Wisconsin Bankers ASSOCIATION

Compliance Journal

April 2024

Special Focus

Summary of Recently Enacted State Legislation

The 2023–2024 Wisconsin legislative session concluded recently, with WBA's state lobbying efforts achieving many of its goals. It was a busy and productive session which saw passage of WBA supported legislation such as the financial institutions modernization bill, an update to Wisconsin's Uniform Trust Code, and creation of a tool to help combat elder financial abuse. This was also a historic session, during which an unprecedented state tax exemption was created for banks on interest income for certain commercial and ag purpose loans.

The above legislation, along with several other recently enacted state legislative items relevant to banks are summarized in this article. While some of the new laws affect banks directly, others may have no direct impact, but are included to provide an overall awareness of what occurred this session within the financial services industry as a whole. For more comprehensive information on each law, please review the applicable Act, for which a link is included at the end of each summary.

Note that all Acts are effective as of the day after publication, unless indicated otherwise.

Commercial Loan Tax Exclusion

A momentous moment occurred this session with passage of a commercial loan tax exclusion (tax exemption) for the banking industry. The tax exemption passed as part of the 2023–2025 state budget, and includes clarifications incorporated through a tax clean-up bill, and an emergency rule issued by the Wisconsin Department of Revenue (DOR). The result of these three components is the realization of a long-standing WBA advocacy priority in creation of an income tax-exemption for covered commercial loans. Each component is summarized below.

Wisconsin Budget

Governor Tony Evers signed 2023 Wisconsin Act 19 in July of 2023 which passed the 2023–2025 state budget. Included within the budget is the historic tax exemption discussed above, which provides an income tax exclusion on income earned from commercial loans for business or agricultural purposes of $5 million or less where the borrower resides, or is located, in the state of Wisconsin (covered commercial loan). Specifically, the budget creates section 71.05(1)(i) and section 71.26(i) which provides an exclusion from individual income taxes and an exclusion from corporation income, respectively. The change is effective for taxable years beginning after December 31, 2022. For purposes of the exclusion, income includes interest, fees, and penalties, derived from a covered commercial loan.

2023 Wisconsin Act 19: https://docs.legis.wisconsin.gov/2023/related/acts/19.pdf

Tax Clean-up Bill

Following signing of the budget, a legislative fix was proposed to clarify the new tax exemption. This fix was incorporated into 2023 Wisconsin Act 146, a tax clean-up bill. The fix creates new section 71.365(4m)(d)1.bd. which provides that "for taxable years beginning after December 31, 2022, the income exclusion under s. 71.05(1)(i) shall be allowed." The purpose for this fix is to clarify that the commercial and agricultural loan income tax exemption also applies to Subchapter S banks where the state income tax is paid at the entity or franchise level rather than the individual shareholder level.
2023 Wisconsin Act 146: https://docs.legis.wisconsin.gov/2023/related/acts/146.pdf

DOR Emergency Rule

Since passage of the tax exemption in the state budget and clarification provided by the tax clean-up bill, DOR has published an emergency rule to provide additional certainty regarding income that qualifies for the exemption. The emergency rule clarifies what entities, loans, and income qualify for the new income exemption, as well as prescribing how the $5 million loan limitation is computed. The emergency rule creates Chapter Tax 3.10 and is included in the link below.

DOR Emergency Rule EmR2404: https://docs.legis.wisconsin.gov/code/register/2024/819a3/register/emr/emr2404_rule_text/emr2404_rule_text.pdf

Financial Institutions Modernization Bill

During every legislative session WBA identifies and advocates for necessary changes to state laws regulating the banking industry. These changes are often presented in a modernization bill, sometimes referred to as an "omnibus bill," given that they often include groupings of many different aspects of state law. The 2023-2024 legislative was no different, and the WBA supported financial institutions modernization bill was signed into law as 2023 Wisconsin Act 128. Act 128 contains several provisions positive for the financial institutions industry and comes as a bipartisan effort by the industry to modify, clarify, and simplify state statues governing financial institutions.

Modifications include:

- Increasing the amount of compensation available from DFI for losses resulting from the deposit of public moneys in a failed financial institution from $400,000 to $1,000,000.
- Extension for the maximum maturity date, from 10 to 20 years of a promissory note issued by a municipality, county, or school district.
- Repeal of outdated provisions related to the installation and operation of off-site ATMs.
- Creation of a crime for interfering with an ATM.

Act 128 also eliminates certain lender disclosure requirements applicable to residential mortgage loans and variable rate loans. Specifically, Act 128 repeals Wis. Stat. sections 138.052(7e), 138.052(7m), and 138.056(6) of Wisconsin law. Prior to the repeal, sections 138.052(7e) and 138.052(7m) required disclosures at time of application and section 138.056(6) required variable rate loan disclosures. Both requirements applied to consumer purpose loans secured by first lien or equivalent security interest in borrower's 1-4 family principal residence. These requirements were repealed due to their redundancy with Federal disclosure requirements. As a result, financial institutions are no longer required to meet the disclosure requirements required by sections 138.052(7e), 138.052(7m), and 138.056(6). Financial institutions must continue to meet any applicable Federal disclosure requirements.

2023 Wisconsin Act 128: https://docs.legis.wisconsin.gov/2023/related/acts/128.pdf

Elder Financial Abuse

A longstanding priority of the industry is creation of new tools to assist in combatting elder financial abuse. This session, 2023 Wisconsin Act 132 was passed to authorize a financial service provider to maintain a contact list on behalf of a vulnerable adult, and to contact certain persons when the provider reasonably suspects financial exploitation of a vulnerable adult. The Act defines "vulnerable adult" as an individual who is either:

- At least 65 years of age, or
- An adult at risk, as further defined within existing Wisconsin law.

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The usage of such a list is optional. If opting to use such a list, the vulnerable adult can submit and periodically update it with persons that the financial institution may contact when it has reasonable cause to suspect that the vulnerable adult is a victim or a target of financial exploitation. How and when the financial institution uses the list is up to the institution. It may also choose not to contact individuals on the list, limit the information, and choose to disclose only its reasonable suspicion, without disclosing any other details or confidential personal information regarding the vulnerable adult's financial affairs. The Act provides immunity from all criminal, civil, and administrative liability for any financial service provider, or financial service provider's employee, for actions taken in good faith to contact a person or elect not to contact a person as authorized under the Act, and for actions taken in furtherance of that determination, if the determination was made based on reasonable suspicion.

WBA will continue to advocate on behalf of the industry for additional tools to assist the industry in combating elder financial abuse.

2023 Wisconsin Act 132: https://docs.legis.wisconsin.gov/2023/related/acts/132.pdf

Uniform Trust Code Trailer Bill

Wisconsin passed its Uniform Trust Code in 2013. Since then, the industry has been working on several technical changes. These changes include incorporating updates reflected in existing uniform laws such as those of other states, fixing issues identified since passage of the original law, and adoption of new concepts and tools as consistent with current Wisconsin law. These changes were incorporated into a trust code trailer bill and signed into law as 2023 Wisconsin Act 127 as a culmination of over a decade of industry work. While it is largely technical in nature, Act 127 represents a significant update to Wisconsin's Trust Code which will provide trust and wealth management professionals with the ability to better serve their trust customers.

More specifically, the Act makes several changes to the administration of trusts, the power to decant trusts, the creation and exercise of powers of appointment, the disclosure of certain digital property, and the classification of digital property as individual property for purposes of determining marital property.

2023 Wisconsin Act 127: https://docs.legis.wisconsin.gov/2023/related/acts/127.pdf

Financial Literacy

The banking industry shares a longstanding mission to promote financial literacy. In support of this goal, the governor signed 2023 Wisconsin Act 60 to create a requirement that high school students complete at least 0.5 credits of personal financial literacy. The course must include financial mindset, education and employment, money management, saving and investing, credit and debt, and risk management and insurance. The requirement first applies to students graduating from high school in 2028.

2023 Wisconsin Act 60: https://docs.legis.wisconsin.gov/2023/related/proposals/ab109.pdf.

Remote Notarial Acts

Two bills were signed into law this session relating to remote notarial acts. Wisconsin law generally permits a notary public to perform a notarization remotely for certain specified transactions but excludes others. Two bills signed into law this session relate to those prohibitions, expanding the types of notarial acts which may be performed remotely.

- 2023 Wisconsin Act 129, creates an exception to the general prohibition on remote notarization of powers of attorney, thus permitting remote notarization of a limited financial power of attorney for a real estate transaction.
- 2023 Wisconsin Act 130 authorizes and creates a process allowing for the remote notarization of an "estate planning document," as that term is defined by the Act.

For purposes of Act 130, "estate planning document" includes a declaration to health care professionals, an authorization for final disposition, a power of attorney for health care, and the execution of a will. Specifically, the Act authorizes the remote notarization of an estate planning document where a remotely located individual appears before a notary public

via two-way, real-time audiovisual communication technology if various requirements are met.

2023 Wisconsin Act 129: https://docs.legis.wisconsin.gov/2023/related/acts/129.pdf

2023 Wisconsin Act 130: https://docs.legis.wisconsin.gov/2023/related/acts/130.pdf

Earned Wage Access

Wisconsin has adopted laws regulating companies that provide earned wage access services to individuals who reside in Wisconsin through 2023 Wisconsin Act 131. Act 131 requires such companies to be licensed by the Wisconsin Department of Financial Institutions (DFI) as a condition of doing business in Wisconsin. An earned wage access service is one which provides consumers with earned but unpaid income and is further defined by the Act. Providers of earned wage access services doing business in Wisconsin must take certain actions, such as developing policies and procedures, providing disclosures, and adhere to certain consumer protections specific to the provision of covered services.

2023 Wisconsin Act 131: https://docs.legis.wisconsin.gov/2023/related/acts/131.pdf

Robbery of a Financial Institution

2023 Wisconsin Act 133 expands the definition of robbery of a financial institution. Wisconsin law governing crimes against financial institutions defines the offense of robbery of a financial institution as committed when a person, by use of force or threat to use imminent force, takes money or property that is owned by or under the custody of another or control of a financial institution from an individual or in the presence of an individual. A person who commits this offense is guilty of a Class C felony. Act 133 expands this definition to provide that a person is also guilty of robbery of a financial institution if he or she creates circumstances that would cause a reasonable person to believe use of force was imminent.

2023 Wisconsin Act 133: https://docs.legis.wisconsin.gov/2023/related/acts/133.pdf

Unclaimed Property

2023 Wisconsin Act 138 makes various technical changes to a variety of areas of law. One aspect relevant to financial institutions is a change made to Wisconsin's Revised Uniform Unclaimed Property Act (RUUPA). When Wisconsin adopted RUUPA, a "loyalty card" was defined, in part, as a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program. Act 138 clarifies the definition of "loyalty card" by creating the term "financial organization loyalty card" and defines that term, in part, as a card or electronic record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program established by a financial organization. This clarification helps establish how financial organization loyalty cards, as defined by the Act, are governed by Wisconsin's abandoned property laws.

2023 Wisconsin Act 138: https://docs.legis.wisconsin.gov/2023/related/acts/138.pdf

College Savings Accounts

Some changes were made this session to Wisconsin college savings programs, as well as to the employee college savings account contribution tax credit. The Wisconsin 529 College Savings Program offers two savings plans to save for higher education under Section 529 of the U.S. Internal Revenue Code: Edvest 529 and Tomorrow's Scholar (529 accounts). Both plans are qualified tuition programs under 26 USC 529 and are administered by DFI. 2023 Wisconsin Act 148 made several changes to Wisconsin's 529 accounts including:

- Modifications to the individual income tax treatment for contributions to and withdrawals from 529 accounts and the employee college savings account contribution credit.
- Increases the maximum amount that can be deducted from contributions to a 529 account to $5,000 for most filers and $2,500 for married-separate filers.
- Requires the use of a first-in, first-out accounting method for determining which withdrawals would be added to adjusted gross income and would restrict the use of carryover contributions in excess of the maximum deduction threshold if the carryover amount was withdrawn within 365 days of being first contributed.

- Links the definition of "qualified higher education expense" to federal law, which has been expanded to include expenses for apprenticeship programs and qualified education loan repayments.

2023 Wisconsin Act 148: https://docs.legis.wisconsin.gov/2023/related/acts/148.pdf

Uniform Fraudulent Transfers Act

The Uniform Fraudulent Transactions Act (UFTA) permits a creditor to challenge certain transfers of assets by a debtor that are intended to deprive the creditor of assets that would otherwise be available if the debtor is or were to become insolvent. 2023 Wisconsin Act 246 modifies the current UFTA as follows:

- The Act renames the UFTA to the Uniform Voidable Transactions Law (UVTL) and replaces the term fraudulent with voidable throughout.
- The Act allocates the burden of proof for claims and defenses related to UVTL and defines the standard of proof as a preponderance of the evidence.
- The Act creates a choice-of-law rule for courts to determine which state's voidable transactions law applies. Under the Act, a court must apply the law of the state where the debtor is located at the time the transfer is made or obligation incurred.
- The Act eliminates the special definition of insolvency for partnerships, making partnerships subject to the same general definition as any other party governed by the UVTL.

2023 Wisconsin Act 246: https://docs.legis.wisconsin.gov/2023/related/acts/246.pdf

ABLE Accounts

Federal law allows for the establishment of tax-advantaged savings accounts for certain individuals with disabilities under the Achieving a Better Life Experience (ABLE) Act, these accounts being known as ABLE accounts. Until this session, Wisconsin residents could only establish an ABLE account in another state. 2023 Wisconsin Act 267 requires DFI to implement a qualified ABLE program, allowing tax-exempt accounts for qualified expenses incurred by individuals with disabilities to be established under Wisconsin law, and Wisconsin consumers to establish ABLE accounts under the state-administered program.

2023 Wisconsin Act 267: https://docs.legis.wisconsin.gov/2023/related/acts/267.pdf

Mobile Branches

DFI has issued Clearinghouse Rule CR 23-039 which proposes to modify Wis. Admin. Code DFI-Bkg 8.01 (1), which currently defines a state bank branch as a "permanent" facility. The new definition would allow state banks to offer services through attended mobile or intermittent branches, subject to the approval of the Division of Banking. This change will enable banks to extend services to Wisconsinites in areas that may be underbanked, whose residents may be underserved, and to areas where permanent branches may not be feasible. This would also maintain with national banks (which are authorized to operate mobile and intermittent branches), and state savings banks, state savings and loan associations, and state credit unions (which are not subject to rules limiting their branches to "permanent" locations).

DFI Clearinghouse Rule CR 23-039: https://docs.legis.wisconsin.gov/code/register/2024/818b/register/cr/cr_23_039_rule_text/cr_23_039_rule_text.pdf

Conclusion

WBA will continue to monitor and advocate on issues, including those discussed above and others, which impact the Wisconsin banking industry. If you have any additional questions on any of the above bills or issues, do not hesitate to contact us at wbalegal@wisbank.com.

FDIC Releases 2023 Consumer Compliance Examination Observations

The Federal Deposit Insurance Corporation (FDIC) released its 2024 Consumer Compliance Supervisory Highlights (Highlights) which provides a summary of the results of consumer compliance examinations in 2023. FDIC also provides a description of the most frequently cited violations, other consumer compliance examination observations, and an overview of trends in consumer complaints that were processed by FDIC in 2023. The following are several notable takeaways from the latest edition of FDIC's Highlights.

Overall Performance

FDIC reported it conducted close to 900 consumer compliance examinations in 2023 and that overall, the majority of FDIC-supervised institutions continue to maintain an effective compliance management system (CMS) and adequately manage consumer compliance risk. FDIC reported that through its use of the Federal Financial Institutions Examination Council's (FFIEC) Uniform Interagency Consumer Compliance Rating System, as of **12/31/2023**, 98 percent of all FDIC-supervised institutions were rated satisfactory or better for consumer compliance (i.e., ratings of 1 or 2), and 99 percent were rated "Outstanding" or "Satisfactory" for the Community Reinvestment Act (CRA).

FDIC also concluded that institutions which rated less than satisfactory for consumer compliance (i.e., ratings of 3, 4, or 5) had overall CMS weaknesses, which often resulted in violations of law and the risk of consumer harm. Institutions rated "Needs to Improve" or "Substantial Noncompliance" for CRA represented a weak performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

Most Frequently Cited Violations

During 2023, FDIC consumer compliance examiners identified regulatory violations that ranged in severity from highest to lowest level of concern (i.e., Levels 3, 2, and 1, with Level 1 representing the lowest level of concern). The Highlights focused on the five most frequently cited instances of Level 3 or Level 2 violations.

The most frequently cited violations (representing approximately 74 percent of the total violations cited in 2023) involved the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z; the Flood Disaster Protection Act (FDPA) and its implementing regulation, Part 339; the Electronic Fund Transfers Act (EFTA) and its implementing regulation, Regulation E; the Truth in Savings Act (TISA) and its implementing regulation, Regulation DD; and Section 5 of the Federal Trade Commission Act (Section 5 of the FTC Act).

The list contains the same laws and regulations from FDIC's 2022 publication; however, Section 5 of the FTC Act violations dropped from the second most frequently cited violation to the fifth most frequently cited violation. Of the top regulatory areas cited for violations, the following list describes the most frequently cited violation in each area.

- **TILA/Regulation Z:** Regulation Z sections 1026.38(f)-(k) requires the creditor to accurately disclose certain closing cost information on the Closing Disclosure. While TILA violations cited during 2023 were widely distributed among the various provisions of the regulation, this section represented 9 percent of the total TILA violations cited.

- **FDPA/12 CFR Part 339:** Section 339.3(a) of FDIC Rules and Regulations requires that adequate flood insurance be in place at the time a covered loan is made, increased, extended, or renewed. This section represented 47 percent of the total FDPA violations cited in 2023.

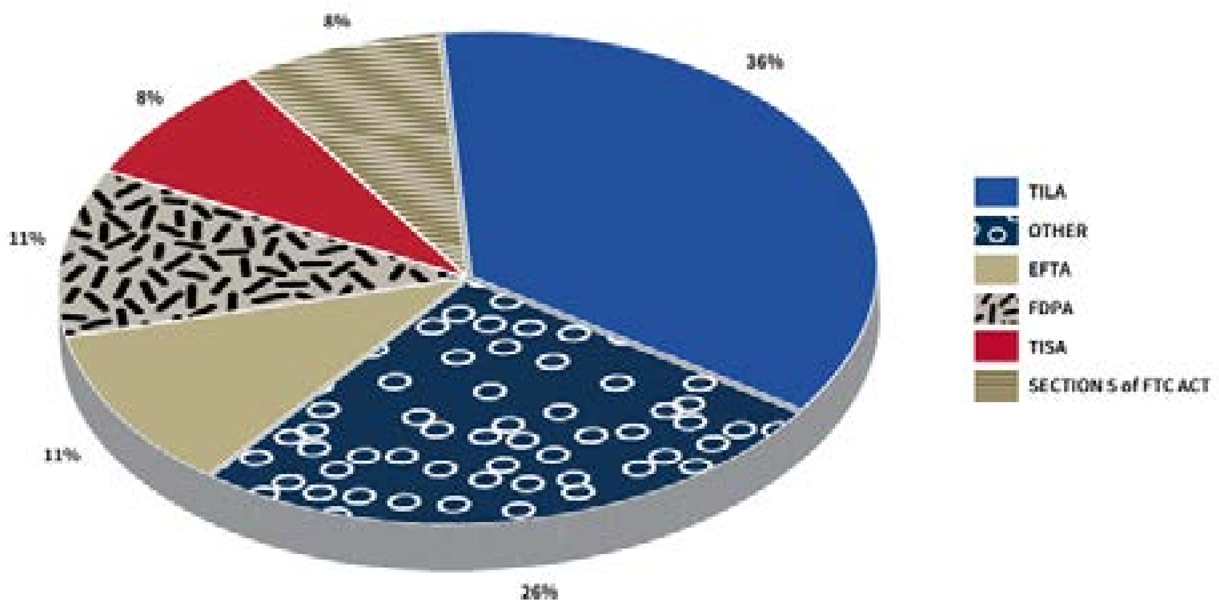
- **EFTA/Regulation E:** Section 1005.11(c) of Regulation E requires a financial institution to investigate allegations of electronic fund transfer (EFT) errors, determine whether an error occurred, report the results to the consumer, and correct the error within certain timeframes. This section represented 46 percent of the total EFTA violations cited in 2023.

- **TISA/Regulation DD:** Sections 1030.4(a) and (b) of Regulation DD set forth timing and content requirements for deposit account disclosures. While TISA violations cited during 2023 were widely distributed among the various provisions of the regulation, this section represented 9 percent of the total TISA violations cited.

- **Section 5 of FTC Act:** Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. FDIC cited violations for instances when financial institutions charged multiple nonsufficient funds (NSF) fees for the re-presentment of the same transaction, but the disclosures did not fully or clearly describe the financial institution's re-presentment practice. This included instances where the institution did not explain that the same unpaid transaction might result in multiple NSF fees if an item was presented more than once. FDIC frequently cited this issue, which represented 58 percent of all Section 5 of the FTC Act violations in 2023.

Additionally in 2023, FDIC initiated 16 formal enforcement actions and 16 informal enforcement actions to address consumer compliance examination findings. During this period, FDIC issued civil money penalty (CMP) orders totaling approximately $474,000 against institutions to address violations of the FDPA, Section 5 of the FTC Act, and the Home Mortgage Disclosure Act. Supervised institutions provided voluntary restitution payments totaling $10.6 million to more than 130,000 consumers for violations of various laws and regulations.

MOST FREQUENTLY CITED STATUTES AND REGULATIONS IN 2023						
Statute/Regulation	Level 3 Violations		Level 2 Violations		Total Violations[2]	
	#	%	#	%	#	%
TILA	10	1%	431	35%	441	36%
FDPA	0	0%	136	11%	136	11%
EFTA	6	<1%	123	11%	129	11%
TISA	1	<1%	100	8%	101	8%
Section 5 of the FTC Act	34	3%	62	5%	96	8%
Total 5 Most Commonly Cited Statutes	51	4%	852	70%	903	74%
All Cited Statutes in 2023	69	6%	1158	94%	1227	100%



Special Focus

Consumer Compliance Examination Observations

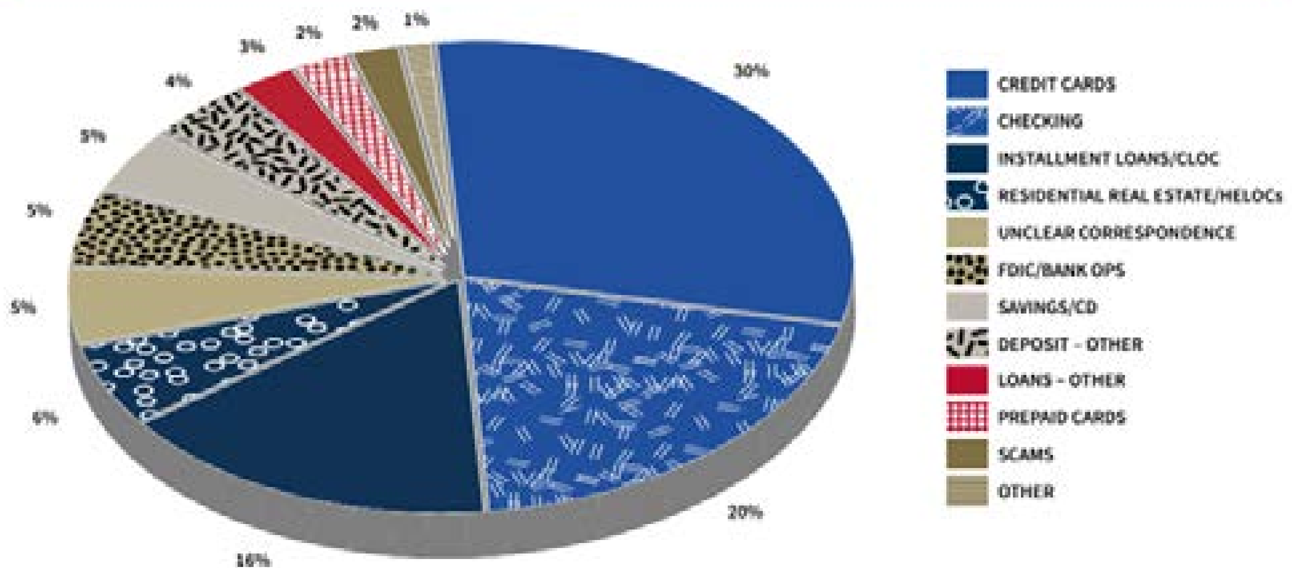
FDIC's Highlights also includes a description of some of the more significant consumer compliance issues identified by examiners in 2023. Many consumer compliance examination observations involve deficiencies in bank oversight of its third-party relationships. In some cases, the third-party relationships described involve arrangements in which products and services were offered directly to consumers by non-bank entities that have relationships with FDIC-supervised banks. The third-parties failed to comply with consumer compliance rules when offering consumer products or services which then resulted in compliance violations for the institutions. These third-party activities included the misuse of FDIC's name or logo in crypto-related asset activities, offering credit building products, performing EFT dispute investigations, and offering unsecured consumer loans and other credit products. FDIC offers several mitigating risk activities to help prevent compliance violations from occurring.

Consumer Complaint Trends

FDIC also reported on consumer complaint trends received in 2023. FDIC's Consumer Response Unit (CRU) of the National Center for Consumer and Depositor Assistance (NCDA), which investigates consumer complaints involving FDIC-supervised banks, reportedly closed 23,287 written complaints and telephone calls in 2023 compared to 22,195 closed in 2022, a 5 percent increase. FDIC also reported that CRU acknowledged all written complaints within 14 days and closed 98.2 percent of investigated complaints within established timeframes.

The following is further consumer complaint trend data of FDIC, including a five-year trend:

PRODUCTS IDENTIFIED IN WRITTEN CONSUMER COMPLAINTS AND INQUIRIES ABOUT FDIC-SUPERVISED INSTITUTIONS



The CRU also associated 15,625 issues among the aforementioned bank products, with the top issues being "credit reporting" (2,386), "disclosures" (1,147), "loan forgery/ID theft" (877), "unable to provide requested service" (775), "billing disputes" (653), and "error resolution procedures" (647). The top 15 issues of 2023 are noted below:

MOST COMMON ISSUES IN CONSUMER COMPLAINTS AND INQUIRIES ABOUT FDIC-SUPERVISED INSTITUTIONS	
Credit Reporting Disputes	15%
Disclosures	7%
Loan Forgery/ID Theft	6%
Discrepancy Transaction Error	5%
Unable to Provide Requested Service*	5%
Billing Disputes and Error Resolution	4%
Error Resolution Procedures	4%
Collection Practices	4%
Fees and Finance Charges	4%
Account Block	3%
Customer Identification Program	3%
Account Closure	3%
Loan Discrepancies/Crediting of Payments	2%
Adverse Action Notice	2%
Funds Availability/Hold Notifications	2%

* Includes service disruption issues and other service-related concerns when customers cannot immediately access their accounts.

MOST COMMON PRODUCT COMPLAINTS REVIEWED BY THE CRU IN 2023	% OF PRODUCTS COMPARED TO TOTAL VOLUME					MOST COMMON ISSUES (2023) (% OF PRODUCT TOTALS)
	2019	2020	2021	2022	2023	
Credit Cards	20%	18%	23%	30%	30%	1. Credit Reporting Errors (30%) 2. Loan Forgery/ID Theft (12%) 3. Billing Disputes (11%)
Checking Accounts	29%	25%	23%	22%	23%	1. Error Resolution (15%) 2. Discrepancy Transaction Error (15%) 3. Account Closure (10%)
Installment Loans	9%	7%	9%	8%	9%	1. Credit Reporting Errors (27%) 2. Disclosures (15%) 3. Loan Forgery/ID Theft (9%)
Consumer Lines of Credit	8%	7%	7%	7%	7%	1. Credit Reporting Errors (38%) 2. Disclosures (14%) 3. Loan Forgery/ID Theft (13%)
Residential Real Estate	10%	8%	9%	5%	5%	1. Disclosures (10%) 2. Credit Reporting Errors (9%) 3. Escrow (9%)

Special Focus

Conclusion

FDIC has released its 2024 Consumer Compliance Supervisory Highlights which provides a summary of the overall results of 2023 consumer compliance examinations. The release also includes descriptions of the most frequently cited violations, other consumer compliance examination observations, and an overview of trends in consumer complaints that were processed by FDIC in 2023. Knowledge of these findings and consumer complaint trends helps FDIC-regulated institutions know what will likely be atop examiners' minds in upcoming compliance examinations. Knowing the findings, recommended risk mitigation steps, and consumer complaint trends will further help compliance staff be prepared for upcoming compliance examinations.

The March 2024 FDIC Consumer Compliance Supervisory Highlights release may be viewed at: https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2024.pdf

Regulatory Spotlight

Agencies Issue Interim CRA 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 an interim final rule regarding the agencies' Community Reinvestment Act (CRA) final rule which was issued **10/24/2023**, and published in the Federal Register on **02/012024**. The interim final rule has two components. First, the agencies have amended the applicability date of the facility-based assessment areas provision and public file provision included in the 2023 CRA final rule. Second, the agencies have made technical amendments to the 2023 CRA final rule and related regulations as outlined in the interim final rule. In addition, the interim final rule corrects the preamble to the 2023 CRA final rule regarding OCC's Unfunded Mandates Reform Act regulatory analysis. The interim final rule is effective **04/01/2024**. Comments regarding the applicability date for §§ 25.16, 25.43, 228.16, 228.43, 345.16, and 345.43 are due **05/13/2024**. The interim final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-03-29/pdf/2024-06497.pdf. *Federal Register*, Vol. 89, No. 62, 03/29/2024, 22060-22069.

Agencies Issue Temporary Appraisal Exceptions for Maui County.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the agencies) issued a temporary exception to Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) appraisal requirements in Maui County as affected by the Hawaii wildfires. In the statement and order, the agencies exercised their authority to grant temporary exceptions to FIRREA appraisal requirements for real estate-related financial transactions, provided certain criteria are met, in an area in the State of Hawaii following the major disaster declared by President Biden as a result of wildfires. The expiration date for the exceptions is **08/10/2026**. The order is effective **03/12/2024**. The order may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-03-12/pdf/2024-05159.pdf. *Federal Register*, Vol. 89, No. 49, 3/12/2024, 17710-17711.

CFPB Issues Final Credit Card Penalty Fee Rule.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA), to address late fees charged by card issuers that together with their affiliates have one million or more open credit card accounts (Larger Card Issuers). The final rule adopts a late fee safe harbor threshold of $8 for Larger Card Issuers and provides that the annual adjustments to reflect changes in the Consumer Price Index (CPI) do not apply to the $8 amount. The final rule is effective **05/14/2024.** The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-03-15/pdf/2024-05011.pdf. *Federal Register*, Vol. 89, No. 52, 03/15/2024, 19128-19223.

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Agencies Release Examination Principles Related to Valuation Discrimination and Bias in Residential Lending

The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Bureau of Consumer Financial Protection (CFPB), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), and the State Liaison Committee, released principles for the examination of supervised institutions' (institutions) residential property appraisal and evaluation (collectively, valuation) practices.

The examination principles are meant to help mitigate risks that may arise due to potential discrimination or bias in valuation practices and to promote creditable valuations. In the context of consumer compliance, "discrimination" is used to refer to prohibited discrimination based on protected characteristics in the residential property valuation process. "Bias" is considered to mean a preference or inclination that precludes an appraiser or other preparer of the valuation from reporting with impartiality, independence, or objectivity in an assignment.

The agencies are concerned over discrimination and bias in valuation practices given how critical an underwriting component real estate valuations are in residential real estate (RRE) lending, both from a consumer compliance and safety and soundness perspective. As a result, the agencies have set forth examination principles for both consumer compliance examinations and for safety and soundness examinations.

Consumer Compliance Examination Principles

Under a consumer compliance examination, examiners are to consider whether the institution's risk management practices for RRE valuations are appropriate to identify and address valuation discrimination. In particular, examiners are to consider board and senior management oversight and the institution's consumer compliance program.

Regarding board and senior management oversight, examiners are to evaluate whether the board of directors and management ensure that the institution has implemented and maintains a compliance management system, including third-party oversight, which is commensurate with the institution's RRE lending risk profile. When evaluating an institution's third-party risk management, examiners are to evaluate the institution's oversight of RRE valuation of third-parties' consumer compliance-related policies, procedures, internal controls, and training.

Examiners will also evaluate an institution's due diligence and ongoing monitoring of third parties, including persons or entities that prepare valuation reports, third-party appraisers, and appraisal management companies, to assess compliance with consumer protection laws and regulations, including anti-discrimination laws.

Regarding an institution's consumer compliance program, examiners will: (a) assess an institution's policies and procedures to determine if its collateral valuation review function includes identifying potential discriminatory valuation practices or results; (b) assess whether its training program appropriately addresses identification of potential discrimination in RRE lending and collateral valuation programs, whether internally identified or from consumer inquiries or complaints; (c) assess whether the institution adheres to policies and procedures designed to identify and address potential discriminations; and (d) evaluate the institution's systems or processes for reviewing, documenting, tracking, addressing, monitoring, and managing collateral valuation complaints—including complaints that allege potential

discrimination. The evaluation will include how an institution handles complaints from various channels and sources, such as letters, phone calls, in person, from regulators, third-party service providers, emails, and social media.

Safety and Soundness Examination Principles

Examiners will also review an institution's RRE collateral valuation program as a component of a safety and soundness examination. Consistent with an agency's risk-focused examination approach, examiners will take a number of matters into consideration. In particular, examiners are to consider consumer compliance examination findings and will review other examination planning information to identify consumer complaints, litigation, and other matters related to valuation discrimination or bias. From a risk assessment perspective, examiners will consider the materiality of RRE lending in relation to the institution's overall lending activities, size, complexity, and risk profile.

Examiners will also assess the institution's policies, processes, staff organization and resources, control system, and management information systems for RRE collateral valuations. This assessment will also include the institution's ability to identify and resolve incidences for potential valuation discrimination or bias. Examiners are to evaluate the institution's practices for selecting, retaining, and overseeing independent, qualified, and competent individuals (and applicable valuation models) that have the ability to render unbiased and credible opinions of collateral value and will evaluate the institution's oversight of valuation-related third parties. The evaluation will also include how an institution reviews how their third parties identify, monitor, and manage the risks related to valuation discrimination or bias.

Within a safety and soundness examination, examiners will also assess the institution's valuation review function for identifying potentially discriminatory or biased valuation results, assess the institution's credit risk review function for RRE loan portfolios for appropriate consideration of potentially discriminatory or biased valuations, and will assess the institution's training program meant to provide staff with the knowledge and skills to identify and resolve valuation discrimination or bias.

Conclusion

Given the principles outlined in the FFIEC statement, financial institutions should use the stated principles as a checklist to review current valuation policies and procedures to identify whether there are gaps and to create a plan for incorporating any missing principles into applicable policy and procedures, in preparation for examiner scrutiny.

For example, an institution should be prepared to explain in a consumer compliance examination how its policies and procedures include a means to review collateral valuations to identify potential discriminatory valuation practices or results, how such review is completed, and how matters are resolved. When an institution conducts valuation training, identify the portion of the training intended to educate staff on valuation discrimination or bias, how to watch for, identify, and report such practices, and how to resolve valuation discrimination or bias. Tracking such training will allow the institution to report how it has educated staff on the topic when asked in examinations. If an institution is utilizing a third party for valuations, the institution should be prepared to demonstrate how it monitors the third party for identifying, monitoring, and managing against valuation discrimination or bias. Having such measurement incorporated into the institution's management of its third-party valuation vendor(s) will help the institution demonstrate to examiners the institution is managing against risks involving valuation discrimination or bias.

The FFIEC interagency statement may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_ffiec-statement-on-exam-principles_2024-02.pdf

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FRB *Consumer Compliance Outlook* Lists Top 2022 Compliance Examination Violations

In its recently released Fourth Issue 2023 *Consumer Compliance Outlook*,® the Board of Governors of the Federal Reserve System (FRB) identified top compliance violations from its 2022 compliance examination data. Violations of the Electronic Fund Transfer Act (Regulation E), Real Estate Settlement Procedures Act (Regulation X), Fair Credit Reporting Act (FCRA), and Equal Credit Opportunity Act (Regulation B) were among the most cited. The following is a summary of FRB's findings.

Regulation E Violations

FRB reported that common violations of Regulation E included not promptly investigating, not providing provisional credit, and not conducting an adequate investigation. FRB examination data reflected that some financial institutions had not promptly initiated error resolution investigations after the consumer notified the institution of an error, in violation of §1005.11(c). FRB identified the errors typically occurred because bank staff did not recognize when consumers were making error resolution claims, did not know how to initiate investigations, or did not correctly identify all of the disputed transactions.

FRB also reported that examiners cited institutions for violating §1005.11(c)(2)(i) by not providing provisional credit for the amount of the alleged error within 10 business days of receiving an error notice when the institutions could not complete their investigation within 10 business days and took up to 45 days to investigate under §1005.11(c)(2). Examiners also cited institutions that provisionally credited accounts but failed to provide full access to and use of the funds during the investigation. FRB identified the errors occurred because the institutions lacked effective procedures, controls, monitoring, and/or training to ensure compliance with the regulation.

FRB compliance examination data also reflected that some institutions conducted inadequate investigations of error claims. Under Regulation E, an institution cannot deny a consumer's claim of an error without conducting a reasonable investigation, unless it corrects the error as alleged by the consumer. FRB explains that a reasonable investigation includes reviewing relevant information within the institution's records. If the review confirms the error, the claim cannot be denied. FRB further explained that when an alleged error is an unauthorized electronic fund transfer (EFT), the Electronic Fund Transfer Act places the burden of proof on the financial institution to establish the transaction was authorized. Therefore, if the institution cannot establish the disputed EFT transaction was authorized, FRB concluded the institution must credit the consumer's account. FRB stated it believes these types of errors occurred because staff either did not review or research all the transactions the consumer disputed or denied claims because of prior disputed transactions with the same merchant. FRB further reported that examiners identified root causes as not providing effective policies and procedures and not conducting adequate training and monitoring. FRB cited institutions for not explaining the results of an investigation and not providing notice to the consumer of the right to request the documents the institution relied on in making its determination. FRB reported the errors occurred primarily because staff did not adhere to the institution's policies and procedures.

Regulation X Violations

FRB's *Consumer Compliance Outlook* also reported violations of escrow account rules under Regulation X. In particular, FRB reported that examiners found bank staff inaccurately computed and disclosed the initial and annual escrow analyses. FRB stated incorrect system settings and payment amount issues typically caused the errors. For the system settings, FRB examiners found bank staff erroneously used the payment due date rather than the anticipated disbursement date as the disbursement date for escrow items on the initial and annual escrow analyses. Using the payment due date rather than the anticipated disbursement date resulted in computation and disclosure errors on the initial and annual escrow account analyses.

For the payment amount issue, examiners identified that bank staff itemized the incorrect number of payments from the escrow account on the initial and annual escrow account analyses, resulting in inaccurate initial and annual escrow computations and projections.

FRB reported that examiners also observed errors related to bank staff conducting annual escrow account analyses beyond the 12-month computation year, without issuing short-year statements as required under Regulation X. In these cases, examiners found bank staff conducted annual escrow analyses for all loans during the same month. If a loan was

originated outside of this month, an annual escrow account analysis was not prepared until the loan aligned with the bank's escrow analysis schedule. The examination finding resulted in staff not conducting timely annual escrow account analyses, as §1024.17(c)(3) requires.

Fair Credit Reporting Act Violations

FRB also shared common examination violations under FCRA. In particular, FRB examiners cited violations for not providing an accurate or complete adverse action notice to affected applicants. FRB reported common violations included: (a) not including the range of possible credit scores under the scoring model used; (b) not providing an adverse action notice when taking adverse action based, in whole or in part, on information in a consumer report, and (c) taking adverse action based, in whole or in part, on a credit score, but not including the credit score disclosures specified in FCRA §609(f)(1) in the adverse action notice. As a reminder, the credit score does not have to the be primary reason adverse action is taken; the credit score disclosures are required whenever a score is used in the decision to take adverse action. FRB stated it believes the FCRA-related errors were due to inadequate training, controls, and procedures.

Regulation B Violations

The latest FRB *Consumer Compliance Outlook* also listed the most cited violations of ECOA under Regulation B. FRB examiners cited financial institutions that required individual, creditworthy applicants to obtain the signature of their spouse or another person as a condition of their loan in violation of the §1002.7(d).

Examiners also cited financial institutions for not appropriately providing applicants a copy of appraisals or valuations associated with a first-lien mortgage application in accordance with §1002.14(a). FRB also cited institutions for failing to mail or deliver a notice in writing of the applicant's right to receive a copy of all written appraisals or valuations developed in connection with the application within the time periods required under Regulation B. FRB stated inadequate training and inadequate procedures were identified as the root causes for the violations cited under Regulation B.

Sound Practices

For the compliance examination violations identified in the article, FRB provided recommendations of what it considers are sound practices to help mitigate compliance risks. The identified practices are meant to help institutions limit the type of violations listed and should be considered if an institution seeks improvements in a particular compliance procedure. The Fourth Issue 2023 FRB *Consumer Compliance Outlook* may be viewed at: https://emma-assets.s3.amazonaws.com/cky/ed16d88bfb810d65b1ad8d243b62c2bb/CCO_Issue_4_2023.pdf

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Reporting HMDA Total Units and Cross-Collateralization

A version of this article previously appeared in the July 2022 edition of the WBA Compliance Journal. While there has been no new law and no new interpretations of existing law in this area, WBA and FIPCO continue to receive questions regarding the interplay of HMDA reporting for total units and cross-collateralization clauses within security agreements. As a result, this article has been updated for purposes clarity. In addition to the updated article, the final pages of this month's Compliance Journal include a brand-new HMDA Total Units Worksheet designed to help banks understand, identify, and report total units for covered loans.

Subject to certain exemptions, the Home Mortgage Disclosures Act (HMDA) requires covered financial institutions (banks) to report data on covered transactions. HMDA reporting banks must report data for covered transactions. The data to be reported is outlined under Regulation C section 1003.4. Some of those data points are optional for banks which qualify for a partial exemption. For the purposes of this article, only one data point is discussed. That data point requires reporting of 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. Thus, total units must be reported by all covered banks, including those who qualify for a partial exemption.

The total units data point requires a reporting bank 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.

A loan could be secured by multiple properties as the result of future advance language or other cross-collateralization clauses. For example, the WBA 451 Business Note contains cross-collateralization language which provides broad coverage in support of the bank's position 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.[1]

Lenders need to review their notes and security agreements for these types of clauses, and similar language. While understanding the language within a bank's notes and security agreements is important for a number of reasons, this article strictly discusses the significance of such language as it relates to reporting HMDA total units. To that extent, the question becomes: for a covered loan, what data must a bank report for total units when that loan is secured by multiple properties by virtue of cross-collateralization?

When reporting total units, HMDA provides an answer to this question 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). Various HMDA data points require a bank to report certain information on the property securing the covered loan. When a covered loan is secured by multiple properties, questions arise as to which property the bank is to report on. Comment 2 provides clarity regarding this question. Thus, comment 2 is critical to the understanding of how to report total units. Specifically, 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). Another way to look at it is that some data points require bank to report information on multiple properties, while others only require bank to report on one property. Comment 2 provides a list of each data point which is reported for a single property, and those which are reported for every property securing the loan.

The data reported for total units is one of those which must be reported for every property securing the loan.[2]

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. When a loan is secured by multiple properties, bank must report total units as including every property securing the loan. Meaning bank must report all properties which are cross-collateralized.

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 procedures 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, and part of that monitoring should include how bank will identify and report every

1 The reason this language is included 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.

2 Comment 2 provides in relevant part: "...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)."

property securing a HMDA covered loan for the total units data point. 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. A HMDA Total Units Worksheet is included at the end of this *Compliance Journal* designed to help banks understand, identify, and report this sole data point. Lastly, as mentioned above, this article, and the included worksheet, is specific to the implications of cross-collateralization clauses in relation to reporting of total units for HMDA purposes only. However, cross-collateralization clauses are important to understand for reasons beyond HMDA reporting.

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

Regulatory Spotlight

Agencies Publish Final CRA Rule and Trade Associations Sue Claiming Agencies Exceeded Statutory Authority.

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) adopted final amendments to their regulations that implement the Community Reinvestment Act (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The final rule is effective **04/01/2024**, except for amendment nos. 29, 52, and 75, which are effective **04/01/2024**, through **01/01/2031**. Amendment nos. 7, 11, 18, 20, 25, 35, 39, 43, 45, 49, 58, 62, 66, 68, and 72, are delayed indefinitely. The agencies will publish a document in the *Federal Register* announcing an effective date for the delayed amendments. Sections II.12 through II.15, II.17 through II.30, and II.42(a); the data collection and maintenance requirements in II.42(c) through (f); and appendices A through F of the common rule text as adopted by the agencies are applicable **01/01/2026**. Section II.42(b) and (g) through (i) and the reporting requirements in II.42(c) through (f) of the common rule text as adopted by the agencies are applicable **01/01/2027**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-01/pdf/2023-25797.pdf. *Federal Register*, Vol. 89, No. 22, 02/01/2024, 6574-7222.

The American Bankers Association, U.S. Chamber of Commerce, Independent Community Bankers of America, Texas Bankers Association, Independent Bankers Association of Texas, Amarillo Chamber of Commerce, and Longview Chamber of Commerce filed a lawsuit in the Northern District of Texas against the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) for exceeding their statutory authority and acting arbitrarily and capriciously with their recent amendments to the Community Reinvestment Act (CRA) Rules. The announcement may be viewed at: https://www.aba.com/about-us/press-room/press-releases/cra-joint-trades-lawsuit.

Agencies Adjust CMPs for Inflation.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to adjust for inflation the maximum amount of each civil penalty within CFPB's jurisdiction. The adjustments are required by the Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law. See the final rule for the specific adjustments. The final rule is effective **01/15/2024**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-01-11/pdf/2024-00456.pdf. *Federal Register*, Vol. 89, No. 8, 01/11/2024, 1787-1789.

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to amend its rules of practice and procedure to adjust the amount of each civil money penalty (CMP) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the final rule for the

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Special Focus

FDIC Revises Part 328 Regarding Advertising of FDIC Membership and Use of Official Sign

The Federal Deposit Insurance Corporation (FDIC) issued a final rule in late December which amends its regulations governing use of the official FDIC sign and insured depository institutions' (IDIs') advertising statements (Part 328) to reflect how depositors conduct business with IDIs today, including through digital and mobile channels. Part 328 includes requirements for the use of the official FDIC sign and IDI's advertising statements, as well as misrepresentations of insured status and misuses of the FDIC name or logo. The amendments made by the final rule are effective **April 1, 2024**; with an extended compliance date of **January 1, 2025**.

FDIC's Part 328, entitled Official Signs, Advertisements and Membership, False Advertising, Misrepresentation of Insurance Status, and Misuse of FDIC's Logo, consists of two parts. Subpart A provides definitions and requirements for the required use of the FDIC official sign and the advertisement of membership. Subpart B of Part 328 provides definitions and prohibitions against false advertising, misrepresentation of insured status, and misuse of FDIC's name or logo. The final rule revised both subparts.

The following is a section-by-section summary of the revisions to Subpart A of Part 328 and an overview summary of the revisions to Subpart B regarding false advertisements, misrepresentation of insurance status, and misuse of FDIC logo.

Subpart A Definitions and Requirements

Subpart A of Part 328 describes the official sign and advertising statement and prescribes their use by IDIs, as well as other signs to prevent customer confusion in the event non-deposit products are offered by an IDI.

Part **328.1** provides definitions for terms used within Subpart A Part 328, including the following:

Branch has the same meaning as the term "domestic branch" as set forth under section 3(o) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(o).

Corporation means the Federal Deposit Insurance Corporation.

Deposit has the same meaning as set forth under section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l).

Digital deposit-taking channel means websites, banking applications, and any other electronic communications method through which an IDI accepts deposits.

Hybrid product means a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

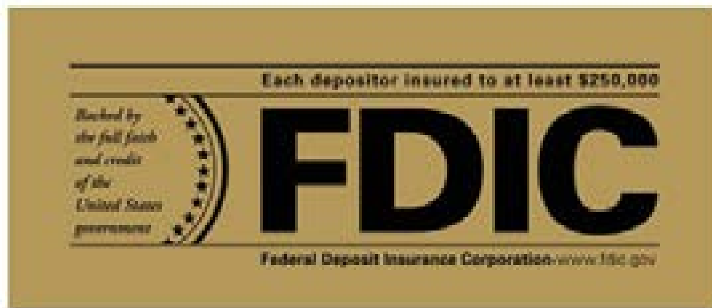
Insured depository institution has the same meaning as set forth under section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

Non-deposit product means any product that is not a "deposit", including, but not limited to: insurance products, annuities,

mutual funds, securities, and crypto-assets. For purposes of this definition, credit products and safe deposit boxes are not non-deposit products.

Part **328.2** provides FDIC's official sign and symbol.

FDIC will continue to use the existing design of its official sign. Except as otherwise provided in this section, FDIC's official sign must be 7" by 3" in size, with black lettering and gold background, and has the following design:



FDIC will also continue the use of its existing "symbol" which is that portion of the official sign consisting of "FDIC" and the two lines of smaller type above and below "FDIC."

An IDI may procure the official sign from FDIC for official use at no charge. Information on obtaining the official sign is posted on FDIC's website at: https://www.fdic.gov. Alternatively, an IDI may, at their expense, procure from commercial suppliers, signs that vary from the official sign in size, color, or material. FDIC has also continued its existing procedure that it may require an IDI, upon at least thirty (30) days written notice, to change the wording or color of the official sign in a manner deemed necessary for the protection of depositors or others.

Signs in Bank Premises

Part 328.3 provides requirements for signage within the premises of IDIs and the offering of non-deposit products within the premises of IDIs.

FDIC has revised its current rule for the display of its official sign to address changes in some branch structures, including café-style locations where deposits are accepted in an open area rather than at a teller window or station. As a general rule, each IDI must continuously, clearly, and conspicuously display the official sign at each place of business where consumers have access to or transact with deposits.

For deposits received at teller windows or stations, FDIC has retained the current rule to require the display of the official sign at each teller window or station where insured deposits are usually and normally received, in a size of 7" by 3" or larger with black lettering on a gold background as described in section 328.2 above.

FDIC has created a new provision meant to allow flexibility with respect to the display of the official sign when the IDI usually and normally receives deposits at teller windows and stations and only offers insured deposit products on the premises. If the IDI does not offer non-deposit products on the premises, the official sign may be displayed at one or more locations visible from the teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area. Whether the display is "large enough to be legible from anywhere in that area" means that the average customer can easily see and read the sign from a reasonable distance from that area. This may depend on factors specific to the layout of the IDI's physical premises. For example, if an IDI's place of business has two teller windows right next to each other

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and it posts one official sign between the teller windows that is large enough to be legible to depositors at both teller windows, that approach would meet the standard.

If insured deposits are usually and normally received in areas of the premises other than teller windows or stations (e.g., café-style locations), the IDI must display the official sign in one or more locations in a manner that ensures a copy of the official sign is large enough to be legible from anywhere in the deposit-taking areas.

An IDI may display the official sign in locations at the institution other than those required by this section, except for areas where non-deposit products are offered as further outlined below. FDIC will also continue to allow an IDI to display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted. However, any such varied sign that is displayed in locations where display of the official sign is required must not be smaller in size than the official sign, must have the same color for the text and graphics, and include the same content.

Under the final rule, if non-deposit products are offered on the IDI premises, the non-deposit products must be physically segregated from areas where insured deposits are usually and normally accepted. The IDI must identify areas where activities related to the sale of non-deposit products occur and clearly delineate and distinguish those areas from the areas where insured deposit-taking activities occur. Examples include, that IDIs could conduct non-deposit related activity in separate areas or in areas that are not in close proximity to where deposits are taken by using a desk, cubicle, partitions, railings, planters, a separate room, or other indicator that the area is distinct and separate from the deposit-taking area.

In addition, at each location within the premises where non-deposit products are offered, an IDI must continuously, clearly, and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. The signage may not be displayed in close proximity to the official sign. FDIC has not created a standardized design or model form for the non-deposit sign; IDIs will need to create their own signage.

In limited situations where physical considerations present challenges to offering non-deposit products in a distinct area, an IDI must take prudent and reasonable steps to minimize customer confusion.

FDIC will permit IDIs to use electronic media to display the official sign and non-deposit sign as required by the rule, so long as the display meets the continuous, clear, and conspicuous display standard. FDIC stated in its preamble to the rule that a rotating display will not satisfy the “continuous” requirement applicable to the display of the official sign and non-deposit sign.

Signs for ATMs and Other Remote Electronic Facilities

Part 328.4 governs signage for IDIs’ automated teller machines (ATMs) and other remote electronic facilities that receive deposits. An IDI’s remote electronic facility that receives deposits and is labeled an interactive teller machine or (ITM) instead of an ATM is subject to Part 328. However, if the ITM does not receive deposits, it is not subject to the rule. This section is separate from online and mobile banking channels, which are referred to as “digital deposit-taking channels” described further in the next section.

As a general rule, an IDI’s ATM or like device that receives deposits for an IDI and does not offer access to non-deposit products may comply with the official sign requirement by either: (1) displaying the physical official sign as described above in section 328.2 on the ATM by attaching or posting it to the ATM; or (2) displaying the FDIC official digital sign which is discussed in the digital deposit-taking channel section below. However, IDI’s ATMs or like devices that accept deposits and are put into service after **January 1, 2025**, must display the official digital sign.

If an IDI is satisfying the requirements of displaying FDIC’s official sign on its ATM or like device by physically attaching or posting it to the ATM, IDIs need be mindful that if the physical sign were to become degraded or defaced, the physical sign would not meet the “clearly, continuously, and conspicuously” standard. As a result, an IDI should monitor the condition of any physically attached posted official sign to ensure it does not become too bad of condition and replace it as necessary.

Special Focus

An IDI's ATM or like device that receives deposits for an IDI and offers access to non-deposit products must clearly, continuously, and conspicuously display the FDIC official digital sign on its home page or screen and on each transaction page or screen relating to deposits. An IDI that offers access to non-deposit products, must clearly, continuously, and conspicuously display electronic disclosures indicating that such non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. These disclosures must be displayed on each transaction page or screen relating to non-deposit products by **January 1, 2025**. Such signage may not be displayed in close proximity to the FDIC official digital sign.

Signs for Digital Deposit-Taking Channels

Part 328.5 governs signage for digital deposit-taking channels, including IDIs' websites and web-based or mobile applications that offer the ability to make deposits electronically and provide access to deposits at IDIs.

An IDI must clearly, continuously, and conspicuously display the FDIC official digital sign on its digital deposit-taking channels on the following pages or screens:

1. Initial or homepage of the website or application;
2. Landing or login pages; and
3. Pages where the customer may transact with deposits.

Under the final rule, the FDIC official digital sign shall be clearly legible across all IDI deposit-taking channels. The official digital sign must also be clearly and conspicuously placed. An official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would be considered clear and conspicuous by FDIC.

The official digital sign required under this section must have the following design:

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

The "FDIC" in the official digital sign shall be displayed with a wordmark size of 37.36 x 15.74px, in navy blue (hexadecimal color code #003256), and the "FDIC-Insured – Backed by the full faith and credit of the U.S. Government" shall be displayed in regular 400 italic (12.8px) and with black (hexadecimal color code #000000) lettering.

The entire official digital sign must be displayed in Source Sans Pro Web. If the FDIC official digital sign in these colors would be illegible in a digital-taking channel, due to the color of the background, the entire official digital sign must be displayed in white (hexadecimal color code #FFFFFF).

The "digital symbol" of FDIC is that portion of the FDIC official digital sign consisting of "FDIC" and the one line of smaller type to the right of "FDIC.

If a digital deposit-taking channel offers both access to deposits at an IDI and non-deposit products, the IDI must clearly and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. This signage must be displayed continuously on each page relating to non-deposit products. The non-deposit signage may not be displayed in close proximity to the FDIC official digital sign display.

If a digital deposit-taking channel offers access to non-deposit products from a non-bank third party's online platform, and a logged-in bank customer attempts to access such non-deposit products, the IDI must provide a one-time per web session notification on the IDI's deposit-taking channel before the customer leaves the IDI's digital deposit-taking channel. The notification must be dismissed by an action of the bank customer before initially accessing the third party's online platform and it must clearly, conspicuously indicate that the third party's non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. An IDI is not precluded from including additional disclosures in the notification that may help prevent consumer confusion, including, for example, that the bank customer is leaving the IDI's insured website.

Similar to signs within an IDI's premises, FDIC may require an IDI, upon at least thirty (30) days written notice, to change the wording, color, or placement of the FDIC official digital sign and other signs for digital deposit-taking channels when it is deemed necessary for the protection of depositors or others or to ensure consistency with this section.

Official Advertising Statement

Part 328.6 governs the requirement of how FDIC's official advertising statement is to be used. Currently, IDI must include the official advertising statement in all advertisements that promote deposit products. The term advertisement means a commercial message in any medium that is designed to attract public attention or patronage to a product or business. The definition includes advertising published through social media channels.

The current official advertising statement under Part 328 is "Member of the Federal Deposit Insurance Corporation."

IDIs are also currently allowed to use the short title "Member of FDIC," "Member FDIC," or a reproduction of the symbol of FDIC. Under the final rule, IDIs may now also use the short title, "FDIC-Insured."

The existing requirements regarding the size and print of the official advertising statement, use of the official statement in advertisements, list of advertisements which do not require the official advertising statement, restrictions on the use of the statement when advertising non-deposit products, and use of the official advertising statement in non-English language remain in place and are not impacted by the final rule.

Prohibition Against Receiving Deposits at Same Teller Station as Non-Insured Institution

Part 328.7 sets forth the general prohibition against an IDI receiving deposits at same teller station or window as any non-insured institution receives deposits or similar liabilities. The section currently has an exception in that the prohibition did not apply to deposits received at an ATM or other remote electronic facility that receives deposits for an IDI. The section was revised to include in the exception deposits facilitated through a digital deposit-taking channel.

Policies and Procedures

Part 328.8 sets forth a new requirement that IDIs must establish and maintain written policies and procedures to achieve compliance with Part 328. The policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI. The policies and procedures must also, as appropriate, include provisions related to monitoring and evaluating activities of persons that prove deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

Subpart B: False Advertising, Misrepresentation of Insured Status, and Misue of the FDIC Name or Logo

FDIC issued Subpart B to Part 328 in May 2022 which established the process by which FDIC identifies and investigates conduct that may violate Section 18 of the Federal Deposit Insurance Act which prohibits any person from misusing the name or logo of the FDIC and from engaging in false advertising or making knowing misrepresentations about deposit insurance. Amendments were made to Subpart B to expressly address situations where consumers may be misled. The section now includes a non-exhaustive list of conduct that violates part 328.

The final rule also revises the definition of "non-deposit product" under the Subpart to state that crypto-assets are not a "deposit." The revised definition also states safe deposit box services are not non-deposit products. The revisions are meant to clarify that IDIs are not required to display the non-deposit sign in areas where IDIs provide safe deposit boxes and offer no other non-deposit products.

Summary

FDIC has revised Part 328 regarding the use of the FDIC official sign and IDI's advertising statements to reflect digital and mobile channels. The final rule generally: (a) modernizes and amends the rules governing the display of the official sign in branches; (b) requires the display of the FDIC official digital sign on bank websites, mobile applications, and certain IDI ATMs and other like devices; (c) requires the use of disclosures differentiating deposits and non-deposit

products across all banking channels, including digital channels; (d) clarifies FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; and (e) amends the definition of "non-deposit product" to include crypto-assets and specifically address safe deposit box services.

The final rule also requires IDIs to adopt a Part 328 policy and create procedures regarding the use of the FDIC official sign and advertising statement, including monitoring, and evaluating any third-party servicer, as applicable. The policy and procedures need be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI. IDIs also need to review ATMs, ITMs, and other remote service devises to ensure any required statements are properly placed, including whether a non-deposit product statement is necessary. IDIs will also need to review any deposit-taking channels to ensure each have the necessary FDIC signage and non-deposit product statement, as applicable.

The amendments made by the final rule are effective **April 1, 2024**; with an extended compliance date of **January 1, 2025**. The final rule may be viewed at: https://www.fdic.gov/news/board-matters/2023/2023-12-20-notice-dis-b-fr.pdf

2024 Adjusted State and Federal Regulatory Thresholds and Limits

Happy New Year! As we start afresh into a new year, several thresholds have been adjusted by both state and federal regulators which go into effect now that the new year has arrived. Below is a collection of thresholds effective **January 1, 2024**, including a link to pull each publication for reference.

Regulation Z, TILA

• The exemption threshold for Regulation Z (Truth in Lending Act) will increase to **$69,500,** up from $66,400. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25048.pdf

• The exemption threshold under Regulation Z for HPML appraisals will increase to **$32,400**, up from $31,000. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25047.pdf

• The asset-size threshold under Regulation Z which exempts creditors from the requirement to establish an escrow account for HPMLs will be:
  - o For creditors and their affiliates that regularly extended covered transactions secured by first liens, the asset-size threshold is adjusted to **$2.640 billion**, up from $2.537 billion; and
  - o The exemption threshold for certain insured depository institutions with assets of $10 billion or less is adjusted to $11.835 billion, up from **$11.374 billion.** https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28076.pdf

• The dollar amount thresholds under Regulation Z for HOEPA and QM-related loans have been adjusted as follows:
  - o For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages will be **$26,092**.
  - o The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,305**.
  - o For QMs under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) will be:
    - • 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$130,461**;
    - • 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$78,277** but less than **$130,461**;
    - • 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than **$78,277**;
    - • 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than **$130,461**;
    - • 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to **$78,277**; or
    - • 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than **$78,277**.

o For all categories of QMs, the thresholds for total points and fees will be:
- 3 percent of the total loan amount for a loan greater than or equal to **$130,461**;
- $3,914 for a loan amount greater than or equal to **$78,277** but less than **$130,461**;
- 5 percent of the total loan amount for a loan greater than or equal to **$26,092** but less than **$78,277**;
- $1,305 for a loan amount greater than or equal to **$16,308** but less than **$26,092**; and
- 8 percent of the total loan amount for a loan amount less than **$16,308**.

o For open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at **$1.00**. https://www.govinfo.gov/content/pkg/FR-2023-09-21/pdf/2023-20476.pdf

Regulation C, HMDA

• The asset-size threshold to be exempt from collecting HMDA data in 2023 is adjusted to **$56 million**, up from $54 million. https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28079.pdf

Community Reinvestment Act (CRA)

• The Board of Governors of the Federal Reserve System (FRB) and Federal Deposit Insurance Corporation (FDIC) CRA regulations have adjusted the asset-size thresholds used to define "small bank" and "intermediate small bank" to be:

o Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than **$1.564 billion**; and

o Intermediate small bank means a small bank with assets of at least **$391 million** as of December 31 of both of the prior two calendar years and less than **$1.564 billion** as of December 31 of either of the prior two calendar years. https://www.govinfo.gov/content/pkg/FR-2023-12-20/pdf/2023-27934.pdf

• The Office of the Comptroller of the Currency (OCC) made the identical adjustments to the asset-size thresholds used to define "small bank or savings association" and "intermediate small bank or savings association." https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-40.html

Required Escrow Rate under Wisconsin Law

• The Wisconsin Department of Financial Institutions (WDFI) has established the interest rate that must be paid on required escrow accounts under section 138.052(5) of the Wisconsin Statutes. The new rate is **0.18%**. https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/EscrowNotice.aspx

Other Regulatory Thresholds and Limits

• The dollar amount of the maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to Fair Credit Report Act (FCRA) section 609 for the 2024 calendar year is **$15.50**. https://www.govinfo.gov/content/pkg/FR-2023-11-15/pdf/2023-25172.pdf

• The exemption threshold for Regulation M (Consumer Leasing Act) will increase to **$69,500,** up from $66,400. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25049.pdf

• The FDIC Designated Reserve Ratio remains **2 percent** for 2024. https://www.govinfo.gov/content/pkg/FR-2023-11-22/pdf/2023-25814.pdf

• The OCC is maintaining the general assessment, independent trust, and independent credit card fee schedules from 2023. There will be no inflation adjustment to assessment rates. OCC is increasing the hourly fee for special examinations and investigations to $170 from $161. The increase is to ensure adequacy in recovering the cost of conducting special examinations and investigations. https://www.occ.treas.gov/topics/supervision-and-examination/examinations/assessments-and-fees/notice-of-fees-semiannual-assessment.html

Special Focus

• Contribution limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased to **$23,000**, up from $22,500. The limit on annual contributions to an IRA increased to **$7,000**, up from $6,500. www.irs.gov/newsroom/401k-limit-increases-to-22500-for-2023-ira-limit-rises-to-6500

• Multifamily loan purchase caps for Fannie Mae and Freddie Mac will be **$70 billion** for each enterprise, for a combined total of $140 billion. The caps reflect current market forecasts. FHFA will continue to require that at least 50 percent of Fannie's and Freddie's multifamily business be mission-driven affordable housing. https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2024-Multifamily-Caps-Fact-Sheet.pdf

• The conforming loan limit values for mortgages to be acquired by Fannie Mae and Freddie Mac in 2024 for one-unit properties will be **$766,550** an increase from $726,200. https://www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-Announces-Conforming-Loan-Limit-Values-for-2024.aspx

• New loan limits for FHA's Single Family Title II Forward and Home Equity Conversion Mortgage (HECM) insurance programs, based upon property size and location, range from **$498,257** to **$3,317,400**. https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_265

• Beginning January 1, 2024, the standard IRS mileage rates for the use of a car (also vans, pickups or panel trucks) will be as follows. The rates apply to electric and hybrid-electric automobiles, as well as gasoline and diesel-powered vehicles.

- o **67** cents per mile driven for business use, up 1.5 cents from 2023;
- o **21** cents per mile driven for medical or moving purposes for qualified active-duty members of the Armed Forces, a decrease of 1 cent from 2023; and
- o **14** cents per mile driven in service of charitable organizations; the rate is set by statute and remains unchanged from 2023. https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2024-mileage-rate-increases-to-67-cents-a-mile-up-1-point-5-cents-from-2023

Regulatory Spotlight

Agencies Issue 2024 CRA Asset-Size Thresholds.

The Board of Governors of the Federal Reserve System (FRB) and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a final rule to amend their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define "small bank" and "intermediate small bank." As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Under the final rule, "small bank" means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion. "Intermediate small bank" means a small bank with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years. The final rule is effective **01/01/2024**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2023-12-20/pdf/2023-27934.pdf. *Federal Register*, Vol. 88, No. 243, 12/20/2023, 87895-87897.

The Office of the Comptroller of the Currency (OCC) announced revisions to the asset-size threshold amounts used to define "small bank or savings association" and "intermediate small bank or savings association" under the Community Reinvestment Act (CRA) regulations. The adjusted threshold amounts are based on the annual percentage change in a measure of the Consumer Price Index. For CRA purposes, beginning **01/01/2024**, a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion is a "small bank or savings association" and a "small bank or savings association" with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years is an "intermediate small bank or savings association." The thresholds, which apply to any national bank, federal savings association, or state savings association, are effective **01/01/2024**. The bulletin may be viewed at: https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-40.html.

Wisconsin Bankers ASSOCIATION

Compliance Journal
March 2024

Special Focus

DOR Issues Emergency Rule to Interpret State Commercial Loan Income Exemption.

On **March 18, 2024**, the Wisconsin Department of Revenue (DOR) published an emergency rule to clarify the commercial loan exemption under ss. 71.05(1)(i) and 71.26(1)(i), Stats., and prescribe how the $5,000,000 loan limitation is computed. The emergency rule was effective upon publication. The following is background regarding the new law and the emergency rule text.

Background

An important provision of 2023 Wisconsin Act 19 (also known as Wisconsin's 2023-2025 Biennial Budget) is a new, historic tax-exemption for banks related to certain business and agricultural lending. Act 19 created new sections 71.05(1)(i) and 71.26(1)(i). This has been an advocacy priority for WBA for quite some time.

Section 71.05 provides a list of exemptions and excluded income which are exempt from taxation under an income computation for individuals and fiduciaries. New section 71.05(1)(i) reads as: Commercial loans. Income from a tax-option corporation that is a financial institution, as defined in s. 69.30(1)(b), including interest, fees, and penalties, derived from a commercial loan of five million dollars or less provided to a person residing or located in this state and used primarily for a business or agricultural purpose.

Section 71.26 provides a list of exemptions and excluded income which are exempt from taxation under an income computation for corporations. New section 71.26(1)(i) reads as: Commercial loans. Income of a financial institution, as defined in s. 69.30(1)(b), including interest, fees, and penalties, derived from a commercial loan of five million dollars or less provided to a person residing or located in this state and used primarily for a business or agricultural purpose.

On March 12th, the Senate concurred on a technical correction to Act 19 (SB 616) which is meant to clarify the new tax exemption. Governor Evers is expected to call for the bill early for his signature.

SB 616 creates new section 71.365(4m)(d)1.bd. which reads as: "For taxable years beginning after December 31, 2022, the income exclusion under s. 71.05(1)(i) shall be allowed." This new section is important to clarify that tax-option banks that elect to pay franchise or income tax at the entity level may avail themselves of the exemption for certain excluded income that is available under section 71.05(1)(i).

SB 616 amended the new section 71.05(1)(i) to read as: Commercial loans. Income of a tax-option corporation that is a financial institution, as defined in s. 69.30(1)(b), including interest, fees, and penalties, derived from a commercial loan of five million dollars or less provided to a person residing or located in this state and used primarily for a business or agricultural purpose <u>in this state</u>. The underlined words are the changes made to section 71.05(1)(i) from that which was previously created under the language of the 2023-2025 Biennial Budget.

SB 616 makes a similar amendment to section 71.26 as was made to section 71.05(1)(i) to include "in this state" to the purpose of the commercial loan. Under SB 616 section 71.26(1)(i) now reads as: Commercial loans. Income of a financial institution, as defined in s. 69.30(1)(b), including interest, fees, and penalties, derived from a commercial loan of five million dollars or less provided to a person residing or located in this state and used primarily for a business or agricultural purpose <u>in this state</u>.

The treatment of sections 71.05(1)(i), 71.26(1)(i), and 71.365(4m)(d)1.bd. first applies to taxable years beginning after December 31, 2022.

On **March 18, 2024**, DOR published an emergency rule in the Wisconsin Administrative Register and the Wisconsin State Journal to clarify the commercial loan income exemption under ss. 71.05(1)(i) and 71.26(1)(i), Stats., and prescribe how the $5,000,000 loan limitation is computed. The following is the text of the emergency rule.

DOR Emergency Rule – Tax 3.10 Commercial Loan Income Exemption

Tax 3.10 Commercial loan income exemption

(1) PURPOSE. This section clarifies the commercial loan income exemption under ss. 71.05(1)(i) and 71.26(1)(i), Stats., and prescribes how the $5,000,000 loan limitation is computed.

(2) DEFINITIONS. In this section and in ss. 71.05(1)(i) and 71.26(1)(i), Stats.:

“Agricultural purpose” means the preparation of plant or animal products for use in a business or for sale or distribution to markets. “Agricultural purpose” includes agriculture, horticulture, viticulture, dairy, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, and all products raised or produced on farms and any processed products thereof. “Agricultural purpose” does not include fishing preserves, recreational uses, or personal uses.

“Business purpose” means activities undertaken for an industrial, commercial, or professional purpose. “Business purpose” does not include the following:

1. Investment in stocks, bonds, and other securities or ownership interests in entities including the borrower’s own stock or ownership interests, unless such assets are regularly held for sale in a trade or business;
2. Personal or consumer expenditures;
3. The purchase, expansion, or improvement by an owner of a one-to-four unit residential facility if such owner or their parent or child uses all or a portion of the facility as their personal residence.
4. Activities conducted by any unit of government or any agency or instrumentality of one or more units of government.
5. Activities conducted by nonprofit organizations, unless one of the following apply:

    a. The commercial loan proceeds are used in this state for activities in which the nonprofit organization reports unrelated business taxable income on Form 990-T to the federal department of the treasury.
    b. The nonprofit organization has over 50 full-time employees in the calendar year immediately preceding the calendar year in which the commercial loan is issued, and the loan proceeds are used in this state for activities regularly conducted by such employees.

“Commercial loan” means a loan issued to a borrower and the proceeds of which are used primarily for a business or agricultural purpose in this state.

“Commercial domicile” means the location from which a trade or business is principally managed and directed. It shall be rebuttably presumed that the location from which a trade or business is principally managed and directed is the location where the greatest number of the business’s employees have their office or their base of operations from which they regularly work and are directed or controlled.

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"Financial Institution" means a financial institution defined in s. 69.30(1)(b) that is authorized to do business under state or federal laws relating to financial institutions and is one of the following:

1. A bank as defined under 12 USC 1841(c), including a national bank organized and existing as a national bank association pursuant to provisions of 12 USC ch. 2 and a state bank organized and operating under ch. 221, Stats, or a comparable law in another state.
2. A savings bank organized under ch. 214, Stats., or a comparable law in another state.
3. A savings and loan association organized and operating under ch. 215, Stats., or a comparable law in another state; or organized according to federal law.
4. Any credit union to the extent not exempt under s. 71.26(1)(a), Stats., and s. 186.113(20), Stats.

"Income" means all income, including interest, fees, and penalties, derived from a commercial loan. "Income" does not include income derived from persons other than the borrower of the commercial loan, including income derived from the sale of a commercial loan or income derived from another financial institution for a loan participation agreement.

"Loan" means money given in exchange for an obligation to pay back such money that results from direct negotiation between a financial institution and a borrower. "Loans" do not include unsecured open-end lines of credit such as credit cards and other unsecured revolving credit plans and letters of credit; conversions; sales or leases of property; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including credit card relationships; non-interest bearing balances; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interest in a real estate mortgage investment conduit, or other mortgage-backed or asset-backed security; and other similar items.

"Primarily" means the loan proceeds are used 75 percent or more for a business or agricultural purpose in this state.

"Residing in this state" means any of the following, determined for the person's taxable year in which the loan origination occurs:

1. A natural person or fiduciary who is a resident of this state as determined under s. 71.01(1n) or 71.14, Stats.
2. A person whose commercial domicile of their business or agricultural activity is in this state.

"Located in this state" means a person (including a natural person or fiduciary) who has a fixed business location in this state such as a commercial office, warehouse, or manufacturing facility.

(3) QUALIFYING BORROWERS. A commercial loan may qualify for the exemption in ss. 71.05(1)(i) and 71.26(1)(i), Stats., if the loan is provided to a person residing or located in this state.

(4) PROCEEDS USED IN THIS STATE. A commercial loan may qualify for the exemption in ss. 71.05(1)(i) and 71.26(1)(i), Stats., if the loan proceeds are used primarily for a business or agricultural purposes in this state.

Example: Financial Institution A issues a loan to Business B for $4,000,000. Business B uses $3,000,000 of the loan proceeds to expand their manufacturing facility in Wisconsin and $1,000,000 to renovate their headquarters office in Illinois. The loan is used primarily for a business purpose in Wisconsin since 75% of the loan proceeds ($3,000,000 / $4,000,000) were used to expand the Wisconsin facility.

(5) COMMERCIAL LOAN LIMITATION. A commercial loan may qualify for the exemption in ss. 71.05(1)(i) and 71.26(1)(i), Stats., if the commercial loan is $5,000,000 or less. This subsection interprets the $5,000,000 limitation.

(a) *General.*

1. The original full amount of the loan obligation is used to determine the $5,000,000 limitation. In the case of secured open-end lines of credit and other secured revolving credit plans and letters of credit, the full amount of the loan obligation is the maximum amount of credit available to the borrower.
2. Costs and fees rolled into the loan are included as part of the original loan obligation.
3. Charge-offs or amounts not expected to be recoverable from a borrower do not reduce the original loan obligation.

Examples: (1) A borrower is issued a commercial loan with an obligation of $4,900,000 and incurs costs and fees of $150,000 on that loan. The borrower does not pay the $150,000 up front but instead rolls the amount into the loan. Since the loan obligation and costs and fees equal an original loan obligation of $5,050,000, income from the loan does not qualify for the exemption.

(2) A bank lends a borrower $6,000,000 on an original commercial loan but charges off $2,000,000 and keeps track of the charged-off balance. Since the original borrowed obligation is $6,000,000, income from the loan does not qualify for the exemption.

(b) *Commercial loan refinancing*. A commercial loan that is refinanced is considered a new original loan obligation and the $5,000,000 limitation is computed based on the facts contained in the refinanced loan documentation.

(c) *Loan participation and assignment*. A commercial loan with an original loan obligation over $5,000,000 to a single borrower does not qualify for the exemption, regardless of whether the loan is sold or assigned, in whole or in part, to another financial institution for $5,000,000 or less. A financial institution that acquires a commercial loan through a purchase, assignment, or participation agreement may not exempt the income derived from the acquired loan if the original loan obligation is more than $5,000,000.

Examples: (1) Bank A issues a commercial loan of $7,000,000. Bank B purchases a loan participation of $3,000,000 in the commercial loan. The income derived from the commercial loan does not qualify for the exemption for Bank A or Bank B because the original loan obligation is over $5,000,000.

(2) Assume the same facts as Example 1, except that $3,000,000 of the original loan obligation is assigned by Bank A to Bank B. The income derived from the commercial loan does not qualify for the exemption for Bank A or Bank B because the original loan obligation is over $5,000,000.

(3) A commercial loan of $5,000,000 is issued by Bank A. Bank B purchases a loan participation of $3,000,000 in the commercial loan from Bank A. The income derived from the commercial loan may qualify for the exemption for Bank A and Bank B because the original loan obligation was for $5,000,000 or less.

(d) *Loan syndication*. If one or more financial institutions enter a loan syndication where both financial institutions will be originating the loans, the total loan amount provided to the borrower is used to determine the original loan obligation, not each financial institution's portion of the syndicated loan. If the original loan obligation is $5,000,000 or less, each financial institution may qualify for the exemption in proportion to the financial institution's interest in the syndicated loan.

Example: Four financial institutions pool their resources to fund a loan syndication to a borrower for a total original loan obligation of $20,000,000. Although each financial institution funds $5,000,000 of the loan, income derived from the $20,000,000 loan does not qualify for the exemption.

(e) *Aggregation*. For purposes of claiming the income exemption:

1. A financial institution may not create separate commercial loan agreements for $5,000,000 or less for a borrower that seeks a commercial loan over $5,000,000, including refinancing a single loan into separate loans.
2. A financial institution may have multiple qualifying commercial loans of $5,000,000 or less with the same borrower if the loans are obtained for a different use and qualifying purpose.
3. A commercial loan over $5,000,000 does not qualify, regardless of whether a portion of the loan is used for purposes outside this state.

Example: A commercial loan is issued for $15,000,000 and 33% or $4,950,000 of the proceeds are used for a business purpose in Wisconsin and 67% outside Wisconsin. The income derived from the commercial loan does not qualify for the exemption because the original loan obligation is over $5,000,000.

(6) Record keeping.

Financial institutions shall keep electronic records in easily accessible and usable form to substantiate the exemption from income for each loan, including electronic data that can be queried and analyzed for each of the following data elements:

1. Borrower's legal name
2. Borrower's state of residence
3. Loan ID number
4. Name of originating underwriter of the loan if someone other than the financial institution
5. Loan origination date
6. Original loan obligation amount, including costs and fees rolled into the loan obligation
7. Detailed description of the purpose of the loan, including whether there is more than one purpose, and where the loan proceeds will be used.

Financial institutions shall keep records to substantiate whether the borrower is a person who is a resident of this state, such as tax returns and trust agreements.

The records must be kept for as long as any period of limitation for assessment for the taxable year in which the exemption is claimed has not expired under ss. 71.76 and 71.77, Stats. If the taxable year results in a net loss, the records must be kept for as long as the period of limitation for assessment for the taxable year in which the loss carryforward is used, as described in ss. 71.05(8)(b)1. and 71.26(4)(a), Stats., has not expired.

Resources

DOR will continue the steps necessary to promulgate a permanent rule. Financial institutions can sign up for email updates regarding DOR's administrative rules, including receiving notification when public comment periods and hearings are available. DOR will also post "Common Questions" on its website and will update their 2023 S Corporation form instructions once the Governor has signed SB 616 into law.

The Emergency Rule may be viewed at: https://docs.legis.wisconsin.gov/code/register/2024/819a3/register/emr/emr2404_rule_text/emr2404_rule_text

To subscribe to DOR E-News: https://www.revenue.wi.gov/Pages/HTML/lists.aspx

WBA Legal has created a series of FAQs regarding the tax law provision and the emergency rule. Contact WBA Legal at wbalegal@wisbank.com to receive a copy of the FAQs.

FTC Final Rule Prohibits Impersonation of Government and Businesses Under FTCA.

The Federal Trade Commission (FTC) has finalized its rule prohibiting government and business impersonation schemes as an unfair or deceptive act or practice under the Federal Trade Commission Act (FTCA). The final rule marks the first time since 1980 that FTC has finalized a new trade regulation rule prohibiting an unfair or deceptive practice. FTC has found that impersonation schemes cheat consumers out of billions of dollars every year by fraudsters pretending to represent government agencies, including impersonating the Social Security Administration and the Internal Revenue Service.

According to FTC's *Fraud Reports: Trends Over Time (2021)*, this category of fraud skyrocketed during the coronavirus pandemic with imposters scamming consumers out of a reported $2 billion between October 2020 and September 2021, an 85 percent increase year-over-year. FTC data further shows that in 2023, consumers reported losing $2.7 billion to reported imposter scams. Impersonation fraud has remained one of the largest sources of total reported consumer financial losses for several years.

Below is a summary of the new sections (Part 461) prohibiting the impersonation of government and businesses. A reminder of the prohibition under state law regarding the misuse of bank's name, logo, or symbol is also included. The final rule is effective **April 1, 2024.**

Definitions - Part 461.1

As used in Part 461:

“Business” means a corporation, partnership, association, or any other entity that provides goods or services, including not-for-profit entities.

“Government” includes federal, state, local, and tribal governments as well as agencies and departments thereof.

“Materially” means likely to affect a person’s choice of, or conduct regarding, goods or services.

“Officer” includes executives, officials, employees, and agents.

Impersonation of Government Prohibited – Part 461.2

The final rule sets forth that it is a violation of Part 461, and is an unfair or deceptive act or practice to: (a) materially and falsely pose as, directly or by implication, a government entity or officer thereof, in or affecting commerce as commerce is defined in FTCA; or (b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a government entity or officer thereof, in or affecting commerce as commerce is defined in FCTA. The FTCA may be found at 15 U.S.C. 44.

Impersonation of Businesses Prohibited – Part 461.3

The final rule also sets forth that it is a violation of Part 461, and is an unfair or deceptive act or practice to: (a) materially and falsely pose as, directly or by implication, a business or officer thereof, in or affecting commerce as commerce is defined in FTCA; or (b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a business or officer thereof, in or affecting commerce as commerce is defined in FTCA.

Definition of “Commerce”

As both sections reference the definition of “commerce” under FTCA, 15 U.S.C. 44 defines “commerce” to mean commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

State Law Prohibition Against Mis-Use of Bank Name, Logo, or Symbol

While discussing the topic of impersonating a business or officers thereof, financial institutions are reminded that state law prohibits the misuse of a bank’s name, logo, or symbol. Pursuant to Wis. Stat. § 221.0404, no person may use the name, logo, or symbol of a bank, or such that is deceptively similar to that of a bank, in any marketing material provided to another person in a manner that a reasonable person may believe that the marketing material originated from the bank.

The Wisconsin Department of Financial Institutions (DFI) has enforcement authority over this section and has been helpful in investigating and issuing cease and desist orders when possible to stop such actions. Banks that encounter such letters are encouraged to contact WBA Legal and DFI.

To be a violation under state law, the item must be deceptive, meaning that a reasonable person reading the marketing material could believe it originated from the bank. A marketing piece is not a violation if a reasonable person should recognize that it did not originate from the bank. This can include letters which display a disclaimer, such as to indicate that the sender is not affiliated with the bank. However, depending upon how the disclaimer is used and the location of the disclaimer, the disclaimer may not be sufficient to avoid the marketing material being considered misleading in violation of s. 221.0404. For example, a letter might be deceptive based upon its envelope. Specifically, envelopes with a “window,” which reveals a portion of the letter including bank’s name. Even if there is a disclaimer in the letter inside, if it’s not visible on the envelope or through the “window,” it could be considered deceptive.

Summary

to extend liability for violations of the new rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the final rule. To that end, FTC issued a proposed rule for which comments are due **April 30, 2024**. See the “Regulatory Spotlight” section of this publication regarding the proposed rule.

Banks are reminded to send redacted examples of deceptive marketing materials received from customers which misuse bank name, logo, or symbol to WBA Legal for review. If the marketing material violates state law, WBA Legal will forward the item to DFI on behalf of the bank requesting that DFI issue a cease and desist order to the imposter to stop the unauthorized use of the bank’s name, logo, or symbol.

The final FTC rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-03-01/pdf/2024-04335.pdf

FCC Adopts Final Rule Clarifying Revocation of Consent under TCPA.

Earlier this month, the Federal Communications Commission (FCC) published a final rule which amended the Telephone Consumer Protection Act (TCPA) to clarify how consumers may revoke consent to receiving autodialed or prerecorded voice calls or texts. The final rule also requires that callers and texters honor such requests in a timely manner.

The final rule amends section 64.1200 regarding delivery restrictions. The amendments regarding the ability to send a one-time text message to confirm a consent revocation request (64.1200(a)(12)) is effective **April 4, 2024.**

The effective date for amendments which create the new provisions regarding revocation of consent and the time frame to honor revocation (64.1200(a)(10) and (11)) are delayed. The effective date for the amendment made to section 64.1200(d)(3) regarding when a person or entity making autodialed or prerecorded voice calls must honor a residential subscriber’s do-not-call request is also delayed. FCC will publish a document in the Federal Register announcing the effective date of the delayed provisions.

The amendments made by the final rule regarding sections 64.1200(a)(10),(11), and (12) are separate from the rules under section 64.1200(a)(9)(iii) which permits financial institutions to make calls and text message so long as all conditions under paragraphs (A) - (H) of that section are met.

Consent Revocation – Sections 64.1200(a)(10) and (a)(11)

Under the amendments made the by the final rule, a called party may revoke prior express consent, including express written consent, to receive autodialed or prerecorded voice calls or texts by using any reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender. Callers or senders of autodialed or prerecorded voice calls or texts may not designate an exclusive means to request revocation of consent.

Any revocation request made using an automated, interactive voice or key press-activated opt-out mechanism on a call; using the words “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” sent in reply to an incoming text message; or to a website or telephone number designated by the caller to process opt-out requests, constitutes a reasonable means to revoke consent. If a called party uses any such method to revoke consent, that consent is considered definitively revoked and the caller may not send additional autodialed or prerecorded voice calls or texts.

If a reply to an incoming text message uses words other than “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe,” the caller must treat that reply text as a valid revocation request if a reasonable person would understand the words to have conveyed a request to revoke consent.

If a text initiator chooses to use a texting protocol that does not allow reply texts, the text initiator must provide a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol, and clearly and conspicuously provide on each text reasonable alternative ways to revoke consent.

All requests to revoke prior consent or prior express written consent made in any reasonable manner must be honored within a reasonable time not to exceed ten business days from receipt of such request.

New section 64.1200(a)(11) provides that the use of any other means to revoke consent not listed under new section 64.1200(a)(10), such as a voicemail or email to any telephone number or email address intended to reach the caller, creates a rebuttable presumption that the consumer has revoked consent when the called party satisfies their obligation to produce evidence that such a request has been made, absent evidence to the contrary. In those circumstances, a totality of circumstances analysis will determine whether the caller can demonstrate that a request to revoke consent has not been conveyed in a reasonable manner.

One-Time Text Message Sent to Confirm Revocation Request – Section 64.1200(a)(12)

The final rule also clarifies that a one-time text message confirming a request to revoke consent from receiving any further calls or text messages does not violate TCPA as long as the confirmation text merely confirms the text recipient's revocation request and does not include any marketing or promotional information. Also, the confirmation request can be the only additional message sent to the called party after receipt of the revocation request.

If the confirmation text is sent within five minutes of receipt, it will be presumed to fall within the consumer's prior express consent. If it takes longer, however, the sender will have to make a showing that such delay was reasonable.

To the extent that the text recipient has consented to several categories of text messages from the text sender, the confirmation message may request clarification as to whether the revocation request was meant to encompass all such messages. The sender must cease all further texts for which consent is required absent further clarification that the recipient wishes to continue to receive certain text messages.

Recording and disclosure of do-not-call requests – Section 64.1200(d)(3)

While section 64.1200(d)(3) does not pertain to the revocation of prior consent, the section was revised by the final rule. Section (d)(3) pertains to the recording and disclosure of do-not-call requests. Currently under section 64.1200(d)(3), if a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under 64.1200(a)(3)(ii) through (v) or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made.

Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. The final rule revises the current 30-day time period to instead be 10 business days. Under the final rule, section 64.12009(d)(3) now sets forth that the period is not to exceed ten business days from receipt of such request.

Summary

FCC has finalized amendments meant to clarify that consumers may revoke prior consent to receiving autodialed or prerecorded voice calls or texts in any reasonable manner, requires that callers honor do-not-call and consent revocation requests within a reasonable time not to exceed ten business days of receipt, and limit text senders to a one-time text message confirming a consumer's request that no further text messages be sent under TCPA.

While several amendments have a delayed effective date, financial institutions making autodialed or prerecorded voice calls or texts, should consider whether the amendments have any impact on current consumer consent revocation procedures or do-not-call requests. It is expected that FCC will finalize the effective date of the delayed sections in the upcoming months. FCC will publish a document in the Federal Register announcing the effective date of the delayed provisions.

Special Focus

The final rule may be viewed at:
https://www.govinfo.gov/content/pkg/FR-2024-03-05/pdf/2024-04587.pdf

Section 64.1200 may be viewed at:
https://www.ecfr.gov/current/title-47/chapter-I/subchapter-B/part-64#64.1200

Regulatory Spotlight

CFPB Updates Supervisory Appeals Process.

The Bureau of Consumer Financial Protection (CFPB) announced it has updated its internal supervisory appeals process for institutions seeking to appeal a compliance rating or an adverse material finding. CFPB first published its process for supervisory appeals **10/31/2012**, as Bulletin 2012-07. On **11/03/2015**, CFPB revised its process, superseding the 2012 Bulletin. CFPB has reviewed its current process and revisions made by prudential regulators since 2015. As a result, CFPB has revised its process to evaluate appealed matters, the options for resolving an appeal, and the matters subject to appeal. The revised supervisory appeals process is applicable as of **02/22/2024**. The revised process may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-22/pdf/2024-03615.pdf. *Federal Register*, Vol. 89, No. 36, 02/22/2024, 13263-13265.

CFPB Proposes Overdraft Lending Rules for Large Financial Institutions.

CFPB proposed to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by large financial institutions. CFPB believes the proposal will ensure that extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers applicable costs and losses. Comments are due **04/01/2024**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-23/pdf/2024-01095.pdf. *Federal Register*, Vol. 89, No. 37, 02/23/2024, 13852-13908.

CFPB Seeks Comment on Consumer Complaint Survey.

CFPB seeks comment regarding an information collection titled, Consumer Complaint Survey. The Dodd-Frank Act charges CFPB with researching, analyzing, and reporting on topics relating to its mission including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. To improve its understanding of consumers and institutional actors in financial markets, CFPB makes use of data collected through the complaint process. CFPB proposes to collect data with two new surveys intended to identify factors that influence a consumer's decision to use the complaint process. Comments are due **05/06/2024**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-04775.pdf. *Federal Register*, Vol. 89, No. 45, 03/06/2024, 15981-15982.

FRB Announces Final Approval of Information Collections.

The Board of Governors of the Federal Reserve System (FRB) announced final approval of an information collection titled, Recordkeeping and Disclosure Requirements Associated with Regulation O. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-16/pdf/2024-03214.pdf. *Federal Register*, Vol. 89, No. 33, 02/16/2024, 12340.

FRB announced final approval of an information collection titled, Reporting, Recordkeeping, and Disclosure Requirements Associated with Rules Regarding Availability of Information. The information collection consists of reporting, recordkeeping, and disclosure requirements under subpart C of the Rules Regarding Availability of Information (12 CFR part 261). Subpart C contains information collections as further described in the notice. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-16/pdf/2024-03215.pdf. *Federal Register*, Vol. 89, No. 33, 02/16/2024, 12341.

FRB announced final approval of an information collection titled, Reporting, Recordkeeping, and Disclosure Provisions Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information and Customer