Regulatory Dispatch

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC Board of Directors Adopts Final Rule on Assessments, Revised Deposit Insurance Assessment Rates; Maintains the Designated Reserve Ratio for 2023

The Federal Deposit Insurance Corporation (FDIC) adopted a final rule to increase initial base deposit insurance assessment rate schedules uniformly by 2 basis points beginning in the first quarterly assessment period of 2023. After careful consideration of comments received and updated analysis and projections, the FDIC adopted as final and without change, the increase in assessment rates as proposed on June 21, 2022.

"The increased assessment revenue will strengthen the DIF at a time of significant downside risk to the economy and financial system, increasing the likelihood that the reserve ratio will reach the statutory minimum of 1.35 percent while reducing the likelihood of a pro-cyclical increase in the future, and promoting public confidence in federal deposit insurance," said Acting Chairman Martin Gruenberg.

The final rule is intended to increase the likelihood that the reserve ratio of the Deposit Insurance Fund (DIF) reaches the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028, consistent with the Amended Restoration Plan. The final rule also reduces the likelihood that the FDIC would need to consider a potentially pro-cyclical assessment rate increase (i.e., raise assessments when banking and economic conditions may be less favorable).

The increase in assessment rates is projected to have an insignificant effect on institutions' capital levels, is estimated to reduce income slightly by annual average of 1.2 percent, and should not impact lending or credit availability in any meaningful way.

The FDIC also concurrently maintained the Designated Reserve Ratio (DRR) for the DIF at 2 percent for 2023. The increase in assessment rate schedules is also intended to support growth in the DIF in progressing toward the FDIC's long-term goal of a 2 percent DRR. Growing the DIF increases the likelihood of the DIF remaining positive throughout periods of significant losses due to bank failures, consistent with the FDIC's long-term fund management plan. Therefore, the new assessment rate schedules will remain in effect unless and until the reserve ratio meets or exceeds 2 percent, absent further Board action. Progressively lower assessment rate schedules will take effect when the reserve ratio reaches 2 percent, and again when it reaches 2.5 percent.

Revised rate schedules will be effective on January 1, 2023, and applicable to the first quarterly assessment period of 2023 (i.e., January 1 through March 31, 2023, with an invoice payment date of June 30, 2023). The revised rate schedules are applicable to all insured depository institutions.

Statement by Martin J. Gruenberg, Acting Chairman, FDIC Board of Directors, Final Rule on Revised Deposit Insurance Assessment Rates

Fact Sheet: Final Rule on Assessments, Revised Deposit Insurance Assessment Rates; and Designated Reserve Ratio for 2023

Memorandum to the Board of Directors: Final Rule on Assessments, Revised Deposit Insurance Assessment Rates

Federal Register Notice: Final Rule on Assessments, Revised Deposit Insurance Assessment Rates

Memorandum to the Board of Directors: Designated Reserve Ratio for 2023
Federal Register Notice: Designated Reserve Ratio for 2023

Comment: The final rule raises deposit insurance assessment rates by 2 basis points on all insured institutions. Revised rate schedules will be effective on Jan. 1, 2023, and applicable to the first quarterly assessment period of 2023, with an invoice payment date of June 30, 2023. Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra, a member of the FDIC Board of Directors, noted the DIF has gone broke twice in the last three decades. "… The modest two basis point adjustment dramatically reduces the likelihood of a much more substantial increase later in order to comply with the deadline set by existing law."

Community Banker Q&A

Q. We need help determining the applicability of limits for guarantors as it relates to legal lending limits for a state bank as well as Regulation O restrictions.

A. A question was added to the Regulation O FAQs on that topic in 2021. Regulation O considers any debt of a 'third-party' guaranteed by an 'insider' to be an extension of credit to that insider in the amount of the guarantee.

…snip

12 CFR 215.3 (Extension of credit)
Q1: Would a guarantee by an insider for an extension of credit by a member bank to a third party be treated as an extension of credit to the insider?

A1: Yes. The definition of "extension of credit" in section 215.3(a)(4) of Regulation O includes any evidence of indebtedness upon which an insider may be liable as guarantor. 12 CFR 215.3(a)(4). The amount of such an extension of credit to the insider equals the amount of the indebtedness for which the insider has provided a guarantee.

Posted: 3/31/2021

Source link.

For the legal lending limit, 7 TAC 12.9 addresses what is a 'common enterprise' and in particular it is section (g) that addresses guarantors.

…snip

(c) Common enterprise.

(1) A common enterprise is considered to exist and loans to separate borrowers will be aggregated in the case of:

(A) loans or extensions of credit made to affiliated borrowers if substantial financial interdependence exists between or among the borrowers; or

(B) loans made to separate persons for the purpose of acquiring more than 50% of the voting securities or voting interests of a business enterprise, in which case the acquisition loans are aggregated and attributed to the business enterprise.

(2) For purposes of paragraph (1)(A) of this subsection, borrowers are affiliated if one borrower directly or indirectly controls, is controlled by, or is under common control with another borrower. Substantial financial interdependence exists if 50% or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower and is presumed to exist, subject to rebuttal, if 25% 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 and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(d) Source of repayment. The expected source of repayment for each loan or extension of credit is considered the same if the primary source of repayment is the same for each borrower. An employer will not be considered a primary source of repayment under this subsection solely because of wages and salaries paid to an employee, unless the standards of subsection (c)(1) of this section are met.

(e) Loans to a corporate group. Pursuant to the Finance Code, §34.201(c), loans or extensions of credit by a bank to a corporate group may not exceed 60% of the bank's Tier 1 capital. This limitation applies only to loans subject to the general lending limit. For purposes of this subsection, a corporate group is comprised of a person and all of its subsidiaries, and a corporation or other entity is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50% of the voting securities or voting interests of the corporation or other entity. Subject to the special limit of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not aggregated or attributed to other members of the corporate group unless either the direct benefit, common enterprise, or source of repayment test is met.

(f) Loans to partnerships or partners.

(1) A loan or extension of credit to a partnership, joint venture, or association is considered to be a loan or extension of credit to each member of the partnership, joint venture, or association other than those partners or members that, 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, provided those provisions are valid against third parties under applicable law, and that have not otherwise agreed to guarantee or be personally liable on the loan or extension of credit.

(2) A loan or extension of credit to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or association, or to other members of the partnership, joint venture, or association, except as otherwise required by subsections (b) - (d) of this section, provided that a loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(g) Guarantors and accommodation parties. The derivative obligation of a drawer, endorser, or guarantor of a loan or extension of credit, including a contingent obligation to purchase collateral that secures a loan, is not aggregated with direct loans or extensions of credit to such drawer, endorser, or guarantor if the lending bank is relying primarily on the creditworthiness of the primary obligor and none of the tests set forth in this section are satisfied. The reliance of the lending bank on the primary obligor must be evidenced by the certification of an officer of the bank that the bank is, on stated facts, relying primarily on the responsibility and financial condition of the primary obligor for payment of the loan or extension of credit and not on the guarantee, or commitment in whatever form, of the guarantor, drawer, or endorser. In the event that the loan or extension of credit to the primary obligor, considered by the bank to be of sufficient credit quality at its inception, experiences subsequent deterioration to the point that the primary obligor is no longer performing in accordance with the terms of the initial loan agreement, such event will not result in a lending limit violation on behalf of the guarantor by virtue of the primary obligator's nonperformance. However, the total amount of the deteriorated loans guaranteed by such accommodating person must be combined with all other obligations of such guarantor in determining whether the guarantor may obtain additional loans or extensions of credit from the bank.

Source link.

Items of Interest

Bank Management

FDIC to Convene Meeting of its Advisory Committee of State Regulators (10/20/2022) - On Monday, October 24, at 2:00 p.m. ET, Federal Deposit Insurance Corporation (FDIC) Acting Chairman Martin J. Gruenberg will host a meeting of the FDIC's Advisory Committee of State Regulators. Committee members will discuss and receive updates on a range of policy issues regarding the regulation of state-chartered financial institutions throughout the U.S. and its territories.

The meeting's agenda includes a discussion of banking conditions; a dialogue regarding state and federal coordination; a briefing on the amended Deposit Insurance Fund restoration plan and deposit insurance assessments; and an update on minority and community development banking. Read the full agenda.

WHO:

Acting FDIC Chairman Martin J. Gruenberg

Senior FDIC Leadership

Advisory Committee Members

WHAT: Meeting of the FDIC Advisory Committee of State Regulators

WHEN: Monday, October 24, 2022, at 2:00 p.m. ET

HOW: This meeting is open to the public via live webcast.

Comment: The Committee is intended to provide advice and recommendations to the FDIC on a broad range of policy issues regarding the regulation of state-chartered financial institutions throughout the United States, including its territories. The Committee provides a forum where state regulators and the FDIC can discuss a variety of current and emerging issues that have potential implications regarding the regulation and supervision of state-chartered financial institutions.

FTC Commission Explores Rule Cracking Down on Junk Fees (10/20/2022) - The Federal Trade Commission announced today that it is exploring a rule to crack down on junk fees proliferating throughout the economy. Junk fees are unnecessary, unavoidable, or surprise charges that inflate costs while adding little to no value. Consumers can get hit with junk fees at any stage of the purchase or payment process. Companies often harvest junk fees by imposing them on captive consumers or by deploying digital dark patterns and other tricks to hide or mask them. The agency is seeking public comment on the harms caused by junk fees and the unfair or deceptive tactics companies use to impose them.

"It's beyond frustrating to end up spending more than you budgeted because of random, arbitrary fees," said FTC Chair Lina M. Khan. "No one has ever felt that a 'convenience fee' was convenient. Companies should compete to provide the best quality at the best price, not to see who can squeeze the most added expenses out of consumers. That's especially true at a time when families are struggling with the effects of inflation."

Comment: The types of junk fees that the FTC plans to look into are: Unnecessary charges for worthless, free, or fake products or services; Unavoidable charges imposed on captive consumers; and Surprise charges that secretly push up the purchase price.

FRB Beige Book (10/19/2022) - Overall Economic Activity - National economic activity expanded modestly on net since the previous report; however, conditions varied across industries and Districts. Four Districts noted flat activity and two cited declines, with slowing or weak demand attributed to higher interest rates, inflation, and supply disruptions. Retail spending was relatively flat, reflecting lower discretionary spending, and auto dealers noted sustained sluggishness in sales stemming from limited inventories, high vehicle prices, and rising interest rates. Travel and tourist activity rose strongly, boosted by continued strength in leisure activity and a pickup in business travel. Manufacturing activity held steady or expanded in most Districts in part due to easing in supply chain disruptions, though there were a few reports of output declines. Demand for nonfinancial services rose. Activity in transportation services was mixed, as port activity increased strongly whereas reports of trucking and freight demand were mixed. Rising mortgage rates and elevated house prices further weakened single-family starts and sales, but helped buoy apartment leasing and rents, which generally remained high. Commercial real estate slowed in both construction and sales amid supply shortages and elevated construction and borrowing costs, and there were scattered reports of declining property prices. Industrial leasing remained robust, while office demand was tepid. Bankers in most reporting Districts cited declines in loan volumes, partly a result of shrinking residential real estate lending. Energy activity expanded moderately, whereas agriculture reports were mixed, as drought conditions and high input costs remained a challenge. Outlooks grew more pessimistic amidst growing concerns about weakening demand.

Comment: Everyone is trying to read the tea leaves for 2023. The general consensus is that the global economy is weakening rapidly, with the US and Europe forecast to experience recessions in the first part of 2023. While a global recession may be avoided, most analysts expect that the the world will probably experience notably below-trend growth of 2.1 percent in 2023.

FRB G. 17 Industrial Production (10/18/2022) - Industrial production increased 0.4 percent in September and 2.9 percent at an annual rate in the third quarter. In September, manufacturing output rose 0.4 percent after advancing a similar amount in the previous month. The index for mining moved up 0.6 percent, and the index for utilities fell 0.3 percent. At 105.2 percent of its 2017 average, total industrial production in September was 5.3 percent above its year-earlier level. Capacity utilization moved up 0.2 percentage point in September to 80.3 percent, a rate that is 0.7 percentage point above its long-run (1972–2021) average.

BSA / AML

Deposit / Retail Operations

FRB Save Your Spot: FedNow Service Operating Circular 8 Overview Webinar on November 7 (10/19/2022) - Join our webinar on Monday, November 7, for an overview of recently released operational documents specific to the FedNow Service. In this session, you'll learn more about:

- Operational documents related to the FedNow Service
- Terms and conditions for the FedNow Service covered in Operating Circular 8
- Key operational details covered in the FedNow Service Operating Procedures

For this webinar, subject matter experts from your organization may include legal, product and operations staff.

Save Your Spot

You will also have a chance to ask Federal Reserve leaders your questions via Q&A. To ensure we answer as many as possible, please submit your questions in advance when you save your spot.

To learn more about the FedNow Service, visit FedNowExplorer.org. For questions about the webinar, please email mailto:SYSFedNowCommunity@chi.frb.org.

Comment: If your bank plans to participate in FedNow, this is program is a must.

FRB Building Customer Centricity: 2022 Chicago Payments Symposium (10/18/2022) - Building Customer Centricity: 2022 Chicago Payments Symposium

In early October, the Federal Reserve Bank of Chicago hosted the Chicago Payments Symposium with participants from across the globe. This year's event focused on Building Customer-Centered and Adaptive Networks to serve end users who increasingly demand frictionless, personalized, on-demand experiences from their financial products and services.

Highlights of the annual two-day event included expert panelists and speakers from the financial services industry and the Fed, who engaged in lively discussions on the current state and exciting future of faster and instant payments, security trends, digital currencies and global payments.

Read the Highlights

Visit the Chicago Payments Symposium 2022 agenda to learn more and stay up to date on Fed events here.

Human Resources

IRS Provides Tax Inflation Adjustments for Tax Year 2023 (10/18/2022) **-** WASHINGTON — The Internal Revenue Service today announced the tax year 2023 annual inflation adjustments for more than 60 tax provisions, including the tax rate schedules and other tax changes. Revenue Procedure 2022-38PDF provides details about these annual adjustments.

New for 2023

The Inflation Reduction Act extended certain energy related tax breaks and indexed for inflation the energy efficient commercial buildings deduction beginning with tax year 2023. For tax year 2023, the applicable dollar value used to determine the maximum allowance of the deduction is $0.54 increased (but not above $1.07) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent. The applicable dollar value used to determine the increased deduction amount for certain property is $2.68 increased (but not above $5.36) by $0.11 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

Comment: Bank employees can put an extra $200 into their health care flexible spending accounts (health FSAs) as the annual contribution limit rises to $3,050, up from $2,850 in 2022. The increase is double the $100 rise from 2021 to 2022 and reflects recent inflation. Additionally, if the bank's plan permits the carryover of unused health FSA amounts, the maximum carryover amount rises to $610, up from $570.

Lending

CSBS State Regulators Provide Licensees Tips to Prepare for NMLS Annual Renewal (10/20/2022) - Washington, D.C. – State regulators encourage individuals and businesses in the mortgage, money transmission, debt collection and consumer financial services industry to get ready for the Nov. 1 start of Nationwide Multistate Licensing System (NMLS) annual license renewal by taking steps to prepare in advance.

More than 261,000 mortgage loan originators (MLOs) and companies are licensed to conduct business, accounting for nearly 1.1 million state licenses to be renewed. There are nearly 21,000 more MLOs eligible to renew their licenses than this time last year. In addition, the number of individual state licenses eligible for renewal is 13 percent higher than the same time last year, while the number of company licenses eligible for renewal is up 16 percent compared to this time last year.

“We recommend that licensees do a bit of housekeeping and take advantage of trainings and other resources to get their questions answered in advance of starting the renewal process,” said Kelly O’Sullivan, chair of the NMLS Policy Committee and deputy commissioner of the Montana Division of Banking and Financial Institutions. “This is especially important for the nearly 20,000 licensees who will be renewing for the first time. We want to make sure that they are taking steps now to ensure a smooth renewal process.”

5 Tips for Licensees to Prepare for NMLS Renewal

- Update your NMLS record – log in and check to make sure your profile is accurate
- Reset your NMLS password – new password requirements are in effect as of March
- Provide a current email address – take this step to ensure you receive important updates from NMLS during renewals
- Review state-specific renewal requirements – state agencies begin publishing requirements, including deadlines and fees, in September
- Access free, on-demand renewal training – CSBS develops a variety of resources for licensees to become familiar with the renewal process

	Information on NMLS renewal is available on the Annual Renewal page of the NMLS Resource Center (www.nmls.org). The renewal period in most states runs Nov. 1 to Dec. 31. State-licensed MLOs must also have completed annual continuing education requirements to renew their licenses. Federally registered MLOs and institutions must also renew their registrations via NMLS by Dec. 31. More information for federal registrants is available on the NMLS Federal Registry Resources page. Effective Oct. 17, licensees as well as federal registrants can submit an online support request form to resolve certain NMLS access issues including password resets or locks, and email address changes to facilitate the renewal process upfront. ***Comment: The MLO license must be renewed each year between November 1 and December 31. MLOs must continue to meet all criminal, financial and background requirements at all times.***
	CFPB Takes Action to Address Junk Data in Credit Reports (10/20/2022) - WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) issued guidance to consumer reporting companies about their obligation to screen for and eliminate obviously false "junk data" from consumers' credit reports. Companies need to take steps to reliably detect and remove inconsistent or impossible information from consumers' credit profiles. For example, many children in foster care have large amounts of information on their credit reports that is clearly junk data because as minors they are prohibited from entering into most contracts for credit. "When a credit report accuses someone of defaulting on a loan before they were born, this is nonsensical, junk data that should have never shown up in the first place," said CFPB Director Rohit Chopra. "Consumer reporting companies have a clear obligation to use better procedures to screen for and eliminate conflicting information, or information that cannot be true." ***Comment: In its press release, the CFPB said: "Complaints about 'incorrect information on your report' have represented the largest share of credit or consumer reporting complaints submitted to the CFPB for at least the last six years, and the CFPB receives more complaints about credit reporting than any other subject."***

Technology / Security

	CISA Oracle Releases October 2022 Critical Patch Update (10/19/2022) - Oracle has released its Critical Patch Update for October 2022. This update addresses 366 vulnerabilities across multiple products. A remote attacker could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review Oracle's October 2022 Critical Patch Update and apply the necessary mitigations. ***Comment: Refer to "Critical Patch Updates, Security Alerts and Bulletins" for information about Oracle Security advisories.***

	CISA Updates Advisory on Threat Actors Exploiting Multiple CVEs Against Zimbra Collaboration Suite (10/19/2022) - CISA and the Multi-State Information Sharing & Analysis Center (MS-ISAC) have updated joint Cybersecurity Advisory AA22-228A: Threat Actors Exploiting Multiple CVEs Against Zimbra Collaboration Suite, originally released August 16, 2022. The advisory has been updated to reference the addition of a new Malware Analysis Report, MAR-10398871.r1.v2. CISA encourages organizations to review the latest update to AA22-228A and apply the recommended mitigations.

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