

# Compliance Journal

## July 2022

### Special Focus

#### Overview of Latest Interagency Community Reinvestment Act Proposal

On June 3, 2022, 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) issued a joint proposed rule (Proposal) to revise existing Community Reinvestment Act (CRA) regulations. The Proposal is meant to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The Proposal comes after much advocacy by Wisconsin bankers and the WBA for a jointly-issued uniform rule between the Agencies.

The Proposal is substantial and includes 180 specific questions for which the Agencies seek feedback in preparation for a final rule. The following is an overview of the Proposal broken down by section. The overview does not cover every nuance of the Proposal, so for more details regarding a particular section, please review the Proposal itself. A link to the proposed rule is included at the end of this article.

##### [Proposal Section III: Community Development Definitions.](#)

Under the current CRA regulations and the Proposal, a bank may, depending on its size, be evaluated for its community development lending, investments, and/or services under various tests. The activities must have community development as their primary purpose. Community development activities currently fall into four broad categories: affordable housing; community services; economic development; and revitalization and stabilization.

The Agencies have proposed to review the community development definitions in order to clarify eligibility criteria for different community development activities by including eleven categories that establish specific eligibility standards for a broad range of community development activities. The new definitions incorporate some aspects of guidance that are currently provided in the Interagency CRA Questions and Answers. The proposed definitions reflect an emphasis on activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities and small businesses and small farms.

Section III discusses proposed definitions for community development activities, including: affordable housing; economic development that supports small businesses and small farms; community supportive services; revitalization activities; essential community facilities; essential community infrastructure; recovery activities in designated disaster areas; disaster preparedness and climate resiliency activities; activities with minority depository institutions (MDIs), women's depository-institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs) certified by the Department of the Treasury, referred to as Treasury Department-certified CDFIs; financial literacy; and qualifying activities in Native Land Areas. The Agencies propose using a primary purpose standard for determining eligibility of the above activities, with pro rata consideration for certain affordable housing activities. The Proposal provides background and current approach information for each of the above activities. Specific questions to each activity are embedded in the section to correspond to each activity for which the Agencies seek feedback thereon.

##### [Proposal Section IV: Qualifying Activities Confirmation and Illustrative List of Activities.](#)

Currently, as part of CRA examinations, banks submit community development activities that were undertaken without an assurance the activities are eligible. Knowing that an activity previously qualified can frequently provide banks with some confidence that the same types of activities are likely to receive consideration in the future. However, new, less common, more complex, or innovative activities might require examiner judgment and the use of performance context to determine whether an activity qualifies for CRA purposes. As a result, banks might know only at the end of an examination—and after a loan or investment has been made or a service provided—whether an activity will receive CRA credit.

To provide additional certainty in determining what community development activities qualify, the Agencies have proposed maintaining a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. The Agencies also propose including



a process for modifying the illustrative list of activities periodically. In addition, the Agencies have proposed a process, open to banks, for confirming eligibility of qualifying community development activities. These concepts are further discussed in Section IV of the Proposal.

### Proposal Section V: Impact Review of Community Development Activities.

The Agencies' current qualitative assessment of a bank's community development performance takes into account the extent to which a bank's community development activities are innovative and complex. In addition, the Agencies consider whether a bank's activities reflect leadership and are responsive to community needs. These terms are generally defined in the Interagency CRA Questions and Answers, and guidance explains that an examiner will consider both quantitative and qualitative aspects of a bank's community development activities.

While current guidance emphasizes the importance of a qualitative review of a bank's community development activities and recognizes that certain activities are more responsive than others, there are no clear standards for how these factors are measured. As a result, the evaluation relies heavily on examiner judgment.

Section V describes the Agencies' proposed specific impact review factors to inform the impact and responsiveness evaluation of a bank's activities under the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks.

### Proposal Section VI: Assessment Areas and Areas for Eligible Community Development Activity.

The Agencies have proposed to update the CRA assessment area approach to evaluate performance in facility-based assessment areas for all banks, and in retail lending assessment areas for large banks. The updates are intended to comprehensively establish the local communities in which a bank is evaluated for its CRA performance and to reflect ongoing changes to the banking industry. In addition, the Agencies propose to consider qualifying community development activities outside of a bank's assessment areas at the state, multistate MSA, and institution levels to add certainty and to encourage qualifying activities in areas with high community development needs.

Section VI describes what the Agencies have proposed regarding delineating facility-based assessment areas for main offices, branches, and deposit-taking remote service facilities (including ATMs). Under the Proposal, large banks would delineate assessment areas comprised of full counties, metropolitan divisions, or MSAs. Intermediate and small banks could continue to delineate partial county facility-based assessment areas, consistent with current practice.

Section VI also describes what the Agencies have proposed for large banks to delineate retail lending assessment areas where a bank has concentrations of home mortgage and/or small business lending outside of its facility-based assessment areas. Under the Proposal, a large bank would delineate retail lending assessment areas where it has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in an MSA or nonmetropolitan area of a state for two consecutive years.

Section VI also discusses that the Agencies have proposed to allow banks to receive CRA credit for any qualified community development activity, regardless of location, although performance within facility-based assessment areas would be emphasized.

In connection with the concepts set forth in this section, Section X (as outlined below) also discusses the Agencies' desire to evaluate large banks and certain intermediate banks on their retail loans that are outside of both retail lending assessment areas and facility-based assessment areas, to ensure that retail lending evaluations for these banks are comprehensive.

### Proposal Section VII: Performance Tests, Standards, and Ratings in General.

Section VII describes the Agencies' proposed evaluation framework, tailored for differences in bank size and business model. The Agencies have proposed the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test.

July 2022  
Volume 28, Number 2

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Intermediate banks would be evaluated under the Retail Lending Test and the status quo Community Development Test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the status quo Small Bank Lending Test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

Under the proposed framework, large banks would be banks that had average quarterly assets, computed annually, of at least \$2 billion in both of the prior two calendar years; intermediate banks would be banks that had average quarterly assets, computed annually, of at least \$600 million in both of the prior two calendar years and less than \$2 billion in either of the prior two calendar years; and small banks would be banks that had average quarterly assets, computed annually, of less than \$600 million in either of the prior two calendar years.

The Agencies are in the process of seeking approval from Small Business Administration (SBA) to use the \$600 million threshold, where applicable and adjusted annually for inflation, rather than the SBA's recently updated size standards.

The Agencies have also proposed to further tailor aspects of the Proposal within the large bank category. The Agencies have proposed that certain provisions of the Retail Services and Products Test and Community Development Services Test would apply only to large banks that had average quarterly assets, computed annually, of over \$10 billion in both of the prior two calendar years. These banks are referred to in the Proposal as large banks with assets of over \$10 billion. Large banks that had average quarterly assets, computed annually, of \$10 billion or less in either of the prior two calendar years are referred to in the Proposal as large banks with assets of \$10 billion or less.

Section VII also discusses a new proposed definition of "operations subsidiary" to FRB's CRA regulation and "operating subsidiary" for FDIC's and OCC's CRA regulations (referred to collectively in the Proposal as "bank subsidiaries") to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance. The Agencies have proposed to maintain the current flexibilities that would allow a bank to choose to include or exclude the activities of other bank affiliates that are not considered "bank subsidiaries."

Section VII also discusses performance context, and the requirement that a bank's CRA lending, investment, and service activities must be consistent with safe and sound banking practices, including underwriting standards.

### Proposal Section VIII: Retail Lending Test Product Categories and Major Product Lines.

The Agencies have proposed to update the definitions for certain retail lending products, to clarify the evaluation of automobile lending, to aggregate certain retail loan types for evaluation, and to develop a clear quantitative threshold for determining when to evaluate a retail product line under the Retail Lending Test.

Specifically, the Agencies seek to improve transparency and streamline retail lending evaluations by:

- Aggregating, respectively, all closed-end home mortgage loans, all open-end home mortgage loans, and all multi-family loans as separate product lines for the purposes of evaluation under the Retail Lending Test.
- Adding definitions of small business and small farm that align with CFPB's proposed small business definition in its current rulemaking pursuant to section 1071 of the Dodd-Frank Act to minimize burden.
- Evaluating automobile lending using metrics in recognition of its importance to low- and moderate-income borrowers and communities.
- Establishing a clear major product line threshold of 15 percent of the dollar value of a bank's retail lending in each facility-based assessment area (and, as applicable, in each retail lending assessment area and in its outside retail lending area) to determine whether to evaluate, respectively, closed-end home mortgage, open-end home mortgage, multi-family, small business, and small farm lending under the Retail Lending Test.
- Establishing a major product line threshold for automobile lending of 15 percent based on the average of the percentage of automobile lending retail lending dollars out of total retail lending dollars and percentage of automobile loans by loan volume out of total retail lending by loan volume.

### Proposal Section IX: Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas.

This section of the Proposal discusses the proposed Retail Lending Test for standardizing evaluations of retail lending performance in facility-based assessment areas and retail lending assessment areas for large and intermediate banks. The Agencies have proposed using a retail lending volume screen to evaluate a bank's retail lending volumes. The Agencies also propose to evaluate a bank's major



product lines using two distribution metrics that measure the bank's record of lending in low- and moderate-income census tracts and to borrowers of different income or revenue levels. Further, the Agencies propose to establish a standardized methodology for setting performance expectations for specific product lines. The methodology defines performance ranges for each conclusion category for each product, and this performance is then averaged together.

Through the metrics and thresholds, the Agencies propose to assign a score reflecting performance on each of a bank's major product lines in each assessment area and outside retail lending area, as applicable. For example, under the Proposal, a bank may receive a score reflecting its closed-end home mortgage lending performance and a different score for its small business lending performance in a facility-based assessment area, providing transparency at the product-line level and showing more granularly how a bank is serving the credit needs of its communities. The scores across the various major product lines would be combined to determine a recommended Retail Lending Test conclusion for each assessment area, weighted by the dollar volume associated with each product line. The aggregation would allow strong performance in one product line to potentially offset weaker performance in another product line.

Section IX sets forth various formulas including several benchmarks, market and community multipliers, and additional factors that may not be captured in metrics.

### Proposal Section X: Retail Lending Test Evaluation Framework for Retail Lending Test Conclusions in State, Multistate MSAs, and at the Institution Level.

The Agencies have proposed a transparent and standardized approach to determining Retail Lending Test conclusions at the state, multistate MSA, and institution level. The proposed approach would leverage performance in a bank's local assessment areas. In addition, the Agencies also propose evaluating a large bank's retail lending performance in areas outside of its assessment areas, referred to as the outside retail lending area. This approach is intended to complement the proposed retail lending assessment areas, as described in Section VI above. The Agencies propose a tailored application of this approach for intermediate banks. Specifically, the Agencies have proposed evaluating an intermediate bank's retail lending performance outside of its facility-based assessment areas only if it does more than 50 percent of its lending outside of its facility-based assessment areas.

As summarized in Section VI above, the Agencies recognize that changing technology increasingly allows banks to reach consumers with loans and deposit products without any in-person contact at a branch office. As a result, a bank's lending may be geographically dispersed, without concentrations in particular local markets that would be captured by the proposed retail lending assessment areas. Tables of data included in the Proposal demonstrate the Agencies' estimates regarding activities for which assumptions within the Proposal have been based upon. For example, as shown in Table 1 in Section VI, the Agencies estimate that approximately 11 percent of home mortgage loans and 16 percent of small business loans originated by large banks would fall outside of facility-based assessment areas or the proposed retail lending assessment areas.

See this section of the Proposal for more details regarding each level of the Retail Lending Test, evaluations, and assigned conclusions.

### Proposal Section XI: Retail Services and Products Test.

Section XI describes what the Agencies have proposed to evaluate large banks under the Retail Services and Products Test. The test would use a predominantly qualitative approach, incorporating quantitative measures as guidelines, as applicable. First, the delivery systems part of the proposed test seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and its digital and other delivery systems. The Agencies propose that the evaluation of digital and other delivery systems and deposit products would be required for large banks with assets of over \$10 billion, and not required for large banks with assets of \$10 billion or less.

Second, the credit and deposit products part of the proposed test aims to evaluate a bank's efforts to offer products that are responsive to the needs of low- and moderate-income communities. The Agencies propose that the evaluation of deposit products responsive to the needs of low- or moderate-income individuals would be required for large banks with assets of over \$10 billion, and not required for large banks with assets of \$10 billion or less.

### Proposal Section XII: Community Development Financing Test.

Section XII describes what the Agencies propose for the Community Development Financing Test, which would apply to large banks as well as intermediate banks that choose to opt into this test. The Community Development Financing Test would consist of a community development financing metric, benchmarks, and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA and institution levels, and would inform conclusions at each of those levels.

The bank community development financing metrics would measure the dollar value of a bank's community development loans and community development investments together, relative to the bank's capacity, as reflected by the dollar value of deposits. The Agencies have proposed to use the term "community development investment" in place of the current term "qualifying investment" for clar-



ity and consistency purposes. The proposed benchmarks would reflect local context, including the amount of community development financing activities by other banks in the assessment area, and would be used in conjunction with the metrics to assess the bank's performance. The metrics and benchmarks would be consistent across banks and Agencies and would provide additional clarity about the evaluation approach.

The impact review would evaluate the impact and responsiveness of a bank's community development loan and community development investment activities through the application of a series of specific qualitative factors described in more detail in Section V of the Proposal. The impact review would provide appropriate recognition under the Community Development Financing Test of activities that are considered to be especially impactful and responsive to community needs, including activities that may be relatively small in dollar amounts.

### Proposal Section XIII: Community Development Services Test.

This section describes the Agencies' recommended plan to assess a large bank's community development services, underscoring the importance of the activities for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development. The Agencies propose that in nonmetropolitan areas, banks may receive community development services consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The proposed test would consist of a primarily qualitative assessment of the bank's community development service activities. For large banks with assets of over \$10 billion, the Agencies have proposed also using a metric to measure the hours of community development services activity per full time employee of a bank.

### Proposal Section XIV: Wholesale and Limited Purpose Banks.

Section XIV describes the Agencies' proposed Community Development Financing Test for Wholesale and Limited Purpose Banks, which would include a qualitative review of a bank's community development lending and investments in each assessment area and an institution level-metric measuring a bank's volume of activities relative to its capacity. The Agencies also propose giving wholesale and limited purpose banks the option to have examiners consider community development service activities that would qualify under the Community Development Services Test.

### Proposal Section XV: Strategic Plans.

The Agencies have proposed to retain the strategic plan option as an alternative method for evaluation under CRA. Banks that elect to be evaluated under a CRA strategic plan would continue to be required to request approval for the plan from the appropriate Federal banking agency. A bank's election for the strategic plan option would not affect its obligation, if any, to report data.

The Agencies also propose to introduce more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. The approach is intended to ensure that banks have a strong justification for why a strategic plan is necessary for their business model and strategy, and that banks evaluated under a strategic plan incorporate how the bank's retail lending and other activities help to meet the credit needs of low- and moderate-income individuals and communities whenever possible.

Banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply unless the bank is substantially engaged in activities outside the scope of the tests. In seeking approval for a plan that does not adhere to requirements and standards that are applied to other banks, the plan would be required to include an explanation of why the bank's view is that different standards would be more appropriate in meeting the credit needs of its communities.

### Proposal Section XVI: Assigned Conclusions and Ratings.

This section outlines how the Agencies propose conclusions and ratings, are assigned at the state, multistate MSA, and institution levels using a consistent, quantifiable approach. The proposed approach is intended to increase transparency and provide clarity on the assessment of a bank's overall CRA performance.

As an initial matter, the proposal would distinguish between conclusions—which generally refers to the bank's performance on a particular test at the assessment area, state, multistate MSA, or institution level—and ratings—which refers to a bank's overall CRA performance across tests at the state, multistate MSA, and institution levels.

With respect to conclusions, the Agencies propose maintaining five categories of performance test conclusions, as described in the Proposal, that splits the category of "Satisfactory" into "High Satisfactory" and "Low Satisfactory" to better differentiate between very good performance and performance on the lower end of the satisfactory range for each test-specific conclusion. With respect to ratings, the Agencies would continue to use the four categories— Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance, as prescribed in the CRA statute.



The proposed ratings approach would combine a bank's conclusions, as described in proposed appendix C, for each applicable test according to a specified set of weights tailored to large banks, intermediate banks, and wholesale and limited purpose banks. The Proposal would apply the weighting approach for ratings at the state, multistate MSA, and institution level as described in proposed appendix D. In addition, the Agencies have proposed additional provisions intended to emphasize a bank's retail lending performance and the importance of assessing how a bank meets the credit needs of all the communities it serves without overlooking smaller or less populated assessment areas as specified in proposed appendix D.

For small banks evaluated under the small bank performance standards, the Agencies would assign lending evaluation conclusions of Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance based on the bank's lending performance in each facility-based assessment area to arrive at the bank's overall rating assigned by the Agencies as explained in Section XVII of the Proposal.

The Agencies also propose updating the criteria on discriminatory and certain other illegal practices that could adversely affect a bank's CRA rating, as well as what rating level (state, multistate MSA, and institution) would be affected. Further, the Agencies propose adding additional laws and regulations to the illustrative list of examples of practices that could impact a bank's CRA rating.

### Proposal Section XVII: Performance Standards for Small and Intermediate Banks.

This section describes that the Agencies have proposed to continue evaluating small banks under the small bank performance standards in the current CRA framework and to apply the proposed metrics-based Retail Lending Test to intermediate banks which will have certain provisions tailored to intermediate banks.

Under the Proposal, small banks could opt into the Retail Lending Test and could continue to request additional consideration for other qualifying CRA activities. For intermediate banks, in addition to the proposed Retail Lending Test, the Agencies have proposed to also evaluate an intermediate bank's community development activity pursuant to the criteria under the current intermediate small bank community development test. Intermediate banks could also opt to be evaluated under the proposed Community Development Financing Test.

### Proposal Section XVIII: Effect of CRA Performance on Applications.

In Section XVIII, the Agencies have proposed to maintain the current regulatory provisions for considering CRA performance on bank applications, such as those for mergers and acquisitions, deposit insurance, and branch openings and relocations.

### Proposal Section XIX: Data Collection, Reporting, and Disclosure.

Section XIX sets forth that the Agencies propose to revise data collection and reporting requirements to increase the clarity, consistency, and transparency of the evaluation process through the use of standard metrics and benchmarks. The Proposal recognizes the importance of using existing data sources where possible, and tailoring data requirements, where appropriate.

All large banks would have the same requirements for certain categories of data, including community development financing data, branch location data, and remote service facility location data. Some new data requirements would only apply to large banks with assets of over \$10 billion. Large banks with assets of over \$10 billion would have data requirements for deposits data, automobile lending data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. The Proposal also provides updated standards for all large banks to report the delineation of their assessment areas. Data requirements for intermediate banks and small banks would remain the same as the current requirements.

Under the Proposal, the data reporting deadline would be moved from March 1 to April 1 of each year.

### Proposal Section XX: Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement.

In Section XX the Agencies describe a desire to provide more transparent information to the public on CRA examinations and encourage communication between members of the public and banks. The Agencies have proposed to make a bank's CRA public file more accessible by allowing any bank with a public website to include its CRA public file on its website. The Agencies have also proposed publishing a list of banks scheduled for CRA examinations for the next two quarters at least 60 days in advance in order to provide additional notice to the public. Finally, the Agencies have proposed to establish a way for the public to provide feedback on community needs and opportunities in specific geographies.

### Proposal Section XXI: Transition.

Section XXI sets forth the proposed timeline for the transition from the current regulatory and supervisory framework to a new CRA regulatory and supervisory framework. The Proposal would establish an effective date for the final rule the first day of the first calen-



dar quarter that begins at least 60 days after publication in the Federal Register. The Agencies propose applicability dates for various provisions of the regulations which are applicable on, or over a period of time after, the effective date of the final rule.

The Agencies believe varying applicability dates would provide banks with time to transition from the current regulations to a new regulation for: collecting, maintaining, and reporting data; transitioning systems; and establishing policies and procedures necessary for the orderly implementation of the proposed regulatory framework.

The Agencies intend that, during the period between the final rule's effective date and the applicability dates in the final rule for certain provisions (transition period), the Agencies' current CRA regulations will remain in effect for the provisions. The Agencies would retain the authority to ensure an orderly transition between the two CRA frameworks and expect to issue guidance regarding the applicability of the relevant CRA framework during this time.

The Agencies also stated an intention to include their current CRA regulations in agency-specific appendices of a final rule and to sunset the appendices as of the final applicability date, at which point all banks would need to be in compliance with all provisions of the final rule.

### Conclusion

The federal prudential banking Agencies have jointly issued a proposed rule to revise existing CRA regulations to better address how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The joint proposal comes after much advocacy by Wisconsin bankers and the WBA for a uniform rule.

This article was meant to provide a high-level look at how the Agencies have proposed their respective CRA regulations be revised; the full proposal may be viewed from the link below. If you have questions regarding the proposal, be sure to contact WBA Legal at [wbalegal@wisbank.com](mailto:wbalegal@wisbank.com) or at 608-441-1200.

The jointly-issued CRA proposal: <https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf>

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## Reporting HMDA Total Units and Cross-Collateralization

WBA has recently become aware of banks facing scrutiny over Home Mortgage Disclosure Act (HMDA) reporting. Specifically, reporting of the number of individual dwelling units when the covered loan is cross-collateralized by multiple properties. While the rules have not changed, there has been some confusion regarding the interplay of cross-collateralization clauses and HMDA rules. This article will discuss those HMDA requirements in relation to cross-collateralization considerations.

Subject to certain exemptions, HMDA requires financial institutions to report data on covered transactions. Data is reported on those fields as required by Regulation C section 1003.4. For institutions which qualify for a partial exemption, some of those fields are optional. For purposes of this article, only one of those data fields is discussed, being the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan (total units). This data point is required by Regulation C section 1003.4(a)(31). Total units is not a field subject to optional reporting.

The total units field requires a reporting institution to enter, in numeral form, the number of individual dwelling units related to the property securing the covered loan. For example, if there are five (5) individual dwelling units, bank will enter 5 on the HMDA LAR. When a loan is secured by multiple properties, bank may need to consider each of those properties securing the loan to properly report this field. This includes property securing the loan by any means.

This could be the result of future advance language or other cross-collateralization. For example, when taking a loan using the WBA 451 Business Note, cross-collateralization language is included which provides broad coverage in support of the bank as lender. This language provides in part that the note is secured by all existing and future security agreements and mortgages by the borrower, by any indorser or guarantor, and by any other person providing collateral security. Lenders must carefully consider this language, and its relationship with the borrower, including guarantors and other parties, in order to determine those properties which secure the loan. This type of broad cross-collateralization language is most common on business notes.

As a consumer example, when taking 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 dwellings as collateral, unless the dwelling is specifically described in the note or agreement. So, a pre-existing mortgage on a dwelling does not secure a future consumer note or agreement unless the note or agreement specifically identifies the dwelling.<sup>1</sup>

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<sup>1</sup> This is for purposes of flood rules. For further discussion on cross-collateralization as it relates to flood requirements, please review the WBA Compliance Journal from February, 2022.



Lenders need to review their notes and security agreements for this, and similar language. While this is important for a number of reasons, this article strictly discusses the significance of such language as it relates to reporting HMDA total units.

When reporting total units, HMDA provides clarity within its commentary. Comment 1 to section 1003.4(a)(31) makes a cross-reference to section 1003.4(a)(9) comment 2 regarding transactions involving multiple properties with more than one property taken as security (comment 2). This discussion provides clarity regarding how to report on various data points. Comment 2 draws distinctions between those data points which require reporting for a single property (selected by the lender), and those which must be considered for every property securing the loan (in addition to that single property selected by the lender). The information reported for total units is one of those which must be reported for every property securing the loan. Comment 2 in relevant part provides:

“...for aspects of the entries that do not refer to the property identified in §1003.4(a)(9) (i.e., §1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in §1003.4(a)(9).”

Because the commentary includes total units as one of those categories for which information must be reported applicable to the covered loan, and not that which relates only to the single property identified under 1003.4(a)(9), then the lender must report total units based upon every property which secures the loan. As a result, lenders must consider whether the loan is secured by multiple properties. Lenders must review their language specifically to make this determination, but as a final point of distinction, note that the effect of cross-collateralization clauses is to secure the loan with multiple properties.

While this is not a new rule, it is recommended that banks review the above HMDA sections as a refresher. From there, banks should review their contracts and HMDA reporting to ensure that all applicable fields are being reported for all applicable properties. It may be that additional monitoring systems need to be put into place to account for multiple properties securing a loan. Banks should conduct this review in advance of any upcoming compliance exam and prepare accordingly.

In summary, if a loan is secured by multiple properties, those properties must be included for purposes of reporting total units. As a result, lenders must review their notes and security agreements to understand the extent of how their loans are secured. This is a contractual matter which can vary from note to note, and from one loan relationship to the next. As such, each loan relationship must be reviewed to determine HMDA reporting requirements. Lastly, as mentioned above, this article is specific to the implications of cross-collateralization clauses in relation to reporting of total units for HMDA purposes. However, cross-collateralization clauses are important to understand for reasons beyond HMDA reporting, and such matters will be addressed in a broader sense in a future article.

For any questions on this matter or others, please contact WBA's legal team at [wbalegal@wisbank.com](mailto:wbalegal@wisbank.com) or 608-441-1200.

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### New CFPB Advisory Opinion Fails to Consider Wisconsin's Marital Property Act

A frequently asked question to the WBA Call Program has long been, “May a bank pull a credit report on a non-applicant spouse when a married Wisconsin resident applies for credit individually?” WBA's longstanding answer has been – Yes. Banks have a permissible purpose under the Fair Credit Reporting Act (FCRA) to pull credit on the non-applicant spouse when an applicant is a married Wisconsin resident. Under Wisconsin's Marital Property Act (MPA), the creditor need consider the couple a unit, taking into consideration all income and all debt of both spouses.

The Bureau of Consumer Financial Protection (CFPB) recently issued an advisory opinion regarding permissible uses of credit reports. The opinion appears to be primarily directed at consumer reporting agencies who furnish credit reports. However, given statements within the opinion regarding use of credit reports, WBA believes it worth a reminder about how the MPA plays a role in there being a legitimate business need for a bank to pull a credit report on a non-applicant spouse when a married Wisconsin resident applies for credit individually as CFPB failed to take into considerations a State's property laws when it analyzed permissible purposes under FCRA Section 604.

Under the MPA, when credit will result in an obligation that is “in the interest of marriage or the family” pursuant to s. 766.56(1), Stats., creditors need consider both the assets and liabilities of each spouse when evaluating an applicant spouse's creditworthiness. By reviewing both the assets and liabilities of each spouse, the creditor can meet its obligations under s. 766.56(1) to consider “all marital property available to satisfy the obligation in the same manner that the creditor, in evaluating the creditworthiness of an unmarried credit applicant, considers the property of an unmarried credit applicant...” Credit reports are the tools most often used to determine liabilities of both spouses.

The Federal Trade Commission (FTC), the agency with authority for banks regarding FCRA prior to the Dodd-Frank Act, recognized states' property laws under its interpretation of FCRA permissible purposes. To use a credit report, the FCRA provides that one must have a permissible purpose for the report. FCRA Section 604 sets forth the permissible purposes of credit reports. Section 604(a)(3)(A) allows a consumer reporting agency to furnish consumer reports to a person which it has a reason to believe “intends to use the



## Special Focus

information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer". Past FTC interpretation of this section has confirmed that creditors may pull a credit report on a non-applicant spouse.

In particular, FTC interpretation of FCRA Section 604(a)(3)(A) has been,

"A creditor has a permissible purpose to obtain a consumer report on an applicant's spouse if that spouse will be permitted to use the account or will be contractually liable upon the account, or if the applicant is relying on the spouse's income as a basis for repayment of the credit requested. In addition, a creditor may obtain a consumer report on an applicant's spouse if (i) the state law doctrine of necessaries (which may make a consumer liable for certain debts of a spouse) applies to the transaction, (ii) the applicant resides in a community property state, (iii) the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state, or (iv) the applicant is acting as the agent of the nonapplicant spouse."

The requirements under the MPA and FTC's interpretation of a permissible purpose under the FCRA were the areas of law WBA has cited as rationale why banks may use the consumer reports of both the married Wisconsin resident applicant and his/her non-applicant spouse when determined debt in connection with new credit or review of an account.

However, with CFPB having issued an advisory opinion regarding the furnishing and use of credit reports under the FCRA, members need be aware of the opinion.

In its opinion, CFPB stated that the permissible purposes listed in FCRA section 604(a)(3) are consumer specific and that a consumer reporting agency may not provide a consumer report to a user under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information included pertains to the consumer who is the subject of the user's request. CFPB believes section 604 analysis need be on a consumer-by-consumer basis, intending the use of information in connection with a credit transaction to be one involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer.

CFPB's new advisory opinion could be read to not allow a credit report to be pulled on a non-applicant spouse as the non-applicant spouse is not party to the application. In writing the opinion, CFPB has failed to consider a state's property law—such as the Wisconsin MPA—and of the legitimate business need for debt information. Separately, a creditor cannot require spouses to apply together to then obtain a credit report on both spouse as that would be a violation of Regulation B. CFPB's focus only on federal law when writing this opinion without considering state marital property laws raises a question for banks in marital/community property states, including Wisconsin banks when trying to comply with s. 766.56(1) Stats.

WBA believes banks do have a permissible purpose under state law, and therefore under FCRA section 604, to obtain a credit report of a non-applicant spouse in connection with an application involving a married Wisconsin resident, since CFPB's advisory opinion focuses solely on the fact that FCRA permissible purposes are consumer-specific and is silent on any relevant state law.

It is clear under s. 766.56(1), Stats., that when credit will result in an obligation that is "in the interest of marriage or the family", creditors need consider both the assets and liabilities of each spouse when evaluating an applicant spouse's creditworthiness. This requirement results in a legitimate business need to identify debts of both the applicant spouse and non-applicant spouse. Furthermore, pursuant to s. 766.55(1), Stats., an obligation incurred while married is presumed to be incurred in the interest of the marriage or family, and under para. (2) the obligation is to be satisfied from all marital property and all other property of the married Wisconsin resident applicant. These MPA provisions make the non-applicant spouse part of the credit transaction and resulting obligation for which a credit report is being used thereby meeting the conditions under CFPB's advisory opinion despite CFPB not specifically addressing marital property interests.

Due to the requirements of ss. 766.55 and 766.56, Stats., banks have a permissible purpose under FCRA section 604(a)(3) to use a consumer report of a non-applicant spouse when an applicant is a married Wisconsin resident. A bank's current practice to pull a credit report on both spouses need not change as a result of CFPB's advisory opinion.

While CFPB's release is only that of an advisory opinion, and is not regulation, WBA wanted to make sure that members are aware of the opinion and its narrowness, along with WBA's thoughts on it. CFPB's FCRA Advisory Opinion may be viewed at: [https://files.consumerfinance.gov/f/documents/cfpb\\_fair-credit-reporting\\_advisory-opinion\\_2022-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting_advisory-opinion_2022-07.pdf)



### Agencies Issue Correction to Interagency Flood Insurance Q&As.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Farm Credit Administration (FCA), and National Credit Union Administration (NCUA) (collectively, the agencies) issued a correction to the Interagency Questions and Answers Regarding Flood Insurance guidance published in the *Federal Register* on **05/31/2022**. The signature block on page 32895, in the third column, has been corrected. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-16/pdf/C1-2022-10414.pdf>. *Federal Register*, Vol. 87, No. 116, 06/16/2022, 36214.

### Agencies Issue Correction to CRA Proposed Rule.

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) issued a correction to the Community Reinvestment Act (CRA) proposed rule published in the *Federal Register* on **06/03/2022**. On page 33976, in the second column, the duplicate formulas have been corrected. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/C1-2022-10111.pdf>. *Federal Register*, Vol. 87, No. 127, 07/05/2022, 39792.

### CFPB Issues Final Rule to Prohibit Inclusion of Adverse Information in Consumer Reports in Cases of Human Trafficking.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend Regulation V, which implements the Fair Credit Reporting Act (FCRA), to address recent legislation that assists consumers who are victims of trafficking. The final rule establishes a method for a victim of trafficking to submit documentation to consumer reporting agencies (CRAs), including information which identifies any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibits CRAs from furnishing a consumer report containing the adverse item(s) of information. CFPB has taken the action as mandated by the National Defense Authorization Act to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence. The final rule is effective **07/25/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13671.pdf>. *Federal Register*, Vol. 87, No. 121, 06/24/2022, 37700-37724.

### CFPB Publishes Advisory Opinion on Debt Collection Practices.

CFPB published an advisory opinion related to Section 808(1) of the Fair Debt Collection Practices Act (FDCPA) which prohibits debt collectors from collecting any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless that amount is expressly authorized by the agreement creating the debt or permitted by law. CFPB issued the advisory opinion to affirm that this provision prohibits debt collectors from collecting pay-to-pay or "convenience" fees, such as fees imposed for making a payment online or by phone, when those fees are not expressly authorized by the agreement creating the debt or expressly authorized by law. The advisory opinion also clarifies that a debt collector may also violate section 808(1) when the debt collector collects pay-to-pay fees through a third-party payment processor. The advisory opinion is effective **07/05/2022**. The advisory opinion may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-14230.pdf>. *Federal Register*, Vol. 87, No. 127, 07/05/2022, 39733-39735.

### CFPB Issues Circulars.

CFPB issued Consumer Financial Protection Circular 2022-01, System of Consumer Financial Protection Circulars to Agencies Enforcing Federal Consumer Financial Law. In the circular, CFPB outlines its efforts to promote consistency among enforcers and fair competition in the market by launching a new system to provide guidance to other agencies with consumer financial protection responsibilities on how CFPB intends to enforce federal consumer financial law. The circular was released on CFPB's website **05/16/2022**. The circular may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-14/pdf/2022-12727.pdf>. *Federal Register*, Vol. 87, No. 114, 06/14/2022, 35868-35869.

CFPB issued Consumer Financial Protection Circular 2022-02, Deceptive Representations Involving FDIC's Name or Logo or Deposit Insurance. In the circular, CFPB responds to when representations involving the name or logo of the Federal Deposit Insurance Corporation (FDIC) or about deposit insurance constitute a deceptive act or practice in violation of the Consumer Financial Protection Act. The circular was released on CFPB's website **05/17/2022**. The circular may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-14/pdf/2022-12728.pdf>. *Federal Register*, Vol. 87, No. 114, 06/14/2022, 35866-35868.

CFPB issued Consumer Financial Protection Circular 2022-03, Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms. In the circular, CFPB responds when creditors make credit decisions based on complex algorithms that prevent creditors from accurately identifying the specific reasons for denying credit or taking other adverse actions, whether the creditors need to comply with the Equal Credit Opportunity Act's requirement to provide a statement of specific reasons to applicants against whom adverse action is taken. The circular was released on CFPB's website **05/26/2022**. The circular may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-14/pdf/2022-12729.pdf>. *Federal Register*, Vol. 87, No. 114, 06/14/2022, 35864-35866.



### CFPB Issues ANPR Regarding Credit Card Late Fees and Late Payments.

CFPB issued an advance notice of proposed rulemaking (ANPR) regarding credit card late fees and late payments. CFPB seeks information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments, and card issuers' revenue and expenses. For example, CFPB seeks information relevant to certain provisions related to credit card late fees in the Credit Card Accountability Responsibility and Disclosure Act and Regulation Z. Comments are due **07/22/2022**. The ANPR may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-13864.pdf>. Federal Register, Vol. 87, No. 124, 06/29/2022, 38679-38682.

### CFPB Requests Information Regarding Employer-Driven Debt.

CFPB seeks comment regarding debt obligations incurred by consumers in the context of an employment or independent contractor arrangement. CFPB has identified a potentially growing market of debt obligations incurred by consumers through employment arrangements. The debts (referred to as employer-driven debts) appear to involve deferred payment to the employer or an associated entity for employer-mandated training, equipment, and other expenses. Comments are due **09/07/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-13030.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36469-36472.

### CFPB Requests Information Regarding Relationship Banking and Customer Service.

CFPB seeks comment regarding relationship banking and how consumers can assert the right to obtain timely responses to requests for information about their accounts from banks and credit unions with more than \$10 billion in assets, as well as from their affiliates. CFPB seeks comment on what customer service obstacles consumers face in the banking market, and specifically, what information would be helpful for consumers to obtain from depository institutions pursuant to section 1034(c) of the Consumer Financial Protection Act. Comments are due **07/21/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13207.pdf>. Federal Register, Vol. 87, No. 118, 06/21/2022, 36828-36830.

### CFPB Solicits Advisory Committees Membership Applications.

Pursuant to the authorities given to the Director of the CFPB under the Dodd-Frank Act, Director Chopra invites applications for membership for appointment to its Consumer Advisory Board, Community Bank Advisory Council, Credit Union Advisory Council, and Academic Research Council, (collectively, advisory committees). Membership of the advisory committees includes representatives of consumers, diverse communities, the financial services industry, academics, and economists. Applications are due **07/24/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13737.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 39067-39068.

### CFPB Seeks Comment on Information Collections.

CFPB seeks comment regarding the extension of an information collection titled, Consumer Leasing Act, Regulation M. The information collection is related to the disclosures required by the Consumer Leasing Act (CLA) and Regulation M for information to comparison shop among leases as well as to ascertain the true costs and terms of lease offers. Federal/state enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. The information provides the primary evidence of law violations in CLA enforcement actions brought by federal agencies. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-07/pdf/2022-14471.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40512-40513.

CFPB seeks comment regarding the extension of an information collection titled, Mortgage Acts and Practices-Advertising, Regulation N. Regulation N prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four months from last dissemination. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-07/pdf/2022-14472.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40513.

CFPB seeks comment regarding the extension of an information collection titled, Mortgage Assistance Relief Services, Regulation O. The required disclosures under Regulation O assist prospective purchasers of mortgage assistance relief services (MARS) in making well-informed decisions and avoiding deceptive, unfair acts and practices. CFPB and the Federal Trade Commission (FTC) use the information provided for enforcement purposes and to ensure compliance with Regulation O. Comments are due **10/05/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-07/pdf/2022-14474.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40513-40514.

CFPB seeks comment regarding the extension of an information collection titled, Interstate Land Sales Full Disclosure Act, Regulations J, K, and L. The Interstate Land Sales Full Disclosure Act (ILSA) requires land developers to register subdivisions of 100 or more



non-exempt lots with CFPB before selling or leasing the lots, and to provide each lot purchaser with a disclosure designated as a property report. Information is submitted to CFPB to assure compliance with ILSA and the implementing regulations. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-07/pdf/2022-14473.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40514-40515.

### **FRB Amends Regulation A.**

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to adopt amendments to Regulation A to reflect FRB's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of FRB's primary credit rate action. On **06/15/2022**, FRB approved a 0.75 percentage point increase in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 1 percent to 1.75 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, FRB had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks increased by 0.50 percentage points as a result of FRB's primary credit rate action, thereby increasing from 1.50 percent to 2.25 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect the rate changes. The amendments are effective **06/29/2022**. The rate changes for primary and secondary credit were applicable **06/16/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-13834.pdf>. Federal Register, Vol. 87, No. 124, 06/29/2022, 38645-38646.

### **FRB Amends Regulation D.**

FRB issued a final rule to adopt amendments to Regulation D to revise the rate of interest paid on balances (IORB) maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 1.65 percent, a 0.75 percentage point increase from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (FOMC). The amendments are effective **06/29/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-13835.pdf>. Federal Register, Vol. 87, No. 124, 06/29/2022, 38646-38647.

### **FRB Announces Final Approval of Investment in Bank Premises Notification Information Collection.**

FRB announced final approval of the extension of the information collection titled, Investment in Bank Premises Notification. The Federal Reserve Act requires a state member bank to seek prior FRB approval before making an investment in bank premises or the securities of a corporation holding its bank premises in certain circumstances. FRB has implemented the requirement in Regulation H, Membership of State Banking Institutions in the Federal Reserve System, which requires a state member bank seeking to make such an investment to provide prior notice to the appropriate Federal Reserve Bank. FRB uses the information provided in the collection to determine whether to object to the proposed investment. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-14216.pdf>. Federal Register, Vol. 87, No. 127, 07/05/2022, 39833.

### **FRB Seeks Comment on Intermittent Survey of Businesses Information Collection.**

FRB seeks comment regarding the extension of an information collection titled, Intermittent Survey of Businesses. The survey data are used to gather information to enable FRB to carry out its policy and operational responsibilities. The surveys are conducted to provide FRB members and Reserve Bank presidents real-time insights into economic conditions. Comments are due **09/06/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-14217.pdf>. Federal Register, Vol. 87, No. 127, 07/05/2022, 39831-39832.

### **FRB Seeks Comment on Securities of State Member Banks Information Collection.**

FRB seeks comment regarding a proposal to extend, without revision, an information collection titled, Securities of State Member Banks as Required by Regulation H. Regulation H requires state member banks whose securities are subject to registration pursuant to the Securities Exchange Act to disclose certain information to shareholders and securities exchanges and to report information relating to their securities to FRB using forms adopted by the Securities and Exchange Commission (SEC) and in compliance with certain rules and regulations adopted by SEC. The information collection is used in connection with Regulation H. Comments are due **09/06/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14547.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40841-40842.

### **FDIC Issues Notice of Termination of Receiverships.**

The Federal Deposit Insurance Corporation (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-



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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-2022-07-07/pdf/2022-14449.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40532-40533.

### FDIC Announces Amended Restoration Plan.

FDIC released an amended Restoration Plan. The Federal Deposit Insurance Act requires that FDIC's Board of Directors adopt a restoration plan when the Deposit Insurance Fund (DIF) reserve ratio falls below the minimum of 1.35 percent or is expected to within 6 months. Extraordinary growth in insured deposits during the first and second quarters of 2020 caused the DIF to decline below the statutory minimum of 1.35 percent as of **06/30/2020**. On **09/15/2020**, FDIC established a Restoration Plan to restore the DIF to at least 1.35 percent by **09/30/2028**, maintaining the assessment rate schedule in place at the time. See the notice for FDIC's amended Restoration Plan. The plan is to be implemented immediately. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-01/pdf/2022-13582.pdf>. Federal Register, Vol. 87, No. 126, 07/01/2022, 39518-39520.

### FDIC Issues Notices of Intent to Terminate Receiverships.

FDIC, as Receiver for the institutions listed in the notice, issued notices to announce it intends to terminate its receiverships for said institutions. The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of the notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of the notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201. No comments concerning the termination of the receivership will be considered which are not sent within this time frame. The notices may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-23/pdf/2022-13433.pdf>. Federal Register, Vol. 87, No. 120, 06/23/2022, 37511-37512; and <https://www.govinfo.gov/content/pkg/FR-2022-07-01/pdf/2022-14136.pdf>. Federal Register, Vol. 87, No. 126, 07/01/2022, 39518.

### FDIC Issues Proposed Rule to Revise Deposit Insurance Assessment Rates.

FDIC seeks comment regarding a proposed rule that would increase initial base deposit insurance assessment rates by 2 basis points, beginning with the first quarterly assessment period of 2023. The proposal would increase the likelihood that the reserve ratio would reach the required minimum level of 1.35 percent by the statutory deadline of **09/30/2028**, consistent with FDIC's Amended Restoration Plan as is highlighted earlier in this publication. The proposal is intended to support growth in the Deposit Insurance Fund in progressing toward FDIC's long-term goal of a 2 percent Designated Reserve Ratio. Comments are due **08/20/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-01/pdf/2022-13578.pdf>. Federal Register, Vol. 87, No. 126, 07/01/2022, 39388-39411.

### FDIC Seeks Comment on Information Collections Regarding CRA, External Audits, and Risk Management.

FDIC seeks comment regarding the renewal of three information collections. The first information collection in the notice is titled, Community Reinvestment Act (CRA). FDIC is required to assess the record of banks and thrifts in helping meet the credit needs of their communities. The information collection is used in connection with FDIC's assessment. The second information collection is titled, External Audit. FDIC regulations establish an annual independent audit and reporting requirement for financial institutions with total assets of \$500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing, and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions. The third information collection is titled, Funding and Liquidity Risk Management. The information collection includes reporting and recordkeeping burdens related to sound risk management principles applicable to insured depository institutions. To enable an institution and its supervisor to evaluate the liquidity risk exposure of an institution's individual business lines and for the institution as a whole, the Interagency Policy Statement on Funding and Liquidity Risk Management (Interagency Statement) summarizes principles of sound liquidity risk management and advocates the establishment of policies and procedures that consider liquidity costs, benefits, and risks in strategic planning. The information collection is used in connection with the Interagency Statement. Comments are due **08/22/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13156.pdf>. Federal Register, Vol. 87, No. 118, 06/21/2022, 36855-36858.



### OCC Seeks Comment on Information Collections.

The Office of the Comptroller of the Currency (OCC) seeks comment regarding the renewal of an information collection titled, Domestic First Lien Residential Mortgage Data. Section 104(a) of the Helping Families Save Their Homes Act (Act), as amended by section 1493(a) of the Dodd-Frank Act, requires OCC to submit a quarterly report to Congress on mortgage modification activity in the federal banking system. Section 104(b) of the Act requires OCC to collect mortgage modification data from national banks and federal savings associations and provides for the collection of all data necessary to fulfill the reporting requirements of section 104(a). Comments are due **07/18/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-13090.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36583-36584.

OCC seeks comment regarding revisions to an information collection titled, Regulation C-Home Mortgage Disclosure Act. Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), requires certain depository and non-depository institutions that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans as well as data about loan applications that do not result in originations. The information collection is used in connection with Regulation C data collection and reporting requirements. Comments are due **07/27/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-27/pdf/2022-13659.pdf>. Federal Register, Vol. 87, No. 122, 06/27/2022, 38256-38257.

OCC seeks comment regarding an information collection titled, Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments. The information collection pertains to OCC regulation, 12 CFR Part 24, which includes the CD-1, National Bank Community Development Investments form, pursuant to which a national bank may notify OCC, or request OCC approval, of certain community development investments. Comments are due **07/27/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-27/pdf/2022-13633.pdf>. Federal Register, Vol. 87, No. 122, 06/27/2022, 38257-38258.

OCC seeks comment regarding an information collection titled, Interagency Guidance on Asset Securitization Activities. In 1999, OCC issued the Interagency Guidance on Asset Securitization Activities (guidance) in response to a determination that some institutions involved in asset securitization activities had significant weaknesses in their asset securitization practices. The information collection contained in the guidance applies to financial institutions engaged in asset securitization activities and provides that any institution engaged in these activities should maintain a written asset securitization policy, document the fair value of retained interests, and maintain a management information system to monitor asset securitization activities. Financial institution management use the information collected to ensure the safe and sound operation of the institution's asset securitization activities. OCC uses the information to evaluate the quality of an institution's risk management practices. Comments are due **07/28/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-28/pdf/2022-13762.pdf>. Federal Register, Vol. 87, No. 123, 06/28/2022, 38455-38456.

OCC seeks comment regarding an information collection titled, Survey of Minority Owned Institutions. OCC is committed to assessing its efforts to provide supervisory support, technical assistance, education, and other outreach to the minority-owned institutions under its supervision. To perform the assessment, it is necessary to obtain feedback from the individual institutions on the effectiveness of OCC's current efforts in these areas and suggestions on how OCC might enhance or augment its supervision and technical assistance going forward. Comments are due **07/28/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-28/pdf/2022-13759.pdf>. Federal Register, Vol. 87, No. 123, 06/28/2022, 38456-38457.

OCC seeks comment regarding an information collection titled, Regulation E-Electronic Fund Transfer Act; Prepaid Account Provisions. The Electronic Fund Transfer Act (EFTA) and Regulation E require disclosure of basic terms, costs, and rights relating to electronic fund transfer services debiting or crediting a consumer's account. The prepaid accounts final rules issued by CFPB require financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account. The notice outlines the requirements of the 2016 rule as amended by the 2017 and 2018 rules. Comments are due **08/29/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-13942.pdf>. Federal Register, Vol. 87, No. 124, 06/29/2022, 38827-38829.

OCC seeks comment regarding an information collection titled, Annual Stress Test Rule. The annual stress test rule implemented Section 165(i) of the Dodd-Frank Act which requires certain companies to conduct annual stress tests. National banks and federal savings associations with total consolidated assets of more than \$10 billion were required to conduct annual stress tests and comply with reporting and disclosure requirements under the rule. The reporting templates for institutions with total consolidated assets of over \$50 billion were finalized in 2012. OCC uses the information to assess the reasonableness of the stress test results and provide forward-looking information to OCC regarding a covered institution's capital adequacy. OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. Comments are due **08/29/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13941.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 39159-39160.



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OCC seeks comment regarding a revised information collection titled, Licensing Manual. The Licensing Manual sets forth OCC's policies and procedures for the formation of a national bank or federal branch or agency, entry into the federal banking system by other institutions, and corporate expansion and structural changes by existing banks. The manual includes sample documents to assist the applicant in understanding the types of information OCC needs in order to process a filing. An applicant may use the format of the sample documents or any other format that provides sufficient information for OCC to act on a particular filing, including OCC's electronic filing system, the Central Application Tracking System (CATS). The notice outlines the amended applications, notices, and templates. Comments are due **08/30/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-01/pdf/2022-14060.pdf>. Federal Register, Vol. 87, No. 126, 07/01/2022, 39590-39592.

OCC seeks comment regarding the renewal of an information collection titled, Lending Limits. Twelve CFR 32.7(a) provides that, in addition to the amount that a national bank or savings association may lend to one borrower under 12 CFR 32.3, an eligible bank or savings association may make loans as outlined under section 32.7. An eligible national bank or savings association must submit an application to, and receive approval from, its supervisory office before using the supplemental lending limits in 12 CFR 32.7(a)(1)-(3). The information collection is used in connection with 12 CFR 32. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14585.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40878-40879.

OCC seeks comment regarding the extension of an information collection titled, Disclosure and Reporting of CRA-Related Agreements. National banks, federal savings associations, and their affiliates occasionally enter into agreements with nongovernmental entities or persons (NGEPs) related to their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act requires disclosure of certain of these agreements and imposes related reporting requirements on insured depository institutions, their affiliates, and NGEPs. The information collection is used in connection with the agreements. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14584.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40879-40880.

### HUD Publishes Regulatory Waiver Requests for Fourth Quarter 2021.

The Department of Housing and Urban Development (HUD), as required by Section 106 of the Department of Housing and Urban Development Reform Act (HUD Reform Act), publishes a quarterly Federal Register notice of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous Federal Register notice. The purpose of the notice is to comply with the requirements of section 106 of the HUD Reform Act. The notice contains a list of regulatory waivers granted by HUD during the period beginning **10/01/2021** and ending **12/31/2021**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-13128.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36524-36537.

### FEMA Issues Final Flood Hazard Determinations.

The Federal Emergency Management Agency (FEMA) issued a notice which identifies communities in the states of **Indiana** and **Iowa**, 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 date of **09/29/2022**, has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13260.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37347-37348.

FEMA issued a notice which identifies communities in the states of **Iowa**, **Minnesota**, and **Ohio**, 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 date of **10/27/2022**, has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13261.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37348-37350.

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

FEMA issued a notice which lists communities in the states of **Illinois**, **Indiana**, **Ohio**, 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



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appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect the flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with federal regulations. The flood hazard determinations will be finalized on the dates listed in the table in the notice and revise the FIRM panels and FIS report in effect prior to the determination for the listed communities. From the date of the second publication of notification of the changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13259.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37344-37347.

### **FEMA Issues Proposed Flood Hazard Determinations.**

FEMA seeks comment on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for communities in the state of **Ohio**, as listed in the table in the notice. 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 **10/03/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-14268.pdf>. Federal Register, Vol. 87, No. 127, 07/05/2022, 39848-39849.

### **FEMA Issues Corrections to Notices of Changes in Flood Hazard Determinations.**

FEMA issued a correction to a notice of changes in flood hazard determinations published in the *Federal Register* on **03/01/2022**, that contained an erroneous table. The table incorrectly listed Will County Illinois, as a county in Idaho. Accordingly, the information for Will County, **Illinois** is corrected. The correction is effective **07/05/2022**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-14266.pdf>. Federal Register, Vol. 87, No. 127, 07/05/2022, 39851.

### **Treasury Seeks Comment on Ensuring Responsible Development of Digital Assets.**

The Department of the Treasury (Treasury) seeks comment pursuant to Executive Order 14067, Ensuring Responsible Development of Digital Assets. In particular, Treasury seeks input, data, and recommendations pertaining to the implications of development and adoption of digital assets and changes in financial market and payment infrastructures for United States consumers, investors, businesses, and for equitable economic growth. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14588.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40881-40883.

### **OFAC Seeks Comment on Report of Closure of U.S. Bank Accounts Information Collection under Iranian Financial Sanctions Regulations.**

The Office of Foreign Assets Control (OFAC) seeks comment regarding the extension, without change, of an information collection titled, Iranian Financial Sanctions Regulations (IFSR) Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts. Section 561.504(b) of IFSR specifies that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List) on OFAC's website as subject to a prohibition on the maintaining of such accounts, must file a report with OFAC that provides complete information on the closing of each such account, and on all transactions processed or executed through the account pursuant to section 561.504, including the account outside of the United States to which funds remaining in the account were transferred. The report must be filed with OFAC within 30 days of closure of the account. The information collection assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for foreign financial institutions listed on the CAPTA List pursuant to the IFSR. Comments are due **08/15/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-15/pdf/2022-12862.pdf>. Federal Register, Vol. 87, No. 115, 06/15/2022, 36206.

### **IRS Proposes Guidance Regarding Deductibility of Certain Interest by Estates.**

The Internal Revenue Service (IRS) issued a proposed rule under section 2053 of the Internal Revenue Code. The proposed rule provides guidance on the proper use of present-value principles in determining the amount deductible by an estate for funeral expenses, administration expenses, and certain claims against the estate. In addition, the proposed rule provides guidance on the deductibility of interest expense accruing on tax and penalties owed by an estate, and interest expense accruing on certain loan obligations incurred by an estate. The proposed rule also amends and clarifies the requirements for substantiating the value of a claim against an estate that is deductible in certain cases. Finally, the proposed rule provides guidance on the deductibility of amounts paid under a decedent's personal guarantee. Comments are due **09/26/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-28/pdf/2022-13706.pdf>. Federal Register, Vol. 87, No. 123, 06/28/2022, 38331-38343.



### IRS Issues Proposed Rule to Define Foreign Currency Contract.

IRS issued a proposed rule to define the term “foreign currency contract” under section 1256 of the Internal Revenue Code to only include only foreign currency forward contracts. See the proposed rule for further explanation for the revision. Comments are due **09/06/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-06/pdf/2022-14318.pdf>. Federal Register, Vol. 87, No. 128, 07/06/2022, 40168-40172.

### FHFA Issues Correction to Enterprise Regulatory Capital Framework Final Rule.

The Federal Housing Finance Administration (FHFA) issued a document to correct two typographical errors that appeared in the final rule published on **06/02/2022**, in the *Federal Register* titled, Enterprise Regulatory Capital Framework–Public Disclosures for the Standardized Approach. See the notice for the specific corrections. The correction is effective **08/01/2022**. The correction may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-27/pdf/2022-13544.pdf>. Federal Register, Vol. 87, No. 122, 06/27/2022, 37979.

### SBA Increases Receipts- and Employee-Based Small Business Size Standards for Wholesale and Retail Trade.

The Small Business Administration (SBA) issued a final rule to increase its receipts-based and employee-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Wholesale Trade and Retail Trade. Specifically, SBA has increased size standards for 57 industries in those sectors, including 22 industries in NAICS Sector 42 (Wholesale Trade) and 35 industries in NAICS Sector 44-45 (Retail Trade). See the final rule for the revised standards. The final rule is effective **07/14/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-14/pdf/2022-12512.pdf>. Federal Register, Vol. 87, No. 114, 06/14/2022, 35869-35885.

### SBA Issues Final Rule to Streamline and Modernize 7(a) Microloan and 504 Loan Programs.

SBA issued a final rule to remove and revise various regulations governing SBA’s business loan programs that are obsolete, unnecessary, ineffective, or burdensome. The final rule also makes several technical amendments to incorporate recent statutory changes and other non-substantive changes. In addition, because the final rule removes a regulation that is cross-referenced in a regulation in SBA’s Disaster Loan Program, the final rule makes one conforming change to the regulation in the Disaster Loan Program. The final rule is effective **08/01/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13483.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 38900-38910.

### SBA Issues Peg Rate.

SBA publishes an interest rate called the optional “peg” rate on a quarterly basis. The rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. The rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. The rate will be **2.75** percent for the July-September quarter of FY 2022. Pursuant to [13 CFR 120.921\(b\)](#), the maximum legal interest rate for any third party lender’s commercial loan which funds any portion of the cost of a 504 project shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given state, the maximum interest rate will be the rate permitted by the constitution or laws of the given state. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-06/pdf/2022-14314.pdf>. Federal Register, Vol. 87, No. 128, 07/06/2022, 40331.

### SBA Issues Interim Final Rule to Implement Temporary 504 Express Loan Authority.

SBA issued an interim final rule to implement the additional authority that the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act temporarily provides to Certified Development Companies (CDCs) that participate in the Accredited Lenders Program with respect to 504 loans that are not more than \$500,000 and that are not made to a borrower in an industry with a high rate of default, as defined by SBA. Under the 504 Loan Program, loans are made to small business applicants by CDCs, which are certified and regulated by SBA to promote economic development within their community. The interim final rule addresses the temporary authority that will be granted to CDCs that are approved by SBA to participate in the Accredited Lenders Program. Comments are due **08/26/2022**. The interim final rule is effective **06/27/2022**. The interim final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-27/pdf/2022-13359.pdf>. Federal Register, Vol. 87, No. 122, 06/27/2022, 37979-37982.

### SBA Proposes to Incorporate NAICS 2022 Into Small Business Size Standards.

SBA issued a proposed rule to amend its small business size regulations to incorporate the U.S. Office of Management and Budget’s (OMB) North American Industry Classification System (NAICS) revision for 2022, identified as NAICS 2022, into its table of small business size standards. The NAICS 2022 revision created 111 new industries by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts. SBA’s proposed size standards for the 111 new industries under NAICS 2022 have resulted in: (a) an increase to the size standards for 21 industries and 27 parts of three industries under NAICS 2017; (b) a decrease to size standards



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for seven industries and 41 parts of one industry; (c) a change in the size standard measure from average annual receipts to number of employees for one industry; (d) a change in the size standard measure from number of employees to average annual receipts for a part of one industry; and (e) no change in size standards for 118 industries and 33 parts of eight industries. SBA proposes to adopt the updated table of size standards, effective **10/01/2022**. Comments are due **08/04/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-05/pdf/2022-13250.pdf>. Federal Register, Vol. 87, No. 127, 07/05/2022, 40034-40087.

### **SBA Issues Proposed Rule on Veteran-Owned Small Business Certification.**

SBA issued a proposed rule to amend its regulations to implement a statutory requirement to certify Veteran-Owned Small Business Concerns (VO SBC) and Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBC) that participate in the Veterans Certification Program. The revisions are meant to implement section 862 of the National Defense Authorization Act for Fiscal Year 2021. Federal contracting officers are authorized to restrict competition to eligible VO SBCs and SDVO SBCs for Department of Veterans Affairs (VA) contracts. The proposed certification would be used in connection with an VO SBC or SDVO SBC seeking to obtain a VA contract. Comments are due **08/05/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-06/pdf/2022-13563.pdf>. Federal Register, Vol. 87, No. 128, 07/06/2022, 40141-40164.

### **FCA Proposes to Increase Direct Lender Association YBS Activity and Reinforce Supervisory Responsibility of Funding Banks.**

The Farm Credit Administration (FCA) issued a proposed rule to increase direct lender associations' young, beginning, and small farmer and rancher (YBS) activity and reinforce the supervisory responsibilities of the funding banks, authorized by section 4.19 of the Farm Credit Act. The proposed rule requires direct lender associations to adopt an independent strategic plan for their YBS program. The direct lender association's funding bank will approve each YBS strategic plan, annually. The direct lender association's YBS strategic plan must contain specific elements that will be evaluated as part of a rating system to measure year-over-year internal progress. The rating system will enable FCA to compare the success of the direct lender association's extension of credit and services to the YBS borrowing population to its peers both within and outside its bank district. Comments are due **08/15/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-16/pdf/2022-12803.pdf>. Federal Register, Vol. 87, No. 116, 06/16/2022, 36261-36266.

### **FCIC Issues Final Rule to Amend Crop Insurance Reporting and Other Changes.**

The Federal Crop Insurance Corporation (FCIC) issued a final rule to amend its regulations to enhance production reporting terminology and assist producers with production reporting requirements. The amendments will provide alternative production reporting options to producers who are unable to provide disinterested third-party verifiable records to support their production report because the producer or a related person generates the supporting records. FCIC is also clarifying the good farming practice appeal deadline and clarifying and correcting portions of the policy. The changes to the crop insurance policies resulting from the amendments in the final rule are applicable for the 2023 and succeeding crop years for crops with a contract change date on or after **06/30/2022**. For all other crops, the changes to the policies made in the final rule are applicable for the 2024 and succeeding crop years. The final rule is effective **06/30/2022**. FCIC will consider comments received by **08/29/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13411.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 38883-38900.

### **Agencies Issue Final Rule to Revise Rural Area Definition.**

The Rural Business-Cooperative Service (RBC), Rural Utilities Service (RUS), and Rural Housing Service (RHS) (collectively, the agencies) issued a final rule to implement the exclusion of certain populations from the definition of "rural area." The final rule updates the definition of "rural area" for every Rural Development program using the Consolidated Farm and Rural Development Act (CONAct) definition to conform to the revision to the statutory definition in the 2018 Farm Bill. The final rule is effective **06/29/2022**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-13857.pdf>. Federal Register, Vol. 87, No. 124, 06/29/2022, 38639-38645.

### **Agencies Announce NOFA for 2022 Rural Placemaking Innovation Challenge.**

The Rural Business-Cooperative Service (RBC), Rural Utilities Service (RUS), and Rural Housing Service (RHS) (collectively, the agencies) issued a notice of funds availability (NOFA) seeking applications for the Rural Development Cooperative Agreement Program, referred to as the Rural Placemaking Innovation Challenge. The program allows for eligible entities to provide technical assistance and training to rural communities for placemaking planning and implementation. See the NOFA for application details. Applications are due **08/15/2022**. The NOFA may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-14028.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 39053-39063.

### **RBC Seeks Comment on Rural Business Development Grants Information Collection.**

The Rural Business-Cooperative Service (RBC) seeks comments regarding revisions to an information collection titled, 7 CFR Part 4280-E, Rural Business Development Grants. The Agricultural Act authorizes the Rural Business Development Grant Program



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to facilitate the development of small and emerging private businesses, industries, and related employment as well as identifying and analyzing business opportunities. The information collection is used in connection with the grant program. Comments are due **09/06/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14519.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40782-40783.

### **RHS Issues Regulatory Waivers for Single Family Housing Section 504 Repair Pilot.**

The Rural Housing Service (RHS) announced the waiver of two regulatory requirements for the Section 504 Direct Single Family Housing Loans and Grants Pilot Program. RHS's intention is to evaluate the existing regulations and remove regulatory barriers to assist eligible applicants with improved ease of use for very low-income homeowners seeking to repair or rehabilitate their homes. The notice briefly discusses the waivers and provides contact information for additional details about the pilot program. The effective date of the two regulatory waivers is **07/08/2022**. The notification of waivers may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14523.pdf>. Federal Register, Vol. 87, No. 130, 07/08/2022, 40709-40710.

### **CFTC Issues 2021 Schedule of Fees.**

The Commodity Futures Tradition Commission (CFTC) issued a notification of 2021 schedule of fees. CFTC charges fees to designated contract markets and registered futures associations to recover the costs incurred by CFTC in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association, a registered futures association, and the designated contract markets. Fees collected from each self-regulatory organization are deposited in the Treasury of the United States as miscellaneous receipts. The calculation of the fee amounts charged for 2021 is based upon an average of actual program costs incurred during fiscal years 2018, 2019, and 2020. Each self-regulatory organization is required to remit electronically the applicable fee on or before **08/16/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-13141.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36407-36409.

### **CFTC Seeks Comment on Real Time Recording and Block Trades Information Collection.**

CFTC seeks comment regarding revisions to an information collection titled, Real Time Public Reporting and Block Trades. The collection of information is needed to ensure that swap data repositories publicly disseminate swap data as required by the Commodity Exchange Act, as amended by the Dodd-Frank Act (DFA). DFA directed CFTC to adopt rules providing for the real-time public reporting and dissemination of swap data and rules for block trades. The notice describes the nature of the information collection and its expected costs and burden. Comments are due **08/08/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-07-07/pdf/2022-14506.pdf>. Federal Register, Vol. 87, No. 129, 07/07/2022, 40510-40512.

### **SEC Issues Final Rule to Convert Certain Paper Filings to Electronic Submissions.**

The Securities and Exchange Commission (SEC) issued a final rule to adopt amendments to convert the filing of certain applications, confidential treatment requests, and forms from paper to electronic submission. SEC has amended rules to require the filings identified in the final rule be submitted via the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. SEC has also adopted amendments to harmonize the requirements for the submission of applications for orders under the Advisers Act and the Investment Company Act. In addition, SEC has amended other rules and a form to require the electronic submission of Form ADV-NR through the Investment Adviser Registration Depository system. SEC has also adopted the requirement for nonresident general partners and nonresident managing agents to amend Form ADV-NR within 30 days whenever any information contained in the form becomes inaccurate. Further, SEC has adopted amendments to Form 13F to require managers to provide additional identifying information and to allow managers to disclose, for any security reported on Form 13F, the security's share class level Financial Instrument Global Identifier. Finally, SEC has adopted certain technical amendments to Form 13F. The final rule is effective **08/29/2022**, except for the amendments to Form 13F which are effective **01/03/2023**. The final rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13936.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 38943-38981.

### **SEC Reopens Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation.**

SEC issued a proposed rule to reopen the comment period for its proposal regarding listing standards for recovery of erroneously awarded compensation, Exchange Act Release No. 34-75342. The proposed rule would direct the national securities exchanges and national securities associations to establish listing standards that would require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require disclosure of the policy. SEC has re-opened the comment period to allow persons to analyze and comment on the additional analysis and data on compensation recovery policies and accounting restatements contained in an SEC memorandum that was added to the public comment file on **06/08/2022**. Comments are due **07/14/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-14/pdf/2022-12792.pdf>. Federal Register, Vol. 87, No. 114, 06/14/2022, 35938-35939.



### SEC Proposes Enhanced Disclosures by Investment Advisers of ESG Issues.

SEC has proposed to amend rules and forms under both the Investment Advisers Act and the Investment Company Act to require registered investment advisers, certain advisers that are exempt from registration, registered investment companies, and business development companies, to provide additional information regarding their environmental, social, and governance (ESG) investment practices. The proposed amendments to the forms and rules seek to facilitate enhanced disclosure of ESG issues to clients and shareholders. The proposed rules and form amendments are designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry. In addition, SEC has proposed an amendment to Form N-CEN applicable to all Index Funds, as defined in Form N-CEN, to provide identifying information about the index. Comments are due **08/16/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11718.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36654-36761.

### SEC Issues Proposed Rule Regarding Investment Company Names.

SEC issued a proposal to amend a rule under the Investment Company Act that addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The proposed amendments are designed to increase investor protection by improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests. The proposed rule would also update notice requirements and establish recordkeeping requirements. SEC has also proposed enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form N-PORT regarding compliance with the proposed names-related regulatory requirements. Comments are due **08/16/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11742.pdf>. Federal Register, Vol. 87, No. 117, 06/17/2022, 36594-36651.

### SEC Issues Proposed Rule on Certain Information Providers Acting as Investments Advisers.

SEC seeks comment on certain information providers whose activities, in whole or in part, may cause them to meet the definition of "investment adviser" under the Investment Advisers Act. The role of index providers, model portfolio providers, and pricing services (collectively, information providers) has grown in size and scope in recent years, significantly changing the face of the asset management industry. The development and nature of the services may raise investment adviser status issues under the Advisers Act. Investment adviser status, in turn, has regulatory implications, including questions relating to registration under the Advisers Act. In addition, the development and nature of the services may raise questions under the Investment Company Act, including whether an information provider is acting as an "investment advisory" of an investment company under the Investment Company Act. Comments are due **08/16/2022**. The proposed rule may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13307.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37254-37262.

### SEC Publishes List of Rules to be Reviewed That Have Significant Impact on Small Entities.

SEC published a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The Act requires agencies to review rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of the rules as final rule. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded to minimize any significant impact of the rule upon small entities. The list is published to provide notice that the rules are scheduled for review by SEC. Comments are due **08/23/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13410.pdf>. Federal Register, Vol. 87, No. 121, 06/24/2022, 37772-37773.

### NCUA Seeks Comment on Call Report and Proof of Concept Application for New Charter Organizing Groups Information Collections.

The National Credit Union Administration (NCUA) seeks comment regarding two information collections. The first information collection identified in the notice is titled, NCUA Call Report, Form 5300. Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICUs) to make financial reports to NCUA. Section 741.5 prescribes the method in which FICUs must submit information. Form 5300, Call Report, is used to file quarterly financial and statistical data. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising federal credit unions, and enables NCUA to monitor FICUs with National Credit Union Share Insurance Fund insured share accounts. The second information collection is titled, Proof of Concept Application (POC) for New Charter Organizing Groups. The Office of Credit Union Resources and Expansion (CURE) is responsible for the review and approval of charter applications submitted by organizing groups. CURE management implemented POC data collection through the CyberGrants system, which documents critical elements for establishing a new charter. The information collection identifies the level of understanding an organizing group has before a formal charter application submission is made. Comments are due **08/01/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-14049.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 39130-39131.



## Regulatory Spotlight

### NCUA Seeks Comment on Information Collections Related to Borrowed Funds and Corporate Credit Unions.

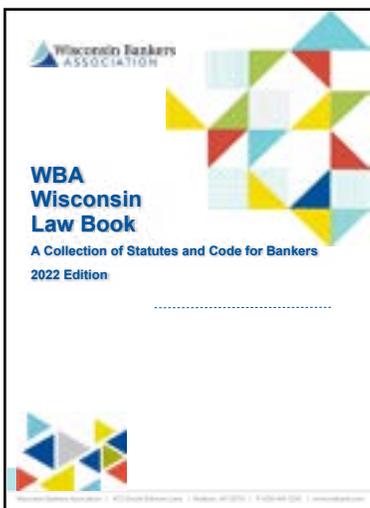
NCUA seeks comment regarding two information collections. The first collection identified in the notice is titled, Borrowed Funds From Natural Person. Section 701.38 of NCUA regulations grants federal credit unions the authority to borrow funds from a natural person as long as they maintain a signed promissory note which includes certain terms and conditions. NCUA uses the information collection to ensure a credit union's natural person borrowings are in compliance and address all regulatory and safety and soundness requirements. The second collection in the notice is titled, Corporate Credit Union, 12 CFR 704. Part 704 of NCUA's regulations established the regulatory framework for corporate credit unions. The collection of information is necessary to ensure that corporate credit unions operate in a safe and sound manner by limiting risk to natural person credit union members and National Credit Union Insurance Fund. Comments are due **08/29/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-14053.pdf>. Federal Register, Vol. 87, No. 125, 06/30/2022, 39131-39132.

### VA Seeks Comment on Guaranteed or Insured Loan Reporting Requirements Information Collection.

The Department of Veteran Affairs (VA) seeks comment regarding a new information collection titled, Guaranteed or Insured Loan Reporting Requirements. 38 U.S.C. 3702(c) requires lenders to report a guaranteed or insured loan to VA in such detail as the VA Secretary may prescribe. In cases where the loan is guaranteed, the Secretary shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. Comments are due within 30 days of publication of the notice. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13257.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37375-37376.

### VA Seeks Comment on Information Collection Regarding Eligibility for VA Home Loan Benefit.

VA seeks comment regarding the extension of an information collection titled, Request for a Certificate of Eligibility for VA Home Loan Benefit, VA Form 26-1880. VA Form 26-1880 is used by VA to determine an applicant's eligibility for loan guaranty benefits, and the amount of entitlement available. If eligible, VA will issue the applicant a Certificate of Eligibility (COE) to be used in applying for loan guaranty benefits. The form is also used in restoration of entitlement cases as further explained in the notice. Comments are due **08/22/2022**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-06-22/pdf/2022-13258.pdf>. Federal Register, Vol. 87, No. 119, 06/22/2022, 37376.



## 2022 WBA Wisconsin Law Book A Collection of Statutes and Code for Bankers

This and other resources are available at:  
<https://wba-storefront.myshopify.com/collections/all>

A question often heard on the phone from bankers calling the WBA Legal Call Program is: **“Where do I find the rule in Wisconsin that requires. . . ?”**

To assist in answering such questions, WBA Legal has released its 2022 WBA Wisconsin Law Book to help bankers locate the statute and code sections applicable to the topic being researched. The new resource includes Wisconsin statute and administrative code sections for over 125 topics, including law related to deposit accounts, legal process, data matching requirements of banks, the Wisconsin Consumer Act, and the Marital Property Act. The book is available in PDF format to assist with searching for a word or phrase.



## Compliance Notes

FinCEN issued a statement on BSA due diligence for independent ATM owners or operators. In the statement, FinCEN reminds banks that not all independent ATM owner or operator customers pose the same level of money laundering, terrorist financing (ML/TF), or other illicit financial activity risk, and that not all independent ATM owner or operator customers are automatically higher risk. Further, banks that operate in compliance with applicable BSA/AML regulatory requirements and reasonably manage and mitigate risks related to the unique characteristics of customer relationships are neither prohibited nor discouraged from providing banking services to independent ATM owner or operator customers, including those that are Independent Sales Organizations (ISOs). The CDD Rule does not require banks to conduct additional due diligence or to institute due diligence processes unique to independent ATM owner or operator customers.

FinCEN further stated that there is no specific customer type, including independent ATM owners and operators, that automatically presents a higher risk of ML/TF or other illicit financial activity; rather, the potential risk to a bank depends on the presence or absence of numerous factors. The ML/TF risk for independent ATM owners or operators can vary depending on the facts and circumstances specific to the customer relationship, such as transaction volume, locations of the ATMs, and the source of funds to replenish the ATMs. Independent ATM owners or operators that fund their ATM replenishment solely with cash withdrawn from their account at a bank may pose a relatively lower ML/TF risk because the bank knows the source of funds and can compare the volume of cash usage to electronic funds transfer settlements to identify suspicious activity. Conversely, independent ATM owners or operators that replenish ATMs from other or unknown cash sources may present potentially higher ML/TF risks, as the source of cash can be difficult for the bank to verify. The statement includes customer information that may be helpful for banks in making determinations on the ML/TF risk profile of an independent ATM owner operator. The statement may be viewed at: [www.fincen.gov/sites/default/files/2022-06/Statement%20for%20Independent%20ATM%20Owners%20or%20Operators\\_508.pdf](http://www.fincen.gov/sites/default/files/2022-06/Statement%20for%20Independent%20ATM%20Owners%20or%20Operators_508.pdf)

FRB, FDIC, OCC, FinCEN and NCUA (collectively, the agencies) issued a joint statement on the risk-based approach to assessing customer relationships and conducting CDD. In the release, the agencies stated that banks that operate in compliance with applicable BSA/AML legal and regulatory requirements, and effectively manage and mitigate risks related to the unique characteristics of customer relationships, are neither prohibited nor discouraged from providing banking services to customers of any specific class or type. As a general matter, the agencies do not direct banks to open, close, or maintain specific accounts. The agencies continue to encourage banks to manage customer relationships and mitigate risks based on customer relationships, rather than decline to provide banking services to entire categories of customers. The joint statement may be viewed at: [www.fdic.gov/news/financial-institution-letters/2022/fil22028a.pdf](http://www.fdic.gov/news/financial-institution-letters/2022/fil22028a.pdf)

FDIC posted an update to its *Consumer Compliance Examination Manual*. The most recent update date for each section is indicated on the webpage as well as in the footer of each section. The updated sections are Overview of Compliance Examinations (Section II-1.1), Pre-Examination Planning (PEP) (II-4.1), Review and Analysis (II-5.1), Communicating Findings (II-6.1), Investigations and Visitations (II-8.1), Pre-Examination Information Packet (III-1.1), and Bank of Anytown (III-2.1). The updated manual may be viewed at: [www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/index.html](http://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/index.html)

FRB, FDIC, and OCC released the 2022 list of distressed or underserved nonmetropolitan middle-income geographies. These are geographic areas where revitalization or stabilization activities are eligible to receive CRA consideration pursuant to the definition of community development under the agencies' regulations. The 2022 list, previous years' lists, and criteria for designating the areas may be viewed on FFIEC's website at: [www.ffiec.gov/cra/distressed.htm](http://www.ffiec.gov/cra/distressed.htm)

FDIC released a statement of a new Q&A and new information on its Banker Resource Center Brokered Deposit webpage and to remind FDIC-insured banks that deposits swept from broker dealers with a primary purpose exception to unaffiliated banks must be reported as brokered if there are any additional third parties involved that qualify as a deposit broker under FDIC's Part 337 Brokered Deposits rules. The new Q&A (item D.10) and the updated banker resources may be viewed at: [www.fdic.gov/news/financial-institution-letters/2022/fil22030.html](http://www.fdic.gov/news/financial-institution-letters/2022/fil22030.html)

FHA announced new flexibility for lenders when qualifying borrowers who experienced previous employment gaps or loss of income due to the COVID-19 pandemic. Through the updated list within Mortgagee Letter 2022-09, salaried and hourly wage-earners, as well as self-employed individuals affected by COVID-19, who now have stable income will have a greater opportunity to purchase a home using affordable FHA-insured mortgage financing. The announcement and Mortgagee Letter may be viewed at: [www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_22\\_129](http://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_129)

FFIEC has made available data on 2021 mortgage lending transactions reported under HMDA by nearly 4,400 financial institutions. The report and a snapshot of national loan-level dataset may be viewed at: [www.ffiec.gov/press/pr061622.htm](http://www.ffiec.gov/press/pr061622.htm)

Staff at the Federal Reserve Financial Services co-authored an article for the Association of Certified Fraud Examiners' publication, *Fraud Magazine*. The article is titled, How the U.S. Federal Reserve's Synthetic Identity Fraud Resources Can Help the Financial Sector. The article may be viewed at: [www.fraud-magazine.com/article.aspx?id=4295019499](http://www.fraud-magazine.com/article.aspx?id=4295019499)



## Compliance Notes

▲ Nacha released ACH Operations Bulletin #1-2022 which announces that COVID-related relief from certain Nacha operating rule provisions will expire on **10/01/2022**. In 2020, Nacha provided relief from certain provisions of the Nacha operating rules due to impacts of the COVID-19 pandemic. The relief generally took the form of a policy of non-enforcement of the provisions and the effective dates of some new rules. The bulletin may be viewed at: [www.nacha.org/news/ach-operations-bulletin-1-2022-covid-related-relief-certain-nacha-operating-rule-provisions](http://www.nacha.org/news/ach-operations-bulletin-1-2022-covid-related-relief-certain-nacha-operating-rule-provisions)

▲ CFPB issued an interpretive rule affirming states' abilities to protect their residents through their own fair credit reporting laws. With limited preemption exceptions, states have the flexibility to preserve fair and competitive credit reporting markets by enacting state-level laws that are stricter than the FCRA. FCRA does not stop states from enacting laws to tackle credit reporting problems related to medical debt, tenant screening, and other consumer risks. The interpretive rule may be viewed at: [www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/](http://www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/)

▲ FRB announced the final timeline and implementation details for adoption of new Fedwire Funds Service message format. The final details are similar to the proposal issued last year. FRB confirmed that the new message format, ISO 20022, will be adopted on a single day as proposed last year, rather than in three separate phases. The new timeline for implementation was based on review of comments, with the new message format to be adopted on **03/10/2025**. Additionally, FRB provided further information regarding customer testing and other implementation details. The announcement may be viewed at: [www.federalreserve.gov/newsevents/pressreleases/other20220627a.htm](http://www.federalreserve.gov/newsevents/pressreleases/other20220627a.htm)

▲ CFPB announced it has asked over 20 institutions for data on five consumer-impact metrics regarding overdraft fees. The metrics include: (1) total annual dollar amount consumers receive in overdraft coverage compared to the amount of fees charged; (2) annual dollar amount of overdraft fees charged per active checking account; (3) annual dollar amount of NSF fees charged per active checking account; (4) prevalence of frequent overdrafters, the share of active checking accounts with more than 6 and more than 12 overdrafts and/or NSF fees per year; and (5) share of active checking accounts that are opted into overdraft programs for ATM and one-time debit transactions. In addition to the metrics, CFPB's Supervisory team is seeking detailed information about entities' overdraft practices, including how they assess their fees, their grace periods, the dollar thresholds above which fees are assessed, and caps on the number of fees charged per day, or per statement period. The release may be viewed at: [www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/](http://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/)

### Are you a WBA member with a legal question?

Contact the

### WBA Legal Call Program

[wbalegal@wisbank.com](mailto:wbalegal@wisbank.com) | 608-441-1200 | [wisbank.com/resources/compliance](http://wisbank.com/resources/compliance)

This WBA member-exclusive program provides information in response to compliance questions.



## AUGUST 2022

- **Agricultural Lending School**  
10–12 Madison; \$895/attendee  
*(Optional preschool workshop available on August 9.)*
- **Chairman’s Member Appreciation Golf Outing**  
18 Wisconsin Dells
- **Deposit Compliance School**  
22–23 Madison or virtual; \$535/attendee
- **Branch Manager Boot Camp: Session 4**  
30 4-part series; virtual half-days; \$800/attendee

## SEPTEMBER 2022

- **Internal Audit Workshop**  
1 Madison; \$245/attendee
- **WBA/MBA Advanced Financial Statement & Cash Flow Analysis Workshop**  
7 Lansing, Mich. or virtual; \$265/attendee
- **WBA/MBA Advanced Tax Return Analysis Workshop**  
8 Lansing, Mich. or virtual; \$265/attendee
- **WBA/MBA Advanced C&I and CRE Lending Workshop**  
9 Lansing, Mich. or virtual; \$265/attendee
- **Management Conference** *(including tracks for CEOs, CFOs, CCOs, HR, and other bank leaders)*  
13–14 Wisconsin Dells
- **Secur-I.T. Conference** *(including tracks for BSA/AML, Operations, Security, and Technology)*  
20–21 Wisconsin Dells
- **Branch Manager Boot Camp: Session 1**  
22 4-part series; virtual half-days; \$800/attendee
- **IRA Essentials Workshop**  
27 Madison; \$245/attendee
- **Advanced Workshop**  
28 Madison; \$245/attendee
- **HR Workshop**  
29 Madison; \$245/attendee

## OCTOBER 2022

- **Principles of Banking Course**  
5–6 Mineral Point; \$550/attendee

## OCTOBER 2022 *(continued)*

- **Commercial Lending School**  
12–14 Madison; \$895/attendee
- **Family-owned and Closely Held Bank Strategic Retreat**  
13–14 Madison
- **Supervisor Boot Camp**  
18–19 Madison; \$535/attendee
- **FIPCO Software & Compliance Forum: Loan & Mortgage**; virtual  
19–20
- **Branch Manager Boot Camp: Session 2**  
20 4-part series; virtual half-days; \$800/attendee
- **Community Bankers for Compliance (CBC) – Session IV**  
25 Stevens Point; membership *(pricing options vary)*  
26 Madison; membership *(pricing options vary)*
- **FDIC Directors College**  
26 Wisconsin Dells; \$225/attendee  
27 Madison; \$225/attendee
- **Principles of Banking Course**  
26–27 Eau Claire; \$550/attendee

## NOVEMBER 2022

- **Personal Banker School**  
2–3 Madison; \$495/attendee
- **BOLT Winter Leadership Summit**  
9 Wisconsin Dells; \$150/attendee
- **Branch Manager Boot Camp: Session 3**  
10 4-part series; virtual half-days; \$800/attendee
- **Compliance Forum: Session 2**  
15 Wisconsin Dells; annual membership *(pricing varies)*
- **LEAD360 Conference**  
16–17 Wisconsin Dells

### 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**.