Community Bankers of Michigan Regulatory Dispatch

March 8, 2023

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC-Insured Institutions Reported Net Income of $68.4 Billion in Fourth Quarter 2022

- Full-Year 2022 Net Income Was Lower Than in 2021 But Still Higher than the Pre-Pandemic Average
- Lower Noninterest Income and Higher Provisions Drove a Modest Decline in Net Income Quarter Over Quarter
- The Net Interest Margin Widened for the Third Consecutive Quarter
- Unrealized Losses on Securities Declined Quarter Over Quarter but Remain Elevated
- Broad Based Loan Growth Continued in the Fourth Quarter
- Asset Quality Metrics Remained Favorable Despite Modest Deterioration
- Community Banks Reported Increased Net Income Quarter Over Quarter

"Key banking industry metrics remain favorable at this time. Loan growth continued, net interest income grew, and asset quality measures remained favorable. Further, the industry remains well-capitalized and highly liquid.

"However, the banking industry continues to face significant downside risks from inflation, rising market interest rates, and geopolitical uncertainty that could hurt bank profitability, weaken credit quality and capital, and limit loan and deposit growth. These risks will be matters of continued supervisory attention by the FDIC over the coming year."

— FDIC Acting Chairman Martin J. Gruenberg

Comment: From the report – 'Community Bank Net Income Rose From a Quarter Ago and Year Ago: Community bank quarterly net income for the 4,308 community banks grew $1.0 billion (13.5 percent) from one quarter ago to $8.5 billion in third quarter 2022. Higher net interest income more than offset lower noninterest income and higher noninterest expense. Seventy-four percent of community banks reported higher net income from last quarter. Net income also increased $317.5 million (3.9 percent) from one year ago because of higher net interest income. Sixty-three percent of community banks reported higher net income than one year ago. The community bank pretax ROAA ratio rose 17 basis points from one quarter ago to 1.51 percent.'

CBM Insights

Q. Can we pull a credit report on individual guarantors on a business loan? How about in connection with a follow-up loan review?

A. The Federal Trade Commission (FTC) issued the 'Tatelbaum Opinion' and subsequent 'Advisory Opinion to Tatelbaum' which concluded that as long as the individual guarantors have personal liability on a business loan, the application itself, that identifies specific guarantors, meets the standard for having a 'permissible purpose' for pulling a credit report on those specific individuals. In that case, joint intent would also be required.

Your letter advocates an alternative interpretation of Section 604(a)(3)(A), concluding that "the FCRA would permit a lender to obtain a consumer report in connection with a business credit transaction where the consumer in question is or will be personally liable on the loan, such as in the case of an individual proprietor, co-signer, or guarantor."(1) We agree that it is reasonable to view a business transaction in which an individual has accepted personal liability for the business debt as involving the consumer, thus providing a permissible purpose for the lender to obtain a consumer report under Section 604(a)(3)(A). We understand your practical reasons for desiring that all parties be able to rely on your interpretation. Therefore, we are willing to consider the Tatelbaum letter superseded to the extent that it concludes otherwise.

Source link.

Rather than put your staff in a position on deciding whether the bank has a 'permissible purpose,' obtaining a written authorization from all individuals you want to pull a credit report on removes any doubt in every case.

How about pulling a credit report on an individual guarantor after origination in connection with credit review? In the 'Gowen Opinion,' the FTC concluded that the bank would have to have a contractual right to change the terms of the loan or suspend the loan in order to have a 'permissible purpose.' In that instance, the credit report could be used for no other purpose including offering different terms.

The terms of a closed-end credit transaction are predetermined and generally may not be changed unilaterally by the creditor unless the contract expressly provides for such action (e.g., in the event of default). Therefore, the creditor is unlikely to have a reason to consider "whether to retain or modify current account terms" and, thus, would not have any routine need to procure consumer reports to "review" its accounts. Second, the credit bureau must, pursuant to Section 607(a), require the creditor to "certify the purposes for which the information is sought, and certify that the information will be used for no other purpose." (emphasis added). Because Section 604(a) provides no authority for a creditor (or any party) to use a consumer report for marketing purposes,(4) a creditor would violate its certification by using an existing report in such a manner.

Source link.

Items of Interest

Bank Management

	FRB Recent Inflation and the Dual Mandate - Governor Philip N. Jefferson (02/27/2023) - The two primary measures of the price level in the United States are the consumer price index, commonly referred to as the CPI, and the personal consumption expenditures price index, commonly referred to as the PCE price index. Positive changes in these indexes are recorded as inflation. Each inflation measure has both total (or headline) and core subindexes, which I will talk about later. The CPI and PCE price indexes are constructed in broadly similar ways, but there are important differences between them.1 Both indexes measure

inflation using a specific basket of goods and services consumed by households. These baskets are similar but not identical across the two measures. Both measures also weight each item in their basket roughly in accordance with its expenditure share. That is, the more households spend on an item, like rent, the higher the weight it receives in the overall index. The weights are broadly similar across the two indexes, but, again, there are some important differences.

Now, let's talk in more detail about the differences between the CPI and the PCE price indexes. First, the PCE price index has a broader scope than the CPI. The CPI is limited to expenditures that households pay out of pocket, while the PCE price index covers a broader set of goods and services as it seeks to cover prices for all consumer expenditures in the national income and product accounts (NIPA). For example, the PCE price index includes prices of the health services provided to households through Medicaid, while the CPI excludes these items.

Second, the PCE price index and the CPI use different weighting systems. The PCE price index, which is more comprehensive than the CPI, estimates expenditure shares using the national income and product accounts, while the CPI measures expenditure shares using a separate survey of households, the Consumer Expenditure Survey. This leads to some differences in expenditure weights that can at times be important. For example, the share of medical services is notably higher in the PCE price index (partly because the PCE price index includes more kinds of medical expenditures), and the share of housing services is noticeably smaller (because overall expenditures are larger in the PCE price index). As a result, when health-care services or housing services inflation behave differently than other prices, this can lead to differences in PCE versus CPI inflation.

Comment: The "dual mandate" of the Fed are the two goals of price stability and maximum sustainable employment. The Fed judges that inflation at the rate of 2 percent, as measured by the annual change in the Price Index for Personal Consumption Expenditures is the goal for price stability. Many nonmonetary factors affect the structure and dynamics of the labor market, and these may change over time and may not be measurable directly. Because of those reasons, the Fed does not have an explicit employment goal.

FRB February's Hot Data Releases - Governor Christopher J. Waller (03/02/2023) - Last month we received a barrage of data that has challenged my view in January that the Federal Open Market Committee (FOMC) was making significant progress in moderating economic activity and reducing inflation. I'm not the only one whose outlook has shifted. Since the end of January, financial market participants have revised their outlooks in a way that has led them to mark up their expectations for the federal funds rate at the end of 2023 by about a half percentage point.

The shift in the data started with a bang on February 1, with a big increase in the number of job openings in December that reversed the gradual easing over several months in what is a key indicator of tightness in the labor market. Part of the FOMC's plan to lower inflation is reducing this excess tightness, which has been driving elevated wage growth and contributing to high inflation. The Job Openings and Labor Turnover Survey data can be noisy so, at times, there is a tendency to downplay large moves. But then on February 3, the job report for January showed a stunning 517,000 increase in employment and the unemployment rate moved down to a level not seen in over 50 years.2 These data indicated that, instead of loosening, the labor market was tightening.3 A little over a week later, on Valentine's Day, instead of a box of chocolates, we got the consumer price index (CPI) inflation report for January and revisions to 2022. By this measure, not only had inflation stopped declining in January, it also slowed a lot less in the second half of last year than previously reported.4 Later that week, data on producer prices and last week's report on personal consumption expenditures (PCE) prices reinforced these two points. Retail sales for January also came in much stronger than expected, suggesting the economy was slowing less than it had appeared just a month earlier, a picture that was confirmed by data on personal spending, which represents almost

	70 percent of gross domestic product. Continuing progress on inflation depends on lowering demand and moderating economic activity, and the retail sales and spending data suggest that progress on reducing aggregate demand may have stalled. Whether or not subsequent data confirm the setback in progress last month, the FOMC will do what is needed to reduce inflation to the Committee's 2 percent objective over time. It is possible there may be some bumps on that path, but I assure you, the FOMC's dual mandate objectives will be achieved. Inflation has been elevated for nearly two years due to an excess of aggregate demand relative to supply. Even though the fiscal stimulus and goods supply constraints that contributed to that imbalance have mostly unwound and the FOMC has rapidly raised the target range for the federal funds rate, the labor market remains very tight and aggregate demand has proved resilient to considerable increases in interest rates. One implication of the strong labor market is that the FOMC's maximum employment goal has been achieved and monetary policy can be utterly focused on fighting inflation. Any fear that we might face two-sided risk in achieving our dual mandate was blown away by the January employment numbers. But an excessively tight labor market complicates the path toward achieving price stability, because wages are growing faster than they have in decades, at a pace that may contribute to keeping inflation elevated. We see this excess pressure in the fast growth of services prices, where labor costs are a higher share of overall input costs and shortages of workers are reportedly most acute. ***Comment: In a nutshell, Governor Waller warns that the string of "hot" data may force the Fed to raise rates higher than the 5.1%-5.4% range projected by the majority of Federal Reserve policymakers as recently as December of 2022.***

BSA / AML

	FinCEN Alert on Nationwide Surge in Mail Theft-Related Check Fraud Schemes Targeting the U.S. Mail (02/27/2023) - WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) is issuing an alert to financial institutions on the nationwide surge in check fraud schemes targeting the U.S. Mail. Fraud, including check fraud, is the largest source of illicit proceeds in the United States and is one of the anti-money laundering/countering the financing of terrorism (AML/CFT) National Priorities. In coordination with the United States Postal Inspection Service (USPIS), FinCEN has identified red flags to help financial institutions detect, prevent, and report suspicious activity connected to mail theft-related check fraud. “FinCEN is proud to partner with the United States Postal Inspection Service in producing this important and timely alert on mail theft-related check fraud designed to assist financial institutions in reversing this disturbing trend,” said Acting Director Himamauli Das. “Their vigilance and timely reporting will help law enforcement identify illicit actors who steal mail with the goal of defrauding innocent American taxpayers and businesses.” Criminals have been increasingly targeting the U.S. Mail and United States Postal Service mail carriers since the COVID-19 pandemic to commit check fraud. Criminals typically steal personal checks, business checks, tax refund checks, and checks related to government assistance programs, such as Social Security payments and unemployment benefits. Following the initial theft and fraudulent negotiation of the stolen checks, criminals may continue to exploit their victims by using the personal identifiable information found in the stolen mail for future fraud schemes, such as credit card fraud or credit account fraud. Bank Secrecy Act reporting for check fraud has increased significantly in the last three years. In 2021, financial institutions filed over 350,000 Suspicious Activity Reports (SARs) to FinCEN to report potential check fraud, a 23 percent increase over the number of check fraud-related SARs filed in 2020. This upward

	trend continued into 2022, when the number of SARs related to check fraud reached over 680,000, nearly double from the previous year's amount of filings. ***Comment: FinCEN said in addition to filing a SAR, as applicable, when suspecting this type of fraud, banks should refer their customers/members who may be victims of mail theft-related check fraud to the USPIS at 1-877-876-2455 or https://www.uspis.gov/report.***

Deposit / Retail Operations

	No news to report this week.

Human Resources

	No news to report this week.

Lending

	CFPB Seeking Public Input: New Proposal for Alternative Mortgage Disclosures for Construction Loans (02/28/2023) - The CFPB announced that they are in the final stage of reviewing an application regarding consumer disclosures of a loan that finances both a construction phase and the permanent purchase of a home. In its application, the Independent Community Bankers of America (ICBA) states it is not uncommon in rural communities for first-time homebuyers to build their first home because there are limited existing affordable "starter" homes. The application seeks to adjust the existing mortgage disclosures to facilitate the offering of these products. ICBA believes that consumer understanding of construction loans would be improved by disclosures that are specifically tailored to such loans. If this "template" application is approved, individual lenders can then apply to enroll in an in-market testing pilot. View the application for construction loan disclosures. Seeking public comments In addition to making the application available to the public, we are seeking input from consumers, lenders, and other stakeholders who have experience with construction loans. Submissions will be accepted until March 29, 2023. ***Comment: It is unclear if any systems would be able to produce these 'alternative disclosures.' That mean that if a bank wants to 'test' these disclosures, it will be a manual process.***

Technology / Security

	CISA FBI and CISA Release #StopRansomware: Royal Ransomware (03/02/2023) - The Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) released joint Cybersecurity Advisory (CSA) #StopRansomware: Royal Ransomware to provide network defenders tactics, techniques, and procedures (TTPs) and indicators of compromise (IOCs) associated with Royal ransomware variants. FBI investigations identified these TTPs and IOCs as recently as January 2023.

	Royal ransomware attacks have spread across numerous critical infrastructure sectors including, but not limited to, manufacturing, communications, healthcare and public healthcare (HPH), and education. CISA encourages network defenders to review the CSA and to apply the included mitigations. See StopRansomware.gov for additional guidance on ransomware protection, detection, and response. ***Comment: Ensure your IT department is familiar with this release.***

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 March 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.**