



Community Bankers of Michigan Regulatory Dispatch

May 25, 2022

*Timely news and resources community bankers can use
to better stay on top of a rapidly changing world.*

FDIC Publishes 2022 Risk Review

WASHINGTON – The Federal Deposit Insurance Corporation (FDIC) published its [2022 Risk Review](#), a comprehensive summary of emerging risks in the U.S. banking system as observed in 2021. The 2022 Risk Review expands coverage of risks from prior reports by examining operational risk to banks from cyber threats and illicit activity, and climate-related financial risks faced by banking organizations. Monitoring these risks is among the FDIC's top priorities.

The 2022 report provides a retrospective summary of conditions in the U.S. economy, financial markets, and banking sector, and presents key credit and market risks to banks as of year-end 2021. The report focuses on the effects of these risks on community banks in particular, as the FDIC is the primary federal regulator for the majority of community banks in the U.S. banking system.

The FDIC's Risk Review is an annual publication based on year-end banking data. The FDIC intends to publish its next Risk Review in the spring of 2023.

Comment: The risk review provides a general macroeconomic overview of the industry before homing in on specific risks. Most of the 'key risks' are credit related. Interest rate risk and liquidity also get a nod as does cyber threats and climate change.

CBM Insights

Q: Our third-party review firm wrote us up because the 'loan identification number' on the Loan Estimate and Closing Disclosure does not match note number. Our problem is that the system loan number is not available until we 'upload' the loan after closing. Any suggestions?

A: Was it written-up as a recommendation or a violation? The 'loan identification number' must be unique and consistent on the Loan Estimate and the Closing Disclosure (the loan disclosures) but not necessarily the note (the loan contract.)

(v) Loan identification number. The information required to be disclosed under § 1026.37(a)(12), labeled "Loan ID #."

1. Same identification number as Loan Estimate. The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to

the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

Source [link](#).

While it may be a best practice to keep the ‘loan identification number’ consistent across the disclosures and the loan contracts, it is not a specific requirement. The key here is that the ‘loan identification number’ has as its purpose the linking of the Loan estimate and the Closing Disclosure. By contrast, the note number is an identifying number that the bank uses in its system to manage the note and the payments.

Items of Interest

Bank Management

	<p>FRB Finalizes Rule That Governs Funds Transfers Over the Federal Reserve Banks' FedNow Service (05/19/2022) - The Federal Reserve Board finalized a rule that governs funds transfers over the Federal Reserve Banks' FedNowSM Service. The final rule is substantially similar to the proposal from last year, with a few clarifications in response to comments.</p> <p>The FedNow Service is a new 24x7x365 interbank settlement service with clearing functionality to support instant payments in the United States and is expected to be available in 2023.</p> <p>The final rule provides a comprehensive set of rules governing funds transfers over the FedNow Service and provides legal certainty and clarity on the rights and obligations of parties to a transfer over the FedNow Service.</p> <p><i>Comment: While the Fed recognized that the irrevocable, real-time nature of instant payments can pose a challenge to the industry in detecting and preventing fraud, it suggested that further examining of Regulation E may be the right tool to strengthen consumer protection for this particular topic.</i></p>
	<p>FRB Mitigating Synthetic Identity Fraud with Technology, Data and Information Sharing (05/19/2022) - The Federal Reserve is working with the industry to identify and mitigate synthetic identity fraud. The latest release of the Fed's Synthetic Identity Fraud Mitigation Toolkit is focused on new insights regarding fraud detection technology, data strategy and the value of fraud information sharing. Below, explore the two most recent toolkit modules.</p> <p><i>Comment: For community banks, the challenge is in detecting synthetic identity theft. Back in 2020, ICBA published an interesting Blog post entitled '7 Tips for Mitigating Synthetic Identity Fraud Risk' that is worth the time to read.</i></p>
	<p>FDIC Minority Depository Institution (MDI) Designations (05/19/2022) - On June 15, 2021, the Federal Deposit Insurance Corporation (FDIC) Board of Directors approved an updated Statement of Policy Regarding Minority Depository Institutions (Policy Statement), which details the framework by which the FDIC implements the goals set forth in Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The <i>Policy Statement</i> describes the FDIC's framework and initiatives to fulfill its statutory goals</p>

with respect to MDIs. As noted in the *Policy Statement*, the FDIC will accept requests from entities for designation as an MDI.

This issuance establishes a [process](#) for an insured institution or applicant for deposit insurance to make a request that the FDIC recognize the institution as an MDI.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.

Highlights:

- The FDIC has long recognized the importance of MDIs and has historically taken steps to preserve and promote and encourage the creation of these insured financial institutions.
- FDIC supervised institutions or applicants for deposit insurance that seek to be recognized as an MDI may submit a written request, signed by a duly authorized officer or representative of the institution or applicant, at any time to the appropriate regional office.
 - Institutions may also submit a request in connection with a merger application or a change in control notice.
 - The request should contain sufficient information in support of the designation.
- If the submitted documentation indicates that the institution or applicant has met the eligibility requirements, the FDIC will send a letter acknowledging recognition of the institution as an MDI.
 - The letter will describe the resources available through the MDI Program.
 - The institution or applicant should maintain documentation supporting its continued eligibility for the MDI designation.

Attachment:

[Minority deposit Institutions Designation Process](#)

Comment: A bank can qualify as an MDI if (1) 51 percent or more of the voting stock is owned by minority individuals; or (2) a majority of the board of directors is minority and the community that the institution serves is predominantly minority. (The FDIC defines “minority” as any Black American, Asian American, Hispanic American, or Native American.)

CFPB [Bolsters Enforcement Efforts by States](#) (05/19/2022) - Interpretive Rule Seeks to Clarify Scope of States’ Ability to Enforce Federal Consumer Financial Protection Laws.

Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) issued an interpretive rule that describes states’ authorities to pursue lawbreaking companies and individuals that violate the provisions of federal consumer financial protection law. Because of the crucial role states play in protecting consumers, the Consumer Financial Protection Act grants their consumer protection enforcers the authority to protect their citizens and otherwise pursue lawbreakers.

“In the years leading up to the financial crisis, federal regulators undermined states seeking to protect families and businesses from abuses in the mortgage market,” said CFPB Director Rohit Chopra. “Our action today demonstrates our commitment to promoting state enforcement, not suffocating it.”

Today’s interpretive rule affirms:

• States can enforce the Consumer Financial Protection Act, including the provision making it unlawful for covered persons or service providers to violate any provision of federal consumer financial protection law. This provision covers the Consumer Financial Protection Act itself as well as its 18 enumerated consumer laws and certain other laws, along with any rule or order prescribed by the CFPB under the Consumer Financial Protection Act, an enumerated consumer law, or pursuant to certain other authorities.

• States can pursue claims and actions against a broad range of entities. The Consumer Financial Protection Act outlines entities over which the CFPB may exercise its enforcement authority under the statute. States are able to bring actions against a broader cross-section of companies and individuals.

• CFPB enforcement actions do not put a halt to state actions. Sometimes states bring enforcement actions in coordination with the CFPB. A state may also bring an enforcement action to stop or remediate harm that is not addressed by a CFPB enforcement action against the same entity. Nothing in the Consumer Financial Protection Act precludes these complementary enforcement activities that serve to protect consumers at both the national and state levels.

Comment: It is worth noting that the CFPB's enforcement power is limited to civil actions. The bureau is required by law to make criminal referrals to the Attorney General of the United States, where appropriate, and this interpretive rule seems to build on that for states.

FDIC [Amendments to Guidelines for Appeals of Material Supervisory Determinations](#) (05/17/2022) - The FDIC has adopted Guidelines for Appeals of Material Supervisory Determinations that restore the Supervision Appeals Review Committee (SARC) as the final level of review in the agency's supervisory appeals process. The revised Guidelines take effect May 17, 2022. The FDIC is soliciting comment on the revised Guidelines with a comment period of 30 days.

Statement of Applicability: This FIL apply to all FDIC-supervised financial institutions.

Comment: Material supervisory determinations subject to the Guidelines include CAMELS, CRA and other exam ratings; Truth in Lending Act (Regulation Z) restitution; decisions to initiate informal enforcement actions (such as memoranda of understanding); and matters requiring board attention.

OCC [Acting Comptroller Discusses Risk Management](#) (05/17/2022) - WASHINGTON—Acting Comptroller of the Currency Michael J. Hsu discussed the importance of risk management in remarks at Bloomberg Risk & Regulation Week 2022. In his remarks, the Acting Comptroller encouraged banks to assess exposures and adjust risk profiles ahead of potential uncertainty and volatility in interest rates and loan performance. Mr. Hsu also discussed risk mitigation for counterparty and sector concentrations and offered thoughts on underwriting trends and developments in retail and commercial credit.

Related Links
[Remarks](#) (PDF)

FRB [Industrial Production and Capacity Utilization - G.17](#) (05/17/2022) - Release Date: May 17, 2022

Revision of Industrial Production and Capacity Utilization Notice Below

In April, total industrial production increased 1.1 percent—the fourth consecutive month of gains of 0.8 percent or greater—and manufacturing output rose 0.8 percent. The index for utilities moved up 2.4 percent, and the index for mining advanced 1.6 percent. At 105.6 percent of its 2017 average, total industrial production in April was 6.4 percent above its year-earlier level. Capacity utilization climbed to 79.0 percent, a rate that is 0.5 percentage point below its long-run (1972–2021) average.

BSA / AML

FinCEN [Prepared Remarks of Alessio Evangelista, Associate Director, Enforcement and Compliance Division, During Chainalysis Links Conference](#) (05/19/2022) - Alessio Evangelista, Associate Director of FinCEN's Enforcement and Compliance Division, provided prepared remarks today during the Chainalysis Links Conference. He discussed the intersection of cryptocurrencies and national security.

Comment: The debate continues about the use, risks, and validity of crypto assets, but key regulators have certainly signaled an intent to regulate these assets. Virtually every federal regulator is discussing crypto as a new asset class. In March of this year, President Biden signed an executive order to ensure the responsible development of digital assets.

Deposit / Retail Operations

FDIC [Small Entity Compliance Guide related to Simplification of Deposit Insurance Rules for Trust and Mortgage Servicing Accounts](#) (05/18/2022) - On January 28, 2022, the Federal Deposit Insurance Corporation (FDIC) published a final rule to amend the deposit insurance regulations for trust accounts and mortgage servicing accounts. The changes are intended to make the deposit insurance rules easier to understand for depositors and bankers, facilitate more timely insurance determinations for trust accounts in the event of a bank failure, and enhance consistency of insurance coverage for mortgage servicing account deposits. The final rule will take effect on April 1, 2024, providing depositors and banks more than two years to prepare for the changes in coverage.

The FDIC is adding a Small Entity Compliance Guide to its website to assist insured depository institutions and community banking organizations in understanding and preparing for the changes in deposit insurance coverage.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.

Highlights:

- The FDIC is updating its Banker Resources Guide Deposit Insurance Page with the Small Entity Compliance Guide (Community Bank Information) to promote understanding of the regulations.

- The final rule amends the deposit insurance regulations by merging the revocable and irrevocable trusts categories into one category.
- The final rule amends the regulation to expand the current per-borrower coverage of up to \$250,000 to include any funds paid into the account to satisfy the principal and interest obligation of the mortgagors to the lender.
- Some depositors within excess of \$1.25 million in trusts deposits at a particular IDI may want to make changes given the new coverage limits that take effect on April 1, 2024.

Attachment:

[Small Entity Compliance Guide related to Simplification of Deposit Insurance Rules for Trust and Mortgage Servicing Accounts](#)

Comment: The final rule, among other things: (i) establishes updates to the Banker Resources Guide Deposit Insurance Page with the Small Entity Compliance Guide (Community Bank Information) to promote understanding of the regulations; (ii) amends the deposit insurance regulations by merging the revocable and irrevocable trusts categories; (iii) “amends the regulation to expand the current per-borrower coverage of up to \$250,000 to include any funds paid into the account to satisfy the principal and interest obligation of the mortgagors to the lender”; and (iv) establishes that certain “depositors within excess of \$1.25 million in trusts deposits at a particular IDI may want to make changes given the new coverage limits” effective April 1, 2024.

[FDIC Issues Final Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC’s Name or Logo](#) (05/17/2022) - WASHINGTON — The Federal Deposit Insurance Corporation (FDIC) approved a final rule implementing its statutory authority to prohibit any person or organization from making misrepresentations about FDIC deposit insurance or misusing the FDIC’s name or logo.

“These practices not only harm those who are targeted with the false promise of deposit insurance, but, if left unchecked, could also undermine confidence in the FDIC, FDIC-insured banks, and the U.S. banking system,” said Acting Chairman Martin J. Gruenberg.

In recent years, the FDIC has observed an increasing number of instances where individuals or entities have misused the FDIC’s name or logo or have made false or misleading representations about deposit insurance. To provide transparency into how the FDIC will address these and similar concerns, the final rule clarifies the FDIC’s procedures for identifying, investigating, and where necessary, taking formal and informal enforcement actions against individuals or entities to address violations.

The final rule will take effect 30 days after publication in the Federal Register.

[Statement by Acting Chairman, Martin J. Gruenberg
Final Rule on False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo](#)

Comment: The FDIC noted that the final rule “will primarily affect non-bank entities and individuals who are potentially misusing the FDIC’s name or logo or are making misrepresentations about deposit insurance,” adding that it has observed “an increasing number of instances” of such conduct.

[CFPB Takes Action to Protect Depositors from False Claims About FDIC Insurance](#)

(05/17/2022) - Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) released an enforcement memorandum that addresses prohibited practices on claims about Federal Deposit Insurance Corporation (FDIC) insurance. Specifically, firms cannot misuse the name or logo of the FDIC or make deceptive representations about deposit insurance. The issue has taken on renewed importance with the emergence of financial technologies – such as crypto-assets, including stablecoins – and the risks posed to consumers if they are lured to these or other financial products or services through misrepresentations or false advertising.

Specifically, the Circular emphasizes that:

- Misrepresenting the FDIC logo or name will typically be a material misrepresentation. Material misrepresentations are deceptive practices in violation of the Consumer Financial Protection Act. Representations made by covered firms to consumers about FDIC insurance will typically be material. The misuse of the name or logo of the FDIC or engagement in false advertising or making misrepresentations to consumers about deposit insurance, regardless of whether such conduct is engaged in knowingly, is likely deceptive.
- Misrepresentation or misuse of the FDIC name or logo harms customers and puts them at significant risk of unexpected losses. Customers can be at risk of loss if they discover their assets are not insured during a time of financial distress. Because of their relatively recent entrance into the consumer marketplace, emerging financial products and services--such as digital assets, including crypto-assets--may present particularly acute risks to consumers. Claims that financial products or services are “regulated” by the FDIC or “insured” or “eligible for” FDIC insurance are likely deceptive if those claims expressly or implicitly indicate that the product or service is FDIC-insured when that is not in fact the case.
- Misuse of the FDIC name or logo harms honest companies. A covered firm deceptively advertising that its products or services are FDIC-insured may convince individuals to purchase that firm’s products or services when the individuals may have otherwise selected similar products or services from one of the firm’s competitors engaged in honest advertising and marketing.

Comment: The CFPB circular specifically addresses situations regarding deceptive representations involving the FDIC’s name and logo or information about deposit insurance and when they might constitute a deceptive act or practice in violation of the Consumer Financial Protection Act.

Human Resources

No news to report this week.

Lending

[CFPB Releases Report on Mortgage Servicing Metrics](#) (05/16/2022) - WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) published a report examining mortgage servicers’ responses to the COVID-19 pandemic. The data, collected across 16 large servicers from May through December 2021, reveal homeowners continue to face

significant risks and challenges connected to working with their mortgage servicers. This problem is particularly acute for those borrowers struggling to make their mortgage payments after exiting COVID-19 hardship forbearances.

“While many mortgage servicers are successfully assisting borrowers to avoid foreclosure, today's report highlights that some servicers are lagging their peers and are less well-equipped to assist borrowers who have exited pandemic housing protections,” said CFPB Director Rohit Chopra. “We will be closely monitoring mortgage servicer performance to ensure that they are meeting their obligations under the law.”

Today's mortgage metrics report reveals the challenges borrowers faced as CARES Act protections began to expire, and homeowners transitioned to restarting their monthly payments. At the end of 2021, approximately 330,000 homeowners had delinquent loans, their loans were no longer in forbearance, and they had no loss mitigation solution in place. One challenge for borrowers was their inability to reach, or get a timely response from, their mortgage servicer's call center. Mortgage servicer call centers are vital links between the homeowner and servicer that answer homeowners' questions and provide them with information to make important decisions about their loans. The extent of these challenges varied significantly among servicers.

Comment: Most community banks are “small servicers” and are not subject to most of the servicing rules, such as loss mitigation requirements. Nonetheless, avoiding foreclosure through good workout programs can be a win/win for the parties.

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

05.05.2022 [Joint Agency Community Reinvestment Act](#) - The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. **DATE: Comments must be received on or before August 5, 2022.**

03.25.2022 [FDIC Request for Information on Bank Merger Act](#) - The Federal Deposit Insurance Corporation sent for publication in the Federal Register a Request for Information (RFI) seeking information and comments regarding the application of the laws, practices, rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to merger transactions involving one or more insured depository institution, including the merger between an insured depository institution and a noninsured institution. **Dates: Comments are due May 31, 2022.**

03.22.2021 [Rules to Enhance and Standardize Climate-Related Disclosures for Investors](#) - The Securities and Exchange Commission today proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about

climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposing release will be published on SEC.gov and in the Federal Register. **DATES: Comments should be received on or before June 17, 2022 (the comment period was extended on Monday, May 9th.)**