

Compliance Journal

Special Focus

Wisconsin's Revised Uniform Unclaimed Property Act

On Friday, November 5, Governor Evers signed 2021 Wisconsin Act 87 (Act 87) into law. Act 87 adopts the Revised Uniform Unclaimed Property Act (RUUPA) as approved by the Uniform Law Commission. By updating the state's unclaimed property laws, Act 87 clarifies the duties of property holders and improves the Department of Revenue's (DOR) ability to return unclaimed property to its rightful owners. WBA supported passage of Act 87, including incorporation of amendments to make clarifications.

Act 87 modifies current Wisconsin Chapter 177 in order to address technological innovation and recognize new types of property not currently included in the law. The Act designates DOR, formerly the Secretary of Revenue, as the administrator of the Act. As under current law, Act 87 applies to property that is presumed to be abandoned, and if certain conditions apply, provides Wisconsin with jurisdiction over the property. The holder of unclaimed property, such as Wisconsin financial institutions, must provide written notice to the apparent owner, file a report with DOR, and deliver any property that remains unclaimed to DOR. If DOR is unable to deliver the unclaimed property to its apparent owner and the unclaimed property is not sold to satisfy the apparent owner's debt to a state agency, county, or municipality, the unclaimed property is sold to the highest bidder. Funds that are not used to pay for administrative expenses or to satisfy claims related to unclaimed property are deposited in the school fund.

Dormancy Periods Under RUUPA

Act 87 describes a dormancy period as the period of time which must pass before certain types of property are presumed abandoned. Thus, revised Chapter 177 provides the dormancy period for certain types of property. The properties listed below are presumed abandoned if unclaimed by the apparent owner during the specified dormancy period. The six types of property categories listed are all subject to the conditions discussed later in the article whereby there is an indication of apparent owner interest in the property.

General Dormancy Periods

The following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below:

- 1) A traveler's check, 15 years after issuance.
- 2) A money order or similar instrument, 5 years after issuance.
- 3) A state or municipal bond, bearer bond, or original-issue-discount bond, 3 years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises.
- 4) A debt of a business association owed to an individual, 3 years after the obligation to pay arises.
- 5) A payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the later of maturity or the date of the last indication of interest in the property by the apparent owner, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal.
- 6) Money or a credit owed to a customer as a result of a retail business transaction, other than in-store credit for returned merchandise, 5 years after the obligation arises.
- 7) An amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, 3 years after the obligation to pay arises under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured by proof of the death of the insured or annuitant, as follows:
 - a) With respect to an amount owed on a life or endowment insurance policy, 3 years after the earliest of the date on which the insurance company has knowledge of the death of the insured or the date on which the insured attained, or would have attained if living, the limiting age under the mortality table that forms the basis of the reserve for the policy.
 - b) With respect to an amount owed on an annuity contract, 3 years after the date on which the insurance company has knowledge of the death of the annuitant.



Special Focus

- 8) Property that may be distributed by a business association in the course of dissolution, one year after the property may be distributed.
- 9) Except as provided in Wis. Stat. sections 800.095(8), 852.01(3), 863.37(2), and 863.39, property held by a court, including property received as proceeds of a class action, one year after the property may be distributed.
- 10) Except as provided in Wis. Stat. sections 40.08(8), 852.01(3), 863.37 (2), and 863.39, property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, 5 years after the property may be distributed.
- 11) Wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, other than amounts held in a payroll card, one year after the amount becomes payable.
- 12) A deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable.
- 13) Property not specified in section 117.0201 or the sections described in revised sections 177.0202 through 177.0209, the earlier of 5 years after the owner first has a right to demand the property or the date on which the obligation to pay or distribute the property arises.

Tax-deferred Retirement Accounts

- 1) Property held in a pension account or retirement account that qualifies for federal income tax deferral under the U.S. income tax laws is presumed abandoned if it is unclaimed by the apparent owner 3 years after the later of:
 - a) The following dates:
 - i) The date on which a 2nd consecutive communication sent by the holder by 1st class mail to the apparent owner is returned to the holder by the U.S. postal service as undeliverable.
 - ii) If the 2nd communication is sent later than 30 days after the date on which the first communication is returned to the holder by the U.S. postal service as undeliverable, the date on which the first communication was returned as undeliverable.
 - b) The earlier of the following dates:
 - i) The date on which the apparent owner reaches the minimum required distribution age, as specified under the Internal Revenue Code or by federal regulation, if that can be determined by the holder.
 - ii) If distribution to avoid a tax penalty is required under the Internal Revenue Code, 2 years after the following:
 - (1) The date on which the holder receives confirmation of the death of the apparent owner in the ordinary course of the holder's business.
 - (2) The date on which the holder confirms the death of the apparent owner under sub 2) below.
- 2) If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and sub 1)(b) above applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.
- 3) If the holder does not send communications to the apparent owner of an account described in sub 1) above by 1st class mail, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner e-mail not later than 2 years after the apparent owner's last indication of interest in the property, except that the holder shall promptly attempt to contact the apparent owner by 1st class mail if any of the following applies:
 - a) The holder does not have information needed to send the apparent owner e-mail or the holder believes that the apparent owner's e-mail address in the holder's records is not valid.
 - b) The holder receives notification that the e-mail was not received.
 - c) The apparent owner does not respond to the e-mail within 30 days from the date on which the e-mail was sent.
- 4) If 1st class mail sent under sub 3) above is returned to the holder by the U.S. postal service as undeliverable, the property is presumed abandoned on the date determined under sub 1) above.

November 2021
Volume 27, Number 6

Wisconsin Bankers Association

4721 South Biltmore Lane,
P.O. Box 8880, Madison,
Wisconsin, 53708-8880

Senior Writers

Heather MacKinnon
Scott Birrenkott

Editor

Katie Reiser

Layout

Sonja Vike

Copyright ©2021
Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

Subscription Rate:

\$195/year for non-members. For subscription orders and inquiries, please contact the Wisconsin Bankers Association at the above address, by phone at 608-441-1200 or email at WBALegal@wisbank.com. *WBA Compliance Journal* may also be seen online at: www.wisbank.com.



Special Focus

Other Tax-deferred Accounts

For property not subject to the tax-deferred retirement account provisions directly above, and property not held in a plan described in section 529A of the Internal Revenue Code, property held in an account or plan, including a health savings account, that qualifies for federal income tax deferral under the Internal Revenue Code is presumed abandoned if it is unclaimed by the apparent owner 3 years after the earliest of the following:

- 1) The date specified under the Internal Revenue Code or by federal regulation by which the distribution of property must begin in order to avoid a penalty, if no such distribution has been made.
- 2) Thirty years after the date on which the account was opened.

Custodial Accounts for a Minor

- 1) Property held in an account established under any state's uniform gifts to minors act or uniform transfers to minors act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf the account was opened 3 years after the later of the following:
 - a) If the date on which the minor's custodian is required to transfer the property to the minor has passed, the date on which a 2nd consecutive communication sent by the holder by 1st class mail to the minor's custodian is returned to the holder by the U.S. postal service as undeliverable.
 - b) If the date on which the minor's custodian is required to transfer the property to the minor has passed and if the 2nd communication is sent by the holder to the minor's custodian later than 30 days after the date on which the first communication is returned to the holder by the U.S. postal service as undeliverable, the date on which the first communication was returned as undeliverable.
 - c) The date on which the minor's custodian is required to transfer the property to the minor or the minor's estate in accordance with the uniform gifts to minors act or uniform transfers to minors act of the state in which the account was opened.
- 2) If the holder does not send communications to the custodian by 1st class mail, as described in sub 1) above, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian e-mail not later than 2 years after the custodian's last indication of interest in the property, except that the holder shall promptly attempt to contact the custodian by 1st class mail if any of the following applies:
 - a) The holder does not have information needed to send the custodian e-mail or the holder believes that the custodian's e-mail address in the holder's records is not valid.
 - b) The holder receives notification that the e-mail was not received.
 - c) The custodian does not respond to the e-mail within 30 days from the date on which the e-mail was sent.
- 3) If 1st class mail sent under sub 2) above is returned to the holder by the U.S. postal service as undeliverable, the property is presumed abandoned on the date determined under sub 1) above.
- 4) The property in the account described under sub 1) above is not subject to this section after the property is transferred to the minor or the minor's estate.

Contents of a Safe Deposit Box

Tangible property held in a safe deposit box and proceeds from a sale of the property by the holder permitted by Wisconsin law other than chapter 177 are presumed abandoned if the property remains unclaimed by the apparent owner 5 years after the earliest of the following:

- 1) The expiration of the lease or rental period for the box.
- 2) The earliest date when the lessor of the box is authorized by contract or Wisconsin law other than chapter 177 to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

Securities

- 1) A security is presumed to be abandoned 3 years after the following:
 - a) The date on which a 2nd consecutive communication sent by the holder by 1st class mail to the apparent owner is returned to the holder by the U.S. postal service as undeliverable.



Special Focus

- b) If the 2nd communication is sent by the holder to the apparent owner later than 30 days after the date on which the first communication is returned to the holder by the U.S. postal service as undeliverable, the date on which the first communication was returned as undeliverable.
- 2) If the holder does not send communications to the apparent owner of the security by 1st class mail, as described in sub 1) above, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner e-mail not later than 2 years after the apparent owner's last indication of interest in the security, except that the holder shall promptly attempt to contact the apparent owner by 1st class mail if any of the following applies:
 - a) The holder does not have information needed to send the apparent owner e-mail or the holder believes that the apparent owner's e-mail address in the holder's records is not valid.
 - b) The holder receives notification that the e-mail was not received.
 - c) The apparent owner does not respond to the e-mail within 30 days from the date on which the e-mail was sent.
- 3) If 1st class mail sent under sub 2) above is returned to the holder by the U.S. postal service as undeliverable, the security is presumed abandoned 3 years after the date on which the mail is returned.

Indication of Apparent Owner Interest in Property

Act 87 provides for a general rule describing when an owner has indicated an interest in the property. More specifically:

- 1) Property is presumed abandoned from the earliest of the following:
 - a) The date on which the property is otherwise presumed abandoned, such as within the categories discussed above.
 - b) The date on which the dormancy period has elapsed following the last indication of interest by the apparent owner in the property.
- 2) Under Chapter 177, an indication of an apparent owner's interest in property includes the following:
 - a) A record communicated by the apparent owner to the holder or the holder's agent concerning the property or the account in which the property is held.
 - b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or the holder's agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication.
 - c) Presentation of a check or other instrument of payment of a dividend, interest, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association.
 - d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account.
 - e) Any of the following activities concerning property or an account held at a financial organization:
 - i) A deposit into or withdrawal from an account previously authorized by the apparent owner, other than an automatic reinvestment of dividends or interest.
 - ii) A deposit into or withdrawal from any other account the apparent owner has with the financial organization if the mailing address for the apparent owner in the financial organization's books and records is the same for both the inactive account and the active account.
 - iii) A payment by the apparent owner on any amount due on a loan with the financial organization if the mailing address for the apparent owner in the financial organization's books and records is the same for both the inactive account and the loan account.
 - iv) Communication in writing from the apparent owner to the financial organization about an account or another relationship with the financial organization.
 - v) Any correspondence in writing from the financial organization to the apparent owner, such as the mailing of a statement, report of interest paid or credited, or other written advice relating to a deposit, if the correspondence is not returned to the financial organization for non-delivery and if the financial organization maintains a record of all such returned correspondence.
 - f) Subject to sub 5) below, payment of a premium on an insurance policy.
 - g) Any other action by the apparent owner that reasonably demonstrates to the holder that the apparent owner knows that the property exists.
- 3) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.



Special Focus

- 4) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.
- 5) If an insured person dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic-premium-loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating for purposes of Chapter 177.

As a result of this provision, if a financial institution can demonstrate there is an indication of apparent owner interest in the property, the property is not abandoned under the Act 87 general dormancy periods outlined above. For example, Customer Jones has a savings account and checking account. Customer Jones uses the checking account routinely; however, the savings account is an account used just for emergencies resulting in no transactions having been conducted on the account for over 5 years. The financial institution has routinely mailed periodic statements for each account to Customer Jones, none have been returned by the U.S. postal service as undeliverable. Under Act 87, as Customer Jones has indicated an interest in the property (see item v) above) the savings account is not presumed to be abandoned.

Reporting Required by Holder of Property

General Reporting Requirements

- 1) Report required by holder:
 - a) A holder of property presumed abandoned and subject to the custody of DOR shall report in a record to DOR concerning the property.
 - b) A holder shall report electronically in a format approved by DOR, unless DOR approves another method.
- 2) A holder may contract with a 3rd party to make the report required under sub. 1) above.
- 3) Regardless of whether a holder enters into a contract under sub 2) above, the holder is responsible to DOR for the complete, accurate, and timely reporting of property presumed abandoned and for paying or delivering the property described in the report to DOR.

Report Content Requirements

- 1) The report required shall be signed by or on behalf of the holder and verified as to its completeness and accuracy and be in a secure format, as approved by DOR, that protects the apparent owner's confidential information in the same manner as is required of DOR and DOR's agent under certain confidentiality and security of information requirements described in Chapter 177. The report shall contain the following information:
 - a) A description of the property.
 - b) Unless the property is a travelers check, money order, or similar instrument, the name, last-known address, social security number or taxpayer identification number, and date of birth of the property's apparent owner, if such information is known or readily ascertainable.
 - c) For an amount held or owing under a life or endowment insurance policy or annuity contract, the name, social security number or taxpayer identification number, if known, date of birth, if known, and last-known address of the insured, annuitant, or other apparent owner of the policy or contract and of each beneficiary.
 - d) For property held in or removed from a safe deposit box or other safekeeping repository or for other tangible personal property, an itemized inventory and description of the property, including the location of the property where it may be inspected by DOR and any amounts owed to the holder.
 - e) The commencement date for determining abandonment under the periods described in the property descriptions above.
 - f) A statement that the holder has complied with the notice requirements.
 - g) Any other information prescribed by DOR.
- 2) A report may include in the aggregate items valued under \$5 each only if the apparent owner is unknown.
- 3) A report may include personal information about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law.
- 4) If a holder has changed the holder's name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder shall include in the report the holder's former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.



Special Focus

Report Timing

- 1) Subject to sub 2) below, the report shall be filed on or before November 1 of each year and cover the 12 months preceding July 1 of that year.
- 2) Before the due date for filing the report under, the holder of property presumed abandoned may request DOR to extend the time for filing. DOR may grant an extension of 60 days or other period agreed to by DOR.

Notice to Apparent Owner by Holder

Notice Required

- 1) Subject to sub 2) below, the holder of property presumed abandoned shall send to the apparent owner notice by 1st class mail, in a format acceptable to DOR, not more than 120 days nor less than 60 days before filing the report required above, if all of the following apply:
 - a) The holder has in the holder's records an address for the apparent owner that the records do not indicate to be invalid and that is sufficient to direct the delivery of 1st class mail to the apparent owner.
 - b) The value of the property is \$50 or more.
- 2) If an apparent owner has consented to receive e-mail delivery from the holder, the holder shall send the notice described in sub 1) above both by 1st class mail to the apparent owner's last-known mailing address and by e-mail, unless the holder believes that the apparent owner's e-mail address is invalid.

Contents of Required Notice

- 1) The required notice shall contain a heading that reads substantially as follows: "Notice. The State of Wisconsin requires us to notify you that your property may be transferred to the custody of the state's unclaimed property administrator if you do not contact us before (the date that is 30 days after the date of the notice)."
- 2) The notice shall do all of the following:
 - a) Identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice.
 - b) State that the property will be turned over to DOR.
 - c) State that after the property is turned over to DOR an apparent owner that seeks return of the property shall file a claim with DOR.
 - d) State that property may be sold by DOR.
 - e) Provide instructions that the apparent owner shall follow to prevent the holder from reporting and paying or delivering the property to DOR.
- 3) A notice under sub 1) above shall contain all of the following:
 - a) The names in alphabetical order and the last-known addresses, if any, of persons listed in the report and entitled to notice within the county, as specified in sub 1) above.
 - b) A statement that information concerning the property and the name and last-known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to DOR.

Dormancy Charge

Act 87 provides that a holder may deduct a dormancy charge from property required to be paid or delivered to DOR if all of the following apply:

- 1) A valid written contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time.
- 2) The holder regularly imposes the charge and regularly does not reverse or otherwise cancel or not collect the charge.

In addition, Act 87 requires that the amount of the deduction for a dormancy charge is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.



Special Focus

Additional Provisions

Act 87 provides many additions to the provisions above. While this article does not describe all of them, WBA recommends that financial institutions review Act 87 in order to understand the full scope of the changes to Wisconsin's Uniform Unclaimed Property Act. Some highlights are included below to assist in identifying important changes in addition to those described in more detail above:

- The definitions of several new terms including for certain items that are not considered to be property, such as gift cards and game-related digital content, and for terms that are considered property and are subject to the act, such as virtual currency.
- Definitions of the address of apparent owner in Wisconsin.
- The use of tax records and assistance from other state agencies to identify and deliver property to an apparent owner.
- The income, interest, or gain accrued by property while in the custody of DOR.
- The penalties for failing to file a report or deliver property to DOR.
- DOR's ability to enter into agreements with other states and countries to deliver unclaimed property.
- Voluntary disclosures by a property holder for failing to file a report despite being required to do so.
- Agreements between an apparent owner and a locator service to locate property, subject to certain requirements in the agreement.
- Confidentiality and security of information provisions.

Conclusion

Act 87 is effective as of **November 7, 2021**. Accordingly, Wisconsin banks should consider their current procedures related to abandoned property, including reporting, in relation to the updated definitions and requirements.

Additional Resources

2021 Wisconsin Act 87: <https://docs.legis.wisconsin.gov/2021/related/acts/87.pdf>

Wisconsin Department of Revenue's Unclaimed Property FAQ: <https://www.revenue.wi.gov/Pages/FAQS/ucp-unclaimed-property.aspx> ■

Reminder: Lower Open-End Line of Credit HMDA Volume Threshold Begins January 1, 2022

The Bureau of Consumer Financial Protection (CFPB) recently released revised frequently asked questions (FAQs) regarding the Home Mortgage Disclosure Act (HMDA). In particular, the FAQs remind banks that the lower open-end line of credit volume threshold begins January 2022. The following are revised FAQs related to HMDA transactional coverage and partial exemptions.

Institutional and Transactional Coverage

Q1: What are the loan volume thresholds for determining institutional and transactional coverage?

A1: As of **January 1, 2022**, the loan-volume thresholds are 100 closed-end mortgage loans in each of the two preceding calendar years and 200 open-end lines of credit in each of the two preceding calendar years. CFPB issued a final rule in April 2020 that set the closed-end mortgage loan threshold at 100 in each of the two preceding calendar years, effective July 1, 2020, and set the open-end line of credit threshold at 200 in each of the two preceding calendar years, effective January 1, 2022, upon the expiration of the temporary threshold of 500 open-end lines of credit.

Q2: My institution originated 400 closed-end mortgage loans and 199 open-end lines of credit in calendar year 2020 and 600 closed-end mortgage loans and 499 open-end lines of credit in calendar year 2021. My institution has met all other Regulation C institutional coverage criteria. Is my institution required to collect and report HMDA data for calendar year 2022 on closed-end mortgage loans and open-end lines of credit?



Special Focus

A2: Your institution will be required to collect and report data about its closed-end mortgage loans for calendar year 2022 because it originated at least 100 closed-end mortgage loans in each of the two preceding calendar years (2020 and 2021). Your institution will not be required to collect and report data about its open-end lines of credit for calendar year 2022 because it did not originate at least 200 open-end lines of credit in each of the two preceding calendar years (2020 and 2021).

Q3: My institution originated 100 closed-end mortgage loans and 200 open-end lines of credit in calendar year 2020 and 190 closed-end mortgage loans and 250 open-end lines of credit in calendar year 2021. My institution has met all the other Regulation C institutional coverage criteria. Is my institution required to collect and report HMDA data for calendar year 2022 on closed-end mortgage loans and open-end lines of credit?

A3: Yes, your institution will be required to collect and report data about its closed-end mortgage loans and open-end lines of credit for calendar year 2022 because it originated at least 100 closed-end mortgage loans in each of the two preceding calendar years (2020 and 2021) and it originated at least 200 open-end lines of credit in each of the two preceding calendar years (2020 and 2021).

Q4: My financial institution met the loan-volume threshold for closed-end mortgage loans and all other Regulation C institutional coverage criteria, but it did not meet the loan-volume threshold for open-end lines of credit. Can my financial institution collect and report data about its open-end lines of credit even though it did not meet the loan-volume threshold for open-end lines of credit?

A4: Yes. A financial institution that meets the loan-volume threshold for closed-end mortgage loans and all other Regulation C institutional coverage criteria may voluntarily opt to report applications, originations, and purchases of its open-end lines of credit even though it did not meet the open-end line of credit threshold. It is thus not required to report data on its open-end lines of credit transactions. However, a financial institution that voluntarily opts to report such data must report all the applications, originations, and purchases of its open-end lines of credit that would be covered transactions if it had met the open-end line of credit threshold.

Q5: My financial institution originated less than 500 closed-end mortgage loans and less than 500 open-end lines of credit. I heard that my financial institution was exempt from collecting and reporting data.

A5: Effective July 1, 2020, if your financial institution originated at least 100 closed-end mortgage loans in each of the two preceding calendar years and met all other Regulation C institutional coverage criteria, your financial institution will be required to collect and report data about its closed-end mortgage loans. Similarly, effective **January 1, 2022**, if your financial institution originated at least 200 open-end lines of credit in each of the two preceding calendar years and met all other Regulation C institutional coverage criteria, your financial institution will be required to collect and report data about its open-end lines of credit. However, if your financial institution is an insured depository institution or insured credit union that originated less than 500 closed-end mortgage loans in each of the two preceding calendar years and/or 500 open-end lines of credit in each of the two preceding calendar years, your financial institution may be eligible for partial exemptions. For more information about partial exemptions, see Partial Exemption FAQs below.

Partial Exemptions, Regulation C Section 1003.3(d)

Q1: Are all types of lending institutions eligible for the partial exemption?

A1: No. To be eligible for a partial exemption, a financial institution must be an insured depository institution as defined in Section 3 of the Federal Deposit Insurance Act.

Q2: If my financial institution originated 500 or more closed-end mortgage loans in the previous calendar year, can it take advantage of the partial exemption found in 12 CFR §1003.3(d) and collect, record, and report the limited HMDA data set for closed-end mortgage loans?

A2: No. Section 1003.3(d)(2) of Regulation C states that a financial institution that originated fewer than 500 closed-end mortgages that are not excluded by 12 CFR § 1003.3(c)(1) through (10) or (13) *in each* of the two preceding calendar years can claim the partial exemption for closed-end mortgage loans. Thus, the financial institution cannot take advantage of the partial exemption if it originated 500 or more such closed-end mortgage loans in the previous calendar year. Note that, in addition to originating fewer than 500 closed-end mortgage loan in each of the two preceding calendar years, the financial institution must meet additional requirements that are not discussed in this FAQ to be eligible for the partial exemption. See 12 CFR §1003.3(d) for the additional requirements.

For general information on the partial exemptions, see section 4.3 of the HMDA Small Entity Compliance Guide, and Regulation C, 12 CFR §1003.3(d).



Special Focus

Q3: If my financial institution originated 500 or more open-end lines of credit in the previous calendar year, can it take advantage of the partial exemption found in 12 CFR §1003.3(d) and collect, record, and report the limited HMDA data set for open-end lines of credit?

A3: No. Section 1003.3(d)(3) of Regulation C states that a financial institution that originated fewer than 500 open-end lines of credit that are not excluded by 12 CFR §1003.3(c)(1) through (10) *in each* of the two preceding calendar years can claim the partial exemption for open-end lines of credit. Thus, the financial institution cannot take advantage of the partial exemption if the financial institution originated 500 or more such open-end lines of credit in the previous calendar year. Note that, in addition to originating fewer than 500 open-end lines of credit in each of the two preceding calendar years, the financial institution must meet additional requirements that are not discussed in this FAQ to be eligible for the partial exemption. See 12 CFR §1003.3(d) for the additional requirements.

For general information on the partial exemptions, see section 4.3 of the HMDA Small Entity Compliance Guide, and Regulation C, 12 CFR §1003.3(d).

Q4: Can a financial institution that originates fewer than 500 open-end lines of credit in each of the two preceding calendar years claim the partial exemption for open-end lines of credit even if it originated 500 or more closed-end mortgage loans in one of those years?

A4: The partial exemption for closed-end mortgage loans and the partial exemption for open-end lines of credit operate independently of one another. Thus, in a given calendar year, an eligible financial institution may be able to rely on one partial exemption but not the other. See 12 CFR §1003.3(d)(2) and (3). The table below contains partial exemption examples that assume that the originations indicated in the table are not excluded by 12 CFR §1003.3(c)(1) through (10) or (13), and that the financial institution meets the other eligibility requirements of 12 CFR §1003.3(d).

Financial Institution	Originations in calendar year 1	Originations in calendar year 2	Partial exemption(s) eligibility in calendar year 3
A	Closed-end mortgage loans: 600 Open-end lines of credit: 350	Closed-end mortgage loans: 400 Open-end lines of credit: 600	Financial Institution A <i>cannot</i> claim either partial exemption in year 3
B	Closed-end mortgage loans: 600 Open-end lines of credit: 350	Closed-end mortgage loans: 400 Open-end lines of credit: 275	Financial Institution B <i>can</i> claim the partial exemption for open-end lines of credit in year 3, but it <i>cannot</i> claim the partial exemption for closed-end mortgage loans.
C	Closed-end mortgage loans: 400 Open-end lines of credit: 250	Closed-end mortgage loans: 499 Open-end lines of credit: 500	Financial Institution C <i>can</i> claim the partial exemption for closed-end mortgage loans in year 3, but it <i>cannot</i> claim the partial exemption for open-end lines of credit.
D	Closed-end mortgage loans: 200 Open-end lines of credit: 250	Closed-end mortgage loans: 150 Open-end lines of credit: 300	Financial Institution D <i>can</i> claim the partial exemptions for both closed-end mortgage loans and open-end lines of credit in year 3.

Note that prior to January 1, 2022, a financial institution originating fewer than 500 open-end lines of credit in either of the two preceding calendar years is not required to collect, record, or report HMDA data for open-end lines of credit. See 12 CFR §§1003.2(g), 1003.3(c)(12). Beginning on **January 1, 2022**, a financial institution originating 200 or more open-end lines of credit must collect, record, and report HMDA data for open-end lines of credit.



Special Focus

Q5: Can a financial institution that originated fewer than 500 closed-end lines mortgage loans or open-end lines of credit in each of the two preceding calendar years claim a partial exemption for the following collection year even if it knows it will originate more than 500 closed-end mortgage loans or open-end lines of credit in the following calendar year?

A5: Section 1003.3(d)(2) and (3) of Regulation C requires that the financial institution look at the amount of loans it originated in each of the two preceding calendar years. Neither 12 CFR §1003.3(d)(2) nor (3) requires the financial institution to consider or anticipate the number of loans it will originate for the following calendar year. See HMDA Partial Exemption FAQ #4 for partial exemption examples. Note that, in addition to originating fewer than 500 open-end lines of credit in each of the two preceding calendar years, the financial institution must meet additional requirements that are not discussed in this FAQ to be eligible for the partial exemption.

Resources

The full HMDA FAQs also address universal loan identifier; legal entity identifier; ethnicity, race, and sex reporting; discount points; multiple data points; and construction and construction/permanent transactions. The full FAQ may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_hmda_frequently-asked-questions-v6_2021-11.pdf

For loan-volume thresholds in effect prior to January 1, 2022, see the HMDA institutional and transactional coverage charts which may be viewed at: <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/>

The HMDA Small Entity Compliance Guide may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2021-04.pdf ■

Regulatory Spotlight

Agencies Seek Comment on Call Report Forms.

- The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) seek comment on revision to the FFIEC 031, FFIEC 042, and FFIEC 051 Consolidated Reports of Condition and Income (Call Report) forms. Revisions to the forms were meant to accommodate a new item for calculating the exposure amount for derivative contracts for purposes of calculating total risk-weighted assets, called SA-CCR and to clarify instructional guidance and correct grammatical and typographical errors. Comments are due **12/06/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24060.pdf>. *Federal Register*, Vol. 86, No. 211, 11/04/2021, 60965-60968.
- The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) seek comment on the FFIEC 030, Foreign Branch Report of Condition and the Abbreviated Foreign Branch Report of Condition, FFIEC 030S, which are currently approved collections of information. Comments are due **12/10/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24519.pdf>. *Federal Register*, Vol. 86, No. 215, 11/10/2021, 62599-62601.

CFPB Issues Annual Regulation Z Threshold Adjustments for Credit Cards, HOEPA, and QMs.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend the regulation text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). CFPB is required to calculate annually the dollar amounts for several provisions in Regulation Z. The final rule revises, as applicable, the dollar amounts for provisions implementing TILA and amendments to TILA, including under the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), the Home Ownership and Equity Protection Act (HOEPA), and the Dodd-Frank Wall Street Act, including thresholds related to qualified mortgages (QMs). CFPB has adjusted the amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on **06/01/2021**. The final rule is effective **01/01/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-02/pdf/2021-23478.pdf>. *Federal Register*, Vol. 86, No. 209, 11/02/2021, 60357-60364.



Regulatory Spotlight

CFPB Issues Advisory Opinion Regarding Name-Only Matching Procedures in Credit Reporting.

CFPB issued an advisory opinion to highlight that a consumer reporting agency that uses inadequate matching procedures to match information to consumers, including name-only matching (*i.e.*, matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the names associated with the information), in preparing consumer reports is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA). The advisory opinion is effective **11/10/2021**. The advisory opinion may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24471.pdf>. *Federal Register*, Vol. 86, No. 215, 11/10/2021, 62468-62472.

CFPB Seeks Comment on Big Tech Payment Platforms.

On **10/21/2021**, CFPB ordered six large technology companies operating payments systems in the United States to provide information about certain of their business practices. The information will help CFPB better understand how the firms use personal payments data and manage data access to users so CFPB can ensure adequate consumer protection. Accompanying the orders, the Director of CFPB issued a statement which is reprinted in the notice. Comments are due **12/06/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-24176.pdf>. *Federal Register*, Vol. 86, No. 212, 11/05/2021, 61182-61183.

FDIC Issues Final Rule to Amend Real Estate Lending Standards.

The Federal Deposit Insurance Corporation (FDIC) issued a final rule to amend the Interagency Guidelines for Real Estate Lending Policies (Real Estate Lending Standards). The purpose of the final rule is to incorporate consideration of the community bank leverage ratio (CBLR) rule, which does not require electing institutions to calculate tier 2 capital or total capital, into the Real Estate Lending Standards. The final rule allows a consistent approach for calculating the ratio of loans in excess of the supervisory loan-to-value limits (LTV Limits) at all FDIC-supervised institutions, using a methodology that approximates the historical methodology FDIC has followed for calculating the measurement without requiring institutions to calculate tier 2 capital. The final rule also avoids any regulatory burden that could arise if an FDIC-supervised institution subsequently decides to switch between different capital frameworks. The final rule is effective **11/26/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23381.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59279-59282.

FDIC Issues Notice of Termination of Receiverships.

FDIC, as Receiver for each of the insured depository institutions listed in the notice, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed in the notice, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24058.pdf>. *Federal Register*, Vol. 86, No. 211, 11/04/2021, 60815-60816.

OCC Seeks Comment on Renewal of Libor Self-Assessment Information Collection.

The Office of the Comptroller of the Currency (OCC) seeks comment on the renewal of an existing information collection titled, Libor Self-Assessment. Given that OCC expects banks to discontinue making Libor loans by the end of 2021, the prevalence of Libor, and the remaining work to be done within the timeframe described in the notice, OCC has made the self-assessment tool available to banks, due to the immediate need and the brief duration of use, to help banks prepare for Libor-related risk. Banks may use the self-assessment to determine whether they have risk management processes in place to identify and mitigate their Libor transition risks. Comments are due **12/21/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-22/pdf/2021-23056.pdf>. *Federal Register*, Vol. 86, No. 202, 10/22/2021, 58723-58725.



Regulatory Spotlight

OCC Seeks Comment on Revision to Company-Run Annual Stress Test Reporting Template and Documentation Information Collection.

OCC seeks comment on revision to an existing information collection titled, Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$250 Billion or More under the Dodd-Frank Act. Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests and requires the primary financial regulatory agency of the financial companies to issue regulations implementing the stress test requirements. OCC first implemented reporting templates in 2012. OCC uses the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to OCC regarding a covered institution's capital adequacy. OCC recognizes that many covered institutions with total consolidated assets of \$250 billion or more are required to submit reports using Comprehensive Capital Analysis and Review (CCAR) reporting form FR Y-14A. OCC also recognizes the Board of Governors of the Federal Reserve System (FRB) made modifications to the FR Y-14A and, to the extent practical, OCC seeks to keep its reporting requirements consistent with FRB's FR Y-14A in order to minimize burden on covered institutions. OCC's proposed changes include only limited updates to reflect the changes made by FRB. Comments are due **12/27/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23398.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59447-59448.

HUD Issues Waivers and Alternative Requirements for Implementation of the HOME American Rescue Plan Program.

The Department of Housing and Urban Development (HUD) published the waivers and alternative requirements that apply to a grantee's use of HOME Investment Partnerships Program funds made available under Section 3205 of the American Rescue Plan Act (HOME-ARP). On **09/13/2021**, HUD issued a notice to impose the requirements applicable to the use of HOME-ARP funds. At the same time, HUD published an Appendix to the HOME-ARP notice which described all waivers and alternative requirements applicable to HOME-ARP funds. Consistent with HUD's responsibility under the HUD Reform Act, HUD is providing additional notice to all interested parties of the HOME-ARP waivers and alternative requirements by republishing the Appendix. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-12/pdf/2021-22046.pdf>. *Federal Register*, Vol. 86, No. 194, 10/12/2021, 56764-56787.

HUD Announces FY 2022 Section 108 Loan Guarantee Program Fee.

HUD issued a notice to announce the fee it will collect from borrowers of loans guaranteed under HUD's Section 108 Loan Guarantee Program. The fee is meant to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in Fiscal Year 2022 in the event HUD is required or authorized by statute to do so, notwithstanding subsection (m) of section 108 of the Housing and Community Development Act. The notice is applicable **11/26/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23365.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59302-59303.

HUD Announces Delegation of Authority for Office of Chief Financial Officer.

In the notice, the Secretary of HUD, pursuant to the Chief Financial Officers Act, which established the position of the Chief Financial Officer within HUD, has delegated authority to the Chief Financial Officer and the Deputy Chief Financial Officer for certain responsibilities with respect to the financial management activities, systems, and operations of HUD. The delegated authority is outlined in the notice. The notice is applicable **10/29/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-24250.pdf>. *Federal Register*, Vol. 86, No. 212, 11/05/2021, 61285-61286.

HUD Extends Comment Period on Reinstatement of FHA Catalyst Multifamily Application Portal Information Collection.

HUD has extended the comment period for reinstatement of information collection titled, Federal Housing Administration (FHA) Catalyst: Multifamily Application Portal. The portal allows FHA-approved multifamily lenders to submit electronic applications for FHA multifamily mortgage insurance and upload documents to HUD through the portal. HUD staff are able to receive and download documents from the portal. Comments are now due **11/18/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-19/pdf/2021-22745.pdf>. *Federal Register*, Vol. 86, No. 199, 10/19/2021, 57844.



Regulatory Spotlight

FEMA Issues Final Flood Hazard Determinations.

The Federal Emergency Management Agency (FEMA) issued a notice which identifies communities in the states of **Iowa** and **Wisconsin**, where flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final. The FIRM and FIS reports are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in FEMA's National Flood Insurance Program (NFIP). The final notice is effective **02/25/2022**. The final notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-01/pdf/2021-23751.pdf>. *Federal Register*, Vol. 86, No. 208, 11/01/2021, 60266-60267.

FEMA Issues Final Notice on Changes in Flood Hazard Determinations.

New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) have been made final for communities in the states of **Illinois**, **Indiana**, **Iowa**, **Minnesota**, and **Wisconsin**, as listed in the table in the notice. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. Each LOMR was finalized as indicated in the table in the notice. The final notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-24404.pdf>. *Federal Register*, Vol. 86, No. 214, 11/09/2021, 62191-62195.

FEMA Issues Changes in Flood Hazard Determinations.

FEMA issued a notice which lists communities in the states of **Minnesota** and **Wisconsin**, where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by FEMA for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect the flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with federal regulations. The flood hazard determinations will be finalized on the dates listed in the table in the notice and revise the FIRM panels and FIS report in effect prior to the determination for the listed communities. From the date of the second publication of notification of the changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-26/pdf/2021-23239.pdf>. *Federal Register*, Vol. 86, No. 204, 10/26/2021, 59181-59183.

FEMA Issues Proposed Flood Hazard Determinations.

- FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for communities in the states of **Michigan** and **Minnesota**, as listed in the table in the notice. The purpose of the notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that FEMA has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). Comments are due **01/11/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-13/pdf/2021-22162.pdf>. *Federal Register*, Vol. 86, No. 195, 10/13/2021, 56978-56979.
- FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for communities in the state of **Indiana**, as listed in the table in the notice. The purpose of the notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that FEMA has provided to the affected



Regulatory Spotlight

communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). Comments are due **02/07/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-24405.pdf>. *Federal Register*, Vol. 86, No. 214, 11/09/2021, 62195-62196.

FHFA Issues Proposed Rule to Introduce New Standardized Approach Disclosure Requirements for Fannie and Freddie.

The Federal Housing Finance Agency (FHFA) issued a proposed rule that would introduce new standardized approach disclosure requirements for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), including disclosures related to regulatory capital instruments and risk-weighted assets calculated under the Enterprise Regulatory Capital Framework (ERCF). The proposed rule would implement standardized approach public disclosure requirements for the Enterprises that align with many of the public disclosure requirements for large banking organizations under the regulatory capital framework adopted by United States banking regulators. Modern bank disclosure requirements were initially contemplated by the Basel Committee on Banking Supervision under Pillar 3 of Basel II in order to complement the minimum capital requirements and the supervisory review process and were later expanded with additional requirements in Basel III. In much the same way, the public disclosure requirements in the proposed rule would complement the ERCF as it aims to ensure that each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle, in particular during periods of financial stress. Comments are due **01/03/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-03/pdf/2021-23780.pdf>. *Federal Register*, Vol. 86, No. 210, 11/03/2021, 60589-60600.

FHFA Seeks Comment on Renewal of Information Collection for Minimum Requirements for Appraisal Management Companies.

FHFA seeks comment concerning the renewal of an existing information collection titled, Minimum Requirements for Appraisal Management Companies. In 2015, FHFA, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and Board of Governors of the Federal Reserve System (FRB) (collectively, the agencies) jointly issued regulations to implement minimum statutory requirements to be applied by states in the registration and supervision of appraisal management companies (AMCs). The minimum requirements apply to states that have elected to establish an appraiser certifying and licensing agency with authority to register and supervise AMCs. The regulations also implement the statutory requirement that states report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) the information required by ASC to administer the national registry of AMCs. The AMC National Registry includes AMCs that are either: (1) subsidiaries owned or controlled by an insured depository and regulated by either the agencies; or (2) registered with, and subject to supervision of, a state appraiser certifying and licensing agency. FHFA's AMC regulation is substantively identical to the AMC regulations of the agencies and contains the recordkeeping and reporting requirements as described in the notice. Comments are due **12/01/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-01/pdf/2021-23657.pdf>. *Federal Register*, Vol. 86, No. 208, 11/01/2021, 60239-60242.

SBA Issues Final Rule to Make Technical Changes to Definitions and to Change 8(a) Business Development Contracting Thresholds.

The Small Business Administration (SBA) issued a final rule to make technical changes to SBA regulations to conform the regulations to recent statutory changes. First, the final rule incorporates a required change to SBA's ownership requirements for small business concerns owned and controlled by service-disabled veterans. The final rule adopts changes to the treatment of certain surviving spouses made by the National Defense Authorization Act. In addition, the final rule incorporates changes to the dollar thresholds for certain contracting actions authorized for the 8(a) Business Development program made by the National Defense Authorization Act. Finally, the final rule adjusts the competitive threshold dollar levels authorized for SBA's contracting programs to changes made to the Federal Acquisition Regulation due to inflation. The final rule is effective **02/07/2022**, without further action, unless significant adverse comment is received by **12/08/2021**. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the *Federal Register*. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-08/pdf/2021-24348.pdf>. *Federal Register*, Vol. 86, No. 213, 11/08/2021, 61670-61673.



Regulatory Spotlight

SBA Issues Interest Rate for Military Reservist Economic Injury Disaster Loans.

SBA announced the first quarter fiscal year 2022 interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512). SBA publishes the rate on a quarterly basis. The interest rate will be **2.830** for loans approved on or after **10/22/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-29/pdf/2021-23536.pdf>. *Federal Register*, Vol. 86, No. 207, 10/29/2021, 60080.

SBA Issues Notice of Delegation of Authority for Activities Related to Licensing of Small Business Investment Companies.

SBA issued a notice of the delegation of authority for certain activities related to the licensing of small business investment companies by SBA to the SBA SBIC Licensing Committee. The announcement provides notice of SBA's delegation of authority to the SBA SBIC Licensing Committee to review and recommend to the SBA Administrator for approval applications for licenses to operate as a small business investment company under the Small Business Investment Act, as amended. See the notice for the specific delegation of authority language. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-08/pdf/2021-24344.pdf>. *Federal Register*, Vol. 86, No. 213, 11/08/2021, 61822.

SBA Proposes Changes to Small Business Size Standards to Calculate Number of Employees and Average Annual Receipts for SBA Program Eligibility.

SBA seeks comment on a proposed rule to use a 24-month average to calculate a business concern's number of employees for eligibility purposes in all of SBA's programs. SBA has also proposed to permit business concerns in its Business Loan, Disaster Loan, and Small Business Investment Company (SBIC) Programs to use a 5-year averaging period, in addition to the existing 3-year averaging period, for the purposes of calculating annual average receipts. The proposed changes will allow larger small businesses to retain their small business size status for longer, and some mid-sized businesses to regain small business status. Comments are due **12/02/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-02/pdf/2021-23439.pdf>. *Federal Register*, Vol. 86, No. 209, 11/02/2021, 60396-60416.

SBA Seeks Comment on FY 2022-2026 Strategic Plan Framework and Learning Agenda.

SBA seeks comment on a draft Strategic Plan Framework and Enterprise Learning Agenda for fiscal years 2022-2026. SBA proposes three strategic goals for the next five years: (1) ensure equitable and customer-centric design and delivery of programs to support small businesses and innovative startups; (2) build resilient businesses and a sustainable economy; and (3) implement strong stewardship of resources for greater impact. The draft plan framework and learning agenda are available on SBA's website. Comments are due **11/19/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-21/pdf/2021-23001.pdf>. *Federal Register*, Vol. 86, No. 201, 10/21/2021, 58376.

FCA Issues Technical Correction and Effective Date for Standards of Conduct Final Rule.

The Farm Credit Administration (FCA) issued a technical correction to the final rule published in the *Federal Register* on **09/13/2021**, regarding the standards of conduct for directors and employees of Farm Credit System (System) institutions. The final rule document inadvertently failed to update two cross-references to the standards of conduct rules contained in parts 611 and 621 of the same chapter. FCA has made a technical correction to change the cross-references contained in parts 611 and 621. The correction is effective **01/01/2023**. FCA also published an effective date for the final rule. The final rule is effective **01/01/2023**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-22/pdf/2021-23059.pdf>. *Federal Register*, Vol. 86, No. 202, 10/22/2021, 58559. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-22/pdf/2021-23062.pdf>. *Federal Register*, Vol. 86, No. 202, 10/22/2021, 58559-58560.

FCA Extends Comment Period of Proposed Rule to Revise Risk Weighting of HVCRE Exposures.

FCA announced an extension of the comment period for a proposed rule that would revise the regulatory capital requirements for Farm Credit System institutions to define and establish a risk-weight for high volatility commercial real estate (HVCRE) exposures.



Regulatory Spotlight

FCA has extended the comment period for an additional 61 days. Comments are now due **01/24/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-20/pdf/2021-22826.pdf>. *Federal Register*, Vol. 86, No. 200, 10/20/2021, 58042.

Agencies Issue NOSA on Strategic Economic and Community Development Program.

The Rural Business-Cooperative Service (RBC), Rural Housing Service (RHS), and Rural Utilities Service (RUS) (collectively, the agencies) issued a notice seeking applications (NOSA) for the Strategic Economic and Community Development (SECD) priority for projects that support multi-jurisdictional and multi-sectoral strategic community investment plans. In fiscal year 2022, the agencies will implement SECD by reserving loan and or grant funds from the appropriations of the programs covered by this funding priority. The NOSA describes the requirements by which the agencies will consider projects eligible for the covered programs' reserved appropriated funds and the information needed to submit an application. The NOSA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-22499.pdf>. *Federal Register*, Vol. 86, No. 197, 10/15/2021, 57409-57412.

Agencies Seek Comment on New Civil Rights Forms.

The Rural Business-Cooperative Service (RBC), Rural Housing Service (RHS), and Rural Utilities Service (RUS) (collectively, the agencies) seek comment on a new information collection titled, Common Forms Package for Civil Rights Forms. The new information collection will enable the agencies to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The agencies are required to provide federal financial assistance through its housing and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E, require the recipients of Rural Development (RD) federal financial assistance to collect various types of information, including information on participants in certain of the agencies' programs, by race, color, and national origin. The information collected and maintained by the recipients of certain programs in RD are used internally for monitoring compliance with the civil rights laws and regulations. Comments are due **01/04/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-24149.pdf>. *Federal Register*, Vol. 86, No. 212, 11/05/2021, 61116-61117.

Agencies Seek Comment on New Real Estate Title Clearance and Loan Closing Forms.

The Rural Business-Cooperative Service (RBC), Rural Housing Service (RHS), and Rural Utilities Service (RUS) (collectively, the agencies) seek comment on a new information collection titled, Common Forms Package for Real Estate Title Clearance and Loan Closing. The new information collection will enable the agencies to effectively extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the agencies that the loan is legally secured and has the required lien priority. Rural Development (RD) will be collecting information to assure that the participants in the program remain eligible to proceed with loan closing and to ensure that loans are made with federal funds are legally secured. The respondents are individuals or households, businesses, and non-profit institutions. The information required is used by the agencies' personnel to verify that the required lien position has been obtained. Comments are due **01/04/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-24150.pdf>. *Federal Register*, Vol. 86, No. 212, 11/05/2021, 61117-61118.

RUS Issues NOFA for Rural eConnectivity Program.

The Rural Utilities Service (RUS) issued a notice of funding announcement (NOFA) that it is accepting applications for fiscal year 2022 for the Rural eConnectivity Program (the ReConnect Program). In addition, the NOFA defines requirements that are determined at the time a funding announcement is published. See the NOFA for application details and timelines. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23128.pdf>. *Federal Register*, Vol. 86, No. 203, 10/25/2021, 58860-58864.

SEC Issues Final Rule on Performance-Based Investment Advisory Fees.

The Securities and Exchange Commission (SEC) issued a final rule to adopt amendments to the rule under the Investment Advisers Act that permits investment advisers to charge performance-based compensation to "qualified clients." The rule defines "qualified client" with reference to specific dollar amount thresholds, which are required to be adjusted every five years to account for the effects of inflation. The amendments replace specific dollar amount thresholds in the rule's "qualified client" definition with references to SEC's "most recent order," as defined by the amended rule, containing the specific dollar amount thresholds adjusted for inflation.



Regulatory Spotlight

The final rule is effective **11/10/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24525.pdf>. *Federal Register*, Vol. 86, No. 215, 11/10/2021, 62473-62475.

SEC Issues Proposed Rule to Enhance Reporting of Proxy Votes by Registered Management Investment Companies.

SEC issued a proposed rule to amend Form N-PX under the Investment Company Act to enhance the information mutual funds, exchange-traded funds, and certain other funds currently report annually about their proxy votes and to make that information easier to analyze. SEC has also proposed form amendments under the Securities Exchange Act that would require an institutional investment manager subject to the Exchange Act to report annually on Form N-PX how it voted proxies relating to executive compensation matters, as required by the Exchange Act. The proposed reporting requirements for institutional investment managers, if adopted, would complete implementation of requirements under the Dodd-Frank Act. Comments are due **12/14/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-21549.pdf>. *Federal Register*, Vol. 86, No. 197, 10/15/2021, 57478-57524.

SEC Reopens Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation Proposed Rule.

SEC has reopened the comment period for its proposed rule that would implement provisions of Section 954 of the Dodd-Frank Act to direct the national securities exchanges and national securities associations to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require disclosure of the policy. Comments are due **11/22/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-21/pdf/2021-22754.pdf>. *Federal Register*, Vol. 86, No. 201, 10/21/2021, 58232-58237.

FTC Issues Final Rule to Update Procedures for Responding to Petitions for Rulemaking.

The Federal Trade Commission (FTC) issued a final rule to update its procedures for responding to petitions for rulemaking. The changes will provide increased transparency and promote public participation in the rulemaking process. The updated procedures will govern the handling of petitions for the issuance, amendments, or repeal of rules, including trade regulation rules issued pursuant to Section 18(a)(1)(B) of the FTC Act, as well as other statutory grants of rulemaking authority. The procedures will also apply to requests to issue, amend, or repeal interpretive rules, including guides described in subchapter B of FTC rules and other official FTC interpretations. In addition, the procedures will apply to petitions from regulated parties seeking exemptions from FTC rules. The amendments also add a new subpart D in part 1 of FTC rules to establish updated procedures for responding to petitions for rulemaking. Under the revised procedures, FTC will publish petitions for rulemaking in the *Federal Register* and invite comment on the merits of petitions. The final rule is effective **10/29/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-29/pdf/2021-21824.pdf>. *Federal Register*, Vol. 86, No. 207, 10/29/2021, 59851-59855.

FTC Issues Enforcement Policy Statement Regarding Negative Option Marketing.

FTC issued a policy statement to provide guidance regarding its enforcement of various statutes and FTC regulations which address negative option marketing and operating. The statement is intended to assist the business community and practitioners by providing specific guidance on FTC's interpretation of existing law as it applies to negative option practices. The policy statement may also assist courts in developing an appropriate framework for interpreting and applying the various statutes and regulations addressing negative option marketing discussed in the statement. FTC announced the issuance of the statement on **10/29/2021**. The policy statement may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24094.pdf>. *Federal Register*, Vol. 86, No. 211, 11/04/2021, 60822-60827.

FCC Issues Proposed Rule on SIM Swapping and Port-Out Fraud.

The Federal Communications Commission (FCC) issued a proposed rule that focuses on putting an end to two methods used by bad actors to take control of consumers' cell phone accounts and wreak havoc on people's financial and digital lives without ever gaining physical control of a consumer's phone. In the first type of scam, known as "subscriber identity module swapping" or



Regulatory Spotlight

“SIM swapping,” a bad actor convinces a victim’s wireless carrier to transfer the victim’s service from the victim’s cell phone to a cell phone in the bad actor’s possession. In the second method, known as “port-out fraud,” the bad actor, posing as the victim, opens an account with a carrier other than the victim’s current carrier. The bad actor then arranges for the victim’s phone number to be transferred to or “ported out” to the account with the new carrier controlled by the bad actor. The proposed rule takes aim at these scams by proposing to amend the FCC’s Customer Proprietary Network Information (CPNI) and local number portability (LNP) rules to require carriers to adopt secure methods of authenticating a customer before redirecting a customer’s phone number to a new device or carrier. The proposed rule would also require providers to immediately notify customers whenever a SIM change or port request is made on customers’ accounts. FCC also seeks comment on other ways to protect consumers from SIM swapping and port-out fraud. Comments are due **11/15/2021**, and reply comments are due on or before **12/14/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-22099.pdf>. *Federal Register*, Vol. 86, No. 197, 10/15/2021, 57390-57404.

NCUA Issues Final Rule on CAMELS Rating System.

The National Credit Union Administration (NCUA) issued a final rule to update its supervisory rating system from CAMEL to CAMELS by adding the “S” (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefining the “L” (Liquidity Risk) component. The benefits of adding the “S” component are to enhance transparency and allow NCUA and federally-insured natural person and corporate credit unions to better distinguish between liquidity risk (“L”) and sensitivity to market risk (“S”). The addition of “S” also enhances consistency between the supervision of credit unions and financial institutions supervised by the other banking agencies. The effective date of the rule is **04/01/2022**. NCUA plans to implement the addition of the “S” rating component and a redefined “L” rating for examinations and contacts started on or after **04/01/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23332.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59282-59289.

NCUA Issues Final Rule to Amend CUSO Regulation.

NCUA issued a final rule to amend the credit union service organization (CUSO) regulation. The final rule accomplishes two objectives: expands the list of permissible activities and services for CUSOs to include the origination of any type of loan that a federal credit union may originate; and grants NCUA additional flexibility to approve permissible activities and services. The final rule is effective **11/26/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23322.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59289-59302.

VA Announces Maximum Allowable Fees for Legal Services.

The Department of Veteran Affairs (VA) announced updated information to participants in the Department of Veterans Affairs (VA) Home Loan Guaranty program concerning the maximum allowable fees for legal services performed in connection with the foreclosure of single-family housing loans. The notice also provides updated information concerning the legal fees for bankruptcy-related services. The table in the notice contains the amounts the VA Secretary has determined to be reasonable and customary in all states. The new maximum allowable fees for legal services will be allowed for all guaranty claims submitted to VA on or after **12/08/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-08/pdf/2021-24330.pdf>. *Federal Register*, Vol. 86, No. 213, 11/08/2021, 61856-61858.

VA Seeks Comment on Interest Rate Reduction Refinancing Loan Worksheet.

VA seeks comment on revisions to an existing information collection titled, Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26-8923. VA is revising the information collection to incorporate regulatory collection requirements previously captured under OMB control number 2900-0601. The purpose is to consolidate information collection requirements applicable only for interest rate reduction refinance loans under one information collection package. Comments are due within 30 days of publication of the notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23339.pdf>. *Federal Register*, Vol. 86, No. 205, 10/27/2021, 59450.

VA Seeks Comment on Extension of VA Fiduciary Account Information Collection.

VA seeks comment on an extension of an existing information collection titled, VA Fiduciary’s Account (VA Form 21P-4706b), Court Appointed Fiduciary’s Account (VA Form 21P-4706c), Certification of Balance on Deposit and Authorization to Disclose Financial



Regulatory Spotlight

Record (21P– 4718a). VA Forms 21P–4706b, 21P– 4706c, and 21P–4718a will be completed by VA-appointed fiduciaries of VA beneficiaries. The information will be used by VA fiduciary hub staff to determine whether an individual is an appropriate fiduciary and properly using and maintaining an accounting of the VA beneficiary’s compensation or pension payments. VA continues to use the information provided on the forms in the oversight of VA-appointed fiduciaries. Comments are due within 30 days of publication of the notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23492.pdf>. *Federal Register*, Vol. 86, No. 206, 10/28/2021, 59837-59838.

DOL Issues Final Rule to Withdraw Portion of Tip Regulation Under FLSA.

The Department of Labor (DOL) issued a final rule to withdraw one portion of the Tip Regulations Under the Fair Labor Standards Act (FLSA) and finalize its proposed revisions related to the determination of when a tipped employee is employed in dual jobs under FLSA. Specifically, DOL has amended its regulations to clarify that an employer may only take a tip credit when its tipped employees perform work that is part of the employee’s tipped occupation. Work that is part of the tipped occupation includes work that produces tips as well as work that directly supports tip-producing work, provided the directly supporting work is not performed for a substantial amount of time. As of **12/28/2021**, DOL is withdrawing the revision of 29 CFR 531.56(e) (in amendatory instruction 11), published in the *Federal Register* on **12/30/2020**, delayed until **04/30/2021**, as published in the *Federal Register* on **02/26/2021**, and further delayed until **12/31/2021**, as published in the *Federal Register* on **04/29/2021**. The final rule is effective **12/28/2021**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-29/pdf/2021-23446.pdf>. *Federal Register*, Vol. 86, No. 207, 10/29/2021, 60114-60158.

DOL Issues Proposed Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.

DOL issued a proposed rule to amend the Investment Duties regulation under Title I of the Employee Retirement Income Security Act (ERISA), as amended, to clarify the application of ERISA’s fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. Comments are due **12/13/2021**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-14/pdf/2021-22263.pdf>. *Federal Register*, Vol. 86, No. 196, 10/14/2021, 57272-57304.

CDFI Fund Issues NOFA for 2021 Bank Enterprise Award Program.

The Community Development Financial Institutions Fund (CDFI Fund) issued a notice of funds availability (NOFA) to invite applications for fiscal year 2021 funding round of the Bank Enterprise Award Program (BEA Program). Through the BEA Program, CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) for increasing their levels of loans, investments, service activities, and technical assistance to residents and businesses in the most economically distressed communities, and financial assistance and technical assistance to certified Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of assistance, during a specified period. See the NOFA for further application details, including deadlines and program criteria. CDFI Fund also issued a correction to the NOFA to clarify eligibility requirements. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-14/pdf/2021-22450.pdf>. *Federal Register*, Vol. 86, No. 196, 10/14/2021, 57253-57266. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-24542.pdf>. *Federal Register*, Vol. 86, No. 214, 11/09/2021, 62235-62236.

CDFI Fund Issues NOFA for 2021 Allocation Round of New Markets Tax Credit Program.

CDFI Fund issued a notice of funds availability (NOFA) to invite applications for fiscal year 2021 funding round of the New Markets Tax Credit (NMTC) Program. The NOFA is issued in connection with the Calendar Year 2021 allocation round NMTC Program. Through the NMTC Program, CDFI Fund provides authority to certified community development entities (CDEs) to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. See the NOFA for further application details, including deadlines and program criteria. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-08/pdf/2021-24310.pdf>. *Federal Register*, Vol. 86, No. 213, 11/08/2021, 61839-61849. ■



Compliance Notes

▲ On **11/12/2021**, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Standard (ETS), published in the *Federal Register* on **11/05/2021** (86 Fed. Reg. 61204). The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." While OSHA stated it remains confident in its authority to protect workers in emergencies, OSHA has stated it has suspended activities related to the implementation and enforcement of the ETS pending further developments in the litigation. OSHA's ETS and related information may be viewed at: www.osha.gov/coronavirus/ets2

▲ Agencies issued a joint statement announcing a return to enforcement of protections for families and homeowners. The statement from CFPB, FRB, FDIC, OCC, NCUA, and state financial regulators makes clear that the agencies will apply their respective supervisory and enforcement authorities to protect homeowners and address any compliance failures. The joint statement provides that a previous joint statement issued in April 2020, which stated that the agencies would relax supervisory and enforcement oversight with respect to certain requirements in Regulation X, will no longer apply. The agencies believe that mortgage servicers have had adequate time to adjust their operations to comply with the timelines and other requirements of Regulation X and servicers will now be expected to fully comply with the rules. The statement may be viewed at: www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-prevent-avoidable-foreclosures/

▲ OCC issued version 2.0 of the Retail Lending booklet of the *Comptroller's Handbook*. The revised booklet reflects changes to laws and regulations since the booklet was last updated; reflects OCC issuances published and rescinded since the booklet was last updated; includes clarifying edits regarding supervisory guidance, sound risk management practices, and legal language; and revises certain content for general clarity. With the issuance of the revised booklet, OCC has rescinded the following: OCC Bulletin 2017-15, Retail Lending: New Comptroller's Handbook Booklet and version 101 of the Retail Lending booklet of the *Comptroller's Handbook*. The booklet may be viewed at: www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/retail-lending/index-retail-lending.html

▲ FRB released the November 2021 Financial Stability Report which presents FRB's current assessment of the resilience of the U.S. financial system. The report may be viewed at: www.federalreserve.gov/publications/financial-stability-report.htm

▲ IRS announced that the amount individuals can contribute to their 401(k) plans in 2022 has increased to \$20,500, up from \$19,500 for 2021 and 2020. The IRS also issued technical guidance regarding all of the cost-of-living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2022 in Notice 2021-61 PDF, posted on IRS.gov. The release may be viewed at: www.irs.gov/newsroom/irs-announces-401k-limit-increases-to-20500

▲ The U.S. Department of Justice (DOJ) announced the launch of its new Combatting Redlining Initiative earlier this month. Redlining is an illegal practice in which lenders avoid providing services to individuals living in communities of color because of the race or national origin of the people who live in those communities. The new initiative represents DOJ's most aggressive and coordinated enforcement effort to address redlining, which is prohibited by the Fair Housing Act and ECOA. The announcement was made in conjunction with an announcement by DOJ, CFPB, and OCC regarding the resolution of lending discrimination claims against Trustmark National Bank of Tennessee. The redlining initiative announcement may be viewed at: www.justice.gov/opa/pr/justice-department-announces-new-initiative-combat-redlining

▲ Revised Regulation Z, Truth in Lending examination procedures have been released. The revised procedures reflect amendments to Regulation Z published by CFPB in 2020 and 2021, including: implementing permanent changes to the regulation's QM provisions, and implementing an extension and phase-out for the GSE Patch, which had originally carried a **01/10/2021**, sunset date under the ATR/QM rule and which will now sunset on **10/01/2022**. The revised examination procedures may be viewed at: www.federalreserve.gov/supervisionreg/caletters/21-3%20Attach.pdf

▲ FinCEN issued an update and replacement of its **10/01/2020**, Advisory on Ransomware and the Use of the Financial System to Facilitate Payments. The updated advisory is in response to the increase in the ransomware attacks in recent months against critical U.S. infrastructure, such as the May 2021 ransomware attack that disrupted the operations of Colonial Pipeline, the largest pipeline system for refined oil products in the United States. Other recent targets include entities in the manufacturing, legal services, insurance, financial services, health care, energy, and food production sectors. FinCEN issued the original advisory to alert financial institutions to predominant trends, typologies, and potential indicators of ransomware and associated money laundering activities. The amended advisory reflects information released by FinCEN in its Financial Trend Analysis Report issued on **10/15/2021**, and is part of Treasury's broader efforts to combat ransomware. The updated advisory identifies new trends and typologies of ransomware and associated payments, including the growing proliferation of anonymity-enhanced cryptocurrencies (AECs) and decentralized mixers.



Compliance Notes

Updated advisory FIN-2021-A004 may be viewed at: www.fincen.gov/sites/default/files/2021-11/FinCEN%20Ransomware%20Advisory_FINAL_508_.pdf

▲ FinCEN also issued a notice to call attention to an upward trend in environmental crimes and associated illicit financial activity. FinCEN is highlighting the trend because of: (1) its strong association with corruption and transnational criminal organizations, two of FinCEN's national anti-money laundering and countering the financing of terrorism (AML/CFT) priorities; (2) a need to enhance reporting and analysis of related illicit financial flows; and (3) environmental crimes' contribution to the climate crisis, including threatening ecosystems, decreasing biodiversity, and increasing carbon dioxide in the atmosphere. The notice provides financial institutions with specific SAR filing instructions and highlights the likelihood of illicit financial activity related to several types of environmental crimes. Notice FIN-2021-NTC4 may be viewed at: www.fincen.gov/sites/default/files/2021-11/FinCEN%20Environmental%20Crimes%20Notice%20508%20FINAL.pdf

▲ FDIC Chairman McWilliams announced the creation of a new office to support FDIC's ongoing strategic and direct engagement with MDIs, CDFIs, and other mission-driven banks. The new office, Office of Minority and Community Banking, will further promote private sector investments in low- and moderate-income communities. The release may be viewed at: www.fdic.gov/news/press-releases/2021/pr21093.html

▲ IRS reminds taxpayers that a special tax provision will allow more Americans to deduct up to \$600 in donations to qualifying charities on their 2021 federal income tax return. Ordinarily, people who choose to take the standard deduction cannot claim a deduction for their charitable contributions. But a temporary law change now permits them to claim a limited deduction on their 2021 federal income tax returns for cash contributions made to qualifying charitable organizations. Under the provision, individual tax filers, including married individuals filing separate returns, can claim a deduction of up to \$300 for cash contributions made to qualifying charities during 2021. The maximum deduction is increased to \$600 for married individuals filing joint returns. The reminder may be viewed at: www.irs.gov/newsroom/year-end-giving-reminder-special-tax-deduction-helps-most-people-give-up-to-600-to-charity-even-if-they-dont-itemize

▲ CFPB released its research finding that consumers in majority Black and Hispanic neighborhoods, as well as younger consumers and those with low credit scores, are far more likely to have disputes appear on their credit reports. The new research is a part of a series of reports focusing on trends in the consumer financial marketplace, and uses data on auto loan, student loan, and credit card accounts opened between 2012 and 2019. The report may be viewed at: www.consumerfinance.gov/about-us/newsroom/cfpb-finds-credit-report-disputes-far-more-common-in-majority-black-and-hispanic-neighborhoods/

▲ DFI and DATCP issued a release encouraging student loan borrowers to be cautious of offers from questionable student loan debt relief companies, to be aware of fraudsters taking advantage of the transition period (the final extension of the federal student loan payment pause runs until **01/31/2022**), and to create a repayment plan now before their student loan payments are due. The agencies shared that student loan borrowers should be wary of phone calls, emails, letters, and texts claiming relief from federal student loans or warning that student loan forgiveness programs are immediately expiring. These aggressive solicitations are used to scam borrowers with fees for services that are often free and can be used by fraudsters to steal their money and identity. Signs of fraud are also included in the release. The release may be viewed at: www.wdfi.org/newsroom/press/2021/20211115_NewsRelease_DATCP-DFI_StudentLoanDebtScams_vFINAL.pdf

▲ FHA announced significantly revised and enhanced policies under its Single-Family Title I Manufactured Home Loan Program for lenders to provide loans for the financing of manufactured homes, including those titled as personal property, and the lots on which the homes will reside. The enhanced policies provide updated guidance that will make the program easier to understand and use for lenders, while providing expanded eligibility requirements for loan financing that are consistent with the criteria for income and property valuations used in real-estate mortgage financing. The new policies have been incorporated into the *Single Family Housing Policy Handbook* 4000.1. The announcement and updated policy handbook may be viewed at: www.hud.gov/press/press_releases_media_advisories/HUD_No_21_183

▲ CFPB released a new guide for family members of elders, *Preventing Elder Financial Abuse: Guide for Family and Friends of People Living in Nursing Homes and Assisted Living Communities*. The guide outlines four key steps of successful intervention: (1) prevent: educate oneself, loved ones, and one's community; (2) recognize: spot the warning signs and take action; (3) record: document what one observes; and (4) report: tell the appropriate authorities so they can investigate and help. The guide may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_preventing-elder-financial-abuse_friends-family-guide.pdf ■



Are you a WBA member with a compliance question?

Contact the WBA Legal Call Program

This WBA member-exclusive program provides information in response to compliance questions.
call: 608-441-1200

WBA ADVOCACY

Volunteer Today — WBA Advocacy Officer

Join the group where influential bankers become leaders in their community.

WHY BECOME AN ADVOCACY OFFICER? IT'S LEADERSHIP IN ACTION!

Leadership. You will be seen as a leader in your bank because of your increasing awareness regarding banking-related issues.

Development. You will develop the ability to innovate and make a positive impact on the direction of the banking industry.

Opportunity. You'll be given the opportunity to facilitate statutory or regulatory changes that will benefit your bank and the banking industry.

Visibility. Your voice and your opinions will be heard by policymakers.

Impact. You will be making a real difference in the lives of Wisconsin bankers and the communities you serve.

Contact John Cronin at jcronin@wisbank.com or 608-441-1215 with questions, to sign up, or to learn more about Advocacy Officer duties and responsibilities.

You can also visit www.wisbank.com/advocacy.



Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

DECEMBER 2021

- **Driving Workplace Equity and Inclusion**
7 Virtual; \$29/attendee

JANUARY 2022

- **Midwest Economic Forecast Forum**
4 Virtual; (individual or group pricing options)
- **Capitol Day**
18 Madison

FEBRUARY 2022

- **Bank Executives Conference**
9-11 Wisconsin Dells
- **In-House Legal Counsel Webinar: Session 4**
17 6 Part Webinar Series; \$750/attendee
- **Compliance Forum: Session 3**
22 Wausau; Membership (pricing options vary)
23 Madison; Membership (pricing options vary)

MARCH 2022

- **Loan Compliance School**
7-11 Madison; \$1,295/attendee
- **Real Estate Compliance School**
9-11 Madison; \$795/attendee
- **Introduction to Commercial Lending School**
14-16 Madison; \$795/attendee
- **Residential Mortgage Lending School**
29-4/1 Madison; \$1,095/attendee
- **Security Officer Workshops**
TBD Locations TBD; \$175/attendee
- **Call Report Review & Update Workshop**
TBD Virtual
- **Advanced IRA Workshops**
TBD Locations TBD; \$245/attendee

APRIL 2022

- **Agricultural Bankers Conference**
6-7 Wisconsin Dells; \$300/ag section member or \$350/non-section member attendee

APRIL 2022 (continued)

- **In-House Legal Counsel Webinar: Session 5**
7 6 Part Webinar Series - \$750/attendee
- **Power of Community Week**
18-23 www.wisbank.com/BanksPowerWI
- **FIPCO Software & Compliance Forum: Deposit**
21 Madison
- **American Mortgage Conference**
25-27 Pinehurst, NC
- **Women in Banking Conference**
26 Wisconsin Dells
- **Community Bankers for Compliance (CBC) – Session II**
26 Stevens Point; Membership (pricing options vary)
27 Madison; Membership (pricing options vary)
- **Principles of Banking Course**
TBD Locations TBD; \$550/attendee

MAY 2022

- **School of Bank Management**
9-13 Madison; \$1,395/attendee
- **BSA/AML Workshop**
12 Location TBD; \$245/attendee
- **FDIC Bank Directors College**
18 Stevens Point
19 Madison
- **In-House Legal Counsel Webinar: Session 6**
26 6 Part Webinar Series; \$750/attendee
- **Personal Banker School**
TBD Wausau area; \$495/attendee

KEY: Color-Coded Event Descriptions...

- **Conferences|Summits** – One or more days, based on hot topics, industry news and best practices; scheduled time for peer networking.
- **Schools|Boot Camps** – Focused on a particular area of banking, allowing for a deep dive into that focused area over the course of two to six days.
- **Workshops|Seminars** – One-day programs, sometimes in multiple locations, focused on a specific topic or area of banking.
- **WBA-Hosted Webinars** – Two-hour webinars instructed with a particular focus on Wisconsin state law and rules.
- **Other Events.**