

# Compliance Journal

## Special Focus

### Revisiting Important Flood Considerations

#### Introduction

WBA has become aware that the Federal Deposit Insurance Corporation (FDIC) has recently once again been closely examining flood insurance issues. Specifically, they have focused on cross-collateralization and overall coverage considerations, including contents coverage. This article discusses those issues, in addition to practical considerations, regardless of an institution's primary regulatory agency. While these flood issues are not new, it is important that institutions review their flood procedures in light of renewed regulator interest.

#### Background

Flood insurance regulations require that covered institutions shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property.

In some cases, a financial institution may utilize cross-collateralization language, resulting in multiple loans being secured by a property located in a special flood hazard area (SFHA). This can affect when the flood rules are triggered, as well as the determination of the required amount of flood insurance. Furthermore, if a lender secures a loan with a building located in a SFHA, and takes a security interest in the contents, flood insurance is required. These issues are discussed below.

#### Cross-Collateralization

When a financial institution has a pre-existing mortgage, it should consider whether this mortgage secures any future obligations. This could be the result of future advance language or other cross-collateralization clauses. If a financial institution has a loan secured by property in a flood zone, and utilizes such language, then it should consider whether future loans are secured by that same property in a flood zone. Such situations will trigger flood rules, which will then need to be addressed. It is important to understand the specific function of the language, as it may also include collateral disclaimers to avoid flood complications.

For example, when making a loan secured by a WBA 428 Real Estate Mortgage, the mortgage document states that the mortgage will secure certain future advances. However, in general, most WBA consumer notes disclaim principal dwellings as collateral, unless the principal dwelling is specifically described in the note or agreement. So, a pre-existing mortgage on a principal dwelling does not secure a future consumer note or agreement unless the note or agreement specifically identifies the dwelling.

As a general matter, for consumer loans, if the mortgage covers a principal dwelling, and the principal dwelling is identified by future advance as security for the note, the lender will have presumably already considered flood requirements. However, there may also be cases where the lender makes a loan, such as a vehicle loan, and the lender has a pre-existing real estate mortgage, where the car loan may also be secured by the pre-existing mortgage. Similarly, a commercial loan to an individual borrower may also be secured by a pre-existing mortgage from that borrower. If the lender does take a security interest in a building or mobile home by virtue of a pre-existing mortgage, the lender will trigger flood rules, including the requirement to deliver flood notices, and complete the Standard Flood Hazard Determination Form.

Financial institutions might also utilize collateral disclaimers. If a lender is looking to specifically exclude certain collateral for flood purposes, or if lender is otherwise unable to determine whether a loan may be secured by a pre-existing mortgage, the lender may choose to disclaim as collateral any real estate or mobile home within a SFHA. Certain WBA forms include such a disclaimer.



# Special Focus

By way of example of the above, assume a lender makes a mortgage loan on the WBA 458 Mortgage Note, which identifies on the face of the note that the collateral is a residential dwelling. The dwelling is in a SFHA.

The Mortgage Note also includes a standard cross-collateral provision on the reverse side of the form providing, in part, that the Mortgage Note is also secured by:

“...all existing and future security agreements covering personal property (other than a dwelling, unless the security agreement granting a security interest in the dwelling is disclosed on the reverse side), between Lender and any of us...”

Under this cross-collateral provision, any personal property taken as collateral from the borrower at a later time (other than a dwelling), also secures the Mortgage Note.

Assume that a second consumer loan is made to the same borrower and the second loan is secured by a motor vehicle. This second loan to the borrower may be documented on WBA 454L Consumer Simple Interest Note and Chattel Security Agreement or a WBA 455 Consumer Universal Note (Consumer Note). The vehicle taken as collateral for the subsequent Consumer Note also secures the Mortgage Note by virtue of the cross-collateral clause in the Mortgage Note (and the security agreement).

As mentioned above, the flood rules provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located or to be located in an SFHA unless the building or mobile home and any personal property securing that loan are covered by flood insurance for the term of the loan. Note that the trigger for the flood rules is that the lender has made, increased, extended, or renewed a loan secured by a building or mobile home located or to be located in a SFHA. If one of the triggering events occurs, then the building or mobile home and any personal property securing the loan must be covered by flood insurance for the term of the loan and the other requirements of the flood rule, such as notice to the borrower of property in a SFHA, apply. However, the first step is the trigger. No increase in flood insurance or notice to the borrower is required if the flood rules are not triggered.

In the case of the loans described directly above, the lender must comply with the flood rules when it makes the original home loan secured by a home located in a SFHA. When the car loan is made the lender must determine whether it is making, increasing, extending, or renewing a loan secured by a building or mobile home in a SFHA.

1. The Home Loan. The Bank does not make, increase, extend, or renew the existing home loan when it makes the car loan. True, the collateral securing the home loan increased because the car also secured the home loan. But, increasing collateral for a loan is not a trigger for the Flood Rules. Therefore, as to the home loan, no triggering event occurs at the time of the car loan.

2. The Car Loan. Likewise, the Bank does not make, increase, extend, or renew a loan secured by a building located in a SFHA when it makes a car loan using a Consumer Note. As to collateral other than the car, the cross-collateral clause on the reverse side of the Consumer Note disclaims any dwelling as collateral unless described in the appropriate blank in the Consumer Note. If the home in the SFHA is not described in the Consumer Note, the home will not secure the car loan. This means the car loan is not secured by real estate or a dwelling located in a SFHA and the flood rules are not triggered for the car loan.

Lenders are reminded that commercial and agricultural loans are treated differently. The cross-collateral clauses in the WBA commercial and agricultural loan documents are broader than they are in the consumer loan documents. The WBA commercial and agricultural loan documents generally provide that the collateral securing a loan to a commercial or agricultural borrower secures all loans to the borrower even those made after the initial loan. Likewise, collateral provided by guarantors may secure commercial and agricultural loans. In the commercial or agricultural context, if one loan to a borrower

**February 2022**  
**Volume 27, Number 9**

**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 ©2022  
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](http://www.wisbank.com).



# Special Focus

is secured by property located in a SFHA, the cross-collateral clauses are likely to trigger the flood rules when a second loan is made to that borrower. Lenders should continue to review commercial and agricultural loans for compliance with the flood rules whenever a new loan is made. In the commercial or agricultural loan context, the lender must determine whether collateral is covered by sufficient flood insurance and whether the notice to borrower is required by the flood rules, by reviewing all collateral for a loan, taking into account the broad cross-collateral clause in the WBA commercial and agricultural loan forms.

Because cross-collateralization and any type of collateral disclaimers (if utilized) depends upon the specific language used, and how financial institutions document their loans, lenders should evaluate the language within their notes and security agreements, and loan policy, to determine whether flood rules are triggered.

Lastly, in a past *FDIC Quarterly Newsletter*, FDIC also specifically addressed the impact of Maximum Obligation Limit provisions within security instruments. A Maximum Obligation Limit provision is one which permits lenders to advance funds to pay for flood insurance premiums and fees, among other things, as additional debt to be secured by the property. FDIC indicated that the presence of a Maximum Obligation Limit provision in security instruments does not limit any potential cross-collateralization exposure.

## Flood Insurance Coverage

The amount of flood insurance required must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act. If a financial institution's note or security agreement includes cross-collateralization language, resulting in multiple loans being secured by a property located in a SFHA, the collective outstanding principal balance of those loans must be accounted for in the flood insurance calculation. Lenders should also note that when determining the amount of flood insurance required, the flood rules do not distinguish between commercial and consumer purpose loans. Furthermore, flood insurance extends to any personal property securing a loan.

For example, if a lender secures the loan with a building located in a SFHA for which flood insurance is available, and the lender also takes a security interest in the contents, flood insurance is required. Financial institutions should consider the language within their loan agreement to determine whether any contents are taken as collateral for a loan. Also note that flood insurance is required depending on whether those contents secure the loan, regardless of whether the security interest is perfected.

FDIC has indicated that the contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes so long as some reasonable amount of insurance is allocated to each category. Eligibility requirements for contents, as well as the maximum amount of insurance available, is also included within the National Flood Insurance Program's Flood Insurance Manual, which is included at the end of this article. Additional information and examples on contents insurance can be found within the Interagency Flood Insurance Questions and Answers, also included at the end of this article.

## Conclusion

While these concepts are not new, given the recent focus by federal regulators, financial institutions might consider reviewing their cross-collateralization and contents language in notes and security instruments and consider the impact on flood insurance compliance, as necessary.

## Additional Resources

Flood Insurance Manuals and Handbooks: <https://www.fema.gov/flood-insurance/work-with-nfip/manuals>

Interagency Flood Q&As 2009: <https://www.govinfo.gov/content/pkg/FR-2009-07-21/pdf/E9-17129.pdf>

Interagency Flood Q&As 2011: <https://www.govinfo.gov/content/pkg/FR-2011-10-17/pdf/2011-26749.pdf>

(Note: In 2021, the agencies proposed revisions to the interagency flood Q&As; however, as those have not been finalized at time of publication of this article, the 2021 flood Q&As have not been included.) ■



# Judicial Spotlight

## WI Supreme Court Affirms Longstanding Principle Regarding Foreign Country's Law

The Wisconsin Supreme Court (Supreme Court) recently affirmed a long established principle that a foreign country's law is something that need be presented and proven before a circuit court as a question of fact when it recently declined to consider the foreign law de novo in the case *Hennessy v Wells Fargo Bank*, 2019AP1206.

Generally speaking, when a circuit court hears a case, factors important to the case are questions of fact that the circuit court need determine is or is not fact. Wisconsin courts have long followed a common law principle that a foreign country's law is something that is to be presented and proven in a circuit court as a question of fact. In this case, the Supreme Court was asked to put that standard aside, and to instead consider the foreign law de novo. "De novo" as a Latin term means "from the new" and a de novo review by a court will result in the court making its own determination of facts and issues without any reference to any legal conclusion by a previous court. Utilizing a de novo standard in a case involving a foreign country's law would have been a new standard in Wisconsin. A brief outline of the facts and procedural events in the case follow.

The Hennessys obtained a loan for \$7.5 million to build a condominium in Mexico. The parties executed a construction loan agreement, a promissory note, and an addendum to the note. The documents were written in English and governed by Wisconsin law. Property underlying the loan transaction as collateral was held in trust; thus, there was also a trust agreement as part of the documentation. The trust agreement was written in Spanish and governed by Mexican law. The agreements (*i.e.*, loan agreements and trust agreement) were "closely interlinked and reference each other."

After the Hennessys defaulted on the loan, the bank initiated a foreclosure action in Mexico in May 2012. The bank sought payment for amounts owed under the agreements, and if those amounts were not recovered, possession of the property which was the collateral. After actions in a lower court and appeals court in Mexico, the bank was awarded judgment in which the Hennessys were to repay the \$7.5 million principal balance of the loan and interest. The Hennessys were also instructed by the court that if the funds were not repaid, they were ordered to deliver the property which was collateral for the loan. In 2017, the Hennessys transferred the property to the bank.

In late 2016, the Hennessys filed a complaint in the Milwaukee County circuit court (circuit court) seeking declaratory injunction that the bank was time-barred from bringing a breach of contract claim under Wisconsin law against them for the failure to pay their loan obligation. In May 2017, the bank, in response, filed a counterclaim to domesticate the Mexican judgment and in August 2017, the circuit court granted summary judgment in favor of the Hennessys. However, the circuit court's order stated that the bank was allowed to enforce the Mexican judgment.

With regard to the bank's request to domesticate the Mexican judgment, the circuit court then split the proceedings into two phases: (1) to hear arguments regarding the effect and meaning of the Mexican judgement under Mexican law; and (2) to determine whether to recognize the Mexican judgment under principles of comity. Comity, generally, is a principle that a court of one jurisdiction respects the laws and judicial decision of another jurisdiction. In this case, whether a Wisconsin court should respect the laws and judicial decision from Mexico.

In the first phase, the circuit court received briefings from both parties, reviewed extensive amounts of exhibits on Mexican law, and held hearings which included experts testifying on the substance and meaning of Mexican law.

The Hennessy's position was that the judgment could not be enforced against them personally, arguing that Mexican law only provided in rem relief (*i.e.*, relief against property) in this circumstance. The bank argued that Mexican law did permit it to seek monetary compensation of any deficiency between the value of the collateral and the amount still owed to the bank. The circuit court issued a decision in favor of the bank.

Regarding the second phase to domesticate the Mexican judgment, the circuit court concluded, under principles of comity, the bank was entitled to recognition of the Mexican judgment. The Hennessys appealed and the court of appeals affirmed the circuit court's decision.

As mentioned previously, the Supreme Court was petitioned to consider a different standard of review for questions of a foreign country's law. The Hennessys sought reversal of the circuit court and court of appeals decisions based on their interpretation of Mexican law and on comity.



# Judicial Spotlight

The Supreme Court, in review of the circuit court record, did not find the court's interpretation clearly erroneous, nor did it find that the circuit court erroneously executed its discretion by choosing to recognize the Mexican judgment in Wisconsin. As a result, the Supreme Court affirmed Wisconsin's longstanding common law approach that foreign laws are facts which must be presented and proven in circuit court as a question of fact, and found the Mexican judgment was properly domesticated.

The case is helpful as it confirmed Wisconsin's current common law standard remains when needing to prove a foreign country's law.

The Wisconsin Supreme Court opinion may be viewed at: <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=473528> ■

# Regulatory Spotlight

## Agencies Adjust CMPs for Inflation.

- The Bureau of Consumer Financial Protection (CFPB) issued a final rule to adjust for inflation the maximum amount of each civil monetary penalty (CMP) within its jurisdiction. The adjustments are required by the Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of CMPs and to promote compliance with the law. See the final rule for the adjusted CMP amounts. The final rule is effective **01/15/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-14/pdf/2022-00672.pdf>. *Federal Register*, Vol. 87, No. 10, 01/14/2022, 2314-2316.
- The Board of Governors of the Federal Reserve System (FRB) issued a final rule to amend its rules of practice and procedure to adjust the amount of each civil money penalty (CMP) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the final rule for the adjusted CMP amounts. The final rule is effective **01/14/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-14/pdf/2022-00592.pdf>. *Federal Register*, Vol. 87, No. 10, 01/14/2022, 2312-2314.
- The Federal Deposit Insurance Corporation (FDIC) issued a notice to adjust its maximum civil money penalties (CMPs) for inflation. See the notice for the adjusted CMP amounts. The adjusted maximum amounts of CMPs are applicable to penalties assessed after **01/15/2022**, for conduct occurring on or after **11/05/2015**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-11/pdf/2022-00286.pdf>. *Federal Register*, Vol. 87, No. 7, 01/11/2022, 1411-1413.
- The Office of the Comptroller of the Currency (OCC) issued a notice to announce changes to its maximum civil money penalties (CMPs) as adjusted for inflation. The inflation adjustments are required by the Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the notice for the adjusted CMP amounts. The adjusted maximum amount of CMPs are applicable to penalties assessed on or after **01/12/2022**, for conduct occurring on or after **11/02/2015**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00109.pdf>. *Federal Register*, Vol. 87, No. 8, 01/12/2022, 1657-1659.
- The Financial Crimes Enforcement Network (FinCEN) issued a final rule to reflect inflation adjustments to its civil monetary penalties (CMPs) as mandated by the Federal Civil Penalties Inflation Adjustment Act, as amended. The final rule adjusts certain maximum CMPs within the jurisdiction of FinCEN to the amounts required by the Act. See the final rule for the adjusted CMP amounts. The final rule is effective **01/24/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-24/pdf/2022-01284.pdf>. *Federal Register*, Vol. 87, No. 15, 01/24/2022, 3433-3435.
- The Office of Foreign Assets Control (OFAC) issued a final rule to adjust certain civil monetary penalties (CMPs) for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the final rule for the adjusted CMP amounts. The final rule is effective **02/09/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-09/pdf/2022-02736.pdf>. *Federal Register*, Vol. 87, No. 27, 02/09/2022, 7369-7373.



# Regulatory Spotlight

- The Federal Housing Finance Agency (FHFA) issued a final rule to amend its Rules of Practice and Procedure and other FHFA regulations to adjust each civil money penalty (CMP) within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the final rule for the adjusted CMP amounts. The final rule is effective **01/12/2022**, and applicable **01/15/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00361.pdf>. *Federal Register*, Vol. 87, No. 8, 01/12/2022, 1659-1662.
- The Farm Credit Administration (FCA) issued a final rule to implement inflation adjustments to civil money penalties (CMPs) that FCA may impose or enforce pursuant to the Farm Credit Act, the Flood Disaster Protection Act, and the Biggert-Waters Flood Insurance Reform Act. The final rule is effective **01/15/2022**. See the final rule for the adjusted CMP amounts. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-11/pdf/2022-00307.pdf>. *Federal Register*, Vol. 87, No. 7, 01/11/2022, 1331-1332.
- The Farm Credit System Insurance Corporation (FCSIC) issued a final rule to implement inflation adjustments to civil money penalties (CMPs) that FCSIC may impose under the Farm Credit Act, as amended. The adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act. The final rule is effective **01/13/2022**. The adjusted amounts of CMPs in the final rule are applicable to penalties assessed on or after **01/15/2022**, for conduct occurring on or after **11/02/2015**. See the final rule for the adjusted CMP amounts. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-13/pdf/2022-00577.pdf>. *Federal Register*, Vol. 87, No. 9, 01/13/2022, 2031-2032.
- The Commodity Futures Trading Commission (CFTC) issued a final rule to amend Rule 143.8, its rule that governs the maximum amount of civil monetary penalties (CMPs) imposed under the Commodity Exchange Act (CEA), to adjust for inflation. The final rule sets forth the maximum, inflation-adjusted dollar amount for CMPs assessable for violations of CEA and CFTC rules, regulations, and orders thereunder. The final rule implements the Federal Civil Penalties Inflation Adjustment Act, as amended. The final rule is effective **01/13/2022**, and is applicable to penalties assessed after **01/15/2022**. See the final rule for the adjusted CMP amounts. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-13/pdf/2022-00595.pdf>. *Federal Register*, Vol. 87, No. 9, 01/13/2022, 2033-2035.
- The Securities and Exchange Commission (SEC) issued a notice pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The notice sets forth the annual inflation adjustment of the maximum amount of civil monetary penalties (CMPs) administered by SEC under the Securities Act, the Securities Exchange Act, the Investment Company Act, the Investment Advisers Act, and certain penalties under the Sarbanes-Oxley Act. The adjusted amounts are effective beginning **01/15/2022**, and will apply to penalties imposed after that date for violations that occurred after **11/02/2015**. See the notice for the adjusted CMP amounts. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00384.pdf>. *Federal Register*, Vol. 87, No. 8, 01/12/2022, 1808-1810.
- The Department of Labor (DOL) issued a final rule to adjust for inflation the civil monetary penalties (CMPs) assessed or enforced by DOL, pursuant to the Federal Civil Penalties Inflation Adjustment Act as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The Inflation Adjustment Act requires DOL to annually adjust its CMP levels for inflation no later than January 15 of each year. Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the CMPs. Accordingly, the final rule sets forth DOL's 2022 annual adjustments for inflation to its CMPs. See the final rule for the adjusted CMP amounts. The final rule is effective **01/15/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-14/pdf/2022-00144.pdf>. *Federal Register*, Vol. 87, No. 10, 01/14/2022, 2328-2340.
- The Department of Veterans Affairs (VA) issued a final rule to provide notice of inflationary adjustments to the maximum civil monetary penalties (CMPs) assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act, for calendar year 2022. VA may impose CMPs for false loan guaranty certifications. Also, VA may impose CMPs for fraudulent claims or written statements made in connection with VA programs generally. The Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act, sets forth a formula that increases the maximum statutory amounts for CMPs and directs VA to give notice of the new maximum amounts by regulation. See the final rule for the adjusted CMP amounts. The final rule is effective **01/21/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01135.pdf>. *Federal Register*, Vol. 87, No. 14, 01/21/2022, 3225-3226.



# Regulatory Spotlight

## Agencies Issue Semiannual Regulatory Agendas.

- The Bureau of Consumer Financial Protection (CFPB) issued its agenda as part of the Fall 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions. CFPB reasonably anticipates having the regulatory matters identified in the agenda under consideration during the period from **11/01/2021**, to **10/31/2022**. The next agenda will be published in Spring 2022 and will update the agenda through Spring 2023. Publication of the agenda is in accordance with the Regulatory Flexibility Act. The information in the agenda is current as of **11/01/2021**. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-27972.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5326-5329.
- The Board of Governors of the Federal Reserve System (FRB) issued its semiannual regulatory agenda under the Regulatory Flexibility Act and FRB's Statement of Policy Regarding Expanded Rulemaking Procedures. FRB anticipates having under consideration regulatory matters as indicated in the agenda during the period **11/01/2021**, through **04/30/2022**. The next agenda will be published in Spring 2022. Comments about the form or content of the agenda may be submitted any time during the next 6 months. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-27950.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5372-5373.
- The Department of the Treasury (Treasury) issued its semiannual regulatory agenda. Notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order which require the publication by Treasury of a semiannual agenda of regulations. Treasury is also required to publish a regulatory plan for the upcoming fiscal year. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-27949.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5278-5283.
- The Small Business Administration (SBA) issued its semiannual regulatory agenda. The agenda is a summary of current and projected rulemakings and completed actions of SBA. The summary information is intended to enable the public to be more aware of, and effectively participate in, SBA's regulatory activities. Accordingly, SBA invites comments on any aspect of the agenda. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-27964.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5306-5309.
- The Federal Communications Commission (FCC) issued its semiannual regulatory agenda. Twice a year, in spring and fall, FCC publishes in the *Federal Register* a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern the proceedings. The complete Unified Agenda will be published on the internet in a searchable format at [www.reginfo.gov](http://www.reginfo.gov). The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-28337.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5340-5370.
- The Securities and Exchange Commission (SEC) issued its agenda of rulemaking actions pursuant to the Regulatory Flexibility Act. The items listed in the Regulatory Flexibility Agenda for Fall 2021 reflect only the priorities of the SEC Chair, and do not necessarily reflect the views and priorities of any individual Commissioner. Information in the agenda was accurate on **09/27/2021**, the date on which SEC staff completed compilation of the data. To the extent possible, rulemaking actions by SEC since that date have been reflected in the agenda. SEC invites comment on the agenda and on the individual agenda entries. SEC's complete agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov). Comments are due **03/02/2022**. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-27952.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5382-5386.
- The Department of Labor (DOL) published a notice of its semiannual regulatory agenda. The internet has become the means for disseminating the entirety of DOL's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the *Federal Register*. The agenda may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2021-28220.pdf>. *Federal Register*, Vol. 87, No. 20, 01/31/2022, 5252-5254.

## Agencies Seek Comment on Revision to Call Report Country Exposure 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 a proposal to revise and extend the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved collections of information. The revisions to the FFIEC 009 and the FFIEC 009a are proposed to take effect as of the **12/31/2022**, report date. Comments are due **03/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-20/pdf/2022-01013.pdf>. *Federal Register*, Vol. 87, No. 13, 01/20/2022, 3170-3173.



# Regulatory Spotlight

## **CFPB Issues Compliance Bulletin and Policy Guidelines on Medical Debt Collection and Consumer Reporting Requirements.**

The Bureau of Consumer Financial Protection (CFPB) issued a compliance bulletin and policy guidance (Bulletin) to remind debt collectors of the obligation to comply with the Fair Debt Collection Practices Act's prohibition on false, deceptive, or misleading representations or means in connection with the collection of any debt and unfair or unconscionable means to collect or attempt to collect any debt. The Bulletin also reminds consumer reporting agencies and information furnishers to comply with the Fair Credit Reporting Act's accuracy and dispute resolution requirements, including when collecting, furnishing information about, and reporting medical debts covered by the No Surprises Act. The Bulletin is applicable **01/20/2022**. The Bulletin may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-20/pdf/2022-01012.pdf>. *Federal Register*, Vol. 87, No. 13, 01/20/2022, 3025-3026.

## **CFPB Seeks Comment on Buy-Now-Pay-Later Providers.**

CFPB seeks comment on buy-now-pay-later (BNPL) providers. On **12/16/2021**, CFPB opened market monitoring orders, inquiring into BNPL products in the United States to gain information about the size, scope, and business practices of the BNPL market. The information will help CFPB better understand how consumers interact with BNPL providers, and how BNPL business models impact the broader e-commerce and consumer credit marketplaces. Comments are due **03/25/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-24/pdf/2022-01278.pdf>. *Federal Register*, Vol. 87, No. 15, 01/24/2022, 3511-3512.

## **CFPB Seeks Comment on Fees Imposed by Providers of Consumer Financial Products and Services.**

CFPB seeks comment related to fees that are not subject to competitive processes that ensure fair pricing. The submissions will serve to assist CFPB and policymakers in exercising its enforcement, supervision, regulatory, and other authorities to create fairer, more transparent, and competitive consumer financial markets. Comments are due **03/31/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02071.pdf>. *Federal Register*, Vol. 87, No. 22, 02/02/2022, 5801-5803.

## **CFPB Seeks Comment on Extension of MLO Information Collection.**

CFPB seeks comment on existing information collection titled, Registration of Mortgage Loan Originators (MLOs), Regulation G. Regulation G implements the Secure and Fair Enforcement for Mortgage Licensing Act which contains the federal registration requirement with respect to any covered financial institutions and their employees who act as residential MLOs. Regulation G requires covered institutions to register with the Nationwide Mortgage Licensing System and Registry, to obtain a unique identifier, to maintain the registration, and to disclose to consumers the unique identifier. Regulation G also requires the covered financial institutions employing the MLOs to adopt and to follow written policies and procedures ensuring their employees comply with the requirements and disclose the unique identifiers of their MLOs. Comments are due **04/11/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-08/pdf/2022-02526.pdf>. *Federal Register*, Vol. 87, No. 26, 02/08/2022, 7162.

## **FRB Issues Final Rule on Reserve Bank Capital Stock.**

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to amend Regulation I to automate non-merger-related adjustments to member banks' subscriptions to Federal Reserve Bank (Reserve Bank) capital stock. The final rule also makes certain technical amendments to Regulation I and conforming revisions to the FR 2056 reporting form. The final rule is effective **02/14/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-13/pdf/2022-00503.pdf>. *Federal Register*, Vol. 87, No. 9, 01/13/2022, 2027-2031.

## **FRB Seeks Comment on Framework for the Supervision of Insurance Organizations.**

FRB seeks comment on a new supervisory framework for depository institution holding companies significantly engaged in insurance activities, or supervised insurance organizations. The proposed framework would provide a supervisory approach that is designed specifically to reflect the differences between banking and insurance. Within the framework, the application of supervisory guidance and the assignment of supervisory resources would be based explicitly on a supervised insurance organization's complexity and individual risk profile. The proposed framework would formalize the ratings applicable to firms with rating definitions that reflect specific supervisory requirements and expectations. It would also emphasize FRB's policy to rely to the fullest extent possible on



# Regulatory Spotlight

work done by other relevant supervisors, describing, in particular, the way it will rely more fully on reports and other supervisory information provided by state insurance regulators to minimize the burden associated with supervisory duplication. Comments are due **04/05/2022**. The proposed guidance may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-04/pdf/2022-02383.pdf>. *Federal Register*, Vol. 87, No. 24, 02/04/2022, 6537-6549.

## FDIC Issues Final Rule to Simplify Deposit Insurance Rules and Notification of Recordkeeping Requirements under the Revised Rule.

- The Federal Deposit Insurance Corporation (FDIC) issued a final rule to amend its regulations governing deposit insurance coverage. The amendments simplify the deposit insurance regulations by establishing a “trust accounts” category that governs coverage of deposits of both revocable trusts and irrevocable trusts using a common calculation, and provide consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender. The final rule is effective on **04/01/2024**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01607.pdf>. *Federal Register*, Vol. 87, No. 19, 01/28/2022, 4455-4471.
- FDIC also issued a notification to insured depository institutions covered by its Recordkeeping for Timely Deposit Insurance Determination rule that it has amended its deposit insurance coverage rules for certain trust accounts and mortgage servicing accounts as is highlighted in the previous paragraph. Such amendments will take effect **04/01/2024**. FDIC has published the notification to specify for covered institutions that they must prepare updates or changes to their deposit insurance calculation capabilities as a result of the amendments, and such changes must be implemented and operational on **04/01/2024**, the effective date of the amendments. The notification is effective **01/28/2022**. The notification may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01608.pdf>. *Federal Register*, Vol. 87, No. 19, 01/28/2022, 4471.

## 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-2022-02-08/pdf/2022-02564.pdf>. *Federal Register*, Vol. 87, No. 26, 02/08/2022, 7176.

## FDIC Seeks Comment on Renewal of Several Information Collections.

- FDIC seeks comment on the renewal of three information collections. There are no changes to methodology or substance of the information collections, but there are changes in anticipated burden estimates. The three information collections, which are further outlined in the notice, are titled: (a) Notice Regarding Unauthorized Access to Customer Information; (b) Furnisher Information Accuracy and Integrity (FACTA 312); and (c) Registration of Mortgage Loan Originators. Comments are due **03/14/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-13/pdf/2022-00574.pdf>. *Federal Register*, Vol. 87, No. 9, 01/13/2022, 2155-2157.
- FDIC seeks comment on the renewal of two information collections. There are no changes to methodology or substance of the information collections, but there are changes in anticipated burden estimates for the first named collection. The two information collections, which are further outlined in the notice, are titled: (a) Procedures for Monitoring Bank Protection Act Compliance, and (b) Mutual-to-Stock Conversion of State Savings Banks. Comments are due **03/28/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-01313.pdf>. *Federal Register*, Vol. 87, No. 16, 01/25/2022, 3806-3807.
- FDIC seeks comment on renewal of an information collection titled, Post-Examination Surveys, Forms: 6600/58 (Post Examination Survey Safety and Soundness Exams); 6600/59 (Post Examination Survey Compliance and CRA Exams). The purpose of the surveys is to gauge bankers’ views on the effectiveness and quality of FDIC safety and soundness and consumer compliance examinations, as well as to identify ways to improve the examination process. Respondents are asked to voluntarily rate the efficiency of the pre-examination process; examiners’ professionalism and understanding of the laws and regulations;



# Regulatory Spotlight

the examination process; and examination report quality. Respondents are also allowed to provide feedback on any areas for improvement and will be given an option to have someone from the FDIC Office of the Ombudsman contact the institution confidentially about its recent examination or any other matters. Comments are due **03/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-20/pdf/2022-00983.pdf>. *Federal Register*, Vol. 87, No. 13, 01/20/2022, 3108-3109.

## OCC Seeks Comment on Renewal of Several Information Collections.

- The Office of the Comptroller of the Currency (OCC) seeks comment on the renewal of an information collection titled, Leasing. Under 12 CFR 23.4(c), national banks must liquidate or re-lease property that is no longer subject to lease (off-lease property) as soon as practicable and not later than five years from the date the national bank acquires the legal right to possess or control the property. If a national bank wishes to extend the five-year holding period for up to an additional five years, it must obtain OCC approval. Twelve CFR 23.4(c) requires a national bank seeking an extension to provide a clearly convincing demonstration as to why any additional holding period is necessary. In addition, a national bank must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property. Under 12 CFR 23.6, leases are subject to the lending limits prescribed by 12 U.S.C. 84, as implemented by 12 CFR part 32, or, if the lessee is an affiliate of the national bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1 and Regulation W, 12 CFR part 223. OCC may also determine that other limits or restrictions apply. Comments are due **03/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-18/pdf/2022-00838.pdf>. *Federal Register*, Vol. 87, No. 11, 01/18/2022, 2665-2666.
- OCC seeks comment on the renewal of an information collection titled, Libor Self-Assessment. The cessation of the London InterBank Offered Rate (Libor) prompted OCC to create a self-assessment tool for banks to use in preparing for the Libor cessation. The self-assessment tool was created to assess the appropriateness of a bank's Libor transition plan, the execution of the plan by its management, and related matters. Comments are due **02/17/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-18/pdf/2022-00843.pdf>. *Federal Register*, Vol. 87, No. 11, 01/18/2022, 2666-2667.
- OCC seeks comment on the renewal of an information collection titled, Climate Risk Range of Practice Questionnaire. OCC is collecting the information through the range of practice to understand the financial risks and ensure the establishment of sound risk management frameworks to measure, monitor, and control risks presented by climate change. Comments are due **03/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-18/pdf/2022-00843.pdf>. *Federal Register*, Vol. 87, No. 11, 01/18/2022, 2667-2669.
- OCC seeks comment on an information collection titled, Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks. On **12/16/2009**, the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), OCC, and National Credit Union Administration (NCUA) sought comment on proposed guidance which was subsequently issued in final form on **08/17/2010**, regarding reverse mortgage products. The guidance focuses on the need to provide adequate information to consumers about reverse mortgage products, to provide qualified independent counseling to consumers considering these products, and to avoid potential conflicts of interest. The guidance also addresses related policies, procedures, internal controls, and third party risk management. Comments are due **03/29/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01700.pdf>. *Federal Register*, Vol. 87, No. 19, 01/28/2022, 4711-4712.
- OCC seeks comment on the final version of revisions to a regulatory reporting requirement for national banks and federal savings associations 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. Revisions were made to the collection due to changes made by the Board of Governors of the Federal Reserve System (FRB) to reporting form FR Y-14A. With the revisions, OCC plans to mirror the reporting requirements of FRB as further discussed in the notice. Comments are due **03/04/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02268.pdf>. *Federal Register*, Vol. 87, No. 22, 02/02/2022, 5942-5943.
- OCC seeks comment on the renewal of an information collection titled, Interagency Statement on Complex Structured Finance Transactions. The statement describes the types of internal controls and risk management procedures that the agencies (OCC, Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and the Securities and Exchange Commission (SEC)) consider particularly effective in helping financial institutions identify and address the reputational,



# Regulatory Spotlight

legal, and other risks associated with complex structured finance transactions. The internal controls and risk management procedures form the basis of the information collection. Comments are due **04/04/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02115.pdf>. *Federal Register*, Vol. 87, No. 22, 02/02/2022, 5941-5942.

- OCC seeks comment on renewal of an information collection titled, OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches. OCC believes that a large, complex institution should undertake recovery planning in order to be able to respond quickly to and recover from the financial effects of severe stress on the institution. The process of developing and maintaining a recovery plan also should cause a covered bank's management and its board to enhance their focus on risk governance with a view toward lessening the negative impact of future events. OCC examiners will assess the appropriateness and adequacy of the covered bank's ongoing recovery planning process as part of the agency's regular supervisory activities. Comments are due **03/07/2022**. The notice may be viewed at <https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02301.pdf>. *Federal Register*, Vol. 87, No. 23, 02/03/2022, 6238-6239.

## HUD Seeks Comment on HMDA LAR Information Collection.

The Department of Housing and Urban Development (HUD) seeks comment on an information collection titled, Home Mortgage Disclosure Act (HMDA) Loan/Application Register (LAR). The HMDA LAR collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year and send the information to HUD by March 1 of the following calendar year. Comments are due **04/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-07/pdf/2022-02439.pdf>. *Federal Register*, Vol. 87, No. 25, 02/07/2022, 6889-6890.

## FEMA Issues Final Flood Hazard Determinations.

The Federal Emergency Management Agency (FEMA) issued a final notice which identifies communities in the state of **Illinois**, 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 report 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 **05/17/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-01623.pdf>. *Federal Register*, Vol. 87, No. 18, 01/27/2022, 4271-4272.

## FEMA Issues Notices of Changes in Flood Hazard Determinations.

FEMA issued a notice which lists communities in the states of **Illinois** 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 become effective 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-2022-01-27/pdf/2022-01620.pdf>. *Federal Register*, Vol. 87, No. 18, 01/27/2022, 4266-4268.

## 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



# Regulatory Spotlight

in the state of **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 **04/27/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-01621.pdf>. *Federal Register*, Vol. 87, No. 18, 01/27/2022, 4272-4274.

## **FinCEN Issues Proposed Rule on Pilot Program on Sharing SARs With Foreign Branches, Subsidiaries, and Affiliates.**

The Financial Crimes Enforcement Network (FinCEN) seeks comment on the proposed establishment of a limited-duration pilot program, subject to conditions set by FinCEN, to permit a financial institution with a suspicious activity report (SAR) reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risk, in accordance with Section 6212(a) of the Anti-Money Laundering Act. Comments are due **03/28/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-01331.pdf>. *Federal Register*, Vol. 87, No. 16, 01/25/2022, 3719-3729.

## **FinCEN Extends Comment Period on AML Regulations for Real Estate Transactions.**

FinCEN announced an extension of the comment period for a proposal involving anti-money laundering (AML) regulations for real estate transactions. On **12/08/2021**, FinCEN issued an advance notice of proposed rulemaking (ANPR) on potential requirements under the Bank Secrecy Act for certain persons involved in real estate transactions to collect, report, and retain information. FinCEN has extended the comment period of the ANPR. Comments are now due **02/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-08/pdf/2022-02593.pdf>. *Federal Register*, Vol. 87, No. 26, 02/08/2022, 7068-7069.

## **FinCEN Seeks Comment on Renewal of Prohibition on Correspondent Accounts for Foreign Shell Banks and Certain Related Records.**

FinCEN seeks comment on the proposed renewal, without change, of an information collection found in existing Bank Secrecy Act regulations. Specifically, the regulations prohibit covered financial institutions from maintaining correspondent accounts for or on behalf of a foreign shell bank. The regulations require that a covered financial institution take reasonable steps to ensure that any correspondent account that it maintains in the United States for a foreign bank is not used by the foreign bank to indirectly provide banking services to a foreign shell bank. The regulations also mandate that a covered financial institution maintaining correspondent accounts in the United States for foreign banks retain records in the United States identifying: the owners of each such foreign bank whose shares are not publicly traded, unless the foreign bank files a Form FR–Y with the Board of Governors of the Federal Reserve System (FRB) identifying the current owners of the foreign bank; and the name and address of a person who resides in the United States who is authorized to serve as each such foreign bank's agent for service of legal process for records regarding each such correspondent account. Although no changes are proposed to the information collection, the request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with the regulations. Comments are due **04/11/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-10/pdf/2022-02885.pdf>. *Federal Register*, Vol. 87, No. 28, 02/10/2022, 7919-7926.

## **Treasury Issues Coronavirus State and Local Fiscal Recovery Funds Final Rule.**

The Department of the Treasury (Treasury) adopted as final the interim final rule published in the *Federal Register* on **05/17/2021**, with amendments. The final rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act. The final rule is effective **04/01/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>. *Federal Register*, Vol. 87, No. 18, 01/27/2022, 4338-4454.

## **Treasury Seeks Comment on Extension of Information Collection Regarding Small Business Lending Fund Supplemental Quarterly Report.**

Treasury seeks comment on the renewal of an information collection titled, Small Business Lending Fund Quarterly Supplemental Report. Banks participating in the Small Business Lending Fund program are required to submit a Supplemental Report each quarter.



# Regulatory Spotlight

The Supplemental Report is used to determine the bank's small business lending baseline and allows Treasury to assess the change in the baseline from the previous quarter. Comments are due **03/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00890.pdf>. *Federal Register*, Vol. 87, No. 12, 01/19/2022, 2983-2984.

## **IRS Issues Final Rule as Guidance Under Section 958 on Determining Stock Ownership.**

The Internal Revenue Service (IRS) issued a final rule regarding the treatment of domestic partnerships for purposes of determining amounts included in the gross income of their partners with respect to foreign corporations. The final rule affects United States persons that own stock of foreign corporations through domestic partnerships and domestic partnerships that are United States shareholders of foreign corporations. The final rule is effective **01/25/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-00066.pdf>. *Federal Register*, Vol. 87, No. 16, 01/25/2022, 3648-3656.

## **IRS Issues Proposed Rule on the Treatment of Domestic Partnerships and S Corporations.**

IRS issued a proposed rule regarding the treatment of domestic partnerships and S corporations that own stock of passive foreign investment companies and their domestic partners and shareholders. The proposed rule also provides guidance regarding the determination of the controlling domestic shareholders of foreign corporations, the owner of a controlled foreign corporation or qualified electing fund that makes an election under section 1411, the treatment of S corporations with accumulated earnings and profits under subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code, and the determination and inclusion of related person insurance income under section 953(c). The proposed rule affects United States persons that own, directly or indirectly, stock in certain foreign corporations. Comments are due **04/25/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-00067.pdf>. *Federal Register*, Vol. 87, No. 16, 01/25/2022, 3890-3919.

## **SBA Issues Second Quarter Military Reservist Economic Injury Disaster Loans Interest Rate.**

The Small Business Administration (SBA) issued the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after **01/28/2022**. SBA issues the rate on a quarterly basis. The interest rate will be **2.940** for loans approved on or after **01/28/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02190.pdf>. *Federal Register*, Vol. 87, No. 23, 02/03/2022, 6224.

## **FCIC Extends Comment Period for Revisions to Apple Crop Insurance Provisions.**

The Federal Crop Insurance Regulations (FCIC) extended the comment period for an additional 60 days to allow more time to provide comments on the proposed rule to amend the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The additional comment period will end **04/15/2022**. The comment date for the proposed rule published in the *Federal Register* on **12/16/2021**, at 86 FR 71396 is extended. Comments are due **04/15/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-01566.pdf>. *Federal Register*, Vol. 87, No. 18, 01/27/2022, 4168.

## **Agencies Issue Correction to OneRD Guaranteed Loan Regulation.**

The Rural Business-Cooperative Service (RBC), Rural Housing Service (RHS), and Rural Utilities Services (RUS) (collectively, the agencies) issued a final rule to correct the OneRD Guaranteed Loan Regulation published in the *Federal Register* on **12/10/2021**. The final rule made necessary revisions to the policy and procedures that strengthened the oversight and management of the growing Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America guarantee portfolios. The final rule had an omission of information in the preamble and contained errors in the amendatory language. The final rule corrects the final regulation. The final rule is effective **02/09/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-09/pdf/2022-02710.pdf>. *Federal Register*, Vol. 87, No. 27, 02/09/2022, 7367-7368.

## **RBC Issues NOSA for Rural Business Development Grant Program.**

The Rural Business-Cooperative Service (RBC) issued a notice of solicitation of applications (NOSA) for grants to provide Technical Assistance for passenger Rural Transportation (RT) systems under the Rural Business Development Grant program and the terms for such funding. Grant funds will provide Technical Assistance for RT systems including designated funds to provide Technical



# Regulatory Spotlight

Assistance to RT systems operating within tribal lands of federally-recognized Native American Tribes. See the NOSA for application details. Applications are due **04/14/2022**. The NOSA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-14/pdf/2022-00653.pdf>. *Federal Register*, Vol. 87, No. 10, 01/14/2022, 2406-2411.

## **RBC Issues NOFO for Rural Energy Pilot Grant Program.**

RBC issued a notice of funding opportunity (NOFO) to announce the availability of up to \$10 million in competitive grants awarded to Rural Energy Community Partnerships. Cost-share grants of up to 80 percent of total eligible project costs but not more than \$2 million will be made available to assist eligible entities with planning, installing, equipping, and maintaining community scale distributed renewable energy technologies, systems and resources. See the NOFO for application details. The NOFO may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00943.pdf>. *Federal Register*, Vol. 87, No. 12, 01/19/2022, 2747-2759.

## **RBC Issues NOFO for Biofuel Producer Program.**

RBC issued a notice of funding opportunity (NOFO) in the *Federal Register* on **12/13/2021** titled, Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021, to announce the application window, application requirements and the availability of up to \$700 million in payments to eligible biofuel producers for unexpected market losses as a result of COVID-19 in order to maintain a viable and significant biofuels market for agricultural producers that supply biofuel producers. RBC issued this notice to amend Sections A, D and E of the NOFO to include production to meet marketing obligations or fulfill or maintain essential markets in the calculations of a biofuel producer's market losses as a result of COVID-19. Applications are due **02/11/2022**. The NOFO may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01797.pdf>. *Federal Register*, Vol. 87, No. 19, 01/28/2022, 4554.

## **RHS Issues Final Rule on Direct Single Family Housing Loans and Grants Programs.**

The Rural Housing Service (RHS) issued a final rule to amend its Direct Single Family Housing Loans and Grants programs regulation. The final rule adopts most changes as presented in the proposed rule. The final rule also addresses comments received and makes some modifications based on consideration of the comments, including revisions to the refinancing provisions which will help provide relief to homeowners who have difficulty keeping their accounts current (e.g., coming off a payment moratorium), based on the availability of funds and RHS priorities. The final rule is effective **03/09/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-07/pdf/2022-02470.pdf>. *Federal Register*, Vol. 87, No. 25, 02/07/2022, 6761-6773.

## **RHS Issues Final Rule on Single Family Housing Guaranteed Loan Program.**

RHS issued a final rule to implement changes to the Single Family Housing Guaranteed Loan Program to mandate the use of the Guaranteed Underwriting System (GUS) and the Lender Loan Closing System (LLC) by approved lenders. RHS' mandated use of GUS in loan originations and the LLC for loan closings will allow RHS to decrease time-consuming and expensive manual file reviews, improve performance monitoring, and reduce program risk of the guaranteed loan portfolio. The final rule is effective **05/09/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-07/pdf/2022-02467.pdf>. *Federal Register*, Vol. 87, No. 25, 02/07/2022, 6773-6777.

## **RHS Issues NOFA for Off-Farm Labor Housing Technical Assistance Grants.**

RHS issued a notice of funding availability (NOFA) to announce the availability of \$1 million in grant funding, and the timeframe to submit applications for Off-Farm Labor Housing Technical Assistance grants. Applications are due **03/21/2022**. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-20/pdf/2022-01076.pdf>. *Federal Register*, Vol. 87, No. 13, 01/20/2022, 3071-3079.

## **RHS Issues NOSA for Rural Community Development Initiative for FY 2022.**

RHS issued a notice of solicitation of applications (NOSA) to announce the acceptance of applications under the Rural Community Development Initiative program for fiscal year (FY) 2022. The grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing,



# Regulatory Spotlight

community facilities, or community and economic development that will support the community. See the NOSA for application details. The NOSA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-08/pdf/2022-02624.pdf>. *Federal Register*, Vol. 87, No. 26, 02/08/2022, 7084-7094.

## **SEC Reopens Comment Period for Pay Versus Performance Proposed Rule.**

The Securities and Exchange Commission (SEC) has reopened the comment period for its proposal to implement Section 953(a) of the Dodd-Frank Act. The proposed rule would amend the current executive compensation disclosure rule to require a description of how executive compensation actually paid by a registrant related to the financial performance of that company. The proposed rule was first set forth in the *Federal Register* on **05/07/2015**. The reopening of the comment period is intended to allow interested persons further opportunity to analyze and comment upon the proposed rules in light of developments since the publication of the proposing rule and further SEC consideration of the Section 953(a) mandate. Comments are due **03/04/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02024.pdf>. *Federal Register*, Vol. 87, No. 22, 02/02/2022, 5751-5759.

## **SEC Reopens Comment Period for Proposed Rule Meant to Prevent Fraud in Security-Based Swap Transactions.**

SEC has repropose the comment period for a proposed rule under the Securities Exchange Act, which would be a new rule designed to prevent fraud, manipulation, and deception in connection with effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security-based swap. The proposed rule is designed specifically to take into account the unique features of a security-based swap and would explicitly reach misconduct in connection with the ongoing payments and deliveries that typically occur throughout the life of a security-based swap. SEC has also proposed a new rule, which would make it unlawful for any officer, director, supervised person, or employee of a security-based swap dealer or major security-based swap participant, or any person acting under such person's direction, to directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the security-based swap dealer's or major security-based swap participant's chief compliance officer in the performance of their duties under the federal securities laws or the rules and regulations thereunder. Finally, SEC seeks comment on a new rule, which would require any person with a security-based swap position that exceeds a certain threshold to promptly file with SEC a schedule disclosing certain information related to its security-based swap position. Comments are due **03/21/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-04/pdf/2021-27531.pdf>. *Federal Register*, Vol. 87, No. 24, 02/04/2022, 6652-6706.

## **SEC Issues Proposed Rule on Money Market Reforms.**

SEC proposes amendments to certain rules that govern money market funds under the Investment Company Act. The proposed amendments are designed to improve the resilience and transparency of money market funds. The proposal would remove the liquidity fee and redemption gate provisions in the existing rule, which would eliminate an incentive for preemptive redemptions from certain money market funds and could encourage funds to more effectively use their existing liquidity buffers in times of stress. The proposal would also require institutional prime and institutional tax-exempt money market funds to implement swing pricing policies and procedures to require redeeming investors to bear the liquidity costs of their decisions to redeem. SEC also proposed to increase the daily liquid asset and weekly liquid asset minimum liquidity requirements, to 25 percent and 50 percent respectively, to provide a more substantial buffer in the event of rapid redemptions. The proposal would amend certain reporting requirements on Forms N-MFP and N-CR to improve the availability of information about money market funds, as well as make certain conforming changes to Form N-1A to reflect SEC proposed changes to the regulatory framework for the funds. In addition, SEC proposed amendments to address how money market funds with stable net asset values should handle a negative interest rate environment. Finally, SEC proposed amendments to specify how funds must calculate weighted average maturity and weighted average life. Comments are due **04/11/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-08/pdf/2021-27532.pdf>. *Federal Register*, Vol. 87, No. 26, 02/08/2022, 7248-7356.

## **NCUA Issues Proposed Rule and Information Collection on Succession Planning.**

- The National Credit Union Administration (NCUA), through a proposed rule, would require that Federal Credit Union (FCU) boards of directors establish and adhere to processes for succession planning. The succession plans would help to ensure that the credit union has plans to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee to provide



# Regulatory Spotlight

continuity of operations. In addition, the proposed rule would require directors to be knowledgeable about the FCU's succession plan. Comments are due **04/04/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02038.pdf>. *Federal Register*, Vol. 87, No. 23, 02/03/2022, 6078-6082.

- NCUA seeks comment on a new information collection titled, Succession Planning. As highlighted in the paragraph directly above, NCUA proposed that Federal Credit Union (FCU) boards of directors establish and adhere to processes for succession planning. The succession plans will help to ensure that the credit union has plans to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee to provide continuity of operations. In addition, the proposed rule would require directors to be knowledgeable about the FCU's succession plan. Comments are due **04/11/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-09/pdf/2022-02672.pdf>. *Federal Register*, Vol. 87, No. 27, 02/09/2022, 7502-7503.

## OSHA Withdraws COVID-19 Vaccination and Testing Emergency Temporary Standard.

The Occupational Safety and Health Administration (OSHA) issued an interim final rule to withdraw the **11/05/2021**, emergency temporary standard (ETS) which was issued to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID-19 by strongly encouraging vaccination. The withdrawal does not affect the ETS' status as a proposal or otherwise affect the status of the notice and comment rulemaking commenced by the Vaccination and Testing ETS. The withdrawal is effective **01/26/2022**. The withdrawal may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-26/pdf/2022-01532.pdf>. *Federal Register*, Vol. 87, No. 17, 01/26/2022, 3928-3929.

## VA Finalizes Threshold for Reporting VA Debts to Consumer Reporting Agencies.

The Department of Veterans Affairs (VA) issued a final rule to amend its regulations around the conditions by which VA benefits debts or medical debts are reported to consumer reporting agencies (CRAs). The final rule establishes the methodology for determining a minimum threshold for debts reported to CRAs. The final rule also excludes from the minimum threshold debts which there is an indication of fraud, misrepresentation, or bad faith on the part of the debtor. The final rule is effective **03/04/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-01496.pdf>. *Federal Register*, Vol. 87, No. 22, 02/02/2022, 5693-5696. ■

# Compliance Notes

▲ CFPB released its final lists for use in 2022 of those counties considered “rural or underserved counties” and “rural counties” for purposes of CFPB’s rules. The lists are posted on CFPB’s website each year for certain uses under Regulation Z, which implements the Truth in Lending Act. The lists may be viewed at: [www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/rural-and-underserved-counties-list/](http://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/rural-and-underserved-counties-list/)

▲ FDIC, FinCEN, CFPB, CFTC, FTC, DHS, and US Postal Inspection Service (collectively, the agencies) issued a new awareness campaign, Dating or Defrauding? The campaign is meant to alert the public to romance scams that target victims largely through dating apps or social media. According to FTC, 2020 was a record year for romance scams. Consumer reports to FTC indicate that the number of romance scam complaints continued to increase through 2021. A year-over-year comparison through the third quarter showed a 48 percent increase in reported romance frauds. The agencies’ initiative is intended to show how to recognize the scams before consumers give any money or assets and provides steps to take if a consumer is victimized. Over the coming weeks, the interagency awareness campaign will reach the public via social media, local and national media outreach, and public-private partnerships to encourage consumers to be vigilant when making online love connections. The joint release may be viewed at: [www.fincen.gov/news/news-releases/joint-release-federal-agencies-launch-joint-effort-alert-online-daters-and](http://www.fincen.gov/news/news-releases/joint-release-federal-agencies-launch-joint-effort-alert-online-daters-and)

▲ FHFA announced targeted increases to Fannie Mae and Freddie Mac’s upfront fees for certain high balance loans and second home loans. High balance loans are mortgages originated in certain designated areas above the baseline conforming loan limit. Upfront fees for high balance loans will increase between 0.25 percent and 0.75 percent, tiered by loan-to-value ratio. Fannie Mae and Freddie Mac refer to these mortgages as high balance loans and super conforming loans, respectively. For second home loans, upfront fees will increase between 1.125 percent and 3.875 percent, tiered by loan-to-value ratio. The new fees will go into effect for deliveries



# Compliance Notes

and acquisitions beginning **04/01/2022**. The announcement may be viewed at: [www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-Announcements-Targeted-Increases-to-Enterprise-Pricing-Framework.aspx](http://www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-Announcements-Targeted-Increases-to-Enterprise-Pricing-Framework.aspx)

▲ FRB released the anticipated pricing approach for its FedNow Service for instant payments. The 2023 FedNow Service fee schedule to be published later in 2022 is currently expected to include the following fees and other pricing information: (1) a \$25 monthly FedNow Service participation fee for each routing transit number (RTN) that enrolls in the service to receive credit transfers; (2) a fee of \$0.045 per credit transfer to be paid by its sender, including returns; and (3) a fee of \$0.01 for a request for payment (RFP) message to be paid by the requestor, including both requests for a new payment or funds to be returned. A participating financial institution can send an RFP through the FedNow Service to another participating financial institution to request payment of a bill, invoice or other amount owed by the receiving financial institution's customer. FRB also reported that the planned FedNow Service's credit transfer transaction value limit will be \$500,000. However, participants will have a default limit of \$100,000, with the option to adjust it up or down. FRB will evaluate the credit transfer limit on an ongoing basis and adjust as appropriate. The announcement may be viewed at: [www.frb.org/news/press-releases/012722-fednow-pricing-announcement](http://www.frb.org/news/press-releases/012722-fednow-pricing-announcement)

▲ FDIC's Acting Chairman Gruenberg announced FDIC's priorities for 2022. Key priorities include strengthening CRA, address financial risks posed by climate change, review the bank merger process, evaluate crypto-asset risks, and finalize the Basel III capital rule. The statement may be viewed at: [www.fdic.gov/news/press-releases/2022/pr22015.html](http://www.fdic.gov/news/press-releases/2022/pr22015.html)

▲ OCC announced its schedule of free, virtual workshops for boards of directors of national community banks and federal savings associations for the first half of 2022. The OCC examiner-led workshops provide practical training and guidance to directors of national community banks and federal savings associations in a virtual learning environment. The workshops are Building Blocks: Keys to Success for Directors, Credit Risk: Directors Can Make a Difference, Operational Risk: Navigating Rapid Changes, Compliance Risk: What Directors Need to Know, and Risk Governance: Improving Director Effectiveness. The announcement may be viewed at: <https://occ.gov/news-issuances/news-releases/2022/nr-occ-2022-11.html>

▲ FRB announced preliminary financial information indicating that the Reserve Banks had estimated net income of \$107.8 billion during 2021, of which \$107.4 billion was remitted to the U.S. Treasury as required under the Federal Reserve Act. The Federal Reserve Act requires the Reserve Banks to remit excess earnings to the U.S. Treasury after providing for operating expenses, payment of dividends, and the amount necessary to maintain surplus. The release may be viewed at: [www.federalreserve.gov/newsevents/pressreleases/other20220114a.htm](http://www.federalreserve.gov/newsevents/pressreleases/other20220114a.htm)

▲ In response to FTC charges, Dun & Bradstreet (D&B) has agreed to an order requiring substantial changes in the firm's operations that will benefit small- and mid-sized businesses. Under the proposed order, D&B will also provide refunds to certain businesses that purchased the company's products in the belief that using the products would improve their business credit scores and ratings. According to FTC's complaint, D&B engaged in deceptive and unfair practices as it related to services promised but not delivered via its CreditBuilder product. The release may be viewed at: [www.ftc.gov/news-events/press-releases/2022/01/response-ftc-charges-dun-bradstreet-clean-small-business-credit](http://www.ftc.gov/news-events/press-releases/2022/01/response-ftc-charges-dun-bradstreet-clean-small-business-credit)

▲ FRB released a discussion paper titled, Money and Payments: The U.S. Dollar in the Age of Digital Transformation, which examines the pros and cons of a potential U.S. central bank digital currency (CBDC). FRB seeks comment regarding the topic and is the first step in a discussion of whether and how a CBDC could improve the safe and effective domestic payments system. The paper does not favor any policy outcome, rather the paper summarizes the current state of the domestic payments system and discusses the different types of digital payment methods and assets that have emerged in recent years, including stablecoins and other cryptocurrencies. The paper concludes by examining the potential benefits and risks of a CBDC and identifies specific policy considerations. The discussion paper may be viewed at: [www.federalreserve.gov/newsevents/pressreleases/other20220120a.htm](http://www.federalreserve.gov/newsevents/pressreleases/other20220120a.htm)

▲ SBA issued procedural notice 5000-827666 which outlines a new process to allow PPP borrowers to request an SBA loan review of partial approval forgiveness decisions issued by their PPP lenders. The procedures in the notice apply to loan forgiveness decisions submitted by lenders to SBA through both the regular forgiveness process as well as the Direct Borrower Forgiveness process. The procedural notice may be viewed at: [www.sba.gov/sites/default/files/2022-02/SBA%20Loan%20Reviews%20of%20PPP%20Lender%20Partial%20Approval%20Forgiveness%20Decisions%20Procedural%20Notice%205000-827666-508.pdf](http://www.sba.gov/sites/default/files/2022-02/SBA%20Loan%20Reviews%20of%20PPP%20Lender%20Partial%20Approval%20Forgiveness%20Decisions%20Procedural%20Notice%205000-827666-508.pdf)

▲ FTC issued an advisory opinion to address its Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. §433.2, commonly known as the Holder Rule, and its impact on consumers' ability to recover costs and attorneys' fees. The issue has arisen repeatedly in court cases, with some courts correctly concluding that the Holder Rule does not limit recovery



# Compliance Notes

of attorneys' fees and costs when state law authorizes awards against a holder, and others misinterpreting the Holder Rule as a limitation on the application of state cost-shifting laws to holders. The advisory opinion is meant to set forth FTC's position regarding the matter. The advisory opinion may be viewed at: [www.ftc.gov/system/files/documents/advisory\\_opinions/commission-statement-holder-rule-attorneys-fees-costs/p124802\\_commission\\_statement\\_on\\_the\\_holder\\_rule\\_and\\_attorneys\\_fees\\_and\\_costs.pdf](http://www.ftc.gov/system/files/documents/advisory_opinions/commission-statement-holder-rule-attorneys-fees-costs/p124802_commission_statement_on_the_holder_rule_and_attorneys_fees_and_costs.pdf)

▲ FDIC, OCC, and FRB announced the 2022 National Interagency Community Reinvestment Conference will be held March 15th through 17th. The biennial conference offers participants the opportunity to learn about CRA, participate in regulator-led training on CRA examinations, and discuss best practices, emerging ideas, and challenges in community development. The program, "Reimagine, Reinvest, Rebuild," will be held online. For the full agenda and to register, visit the conference website at: <https://web.cvent.com/event/f3a7f84b-9727-42d6-a69c-ba4a85b06a3d/summary?RefId=fdic-web>

▲ WDFI released their annual list of top investor threats and urged caution before purchasing popular and volatile unregulated investments, especially those involving cryptocurrency and digital assets. WDFI also announced guidance for investors, including steps they can take to protect themselves from fraud in the new year. The top investor threats for 2022 were determined by a survey of state securities regulators conducted by the North American Securities Administrators Association (NASAA), of which WDFI is a member. The annual survey is designed to identify the most problematic products, practices, or schemes facing investors. The following were cited most often by state and provincial securities regulators investments tied to cryptocurrencies and digital assets, fraudulent offerings related to promissory notes, solicitations of money through social media and internet investment offers, and financial schemes connected to self-directed individual retirement accounts. The release may be viewed at: [www.wdfi.org/newsroom/press/2022/20220126\\_NewsRelease\\_TopInvestorThreatsFor2022\\_vFINAL.pdf](http://www.wdfi.org/newsroom/press/2022/20220126_NewsRelease_TopInvestorThreatsFor2022_vFINAL.pdf)

▲ FRB released its latest edition of the *Beige Book*, with observations collected on or before January 3 on the economy in each of the Federal Reserve Districts. The book may be viewed at: [www.federalreserve.gov/monetarypolicy/beigebook202201.htm](http://www.federalreserve.gov/monetarypolicy/beigebook202201.htm)

▲ CFPB announced it will begin examining the operations of post-secondary schools, such as for-profit colleges, that extend private loans directly to students. CFPB issued an update to its exam procedures including a new section on institutional student loans meant to inform industry about practices that CFPB examiners will review, including placing enrollment restrictions, withholding transcripts, improperly accelerating payments, failing to issue refunds, and maintaining improper lending relationships. The release may be viewed at: [www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/](http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/)

▲ FRB's FedPayments Improvement area released a new toolkit, Synthetic Identity Fraud Mitigation Toolkit. Synthetic identity is a problem facing the payments industry and other types of businesses. The fraud mitigation toolkit offers a wide variety of information resources for banks, consumers, and businesses. New resources will be added over time, including in the areas of synthetic identity fraud detection and mitigation. The toolkit may be viewed at: <https://fedpaymentsimprovement.org/synthetic-identity-fraud-mitigation-toolkit/>

▲ OCC released Bulletin 2022-2 to address OCC's processes for considering input from state banking commissioners regarding national banks' performance under state community reinvestment laws, including implementation of community reinvestment-related provisions of the Riegle-Neal Act, noting that the Act does not apply to federal savings associations. The bulletin also addresses expectations regarding the handling of consumer complaints that state officials refer to national banks and federal savings associations and state referrals of complaints to OCC. The bulletin may be viewed at: <https://occ.gov/news-issuances/bulletins/2022/bulletin-2022-2.html>

▲ IRS issued several tax filing related resources to help taxpayers prepare their tax returns, including an updated 2021 Child Tax Credit and Advance Child Tax Credit FAQs. The updates are to help eligible families properly claim the credit when they prepare and file their 2021 tax return. The updated FAQs may be viewed at the following links, respectively [www.irs.gov/newsroom/irs-issues-2021-filing-season-frequently-asked-questions-information-to-help-taxpayers-preparing-their-2021-returns](http://www.irs.gov/newsroom/irs-issues-2021-filing-season-frequently-asked-questions-information-to-help-taxpayers-preparing-their-2021-returns) and [www.irs.gov/pub/newsroom/fs-2022-06.pdf](http://www.irs.gov/pub/newsroom/fs-2022-06.pdf)

IRS also updated its 2020 Recovery Rebate Credit FAQs. Individuals who did not qualify for, or did not receive, the full amount of the third Economic Impact Payment may be eligible to claim the 2020 Recovery Rebate Credit based on their 2020 tax year information. The updated FAQs may be viewed at: [www.irs.gov/pub/newsroom/fs-2022-08.pdf](http://www.irs.gov/pub/newsroom/fs-2022-08.pdf)



# Compliance Notes

▲ In a recent blog post, CFPB stated concern that some financial companies are unlawfully considering religion when making decisions on financial products. CFPB further stated the CFPB examiners recently found that lenders violated fair lending law by improperly inquiring about small business applicants' religious affiliation and by considering an applicant's religious affiliation in the credit decision. The full blog post may be viewed at: [www.consumerfinance.gov/about-us/blog/its-illegal-penalize-borrowers-being-religious/](http://www.consumerfinance.gov/about-us/blog/its-illegal-penalize-borrowers-being-religious/)

▲ OCC announced it will host virtual Innovation Office Hours on March 16-17, to promote responsible innovation in the federal banking system. Office hours are one-on-one meetings with representatives from OCC's Office of Innovation to discuss financial technology (fintech), new products or services, partnering with a bank or fintech company, or other matters related to responsible innovation in financial services. Each meeting will last no longer than one hour. Interested parties should request a virtual office hours session by **02/18/2022**, and are asked to provide information on the topic(s) they are interested in discussing with the Office of Innovation. Specific meeting times and arrangements will be determined after OCC receives and accepts the request. OCC's Office of Innovation will hold another virtual office hours session in the second quarter of 2022. The notice, including method to request a meeting may be viewed at: [www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-9.html](http://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-9.html)

▲ FRB released its latest results of a survey of senior financial officers at banks about their strategies and practices for managing reserve balances. FRB uses the Senior Financial Officer Survey to obtain information about deposit pricing and behavior, bank liability management, the provision of financial services, and reserve management strategies and practices. The most recent survey was conducted in collaboration with the Federal Reserve Bank of New York between **01/05/2021**, and **11/19/2021**, and includes responses from banks that held approximately three quarters of total banking system reserve balances at the time of the survey. The release may be viewed at: [www.federalreserve.gov/newsevents/pressreleases/other20220118a.htm](http://www.federalreserve.gov/newsevents/pressreleases/other20220118a.htm)

▲ CFPB recently reported that Americans pay roughly \$120 billion in credit card interest and fees each year (from 2018 to 2020) which is approximately \$1,000 per year for every American household. At almost a trillion dollars outstanding, credit cards are the largest consumer lending product by number of users – over 175 million consumers have at least one credit card – and one of the largest sources of consumer debt. During the pandemic, credit card debt started to decline as many households reduced their borrowing and paid down more. But, as the economy has improved, credit card debt is on the rise again. The release may be viewed at: [www.consumerfinance.gov/about-us/blog/americans-pay-120-billion-in-credit-card-interest-and-fees-each-year/](http://www.consumerfinance.gov/about-us/blog/americans-pay-120-billion-in-credit-card-interest-and-fees-each-year/)

▲ FHFA shared that house prices rose nationwide in November, up 1.1 percent from the previous month, according to its latest House Price Index (HPI). House prices rose 17.5 percent from November 2020 to November 2021. The previously reported 1.1 percent price change for October 2021 remained unchanged. FHFA'S HPI is the nation's only collection of public, freely available house price indexes that measure changes in single-family home values based on data from all 50 states and over 400 American cities that extend back to the mid-1970s. The database incorporates tens of millions of home sales and offers insights about house price fluctuations at the national, census division, state, metro area, county, ZIP code, and census tract levels. FHFA releases HPI data and reports on a quarterly and monthly basis. The latest report may be viewed at: [www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-HPI-Up-1pt1-Percent-in-November-Up-17pt5-Percent-from-Last-Year.aspx](http://www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-HPI-Up-1pt1-Percent-in-November-Up-17pt5-Percent-from-Last-Year.aspx)

▲ In a similar release to the above, HUD also released new residential sales data from December 2021. The data also reflects the median sale price and inventory supply. HUD's December residential sales data may be viewed at: [www.hud.gov/press/press-releases-media-advisories/HUD No 22 016](http://www.hud.gov/press/press-releases-media-advisories/HUD-No-22-016) ■

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.



# In-House Legal Counsel Webinar Series

The WBA In-House Legal Counsel Webinar Series consists of six webinars (September 2021 through May 2022) giving in-house bank attorneys the content they need to keep up to date on legal issues that affect a bank's day-to-day operations. Participants will also have the opportunity to earn CLE credits on topics that are specific to the banking industry.



## Who Should Attend:

Bank in-house legal counsel, attorneys, compliance officers, and bank management will all benefit from this webinar series.

## Registration Information:

The registration fee of \$750/attendee includes:  
» Live and recording access for all six webinars  
» Materials to each session  
» Certificate verifying attendance  
Each participant looking to receive a verification of attendance to submit for continuing education credits must be registered for the event.

## Credits Available:

Each webinar in the series will be submitted to the Board of Bar Examiners and other CE providers to be approved for credit.  
Submission of education program material to CE providers does not guarantee CLE Credit will be granted.  
Register at [www.wisbank.com/events/in-house-legal-counsel-webinar-series](http://www.wisbank.com/events/in-house-legal-counsel-webinar-series).

## Webinar Schedule and Topics:

### March 10, 2022 (9–11 a.m.)

- » Court Case Update
- » Presented by:  
**Lisa Lawless and Natalia Kruse**  
Husch Blackwell

### April 7, 2022 (9–11 a.m.)

- » HR and Employment Issues
- » Presented by:  
**Jennifer Mirus**  
Boardman & Clark LLP

## 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](mailto: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](http://www.wisbank.com/advocacy).



Conferences | Summits

Schools | Boot Camps

Seminars | Workshops

WBA Webinars

Other Events

## MARCH 2022

- **WBA/ABA Washington Summit**  
7–9 Washington, D.C. or virtual
- **Introduction to Commercial Lending School**  
14–16 Madison; \$795/attendee
- **Call Report Review & Update Workshop**  
15–16 Virtual half-days
- **Security Officer Workshops**  
17 Wisconsin Dells or virtual; \$175/attendee
- **Branch Manager Boot Camp: Session 3**  
17 4-Part Series; virtual half-days; \$800/attendee
- **Advanced IRA Workshops**  
22 Wausau area; \$245/attendee  
24 Madison; \$245/attendee
- **Residential Mortgage Lending School**  
3/29–4/1 Madison; \$1,095/attendee

## APRIL 2022

- **Loan Compliance School**  
4–8 Madison; \$1,295/attendee
- **Agricultural Bankers Conference**  
6–7 Wisconsin Dells; \$300/ag section member or \$350/non-section member attendee
- **Real Estate Compliance School**  
6–8 Madison; \$795/attendee
- **In-House Legal Counsel Webinar: Session 5**  
7 6-Part Webinar Series; \$750/attendee
- **HSA Workshop**  
12 Madison; \$245/attendee
- **Power of Community Week**  
18–23 [www.wisbank.com/BanksPowerWI](http://www.wisbank.com/BanksPowerWI)
- **Branch Manager Boot Camp: Session 4**  
21 4-Part Series; virtual half-days; \$800/attendee
- **FIPCO Software & Compliance Forum: Deposit**  
21 Virtual
- **American Mortgage Conference**  
25–27 Pinehurst, NC
- **Women in Banking Conference**  
26 Wisconsin Dells or virtual; team pricing available
- **Community Bankers for Compliance (CBC) – Session II**  
26 Stevens Point; Membership (*pricing options vary*)  
27 Madison; Membership (*pricing options vary*)

## MAY 2022

- **WBA/ICBA Washington Summit**  
1–4 Washington, D.C.
- **Personal Banker School**  
3–4 Wausau area; \$495/attendee
- **School of Bank Management**  
9–13 Madison; \$1,395/attendee
- **BSA/AML Workshop**  
12 Wisconsin Dells; \$245/attendee
- **Directors Summits**  
18 Stevens Point  
19 Madison
- **Trust Conference**  
25 Madison
- **In-House Legal Counsel Webinar: Session 6**  
26 6 Part Webinar Series; \$750/attendee
- **Principles of Banking Course**  
TBD Locations TBD; \$550/attendee

## JUNE 2022

- **BOLT Summer Leadership Summit**  
9–10 Wisconsin Dells; \$200/attendee
- **Credit Analysis Boot Camp**  
22–23 Rothschild/Wausau; \$495/attendee

## JULY 2022

- **Community Bankers for Compliance (CBC) – Session III**  
26–27 Virtual half-days; Membership (*pricing options vary*)

### 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**.