhance safety and soundness. Yet, some have criticized the banking regulators for being hostile to innovation, at least when that innovation occurs within the regulated financial system. Regulators are continually learning about and adapting to new technologies, just as banks are, and regulators can play an important, complementary role, making the regulatory rules of the road clear and transparent to foster bank innovation.

Innovation does pose challenges within the regulated banking system, which can be amplified for community banks. Along with presenting new opportunities, innovation can introduce new risks and create new vulnerabilities. Banks, and really, any business today that adopts new technologies must be prepared to make corresponding improvements to manage these risks and vulnerabilities, including improvements to risk management, cybersecurity, and consumer compliance. Regulators must continue to promote efforts that are consistent with safe and sound banking practices and in compliance with applicable laws, including consumer protection laws. As I am sure you appreciate, this is not always an easy task, and the regulatory response to innovation must reflect the changes in how banks engage in this process.

	<p><i>It is absolutely critical that innovation not distract banks and regulators from the traditional risks that are omnipresent in the business of banking, particularly credit, liquidity, concentration, and interest rate risk. These more traditional risks are present in all bank business models but can be especially acute for banks engaging in novel activities or exposed to new markets, including crypto-assets. Whatever the cause, many traditional risks can be mitigated with appropriate risk-management and liquidity planning practices, and effective supervision, and without stifling the ability of banks to innovate.</i></p> <p><i>Today, I will address three issues related to innovation. First, I will briefly discuss how bank regulation and supervision can best support responsible innovation. Second, I will touch on the unique challenges that apply to smaller and community banks pursuing innovation. Finally, I will mention a few key actions that the federal banking regulators have taken to date, and how I think about future regulatory and supervisory actions to support innovation. And before I conclude, I will also quickly touch on a few other issues that may be of interest to you.</i></p> <p><i>For the rest of the speech, please follow this link.</i></p>
	<p>FDIC Institutions are Required to Meet Contractual Obligations with Bridge Banks (03/14/2023) - Summary: In recent days, the FDIC has established two bridge banks, Silicon Valley Bridge Bank, N.A. and Signature Bridge Bank, N.A., to assume the deposits and obligations of two failing banks. All contracts entered into with banks before they failed, and their counterparties were transferred into the bridge bank by the FDIC as receiver. Accordingly, vendors and counterparties with contracts with the bridge bank are legally obligated to continue to perform under the contracts, and the bridge is obligated to and has the full ability to make timely payments to vendors and counterparties and otherwise perform its obligations under the contract.</p> <p>Statement of Applicability:</p> <p>The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.</p>

BSA / AML

	No news to report this week.
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Deposit / Retail Operations

	<p>FRB Announces July Launch for the FedNow Service (03/15/2023) - CHICAGO – The Federal Reserve announced that the FedNow Service will start operating in July and provided details on preparations for launch.</p> <p>The first week of April, the Federal Reserve will begin the formal certification of participants for launch of the service. Early adopters will complete a customer testing and certification program, informed by feedback from the FedNow Pilot Program, to prepare for sending live transactions through the system.</p>
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Certification encompasses a comprehensive testing curriculum with defined expectations for operational readiness and network experience. In June, the Federal Reserve and certified participants will conduct production validation activities to confirm readiness for the July launch.

"We couldn't be more excited about the forthcoming FedNow launch, which will enable every participating financial institution, the smallest to the largest and from all corners of the country, to offer a modern instant payment solution," said Ken Montgomery, first vice president of the Federal Reserve Bank of Boston and FedNow program executive. "With the launch drawing near, we urge financial institutions and their industry partners to move full steam ahead with preparations to join the FedNow Service."

Many early adopters have declared their intent to begin using the service in July, including a diverse mix of financial institutions of all sizes, the largest processors, and the U.S. Treasury.

In addition to preparing early adopters for the July launch, the Federal Reserve continues to engage a range of financial institutions and service providers to complete the testing and certification program and implement the service throughout 2023 and beyond. Montgomery noted that availability of the service is just the beginning, and growing the network of participating financial institutions will be key to increasing the availability of instant payments for consumers and businesses across the country.

The FedNow Service will launch with a robust set of core clearing and settlement functionality and value-added features. More features and enhancements will be added in future releases to continue supporting safety, resiliency and innovation in the industry as the FedNow network expands in the coming years.

"With the FedNow Service, the Federal Reserve is creating a leading-edge payments system that is resilient, adaptive, and accessible," said Tom Barkin, president of the Federal Reserve Bank of Richmond and FedNow Program executive sponsor. "The launch reflects an important milestone in the journey to help financial institutions serve customer needs for instant payments to better support nearly every aspect of our economy."

Comment: All funds will transfer and settle in real-time 24/7 leveraging master accounts, unlike RTP which requires a 'pooled liquidity' account at the Clearing House.

[FTC Fraud Alert: Scammers Steal Money From the Public Through Fake HHS Websites and Social Media Schemes](#) (03/14/2023) - The scheme involves scammers pretending to offer you grants from HHS and asking for payment or personal information to receive the fake grants. Scammers may use various social media platforms and chat applications to contact you and direct you to fake websites, online chats, chat boxes, or live customer support in order to lure you into providing your personal or financial information. These scammers may pretend to be a "friend" or someone from HHS. Although the precise message may vary, the scammer provides fake HHS employee information or a link to a fake HHS website, tells you that you will receive free Government grant money, and then asks you for money or personal information.

Do not pay scammers. HHS will never ask you to pay money to receive a grant. Scammers may ask you to send gift cards or money to cover processing and/or delivery fees. Do not respond to, pay, or share any financial information with anyone contacting you via social media, email, or otherwise offering free HHS grants or money.

Do not share your personal information. HHS will not message you through social media to begin a grant application. Scammers may offer fake HHS grant money in exchange for personal or financial information, such as your Social Security number, date of birth, address, bank account number, login information, or copies of your personal identification.

Do not be fooled by spoof websites. HHS websites always use a .gov domain. HHS does not use .org, .com, or .us domains.

Comment: It never hurts to remind accountholders that neither the bank, the bank regulatory agencies, or any federal agency will send an email or text asking for personal information or access to banking information.

Human Resources

No news to report this week.

Lending

CSBS [State Regulators Seek Public Comment on Proposed Mortgage Industry Licensing Standards](#) (03/16/2023) - Washington, D.C. – CSBS announced a public comment period for proposed uniform state licensing standards for mortgage companies.

“Adopting a standardized approach for mortgage industry licensing will help increase uniformity within the state system,” said Vickie Peck, CSBS executive vice president of products and solutions. “In turn, uniform standards will streamline the licensing process for mortgage companies seeking licensure in multiple states,” added Peck.

The full proposal is available here and at <https://nationwidelicingsystem.org>.

Public comments will be accepted at comments@csbs.org until May 15 at 5 p.m. ET and will be published at <https://nationwidelicingsystem.org>. The final requirements will be built into the Nationwide Multistate Licensing System (NMLS) in the future.

CFPB [Heightens Scrutiny of Unlawful Collection of Payments on Discharged Student Loans](#) (03/16/2023) - WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) released a bulletin warning servicers of their obligation to halt unlawful conduct with respect to private student loans that have been discharged by bankruptcy courts. The bulletin details recent findings by CFPB examiners that certain loan servicers were illegally returning loans to collections after bankruptcy courts had discharged the loans. The CFPB is directing these servicers to return illegally collected payments to affected consumers and immediately cease these unlawful collection tactics. The bulletin also makes clear that the CFPB will continue to examine student loan servicers’ handling of these loans to detect whether these illegal practices persist at other companies.

CFPB [Releases 2023 HMDA Transactional and Institutional Coverage Charts](#) (03/15/2023) - the CFPB released the 2023 HMDA Transactional and Institutional Coverage Charts. These charts update the closed-end threshold pursuant to the United States District Court for the District of Columbia September 23, 2022, order in NCRC et al. v. CFPB.

You can access the 2023 HMDA Transactional and Institutional Coverage Charts here: www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/.

Comment: The chart explains how to determine whether a transaction involves a covered loan and whether it meets the applicable loan-volume thresholds.

Technology / Security

CISA [FBI and MS-ISAC Release #StopRansomware: LockBit 3.0](#) (03/16/2023) - The Federal Bureau of Investigation (FBI), CISA, and the Multi-State Information Sharing and Analysis Center (MS-ISAC) has released a joint cybersecurity advisory (CSA), #StopRansomware: LockBit 3.0. This joint advisory details known indicators of compromise (IOCs) and tactics, techniques, and procedures (TTPs) that FBI investigations correlated with LockBit 3.0 ransomware as recently as March 2023. LockBit 3.0 functions as an affiliate-based ransomware variant and is a continuation of LockBit 2.0 and LockBit.

CISA encourages network defenders to review and apply the recommendations in the Mitigations section of this CSA. See StopRansomware.gov for additional guidance on ransomware protection, detection, and response.

Comment: Back in November 2022, leaked data about LockBit that showed the backend controls for the ransomware also seems to indicate that the creators have begun experimenting with the use of scripting that would allow the malware to “self-spread” using Windows Group Policy Objects (GPO) or the tool PSEXEC, potentially making it easier for the malware to laterally move and infect computers without the need for affiliates to know how to take advantage of these features for themselves, potentially speeding up the time it takes them to deploy the ransomware and encrypt targets.

CISA [Announces Ransomware Vulnerability Warning Pilot](#) (03/13/2023) - CISA is announcing the creation of the Ransomware Vulnerability Warning Pilot (RVWP). Through the RVWP, CISA:

1. Proactively identifies information systems—belonging to critical infrastructure entities—that contain vulnerabilities commonly associated with ransomware intrusions.
2. Notifies the owners of the affected information systems, which enables the owners to mitigate the vulnerabilities before damaging intrusions occur.

Review the RVWP webpage for details, including information on the authorities and services CISA leverages to enable RVWP notifications.

CISA [Microsoft Releases March 2023 Security Updates](#) (03/14/2023) - Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker can exploit some of these vulnerabilities to take control of an affected system.

CISA encourages users and administrators to review Microsoft’s [March 2023 Security Update Guide](#) and [Deployment Information](#) and apply the necessary updates.

Comment: Ensure your IT staff is aware of 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 extended through April 19, 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.**