Regulatory Dispatch

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

The Consequences of Fewer Banks in the U.S. Banking System - Governor Michelle W. Bowman

Should we be concerned about the decline in the number of banks in the U.S. banking system? In my view, we should.

Many factors have contributed to this decline in the number of banks. But a robust and diverse banking system ensures the wider access to and availability of credit, and that this credit reaches all levels of the income spectrum and supports a range of large and small businesses.

As we have seen over time, the smallest banks often outperform larger banks during periods of stress like the pandemic and during the 2008 financial crisis. Given the continued decline in the number of banks, preserving and enhancing the number of banks should be a regulatory and legislative imperative, including by encouraging new bank formation. Historically, during times of economic and financial stress, the smallest institutions have performed extremely well. For example, small banks demonstrated this strength during the pandemic through their outsized commitment to supporting small businesses through the Paycheck Protection Program.

From 2002 to 2022, the number of FDIC-insured banks declined by nearly half.2 This reduction in the number of chartered financial institutions seems to have largely been driven by the consolidation and merger of existing financial institutions.3 While there has been a slight uptick in de novo formation over the past few years, compared to the years immediately following the 2008 financial crisis,4 de novo activity has been significantly outpaced by consolidation.

In my view, there are several features of the current U.S. banking system that suggest there is an unmet demand for de novo bank charters. I will briefly note three in particular: (1) the ongoing demand for "charter strip" acquisitions; (2) the shift of traditional banking activities out of the banking sector into non-bank financial entities, or the "shadow banking" sector; and (3) the rising demand for banking-as-a-service partnerships.

Comment: The latest threat to community banks – thanks to SVB and Signature Bank – is the flight to safety of depositors who seek refuge with the "too big to fail" banks, starving the smallest ones of liquidity and capital.

Community Banker Q&A

Q. Now that the final 1071` rule is out, what should we do?

A. The first step would be a basic understanding of coverage. If your bank originated at least 100 covered originations in each of the two preceding calendar years, you are covered. Be prepared to prove that up.

The second step would be to identify 'covered transactions.' Covered transactions are credit extensions to small businesses or small farms that had $5 million or less in gross annual revenue (for the preceding year) including:

- Loans,
- Lines of credit,
- Credit cards,
- Merchant cash advances; and
- Credit products used for agricultural purposes to small businesses or small farms.

The third step would be to identify all credit products offered to 'small businesses' as defined in the rule. This step should include a review of the various delivery channels accepting small business applications.

The fourth step would be to outline and define the new required fields and how the bank will capture and store that information. This step will likely involve some discussions with your core and how they might adapt and add additional data fields. Pull out your bank's implementation plans for the 2018 HMDA changes – that might help you lay out a plan for collecting and reporting 1071 data.

Finally, you need a plan to audit and validate the data collected. This should by a dynamic process that does not wait until the report. The last thing you want is to discover a problem in collection 3 or 6 months into a reportable year.

Compliance Pathways subscribers have access to a *SMALL BUSINESS LENDING RULE UNDER THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B* policy template and other tools to assist it complying with the rule.

Items of Interest

Bank Management

	CFPB Protecting People from Discriminatory Targeting (04/14/2023) – The Consumer Financial Protection Bureau (CFPB) is committed to ensuring fair, equitable, and nondiscriminatory access to credit for individuals and communities. The CFPB administers and enforces federal laws such as the Equal Credit Opportunity Act, a landmark civil rights law that protects people against discrimination in all aspects of credit transactions.

	Today, the CFPB filed a Statement of Interest in the United States District Court for the Southern District of Florida to help protect consumers from discriminatory targeting. As courts have recognized for decades, discriminatory targeting is the act of directing predatory or otherwise harmful products or practices at certain groups, neighborhoods, or parts of a community. While "redlining" is the practice of financial institutions not lending to certain groups, neighborhoods, or parts of a community, discriminatory targeting involves targeting predatory products or practices to those communities. Discriminatory targeting has also been called "reverse redlining," often where the targeting is on the basis of geography. ***Comment: Discriminatory targeting is often seen in advertising. Even when advertisers have no intention to discriminate, algorithms can still generate highly unrepresentative audiences, because those algorithms are optimized to show ads to the users deemed most likely to click on them.***
	FRB Industrial Production and Capacity Utilization - G.17 (04/14/2023) - Release Date: April 14, 2023 The annual revision to industrial production and capacity utilization was published on March 28, 2023. Data referred to in the release dated March 17, 2023, were superseded by the data issued at the time of the annual revision. Information on the annual revision to industrial production and capacity utilization appears below. Industrial production rose 0.4 percent in March and was little changed in the first quarter, increasing at an annual rate of 0.2 percent. In March, manufacturing and mining output each fell 0.5 percent. The index for utilities jumped 8.4 percent, as the return to more seasonal weather after a mild February boosted the demand for heating. At 103.0 percent of its 2017 average, total industrial production in March was 0.5 percent above its year-earlier level. Capacity utilization moved up to 79.8 percent in March, a rate that is 0.1 percentage point above its long-run (1972–2022) average.
	CSBS Financial Stabilization and Macroeconomic Stabilization: Two Tools for Two Problems Governor Christopher J. Waller (04/14/2023) - *The sudden failure of Silicon Valley Bank (SVB) and Signature Bank, which contributed to stresses felt by other mid-size banks, was a classic bank run, in which the rapid withdrawal of funds by depositors created severe liquidity problems. SVB was a specialty bank serving the tech sector. Unlike other banks, where a substantial share of deposits is insured and verifiably safe, more than 90 percent of SVB's deposits were above the $250,000-per-account limit for deposit insurance. Additionally, those deposits were largely from many of the same types of businesses, resulting in additional risk. Chair Powell has directed Vice Chair for Supervision Barr to report by May 1 on SVB's failure, including the Federal Reserve's supervision and regulation of the bank. Based on what is already in the public record, SVB seems to have done a terrible job managing its risks.*

A bank run that undermines confidence in other banks is the most fundamental risk to the financial system, and the Fed, serving as the lender of last resort, was created in part to prevent such a development. The job of the lender of last resort is to provide sufficient funds to the banking system so that depositors can be confident they will be able to withdraw their funds on demand. If depositors are confident that they will be able to withdraw their funds, then a bank run will stop or never start in the first place. Last month, that confidence was fractured when the failures of SVB and Signature Bank raised the possibility that uninsured depositors could take significant losses. As fear of taking those losses spread to uninsured depositors at healthy institutions, it became imperative for the Federal Reserve, along with other regulators, to act.

The Fed's long-time liquidity tool is the discount window, by which banks can post collateral, priced at market value, and obtain loans for up to 90 days. On March 12, the Fed created an additional lending tool, with the approval of the Secretary of the Treasury, called the Bank Term Funding Program (BTFP), which accepts U.S. government securities collateral at par value with no haircuts for loans with maturities up to a year. To date, both tools are working well at providing needed liquidity to help banks deal with deposit outflows. In addition, the Board, the Federal Deposit Insurance Corporation, and the Treasury Department announced the use of the systemic risk exception with respect to both SVB and Signature Bank to fully protect all depositors. I voted for these actions, not because SVB and Signature are systemically important on their own, but to stem the emerging crisis of confidence which could have led to additional bank runs with significant adverse effects on financial markets and the broader economy.

Comment: Early on, economists believe banks are turning to discount window borrowing over the BTFP because it has more collateral options, greater familiarity, and the fear of a stigma – justified or not - attached to the BTFP.

CSBS Podcast Community Banker Sentiment Dips to Lowest Level Since Tracking Began in 2019 (04/12/2023) - CSBS Chief Economist Tom Siems shares findings from the most recent CSBS Community Bank Sentiment Index, an index derived from quarterly polling of community bankers across the nation.

We discuss community bankers' lowest sentiment reading since the start of measurement and what is driving it. Plus, we explore what makes the Community Bank Sentiment Index unique compared to other indicators used by economists.

Comment: Earnings and compliance lead the concern for bankers in the latest survey.

OCC Interest Rate Risk: Interest Rate Risk Statistics Report (04/12/2023) - The Office of the Comptroller of the Currency (OCC) published the spring 2023 edition of the Interest Rate Risk Statistics Report. The report presents interest rate risk data gathered during examinations of OCC-supervised midsize and community banks and federal savings associations (collectively, banks). The statistics are for informational purposes only and do not represent OCC-suggested limits or exposures.

Rescissions
This bulletin rescinds OCC Bulletin 2022-23, "Interest Rate Risk: Interest Rate Risk Statistics Report," which transmitted the fall 2022 report.

Note for Community Banks
The publication contains information collected from banks supervised by the OCC's Midsize and Community Bank Supervision department. The report is for informational purposes only.

Highlights
The spring 2023 report provides statistics on interest rate risk exposures and risk limits for different midsize and community bank populations, including:

- all OCC-supervised midsize and community banks with reported data.
- banks by asset size.
- banks by charter type.
- minority depository institutions.

The publication is intended as a resource to the industry, examiners, and the public.

OCC Opens Registration for Community Bank Director and Senior Management Workshops (04/10/2023) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) today opened registration for its 2023 schedule of workshops for board directors and senior management of national community banks and federal savings associations.

The OCC examiner-led workshops provide practical training and guidance to directors and senior management of national community banks and federal savings associations to support the safe and sound operation of community-based financial institutions.

The OCC offers five daylong workshops at a cost of $99 each:

- Building Blocks: Developing Strong Management
- Risk Governance: Improving Effectiveness
- Compliance Risk: Understanding the Rules
- Credit Risk: Recognizing and Responding to Risk
- Operational Risk: Navigating Rapid Changes

The OCC is now offering a half-day workshop, Capital Markets: Keeping Current, at a cost of $49. This fee will be waived for attendees of the previous day's workshop. This new workshop is designed to explain balance sheet management risks, as well as the most current hot topics and risk themes for bankers and regulators in the capital markets area.

	Workshops are limited to 35 participants. Attendees will receive course materials, supervisory publications, and lunch. To view the schedule and locations of workshops and register online, visit the OCC's website. For assistance with additional questions about the workshops, contact the OCC Bank Director Workshop Team at (202) 649-6490 or bankdirectorworkshop@occ.treas.gov. ***Comment: OCC workshops are an excellent opportunity for national bank directors and senior management.***
	FRB Accepting Applications for its Community Advisory Council (04/10/2023) - The Federal Reserve Board announced on Monday that it is accepting applications from individuals who wish to be considered for membership on the Community Advisory Council, or CAC, which advises the Board on issues affecting consumers and communities. The CAC is made up of a diverse group of experts and representatives of consumer and community development organizations and interests, including affordable housing, community and workforce development, small business, and asset and wealth building. CAC members meet semiannually with members of the Board of Governors in Washington to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC is one of several advisory councils that the Board draws upon for firsthand insight from key stakeholders. The Board expects to announce the appointment of CAC members later this year. Applicants from previous years may re-apply. Additional information about the selection process, including instructions for submitting an application, is available here.
	CSBS Cannabis Job Aid (04/05/2023) - Industrial hemp was legalized federally by the 2018 Farm Bill. States across the country are now establishing regulatory schemes for hemp production. The job aid is an examiner reference tool providing background as well as state-specific information, such as legalization status and related topics, on both hemp and marijuana. As federal and state cannabis laws change, we expect that frequent updates will be necessary to keep this job aid up to date. The CSBS State Supervisory Processes Committee approved the release of this job aid to assist state examiners in the examination of a financial institution that may be banking cannabis-related businesses. ***Comment: This is an excellent and very comprehensive aid that is really two aids in one - marijuana and hemp. Additionally, it includes a state-by-state analysis.***

BSA / AML

	FinCEN Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Registration of Money Services Businesses Regulation and FinCEN Form 107 (04/11/2023) - As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, to an information collection requirement contained in FinCEN's regulations and FinCEN Form 107—Registration of Money Services Business (RMSB). Under the regulations, money services businesses (MSBs) must register with FinCEN using FinCEN Form 107, renew their registration every two years, and maintain a list of their agents. This request for comments is made pursuant to the Paperwork Reduction Act of 1995. DATES: Written comments are welcome and must be received on or before June 12, 2023. ***Comment: Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs, costs of operation and maintenance, and cost involved in purchasing services.***

Deposit / Retail Operations

Human Resources

Lending

	FFIEC Home Mortgage Disclosure Act: FFIEC's 2023 'A Guide to HMDA Reporting: Getting It Right!' (04/13/2023) - The Guide is a valuable resource for assisting all institutions in their HMDA reporting. It includes a summary of responsibilities and requirements, directions for assembling the necessary tools, and instructions for reporting HMDA data. Highlights The 2023 guide discusses: • institutions covered by Regulation C. • transactions covered by Regulation C.

	• information that covered institutions are required to collect, record, and report. • requirements for reporting and disclosing data. ***Comment: Update your version of GIR.***
	SBA Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (04/12/2023) - The U.S. Small Business Administration (SBA or Agency) is amending its business loan program regulations to lift the moratorium on licensing new Small Business Lending Companies (SBLCs) and add a new type of lending entity called a Community Advantage SBLC. SBA is also removing the requirement for a Loan Authorization in the 7(a) and 504 Loan Programs. DATES: This rule is effective May 12, 2023. ***Comment: This final rule lifts the licensing moratorium and eliminates the cap on the number of nondepository institutions in the program. It also creates the Community Advantage SBLC. Community Advantage SBLCs are nonprofit organizations that will be licensed to make 7(a) loans to small businesses and will help SBA meet the needs of underserved communities.***

Technology / Security

	CISA Adobe Releases Security Updates for Multiple Products (04/11/2023) - Adobe has released security updates to address multiple vulnerabilities in Adobe software. An attacker can exploit these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review the following advisories and apply the necessary updates: • Digital Editions APSB23-04 • InCopy APSB23-13 • Acrobat and Reader APSB23-24 • Substance 3D Stager APSB23-26 • Dimension APSB23-27 • Substance 3D Designer APSB23-28 ***Comment: Ensure your IT staff is aware of these updates.***
	CISA Apple Releases Security Updates for Multiple Products (04/11/2023) - Apple has released security updates to address vulnerabilities in multiple products. An attacker could exploit some of these vulnerabilities to take control of an affected device.

	CISA encourages users and administrators to review the following advisories and apply the necessary updates. • iOS 15.7.5 and iPadOS 15.7.5 • macOS Monterey 12.6.5 • macOS Big Sur 11.7.6 • Safari 16.4.1 • iOS 16.4.1 and iPadOS 16.4.1 • macOS Ventura 13.3.1 ***Comment: Ensure your IT staff is aware of these updates.***
	CISA Microsoft Releases April 2023 Security Updates (04/11/2023) - Microsoft has released updates to address multiple vulnerabilities in Microsoft software. An attacker can exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review Microsoft's April 2023 Security Update Guide and Deployment Information and apply the necessary updates. ***Comment: Ensure your IT staff is aware of these updates.***

Selected federal rules – proposed

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

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

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. **Comments should be received on or before May 3, 2023.**