Community Bankers of Michigan Regulatory Dispatch

March 2, 2022

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

CISA AND FBI PUBLISH ADVISORY TO PROTECT ORGANIZATIONS FROM DESTRUCTIVE MALWARE USED IN UKRAINE

WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI) issued a joint Cybersecurity Advisory providing an overview of destructive malware that has been used to target organizations in Ukraine as well as guidance on how organizations can detect and protect their networks. The joint Advisory, "Destructive Malware Targeting Organizations in Ukraine," provides information on WhisperGate and HermeticWiper malware, both used to target organizations in Ukraine.

Destructive malware can present a direct threat to an organization's daily operations, impacting the availability of critical assets and data. While there is no specific, credible threat to the United States at this time, all organizations should assess and bolster their cybersecurity. Some immediate actions that can be taken to strengthen cyber posture include:

- Enable multifactor authentication;
- Set antivirus and antimalware programs to conduct regular scans;
- Enable strong spam filters to prevent phishing emails from reaching end users;
- Update software; and
- Filter network traffic.

"In the wake of continued denial of service and destructive malware attacks affecting Ukraine and other countries in the region, CISA has been working hand-in-hand with our partners to identify and rapidly share information about malware that could threaten the operations of critical infrastructure here in the U.S.," said CISA Director Jen Easterly. "Our public and private sector partners in the Joint Cyber Defense Collaborative (JCDC), international computer emergency readiness team (CERT) partners, and our long-time friends at the FBI are all working together to help organizations reduce their cyber risk."

"The FBI alongside our federal partners continues to see malicious cyber activity that is targeting our critical infrastructure sector," said FBI Cyber Division Assistant Director Bryan Vorndran. "We are striving to disrupt and diminish these threats, however we cannot do this alone, we continue to share information with our public and private sector partners and encourage them to report any suspicious activity. We ask that organizations continue to shore up their systems to prevent any increased impediment in the event of an incident."

Executives and leaders are encouraged to review the advisory, assess their environment for atypical channels for malware delivery and/or propagation through their systems, implement common strategies, and ensure appropriate contingency planning and preparation in the event of a cyberattack.

CISA has updated the Shields Up webpage to include new services and resources, recommendations for corporate leaders and chief executive officers, and actions to protect critical assets. Additionally, CISA has created a new Shields Up Technical Guidance webpage that details other malicious cyber activity affecting Ukraine. The webpage includes technical resources from partners to assist organizations against these threats.

Comment: The reality is that a cyberwar can't easily be contained to a specific region of the world. The implications for business because of the conflict in Ukraine — whether conventional, cyber, or hybrid — will be felt far beyond the region's borders.

CBM Insights

Q1: The bank is making a loan to a general partnership in which the managing partner is a trust. The trustee of the trust is a director of the bank. Is the loan to the general partnership subject to Regulation O?

A1: That is a pattern of fact question. This loan is NOT to the trust. Rather, it is to the partnership. But a loan to a general partnership is attributed to each partner. If the director is either personally liable for the debt or would benefit directly from the loan (is a beneficiary of the trust) then it is presumed that the 'extension of credit' is made to the director.

Below is from the Fed's Frequently Asked Questions about Regulation O - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks.

Q2: When is an extension of credit to an estate or trust treated as being made to a beneficiary of the estate or trust?

A2: The tangible economic benefit rule in section 215.3(f) of Regulation O provides that an extension of credit to a third party will be treated as having been made to an insider to the extent that the proceeds are transferred to, or used for the tangible economic benefit of, an insider. Extensions of credit to an estate or trust inure to the benefit of the beneficiaries of the trust or estate. For purposes of Regulation O, an extension of credit to a trust or estate in which an insider has a present or contingent beneficial interest of 25 percent or more will be treated as made to the insider-beneficiary.

Source: FRRS 3-1062.1 (citing a letter from Neal L. Petersen, General Counsel of the Board, to John P. Amershadian (May 23, 1980), available here).

Posted: 3/31/2021

Source link.

The above FAQ is based upon an official staff interpretation published in 1980.

CONTROL OF COMPANY OR BANK-Executor, Trustee, or Beneficiary of Estate or Trust.

An extension of credit by a member bank to an estate or trust for which a director of the bank is executor or trustee (but not beneficiary) is not considered made directly to the director under subpart A of Regulation O solely by reason of the director's status as executor of the estate or trustee of the trust. However, if the director was personally liable for the extension of credit or if the proceeds of the extension of credit were transferred to the director or used for the director's personal benefit, the extension of credit would be considered made to the director.

An extension of credit to an estate may be subject to the prohibitions of subpart A of Regulation O if the estate is a "related interest" of the director. The term "estate" is not included in the definition of "company" under subpart A. Estates are generally similar to individuals, which are not considered companies under subpart A. Accordingly, a member bank may extend credit to an estate of which the director is the executor (but not beneficiary) without regard to the prohibitions of subpart A. However, if the estate is long lived or takes on other characteristics of a company, the estate may be considered a company. If the estate controls a company, the director may be held to control the company through the director's control as executor of shares of the company held by the estate. Also, if the estate holds 10 percent or more of the shares of any class of voting shares of the bank, the estate would qualify as a principal shareholder of the bank. In such a case, the director would also be considered a principal shareholder of the bank through his control of the estate.

A trust qualifies a company under subpart A. Control of a company under Regulation O exists when a person, directly or indirectly, owns or controls 25 percent or more of the voting shares of a company. Also, a person is presumed to control a company when that person owns or controls more than 10 percent but less than 25 percent of the voting shares. Whether a director controls depends on whether the director is in the position to control the requisite share of the trust. Therefore, a sole trustee or a co-trustee would control the trust, and the trust would qualify as a "related interest" of the director. In that situation, any extension of credit to the trust would be subject to the preferential and prior-approval requirement of Regulation O.

If a director is a beneficiary of a trust or estate, an extension of credit to the trust or estate would inure to the benefit of the director. If the director has a 25 percent or more present or contingent interest in the estate or trust, the extension of credit will be considered to have been made to the director. Also, if the director, who is a beneficiary (but not a trustee) of the trust possessed the right to sell or dispose of the trust assets, terminate the trust, or replace the trustee, the director must be considered to control the trust, STAFF OP. of May 23, 1980.

Source link.

Items of Interest

Bank Management

	FRB Begins 2022 Survey of Consumer Finances (02.25.2022) - The Federal Reserve Board in March will begin a statistical study of household finances, the Survey of Consumer

	Finances, that will provide policymakers with important insight into the economic condition of a broad cross section of American families. "This survey is one of the nation's primary sources of information on the financial condition of different types of families," Federal Reserve Board Chair Jerome Powell said in a letter to prospective survey participants. "Our most recent survey has been instrumental in continuing to understand the different experiences of American families during the economic uncertainty resulting from the COVID-19 pandemic." The data collected will provide a representative picture of what Americans own (from houses and cars to stocks and bonds), how and how much they borrow, and how they bank. Past study results have contributed to policy discussions regarding recovery of households from the Great Recession, changes in the use of credit, the use of tax-preferred retirement savings accounts, and a broad range of other issues. The sample design for the 2022 survey will include adjustments to improve the coverage of Black, Hispanic or Latino, and Asian families in the survey. The current version of the survey has been undertaken every three years since 1983. It is being conducted for the Board by NORC, a social science research organization at the University of Chicago, through December of this year. Participants in the study are chosen at random from 119 areas, including metropolitan areas and rural counties across the United States, using a scientific sampling procedure. A representative of NORC contacts each potential participant personally to explain the study and request time for an interview. Individual survey responses are kept confidential. NORC uses names and addresses only for the administration of the survey, and that identifying information will be destroyed at the close of the study. NORC is forbidden from giving the names and addresses of participants to anyone at the Federal Reserve or anywhere else. Summary results for the 2022 study will be published in late 2023 after all data from the survey have been assessed and analyzed. The attached letter from Chair Powell will be mailed in mid-March to approximately 13,000 households urging their participation in the study. ***Comment: This triennial statistical survey of the balance sheet, pension, income and other demographic characteristics of families in the United States; the survey also gathers information on the use of financial institutions.***
	FRB Fighting Inflation with Rate Hikes and Balance Sheet Reduction – Speech by Governor Christopher J. Waller: Thank you Peter, and thank you to the UCSB Economic Forecast Project for the invitation to speak today. My plan is to start with my outlook for the U.S. economy in 2022, and then describe what I consider the appropriate path of monetary policy to keep the economy on a healthy and sustainable course.1 But, before I get into that discussion, let me comment on what I think is on everyone's minds today, Russia's attack on Ukraine. Obviously, there are people in harm's way, and we shouldn't lose sight

of them. It is far too early to judge how this conflict will affect the world, or the world economy, and what the implications will be for the U.S. economy. But this situation adds uncertainty to my outlook and will be something I will be monitoring very closely. As my speech will say, we will need to carefully look at the incoming data, especially during a time of heightened uncertainty.

Turning to my outlook for the economy, my greatest concern is continued elevated inflation. Inflation is too high, and I think concerted action is needed to rein it in. The Federal Open Market Committee (FOMC) has multiple tools to tighten monetary policy, and I will go into some detail about how I believe the Fed should approach increasing the target range for the federal funds rate and reducing the size of the balance sheet.

But let me start with the outlook for economic activity. I expect the economy to continue expanding at a healthy rate this year, slower than in 2021 but still at a solid pace that will keep employment growing strongly. While there are some signs that the effects of the Omicron variant have dampened economic growth in the last month or two, it does not appear to have affected hiring, given the healthy jobs report for January. Even COVID-sensitive sectors such as leisure and hospitality saw big job gains last month. With COVID cases dropping sharply, I expect this latest surge in infections will not be a major factor affecting the economy in 2022. Supply bottlenecks and labor shortages, some of them related to the pandemic, continue to weigh on economic output, but I expect those to diminish later this year.

Click here to continue reading this speech.

CSBS Blog 4 of 7: Is Tech an Opportunity or a Threat? (02.22.2022) - Community banks use various technologies to increase revenues and improve efficiency to remain competitive. In our previous blog, we defined community bank tech usage and found that banks reporting the highest tech-usage tend to be larger (as measured by total assets), headquartered in more populated areas, and appear to have better economies of scale (based on a simple efficiency ratio of data processing costs divided by total assets).

ADAPTING TO THE DIGITAL AGE SERIES

- Blog 1: Macroeconomic Forces
- Blog 2: Competitive Forces
- Blog 3: Tech Usage
- Blog 4: Is Tech an Opportunity or a Threat?

Each blog in this series will contain an updated table of contents. Bookmark this website to return and read more as the series continues.

In this seven-part blog series, we explore how community banks are adapting to a changing digital landscape by analyzing banking and technology questions from the 2021 CSBS National Survey of Community Banks. Survey results are presented each fall at the annual Community Banking in the 21st Century Research and Policy Conference, sponsored by CSBS, the Federal Reserve and the Federal Deposit Insurance Corp.

	Comment: These podcasts are well worth the time to listen to. Afterall, the digital landscape is here to stay and banks need to have a strategic approach to dealing with it.
	FTC The Top Frauds of 2021 (02.22.2022) - Every year, people report fraud, identity theft, and bad business practices to the FTC and its law enforcement partners. In 2021, 5.7 million people filed reports and described losing more than $5.8 billion to fraud — a $2.4 billion jump in losses in one year. You can learn about the types of fraud, identity theft, and marketplace issues people reported by state, and how scammers took payment — including $750 million in cryptocurrency — in the FTC's new Consumer Sentinel Network Data Book. ***Comment: Like the CFPB, the FTC report notes a significant amount of complaints against the credit bureaus.***
	FRB High Inflation and the Outlook for Monetary Policy Governor Michelle W. Bowman (02.21.2022) - Before we get to our conversation on community banking, I would like to briefly discuss my outlook for the U.S. economy and my view of appropriate monetary policy. As I see it, the main challenge for monetary policy now is to bring inflation down without harming the ongoing economic expansion. Inflation is much too high. Last year I noted that inflationary pressures associated with strong demand and constrained supply could take longer to subside than many expected. Since then, those problems have persisted and inflation has broadened, reaching the highest rate that Americans have faced in forty years. High inflation is a heavy burden for all Americans, but especially for those with limited means who are forced to pay more for everyday items, delay purchases, or put off saving for the future. I intend to support prompt and decisive action to lower inflation, and today I will explain how the Fed is pursuing this goal. In the near term, I expect that uncomfortably high inflation will persist at least through the first half of 2022. We may see signs of inflation easing in the second half of the year, but there is a substantial risk that high inflation could persist. In January, the Consumer Price Index rose to a 12-month rate of 7.5 percent, which, consistent with other recent monthly readings, was even higher than expected. Employment costs for businesses, as measured by average hourly wages, also rose last month. And continued tightness in the labor market indicates that upward pressure on wages and other employment compensation is not likely to moderate soon. Click here to continue reading this speech.

BSA / AML

	No news to report this week.

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	CFPB Rising Car Prices Means More Auto Loan Debt (02.24.2022) - Earlier this month, the Bureau of Labor Statistics released data regarding changes to the Consumer Price Index (CPI), which is one measure of inflation. The increasing cost of automobiles continues to be a major component of inflation, as many manufacturers face difficulties procuring chips that are a key component in cars and are therefore producing fewer new cars. While the chip shortage has caused new cars to grow more expensive, the price increase of used cars has been sharper. Data show that the CPI for used cars and trucks increased 40% percent since January 2021 while the CPI for new cars increased 12 percent. As car prices continue to rise, loan amounts are rising, and loan lengths are growing to make those larger loans seem affordable. As a result, we expect that both the total amount of debt and the average loan size will continue to increase and that larger car loans will put increased pressure on some consumers' budgets for much of the next decade. Auto loans are already the third largest consumer credit market in the United States at over $1.4 trillion outstanding, double the amount from 10 years ago and expected to grow further. We are also concerned that current high auto prices, especially for used cars, might create incentives for lenders to repossess cars more quickly than would have occurred before. For many, their car or truck is essential to get to work or to do their work. Therefore, as the economic recovery continues, we will focus on ensuring a fair, transparent, and competitive auto lending market in the following ways.
	CFPB Outlines Options To Prevent Algorithmic Bias In Home Valuations (02.23.2022) - Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) outlined options to ensure that computer models used to help determine home valuations are accurate and fair. The options will now be reviewed to determine their potential impact on small businesses. "It is tempting to think that machines crunching numbers can take bias out of the equation, but they can't," said CFPB Director Rohit Chopra. "This initiative is one of many steps we are taking to ensure that in-person and algorithmic appraisals are fairer and more accurate." When underwriting a mortgage, lenders typically require an appraisal, which is an estimate of the value of the home. While traditional appraisals are conducted in-person, many

lenders also employ algorithmic computer models. These models use massive amounts of data drawn from many sources to value homes. The technical term for these models is automated valuation models. Both in-person and algorithmic appraisals appear to be susceptible to bias and inaccuracy, absent appropriate safeguards.

Obtaining an accurate estimate of a home's worth is one of the most important steps in the mortgage process for homebuyers. Inaccurate valuations, both too high and too low, can pose risks to consumers. Given their crucial role, the Dodd-Frank Wall Street Reform and Consumer Protection Act tasked the CFPB and other regulators with implementing rules on these models.

Overvaluing homes can put family wealth at-risk, create reselling challenges, and lead to higher rates of foreclosure. Homes can be overvalued for numerous reasons. For example, during the run-up to the 2008 collapse of the housing bubble, housing prices became inflated for reasons that included lenders extending mortgage credit—often with toxic or predatory terms—without regard to borrowers' ability to repay. In other situations, supply can become constricted and unable to keep pace with demand.

Low valuations can jeopardize home sales and prevent homeowners from refinancing, which makes it harder to build wealth or make repairs. Systematically low valuations driven by biased appraisers may exacerbate existing disparities in the housing market. The Federal Housing Finance Agency recently identified discriminatory statements in some home appraisals, and both Fannie Mae and Freddie Mac have found appraisal disparities for communities and borrowers of color. Homeowners and homebuyers are often dependent on appraisers' views of a community and of the people that live within it. When those views are negative, the undervaluing of homes can be the result.

Computer models and algorithms are additional tools for mortgage lenders and appraisers to improve valuation accuracy. However, automated valuation models can pose fair lending risks to homebuyers and homeowners. The CFPB is particularly concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further embed and perpetuate historical lending, wealth, and home value disparities.

The CFPB's options will strengthen oversight of these models. Specifically, the CFPB, along with its federal partners, intends to:

- Ensure a high level of confidence in the estimates produced by automated valuation models;
- Protect against the manipulation of data;
- Seek to avoid conflicts of interest;
- Require random sample testing and reviews; and
- Account for any other such factor that the agencies determine to be appropriate.

Read the CFPB's Outline, Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking .

	Comment: This rulemaking is just one of several moves to wring out any discrimination in the appraisal process. See also the joint letter to The Appraisal Foundation regarding potential discrimination through use of "supported" conclusions.
	CFPB Issues Factsheet on Prepaid Interest and the General QM APR Calculation Rule for Certain ARMs (02.23.2022) - The CFPB has released a factsheet on the interest rate that is used for calculating prepaid interest under the price-based General QM APR calculation rule for certain ARMs and step-rate loans. ***Comment: This calculation is essential if the revised QM methodology is to be used to establish ability to repay.***
	Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B (02.22.2022) - The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB or Bureau), the Department of Housing and Urban Development (HUD), the Department of Justice (DOJ), and the Federal Housing Finance Agency (hereafter, the agencies) are issuing an interagency statement to remind creditors of the ability under the Equal Credit Opportunity Act (ECOA) and Regulation B to establish special purpose credit programs to meet the credit needs of specified classes of persons. Many financial institutions have publicly committed billions of dollars to better meet the needs of underserved communities, and the statement calls attention to the special purpose credit options under ECOA and Regulation B. Statement of Applicability: This Financial Institution Letter applies to all FDIC-supervised financial institutions. Highlights: • On December 21, 2020, the CFPB issued an Advisory Opinion (AO) on special purpose credit programs to clarify the content that a for-profit organization must include in a written plan that establishes and administers a special purpose credit program under Regulation B. In addition, the AO clarified the type of research and data that may be appropriate to inform a for-profit organization's determination to establish a special purpose credit program to benefit a specified class of persons. • Previously, some stakeholders expressed uncertainty as to the treatment of ECOA and Regulation B special purpose credit programs under the Fair Housing Act (FHA). On December 7, 2021, HUD released guidance concluding that special purpose credit programs instituted in conformity with ECOA and Regulation B generally do not violate the FHA. Accordingly, creditors may consider the use of special purpose credit programs across all types of credit covered by ECOA and Regulation B.

- As creditors consider how they may expand access to credit to better address special social needs, the agencies encourage creditors to explore opportunities to develop special purpose credit programs consistent with ECOA and Regulation B requirements as well as applicable safe and sound lending principles.

Attachment:

Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B

Comment: Community banks should note that under section 1002.8(b)(2), special purpose credit programs are permitted if the programs were not established to discriminate on a prohibited basis and are not administered in a way that discriminates on a prohibited basis. However, a special purpose credit program may still require participants to share a common characteristic, such as "race, national origin, or sex," as long as the program was not created to evade any part of the ECOA or Regulation B.

OCC Community Reinvestment Act: Frequently Asked Questions Regarding the Final Rule to Rescind the OCC's June 2020 CRA Rule (02.22.2022) - The Office of the Comptroller of the Currency (OCC) issued responses to frequently asked questions (FAQ) about the December 2021 final rule1 to rescind the OCC's Community Reinvestment Act (CRA) rule issued on June 5, 2020 (June 2020 CRA rule).2 The December 2021 CRA final rule, effective January 1, 2022, replaced the June 2020 CRA rule with provisions largely based on the rules adopted jointly by the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation in 1995, as revised.

This bulletin rescinds OCC Bulletin 2021-50, "Community Reinvestment Act: Frequently Asked Questions Regarding Notice of Proposed Rulemaking to Rescind the OCC's June 2020 CRA Rule."

Note for Community Banks
This bulletin applies to banks, including community banks, subject to the CRA.

Highlights
The FAQs provide general information on the implementation of the December 2021 CRA final rule after the effective date of January 1, 2022, and address questions related to

- the impact of the final rule on CRA bank type.
- qualifying activities and the qualifying activity confirmation request system.
- the transition period.
- examination administration.
- assessment areas.
- targeted geographic areas.
- data reporting.
- changes to public notices and public files.
- strategic plans.

	Comment: Note, however, that the OCC is committed to CRA reform, but it is starting from the Fed's prior proposal.

Technology / Security

	No news to report this week.

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

01.26.2022 Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services - The Consumer Financial Protection Bureau (Bureau or CFPB) is seeking comments from the public related to fees that are not subject to competitive processes that ensure fair pricing. The submissions to this request for information will serve to assist the CFPB and policymakers in exercising its enforcement, supervision, regulatory, and other authorities to create fairer, more transparent, and competitive consumer financial markets. **DATES: Comments must be received on or before March 31, 2022.**

01.25.2022 Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates - FinCEN is issuing this notice of proposed rulemaking to seek public comment on the proposed establishment of a limited-duration pilot program, subject to conditions set by FinCEN, to permit a financial institution with a suspicious activity report (SAR) reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risk, in accordance with Section 6212(a) of the Anti-Money Laundering Act of 2020 (AML Act). **DATES: Written comments on this proposed rule must be received on or before March 28, 2022.**