Wisconsin Bankers ASSOCIATION

Compliance Journal
December 2024

Special Focus

2025 Adjusted Regulatory Thresholds and Limits

As we approach the new year, regulatory agencies have announced adjustments to several loan, lease, and retirement account related thresholds and limits. The following is a listing of the adjustments effective **January 1, 2025**, 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 **$71,900**, up from $69,500. https://www.govinfo.gov/content/pkg/FR-2024-10-15/pdf/2024-23275.pdf

The exemption threshold under Regulation Z for HPML appraisals will increase to **$33,500**, up from $32,400. https://www.govinfo.gov/content/pkg/FR-2024-10-15/pdf/2024-23277.pdf

- The dollar amount thresholds under Regulation Z for HOEPA and QM-related loans have been adjusted as follows:
  - For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages will be **$26,968**.
  - The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,348**.
  - 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 **$134,841**;
    - 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$80,905** but less than **$134,841**;
    - 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than **$80,905**;
    - 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than **$134,841**;
    - 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to **$80,905**; or
    - 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than **$80,905**.
  - 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 **$134,841**;
    - $4,045 for a loan amount greater than or equal to **$80,905** but less than **$134,841**;
    - 5 percent of the total loan amount for a loan greater than or equal to **$26,968** but less than **$80,905**;
    - **$1,348** for a loan amount greater than or equal to **$16,855** but less than **$26,968**; and
    - 8 percent of the total loan amount for a loan amount less than **$16,855**.
- For open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at **$1.00** for 2025. https://www.govinfo.gov/content/pkg/FR-2024-12-02/pdf/2024-27553.pdf

Special Focus

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 2025 calendar year remains **$15.50**. https://www.govinfo.gov/content/pkg/FR-2024-11-29/pdf/2024-27695.pdf

- The exemption threshold for Regulation M (Consumer Leasing Act) will increase to **$71,900**, up from $69,500. https://www.govinfo.gov/content/pkg/FR-2024-10-15/pdf/2024-23276.pdf

- The FDIC Designated Reserve Ratio remains **2 percent** for 2025. https://www.govinfo.gov/content/pkg/FR-2024-10-22/pdf/2024-24438.pdf

- 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 **$23,500**, up from $23,000. The limit on annual contributions to an IRA remains **$7,000**. https://www.irs.gov/newsroom/401k-limit-increases-to-23500-for-2025-ira-limit-remains-7000

- Multifamily loan purchase caps for Fannie Mae and Freddie Mac will be **$73 billion** for each enterprise, for a combined total of $146 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/sites/default/files/2024-11/2025-multifamily-loan-purchase-caps-fact-sheet.pdf

- The conforming loan limit values for mortgages to be acquired by Fannie Mae and Freddie Mac in 2025 for one-unit properties will be **$806,500**, an increase of $39,950 from 2024. https://www.fhfa.gov/news/news-release/fhfa-announces-conforming-loan-limit-values-for-2025

- FHA's nationwide forward mortgage limit "floor" and "ceiling" for a one-unit property in 2025 are **$524,225** and **$1,209,750**, respectively. For 2025, the nationwide Home Equity Conversion Mortgage (HECM) limit will be **$1,209,750** for all areas. https://www.hud.gov/program_offices/housing/sfh/lender/origination/mortgage_limits

---

WDFI Division of Banking 2025 Escrow Rate – 0.20%

The Wisconsin Department of Financial Institutions (WDFI), Division of Banking, has calculated the interest rate required to be paid on required escrow accounts for residential mortgage loans subject to sec. 138.052(5), Stats., to be **0.20%** for 2025. The interest rate be in effect **January 1, 2025**, through **December 31, 2025**.

Pursuant to sec. 138.052(5)(am), Stats., except as provided in sec. 138.052(5)(am)(b), Stats., and unless the escrow funds are held by a third-party in a noninterest-bearing account, financial institutions which originate a loan on or after January 1, 1994, and before April 18, 2018, and which requires an escrow account must pay interest on the outstanding principal balance of the escrow at the rate established by WDFI's Division of Banking. Section 138.052 applies to a consumer-purpose loan secured by a first lien or first lien equivalent in a 1-4 family dwelling that is used as the borrower's principal residence.

WDFI's 2025 Escrow Rate:
https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/HistoricalEscrowInterestRates.aspx

December 2024
Volume 30, Number 7

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Cassandra Krause

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

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 2025 calendar year remains **$15.50**. https://www.govinfo.gov/content/pkg/FR-2024-11-29/pdf/2024-27695.pdf

- The exemption threshold for Regulation M (Consumer Leasing Act) will increase to **$71,900**, up from $69,500. https://www.govinfo.gov/content/pkg/FR-2024-10-15/pdf/2024-23276.pdf

- The FDIC Designated Reserve Ratio remains **2 percent** for 2025. https://www.govinfo.gov/content/pkg/FR-2024-10-22/pdf/2024-24438.pdf

- 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 **$23,500**, up from $23,000. The limit on annual contributions to an IRA remains **$7,000**. https://www.irs.gov/newsroom/401k-limit-increases-to-23500-for-2025-ira-limit-remains-7000

- Multifamily loan purchase caps for Fannie Mae and Freddie Mac will be **$73 billion** for each enterprise, for a combined total of $146 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/sites/default/files/2024-11/2025-multifamily-loan-purchase-caps-fact-sheet.pdf

- The conforming loan limit values for mortgages to be acquired by Fannie Mae and Freddie Mac in 2025 for one-unit properties will be **$806,500**, an increase of $39,950 from 2024. https://www.fhfa.gov/news/news-release/fhfa-announces-conforming-loan-limit-values-for-2025

- FHA's nationwide forward mortgage limit "floor" and "ceiling" for a one-unit property in 2025 are **$524,225** and **$1,209,750**, respectively. For 2025, the nationwide Home Equity Conversion Mortgage (HECM) limit will be **$1,209,750** for all areas. https://www.hud.gov/program_offices/housing/sfh/lender/origination/mortgage_limits

WDFI Division of Banking 2025 Escrow Rate – 0.20%

The Wisconsin Department of Financial Institutions (WDFI), Division of Banking, has calculated the interest rate required to be paid on required escrow accounts for residential mortgage loans subject to sec. 138.052(5), Stats., to be **0.20%** for 2025. The interest rate be in effect **January 1, 2025**, through **December 31, 2025**.

Pursuant to sec. 138.052(5)(am), Stats., except as provided in sec. 138.052(5)(am)(b), Stats., and unless the escrow funds are held by a third-party in a noninterest-bearing account, financial institutions which originate a loan on or after January 1, 1994, and before April 18, 2018, and which requires an escrow account must pay interest on the outstanding principal balance of the escrow at the rate established by WDFI's Division of Banking. Section 138.052 applies to a consumer-purpose loan secured by a first lien or first lien equivalent in a 1-4 family dwelling that is used as the borrower's principal residence.

WDFI's 2025 Escrow Rate:
https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/HistoricalEscrowInterestRates.aspx

December 2024
Volume 30, Number 7

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Cassandra Krause

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

Wisconsin Bankers
ASSOCIATION

Compliance Journal
November 2024

Special Focus

FDIC Extends Mandatory Compliance Date to Implement Revised FDIC Signage Rule to May 2025

The Federal Deposit Insurance Corporation (FDIC) announced an extension of the mandatory compliance date for implementation of changes made to the rules which set forth where the official FDIC sign need appear within a branch and for the display of a new official sign on a bank's website, mobile applications, and certain ATMs and other like devises (Part 328). The amendments were made by a final rule first issued on **12/20/2023**, which took effect on **04/01/2024**; however, full compliance with the amendments was set for **01/01/2025**. FDIC has extended the mandatory compliance date to provide additional opportunity for banks to establish processes and systems, and make technological updates, necessary to implement the new regulatory requirements. Banks now have until **05/01/2025**.

To assist with implementation, FDIC has hosted several webinars regarding the amendments. FDIC has committed to a fourth webinar, although the date of the webinar has not yet been released. The webinars have been hosted via MS Teams. Information regarding the webinars, including past webinar materials and where an announcement of the date for the fourth webinar will appear, may be viewed at: https://www.fdic.gov/resources/deposit-insurance/banker-webinar

FDIC has also created a set of frequently asked questions (FAQs) which are updated often. WBA has outstanding questions previously shared with FDIC regarding the revised rule which we hope will be answered soon. The outstanding questions include whether systems such as Positive Pay, remote deposit capture, or transfers made via an 1-800 automated telephone system require the new digital signage given that the technologies allow for customers to access deposits. The FDIC FAQs may be viewed at:
https://www.fdic.gov/deposit-insurance/questions-and-answers-related-fdics-part-328-final-rule

See the "Regulatory Spotlight" section for a link to the final rule which extended the mandatory compliance date for Part 328 to May 2025.

WisDOT to Require Non-Exempt Secured Parties to Release Liens Electronically

The Wisconsin Department of Transportation (WisDOT) has shared that in early January 2025, non-exempt secured parties will be required to release liens electronically. These efforts are to help stop fraud which has occurred against secured parties through fraudulent paper lien releases. The requirement is in accordance with the process established in 2010 under Wis. Stat. § 372.245 and Wis. Admin. Code ch. Trans. 148.03.

Effective July 1, 2010, WisDOT created a process whereby non-individual secured parties (e.g., banks) are required to file all security interest statements on Wisconsin vehicle titles electronically as an update to the vehicle title record in the DMV database. To date, nearly all secured parties file electronically with WisDOT.

As part of the 2010 process, WisDOT created an exemption from electronic filing if the secured party filed 48 or fewer security interest statements with WisDOT during the previous calendar year. The exemption remains and exempt secured parties are not affected by the WisDOT announcement.

In addition to the announcement that non-exempt secured parties need use WisDOT's electronic system, a series of frequently asked questions (FAQs) was created by WisDOT:

Wisconsin Bankers
ASSOCIATION

Compliance Journal
November 2024

Special Focus

FDIC Extends Mandatory Compliance Date to Implement Revised FDIC Signage Rule to May 2025

The Federal Deposit Insurance Corporation (FDIC) announced an extension of the mandatory compliance date for implementation of changes made to the rules which set forth where the official FDIC sign need appear within a branch and for the display of a new official sign on a bank's website, mobile applications, and certain ATMs and other like devises (Part 328). The amendments were made by a final rule first issued on **12/20/2023**, which took effect on **04/01/2024**; however, full compliance with the amendments was set for **01/01/2025**. FDIC has extended the mandatory compliance date to provide additional opportunity for banks to establish processes and systems, and make technological updates, necessary to implement the new regulatory requirements. Banks now have until **05/01/2025**.

To assist with implementation, FDIC has hosted several webinars regarding the amendments. FDIC has committed to a fourth webinar, although the date of the webinar has not yet been released. The webinars have been hosted via MS Teams. Information regarding the webinars, including past webinar materials and where an announcement of the date for the fourth webinar will appear, may be viewed at: https://www.fdic.gov/resources/deposit-insurance/banker-webinar

FDIC has also created a set of frequently asked questions (FAQs) which are updated often. WBA has outstanding questions previously shared with FDIC regarding the revised rule which we hope will be answered soon. The outstanding questions include whether systems such as Positive Pay, remote deposit capture, or transfers made via an 1-800 automated telephone system require the new digital signage given that the technologies allow for customers to access deposits. The FDIC FAQs may be viewed at:
https://www.fdic.gov/deposit-insurance/questions-and-answers-related-fdics-part-328-final-rule

See the "Regulatory Spotlight" section for a link to the final rule which extended the mandatory compliance date for Part 328 to May 2025.

WisDOT to Require Non-Exempt Secured Parties to Release Liens Electronically

The Wisconsin Department of Transportation (WisDOT) has shared that in early January 2025, non-exempt secured parties will be required to release liens electronically. These efforts are to help stop fraud which has occurred against secured parties through fraudulent paper lien releases. The requirement is in accordance with the process established in 2010 under Wis. Stat. § 372.245 and Wis. Admin. Code ch. Trans. 148.03.

Effective July 1, 2010, WisDOT created a process whereby non-individual secured parties (e.g., banks) are required to file all security interest statements on Wisconsin vehicle titles electronically as an update to the vehicle title record in the DMV database. To date, nearly all secured parties file electronically with WisDOT.

As part of the 2010 process, WisDOT created an exemption from electronic filing if the secured party filed 48 or fewer security interest statements with WisDOT during the previous calendar year. The exemption remains and exempt secured parties are not affected by the WisDOT announcement.

In addition to the announcement that non-exempt secured parties need use WisDOT's electronic system, a series of frequently asked questions (FAQs) was created by WisDOT:

Special Focus

Paper Titles

Q: How will release on paper titles with liens be affected?

Q: Do paper titles with liens have to be released electronically and if so, what is the timeframe (and the process for how that paper title is converted to release electronically)?

Q: Will WisDOT allow electronic lien title (ELT) to be papered out going forward or will they be required to release their lien to get a paper title?

A: Any non-exempt secured party will be required to release liens through an electronic processing system. The state of the title (paper or electronic) would not affect the release process or the mandate to release liens electronically. A paper title would not need to be generated when it is being held electronically prior to release.

For exempt secured parties, lien releases issued on paper titles will need to be mailed into WisDOT for manual processing. Paper lien releases in the current format (letterhead, signed, vehicle description, etc.) will be accepted at local Customer Service Centers only for/from secured parties with an Exempt status. All secured parties have 30 days to clear their lien and release the title to the owner after the loan has been paid off.

Lien Release

Q: Will WisDOT require the lender to release the lien first?

A: Holding electronic titles and releasing liens electronically are two separate processes. With the exception of a payoff as part of the ownership transfer (dealer sales), the lien holder (lender) always needs to release the lien to allow the title to be issued to the owner. The state of the title, whether paper or electronic, would not affect the lien release process for the lender.

Printing

Q: Will WisDOT print out titles?

A: If a paper title is requested with the lien still listed, WisDOT will print/mail a title.

Batch Release

Q: Does a secured party have to send the release electronically via batch file or via website like we do today?

Q: The secured party already provides a notification of release on paper transactions by way of batch notification, should we anticipate any change, or will this meet the requirements?

A: The procedure of releasing liens electronically will be required for all non-exempt secured parties for both electronically held and paper titles. Whatever the current method of electronic lien release, it may remain the same.

Leased Vehicle Titles

Q: Any changes for leased vehicle titles?

A: No. If a leased vehicle has a lien holder listed, electronic release of lien is required.

WBA appreciates the efforts of WisDOT to help combat fraudulent lien releases. If a bank is not certain whether they are an exempt secured party or have questions, the bank may contact WisDOT directly via email at: DOTVRI@dot.wi.gov

November 2024
Volume 30, Number 6

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

Wisconsin Statute section 342.245 may be viewed at: https://docs.legis.wisconsin.gov/statutes/statutes/342.pdf

Wisconsin Administrative Code Chapter Trans 148 may be viewed at:
https://docs.legis.wisconsin.gov/code/admin_code/trans/148.pdf

Year-end Frequently Asked Escrow Questions

While the State and Federal escrow rules have not changed, as we near year end, escrow questions frequently arise. This is because banks throughout Wisconsin are often preparing to issue checks at this time of year, as many pay taxes from escrow by December 20th. This article presents several questions and answers to refresh banks on relevant requirements, and important considerations regarding escrow accounts.

Q1: Does Wisconsin have rules regarding disbursements from tax escrows?

A1: Yes. Wis. Stat. section 138.052(5m) governs escrow accounts required to be maintained to pay taxes or insurance in connection with consumer-purpose loans secured by a first lien real estate mortgage or equivalent security interest in the borrower's principal dwelling. For example, the requirement applies to covered purchase money, refinance, and home equity transactions but does not apply to loans that are business or agricultural purpose, or manufactured home transactions. It also does not apply to voluntary escrow accounts. If a bank maintains a voluntary escrow account, it should ensure it has adequate documentation to evidence that fact.

For covered loans, banks must provide an escrow notice before closing giving the borrower options regarding how the bank will make payments from the amount escrowed:

1. Escrow agent sends a check by December 20 to the borrower for the amount held in escrow for the payment of property taxes made payable to the borrower or to the borrower and the taxing authority.
2. Escrow agent pays the property taxes by December 31 if the escrow agent has received a tax statement for the property by December 20.
3. Escrow agent pays the property taxes when due.

However, this notice is not required under section 138.052(5m) if the escrow agent's practice is to pay the borrower the amount held in escrow for the payment of property taxes by December 20, or to send a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and taxing authority.

Regardless of whether a notice under state law is required, banks are reminded that a voluntary agreement is still required under the Real Estate Settlement Procedures Act (RESPA) to pay property taxes annually as permitted under Wis. Stat. section 138.052(5m). Thus, RESPA requirements must be followed in addition to Wisconsin law. It is important to understand the implications RESPA has due to the interplay of the two requirements. See the discussion below regarding the interconnection between state and federal law.

Q2: Does RESPA have rules regarding disbursements from tax escrows?

A2: Yes. RESPA section 1024.17(k) prescribes rules that apply to escrow accounts established in connection with RESPA-covered loans to pay taxes, insurance, or other charges. If the terms of the loan require the borrower to make payments to an escrow account, the bank must make disbursements in a timely manner. A timely manner means payment by the disbursement date, so long as the loan account is not more than 30 days overdue.

If a taxing authority offers a bank a choice between annual and installment disbursements, RESPA includes additional requirements. Generally, disbursements must be made on an installment basis depending on whether the taxing authority offers a discount, or charges additional fees, for installment disbursements. In Wisconsin, where taxes may be paid in annual or installment payments, and the taxing authority does not offer a discount for payments on an annual basis nor does it impose any additional charge or fee for installment payments, the bank must make disbursements on an installment basis, unless the bank and borrower agree to another disbursement alternative.

Wisconsin Statute section 342.245 may be viewed at: https://docs.legis.wisconsin.gov/statutes/statutes/342.pdf

Wisconsin Administrative Code Chapter Trans 148 may be viewed at:
https://docs.legis.wisconsin.gov/code/admin_code/trans/148.pdf

Year-end Frequently Asked Escrow Questions

While the State and Federal escrow rules have not changed, as we near year end, escrow questions frequently arise. This is because banks throughout Wisconsin are often preparing to issue checks at this time of year, as many pay taxes from escrow by December 20th. This article presents several questions and answers to refresh banks on relevant requirements, and important considerations regarding escrow accounts.

Q1: Does Wisconsin have rules regarding disbursements from tax escrows?

A1: Yes. Wis. Stat. section 138.052(5m) governs escrow accounts required to be maintained to pay taxes or insurance in connection with consumer-purpose loans secured by a first lien real estate mortgage or equivalent security interest in the borrower's principal dwelling. For example, the requirement applies to covered purchase money, refinance, and home equity transactions but does not apply to loans that are business or agricultural purpose, or manufactured home transactions. It also does not apply to voluntary escrow accounts. If a bank maintains a voluntary escrow account, it should ensure it has adequate documentation to evidence that fact.

For covered loans, banks must provide an escrow notice before closing giving the borrower options regarding how the bank will make payments from the amount escrowed:

1. Escrow agent sends a check by December 20 to the borrower for the amount held in escrow for the payment of property taxes made payable to the borrower or to the borrower and the taxing authority.
2. Escrow agent pays the property taxes by December 31 if the escrow agent has received a tax statement for the property by December 20.
3. Escrow agent pays the property taxes when due.

However, this notice is not required under section 138.052(5m) if the escrow agent's practice is to pay the borrower the amount held in escrow for the payment of property taxes by December 20, or to send a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and taxing authority.

Regardless of whether a notice under state law is required, banks are reminded that a voluntary agreement is still required under the Real Estate Settlement Procedures Act (RESPA) to pay property taxes annually as permitted under Wis. Stat. section 138.052(5m). Thus, RESPA requirements must be followed in addition to Wisconsin law. It is important to understand the implications RESPA has due to the interplay of the two requirements. See the discussion below regarding the interconnection between state and federal law.

Q2: Does RESPA have rules regarding disbursements from tax escrows?

A2: Yes. RESPA section 1024.17(k) prescribes rules that apply to escrow accounts established in connection with RESPA-covered loans to pay taxes, insurance, or other charges. If the terms of the loan require the borrower to make payments to an escrow account, the bank must make disbursements in a timely manner. A timely manner means payment by the disbursement date, so long as the loan account is not more than 30 days overdue.

If a taxing authority offers a bank a choice between annual and installment disbursements, RESPA includes additional requirements. Generally, disbursements must be made on an installment basis depending on whether the taxing authority offers a discount, or charges additional fees, for installment disbursements. In Wisconsin, where taxes may be paid in annual or installment payments, and the taxing authority does not offer a discount for payments on an annual basis nor does it impose any additional charge or fee for installment payments, the bank must make disbursements on an installment basis, unless the bank and borrower agree to another disbursement alternative.

Most property taxes in Wisconsin may be payable in two installments. If the first installment is paid by January 31st, the second installment may be paid by July 31st. Because no discount is available for making annual payments, and no penalty is imposed for making installment payments, RESPA requires property taxes payable in this manner to be disbursed on an installment basis, unless the borrower voluntarily agrees, in writing, to an annual disbursement.

Q3: How do the requirements under Wis. Stat section 138.052(5m) and RESPA section 1024.17 work together?

A3: RESPA preempts state law only to the extent of any inconsistency. Generally, escrows governed by section 138.052(5m) must also comply with RESPA, which means banks must be aware of both requirements and the nuances of how they interact. This means banks must disburse tax escrows in installments, or as otherwise agreed to by the borrower, as required by RESPA. It also means that banks must provide some form of tax escrow option form, as required by section 138.052(5m). It is helpful to keep in mind that the installment requirement is a RESPA component, not a Wisconsin component. Thus, nuances arise because RESPA requires taxes to be disbursed in installments, but Wisconsin offers more flexibility.

For example, Wisconsin permits taxes to be paid annually. RESPA, however, requires taxes to be disbursed in installments. This apparent contradiction is rectified by the fact that RESPA does allow the borrower to voluntarily, in writing, permit an annual disbursement. Thus, banks must confirm which tax escrow option under Wisconsin law their borrower has elected to use. If they have elected for an annual disbursement (for example, under the "pay by December 20" method), RESPA still requires voluntary agreement. This may seem implied, but it's not always the case. It depends upon how the bank's escrow agreement and option election form has been drafted and completed by the borrower. The important distinction is that the election has clearly been made voluntarily and this can be proved to an examiner. It's also important to keep in mind that while the 138.052(5m) requirements do not apply to voluntary escrow accounts, RESPA requirements apply whether the account was voluntary or required when the account is controlled by the bank.

WBA recommends that bank review their escrow process and procedures to understand how these requirements apply. For example, banks should consider aspects such as whether escrow accounts are required or voluntary, the language in bank's escrow account agreement, and how escrow options are presented, discussed, and selected by the borrower. If using FIPCO forms, FIPCO's WBA Tax Escrow Option Election form meets the requirements under Wis. Stat. section 138.052(5m) and also serves as the voluntary agreement to disburse property taxes out of escrow in any method other than installments to comply with RESPA.

Q4: What if a deficiency occurs before disbursement?

A4: As discussed in Q2, RESPA generally requires the bank to disburse funds in a timely manner. If a deficiency exists, the bank must still cover the amount due. Upon advancing the funds, the bank may seek repayment from the borrower after performing an escrow account analysis.

If the deficiency is less than one month's escrow account payment, then the bank:

1. May allow the deficiency to exist and do nothing to change it;
2. May require the borrower to repay the deficiency within 30 days; or
3. May require the borrower to repay the deficiency in 2 or more equal monthly payments.

If the deficiency is greater than or equal to 1 month's escrow payment, the bank may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

If the borrower is not current, then the bank may recover the deficiency pursuant to the terms of the mortgage loan documents. For example, language within the WBA 428 Real Estate Mortgage states that if the escrowed funds held by bank are not sufficient to pay the escrow account items when due, bank may notify consumer in writing, and consumer shall pay bank the amount necessary to make up the deficiency in a manner described by bank or as otherwise required by applicable law.

Furthermore, for loans that are not covered by RESPA, the bank will need to determine how the deficiency will be covered, either by the borrower, or the bank, pursuant to the terms of its agreement.

Q5: How does a payment deferral or forbearance affect escrow considerations?

As a lingering effect of the pandemic or other economic impact, banks may have borrowers who had deferred or forborne payments. Bank should consider its deferral and forbearance agreements to confirm whether the deferral or forbearance included escrow payments. Even if it did not, financial distress caused by the prolonged effect of the pandemic or by other economic conditions on some borrowers may have resulted in escrow shortages and deficiencies. Banks should consider how to monitor loans for payments, and account for expected, and unexpected shortages. Specific attention may need to be paid to escrow balances for loans in deferral, forbearance, or modification. Banks should identify loans that will be short, and determine how the deficiency will be handled, with the above considerations in mind.

Q6: What is the escrow rate for 2025, as set by 138.052?

A6: The Wisconsin Department of Financial Institutions (WDFI), Division of Banking, calculates the interest rate required to be paid on escrow accounts for residential mortgage loans subject to Wisconsin Statute Section 138.052(5) annually. WDFI has not yet released the rate for 2025. WBA will notify the membership of the rate for 2025 when it is issued by WDFI.

The current interest rate required to be paid on escrow accounts for residential mortgage loans subject to Wisconsin Statute Section 138.052(5), that is in effect through December 31, 2024, is 0.18%

Q7: Does 138.052 require Wisconsin banks to pay interest on escrow accounts?

A7: Not for loans originated after April 18, 2018. 2017 Wisconsin Act 340 eliminated the requirement that a financial institution pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the Act. Thus, a Wisconsin financial institution is not required by law to pay interest on any escrow account maintained in association with a loan originated on or after April 18, 2018.

Wisconsin Section 138.052 previously required financial institutions to pay interest on the balance on any required escrow accounts. As discussed above, 138.052 applies to consumer-purpose loans secured by a first lien or first lien equivalent in a 1-4 family dwelling that is used as the borrower's principal residence. Banks must continue to pay interest on escrow accounts they required prior to the effective date of Act 340. However, for any escrow account associated with a loan originated after the effective date of Act 340, 138.052 no longer requires payment of interest. A bank should also consider the terms of its contract as to whether any payment of interest is required as part of the agreement.

Q8: Bank is closing loan in December for which bank will require escrow for the payment of taxes. The first mortgage payment will be in February. Can bank escrow for 2024 taxes to be paid in 2025?

A8. No. RESPA's escrow collection rules are prospective in nature. Bank should only collect for 2025 taxes to be paid either in December 2025 in a lump sum (with borrower's permission as outlined above) or in installments. Bank should not collect for anything between December 1 and 31st because nothing is owing during that time as the bank should only be collecting for 2025 taxes. Bank should not be collecting for 2024 taxes for payment in 2025. Borrower should be on their own to pay 2024 taxes.

Wisconsin Bankers ASSOCIATION

Compliance Journal
October 2024

Special Focus

Impact of NAR Settlement on Truth in Lending Integrated Disclosures

Recently, the National Association of Realtors (NAR) settled an antitrust lawsuit which has resulted in changes to the way real estate agents negotiate compensation. While the settlement does not directly impact lenders, it does create implications which lenders need to be aware of when working through residential purchase transactions. This article summarizes relevant aspects of the NAR settlement and discusses how it impacts lenders.

The settlement went into effect on August 17, 2024. The longstanding practice prior to the settlement was that sellers paid a commission which was usually split between their agent as well as the buyer's agent. The split would be negotiated between the two agents within a system known as the Multiple Listing Service (MLS). As a result of the lawsuit settlement, buyers and agents will need to agree upon compensation for the agent's services through a written buyer agreement. A seller may still make offers of agent compensation, but such offers can no longer be shared on the MLS and must instead be communicated independently. As a result, there have been several recent real estate practice changes, such as Wisconsin MLS sites taking steps to remove the compensation field (if not completely removed already by time of this article's publication). Instead, sellers and listing firms seeking offer compensation will now need to do so through a written buyer agreement. Additionally, Wisconsin's standardized offer to purchase (OFP) has been revised to include a section for a seller to agree to pay compensation. Information about a seller's payment of compensation to the buyer's firm is located on line 543 of the OFP.

As mentioned above, the NAR settlement does not directly impact residential credit transactions. However, the impact upon the mortgage market is certainly significant. As the change is still relatively new, the full scope of the result is yet to be seen, but the impact on consumers is obvious. So, while the settlement imposes no new requirements upon lenders, it does create certain implications for lenders, particularly from a Truth in Lending Integrated Disclosures (TRID) standpoint. TRID itself has not changed, and so creditor duties remain the same, but it's important for lenders to be aware that buyers may have additional fees which might require disclosure for purposes of good faith estimates.

As a starting point, TRID has always required disclosure of commissions. More specifically, Regulation Z section 1026.37(g)(4), including comment 4 which provides examples, including "commissions of real estate brokers or agents… not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description "(optional)" at the end of the label for the item, and they are disclosed pursuant to 1026.37(g) rather than 1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under § 1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to § 1026.38."

Meaning, lenders must disclose commissions as "other" costs, when aware that they are paid by the consumer pursuant to the property contract. Of course, due to timing requirements of the Loan Estimate, and the requirement that it be provided without requiring the property contract, it raises the question of: what should a lender disclose when it does not know who will pay the fee or what the fee will be? It is helpful to consider that TRID has not changed in this regard, either. In any real estate transaction, there may be fees that a lender may or may not be aware of, depending on the circumstances, such as title fees, or other fees that the buyer and seller may have agreed to, and may agree to after the Loan Estimate is provided, for that matter. The lender must provide the Loan Estimate based upon the best information reasonably available at the time, and this standard is no different for commission fees.

Lenders should consider how this potentially impacts their application process. If a lender, in good faith, is unaware as to whether the buyer will pay realtor commission fees, then there may be nothing to disclose. However, if a lender is aware, it will need to make a good faith estimate as to what those fees are. A lender is not required to obtain a written buyer agreement, but that would be one way to confirm the fee. The NRA is also aware of the implications of the settlement upon lenders and has advised its realtors to be transparent with lenders regarding these fees so that disclosure requirements can be met.

It's worth noting that the standard for accuracy of fees on the Loan Estimate is based upon Regulation Z section 1026.17(c)(2) which requires that "if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate" (See also Regulation Z section 1026.19(e)(1)(i)). Information is unknown if it is not reasonably available to the lender at the time the disclosures are made. The "reasonably available" standard requires that the lender, acting in good faith, must exercise due diligence in obtaining information. Lenders normally may rely on the representations of other parties in obtaining information. Commentary to the regulation provides examples that the lender might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. Lenders may utilize estimates in making disclosures even though the lender knows that more precise information will be available by the point of consummation.

It is also important to note that this good faith standard requires that a lender must not overstate, inflate, or otherwise indicate a fee where it is not actually aware that the buyer will be charged the fee. For example, a lender should not have a practice of arbitrarily disclosing a flat fee or percentage of a fee for a realtor's commission. If a lender, in good faith, has no information reasonably available to determine that the buyer will be charged a commission, then there may be no fee to disclose at all. If, later, the lender becomes aware of such a fee however, it should consider re-disclosing the Loan Estimate for good faith purposes. From a Regulation Z perspective, section 1026.19(e)(3)(iv) does not prohibit the lender from issuing revised disclosures for informational purposes, for example, to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith under Regulation Z sections 1026.19(e)(3)(i) and (ii). Meaning, that while creditors may issue a revised disclosure for information purposes, it must be careful to track this disclosure and understand that it would not reset tolerances for other fees that may have changed as well.

In conclusion, knowing that there may be market adaptations to the NAR settlement, and perhaps even localized standards, lenders must be aware of how it impacts their good faith requirement to provide accurate disclosures based upon the best information reasonably available at the time. As the implications develop, lenders may need to re-evaluate their procedures in order to meet these standards, knowing that there may be negotiations as to how realtor commissions might be paid, and given the fact that the bank has to provide a Loan Estimate before it might have the sales contract to confirm fees.

Lenders need to be prepared to talk to applicants and disclose potential fees, and also be prepared to issue updated Loan Estimates should those fees be negotiated later. Lenders should not have a practice of arbitrarily disclosing a flat fee or percentage of a fee for a realtor's commission. For example, lenders should not have a practice to arbitrarily disclose a 3% realtor's commission on the Loan Estimate if the lender, in good faith, has no information reasonably available to determine that the buyer will be charged a commission.

October 2024
Volume 30, Number 5

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

Wisconsin Bankers ASSOCIATION

Compliance Journal
September 2024

Special Focus

Texas Court Decision Sides with CFPB on Section 1071 Rule

Late last month, Federal Judge Randy Crane issued a decision in *Texas Bankers Association v. CFPB*, S.D. Tex., Docket No. 7:23-cd-00144, 8/26/24, that CFPB did not violate the Administration Procedure Act (APA) when it finalized the small business data collection rule (Section 1071) last March. Section 1071 requires banks that make at least 100 small business loans a year to collect and report certain data about the small business borrower, application information, and loan terms. In his decision, Judge Crane wrote: "It may well be that the Final Rule proves ill-advised as a policy matter, but that possibility does not itself make the Final Rule unlawful under the APA."

WBA is certainly disappointed with the decision. WBA, and the industry as a whole, continue to be gravely concerned over the cost of implementing the rule and *most importantly* of the privacy concerns of small business community borrowers. It is expected that the plaintiffs will appeal the decision.

At this point, CFPB continues to work towards implementation of the Section 1071 rule having issued an interim final rule to extend mandatory compliance dates given the court case mentioned above and recently opening a beta platform for Section 1071 data collection.

Being mindful of the possibility of having to implement a rule as robust as Section 1071, WBA has provided Section 1071 training in past WBA Compliance Forums and through past webinars. Past toolkit materials will be reposted shortly to the WBA Compliance Resources page given the recent court decision. Additionally, WBA will be hosting a Section 1071 workshop, Friday, October 18 in a hybrid format. To further assist with implementing the rule as cost effectively as possible, WBA will continue to create educational Section 1071 resources.

The decision may be viewed at:
https://fingfx.thomsonreuters.com/gfx/legaldocs/byvrqwmawpe/08262024cfpb.pdf

The CFPB interim final rule to extend mandatory compliance dates may be viewed at:
https://www.govinfo.gov/content/pkg/FR-2024-07-03/pdf/2024-14396.pdf

The CFPB beta platform for Section 1071 may be viewed at:
Small Business Lending Data Submission Platform | Consumer Financial Protection Bureau (cfpb.gov)

WBA Section 1071 Workshop Information:
https://www.wisbank.com/events/wba-section-1071-workshop/

Retention of PPP Loan Records is Now 10 Years

In an interim final rule published in the *Federal Register* on August 23, 2024, SBA announced it has lengthened the required records retention for lenders that made loans under the Paycheck Protection Program (PPP) to **ten years** from the date of final disposition of each individual PPP loan. The interim final rule was issued without advance notice or public comment. The rule is effective **August 22, 2024**.

Wisconsin Bankers ASSOCIATION

Compliance Journal
September 2024

Special Focus

Texas Court Decision Sides with CFPB on Section 1071 Rule

Late last month, Federal Judge Randy Crane issued a decision in *Texas Bankers Association v. CFPB*, S.D. Tex., Docket No. 7:23-cd-00144, 8/26/24, that CFPB did not violate the Administration Procedure Act (APA) when it finalized the small business data collection rule (Section 1071) last March. Section 1071 requires banks that make at least 100 small business loans a year to collect and report certain data about the small business borrower, application information, and loan terms. In his decision, Judge Crane wrote: "It may well be that the Final Rule proves ill-advised as a policy matter, but that possibility does not itself make the Final Rule unlawful under the APA."

WBA is certainly disappointed with the decision. WBA, and the industry as a whole, continue to be gravely concerned over the cost of implementing the rule and *most importantly* of the privacy concerns of small business community borrowers. It is expected that the plaintiffs will appeal the decision.

At this point, CFPB continues to work towards implementation of the Section 1071 rule having issued an interim final rule to extend mandatory compliance dates given the court case mentioned above and recently opening a beta platform for Section 1071 data collection.

Being mindful of the possibility of having to implement a rule as robust as Section 1071, WBA has provided Section 1071 training in past WBA Compliance Forums and through past webinars. Past toolkit materials will be reposted shortly to the WBA Compliance Resources page given the recent court decision. Additionally, WBA will be hosting a Section 1071 workshop, Friday, October 18 in a hybrid format. To further assist with implementing the rule as cost effectively as possible, WBA will continue to create educational Section 1071 resources.

The decision may be viewed at:
https://fingfx.thomsonreuters.com/gfx/legaldocs/byvrqwmawpe/08262024cfpb.pdf

The CFPB interim final rule to extend mandatory compliance dates may be viewed at:
https://www.govinfo.gov/content/pkg/FR-2024-07-03/pdf/2024-14396.pdf

The CFPB beta platform for Section 1071 may be viewed at:
Small Business Lending Data Submission Platform | Consumer Financial Protection Bureau (cfpb.gov)

WBA Section 1071 Workshop Information:
https://www.wisbank.com/events/wba-section-1071-workshop/

Retention of PPP Loan Records is Now 10 Years

In an interim final rule published in the *Federal Register* on August 23, 2024, SBA announced it has lengthened the required records retention for lenders that made loans under the Paycheck Protection Program (PPP) to **ten years** from the date of final disposition of each individual PPP loan. The interim final rule was issued without advance notice or public comment. The rule is effective **August 22, 2024**.

SBA stated that the interim final rule was necessary to harmonize PPP lender records retention requirements with subsequent legislation extending the statute of limitations for criminal charges and civil enforcement actions for alleged PPP borrower fraud to ten years after the offense. In particular, the Bank Fraud Enforcement Harmonization Act was signed into law in August 2022 which amended section 7(a) of the Small Business Act to provide, for both First Draw PPP Loans and Second Draw PPP Loans, that notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a PPP loan guaranteed by SBA shall be filed not later than 10 years after the offense was committed.

SBA further provided that the majority of lenders that participated in PPP are federally-regulated lenders having participated under existing SBA Form 750 (Loan Guaranty Agreement (Deferred Participation)) or by signing Form 3506 (CARES Act Section 1102 Lender Agreement). Under the Consolidated Forgiveness and Loan Review Interim Final Rule, federally-regulated lenders that participated in the PPP Program are currently required to retain their PPP loan records in accordance with the records retention requirements imposed by their federal financial institution regulator. SBA has determined that there does not appear to be any consistent or specific time requirements imposed by federal financial institution regulators that are applicable to PPP records retention as a whole. Instead, federally-regulated PPP lenders may implement and follow general internal records retention policies that are acceptable to their regulators. SBA believes it is likely that many of these general internal records retention policies allow for periodic destruction of certain records after a loan is paid in full, which for PPP would include payment in full through forgiveness or otherwise. SBA has extended the record retention period to allow law enforcement to continue to investigate fraud cases.

The interim final rule applies to all PPP lender loan records. This includes PPP loan applications that were withdrawn, approved, denied, or cancelled, and all other PPP lender loan records for PPP loans with an outstanding balance, PPP loans that have been forgiven, and PPP loans that are in repayment or have been paid in full by the borrower as of the effective date of the interim final rule. To the extent that a federally-regulated PPP lender destroyed any PPP loan records before the effective date of the interim final rule in accordance with a general internal records retention policy that was acceptable to the PPP lender's federal regulator, SBA will not enforce compliance by that federally-regulated PPP lender with respect to the PPP loan records that were destroyed before the effective date of this rule.

The extended records retention requirements apply equally to federally-regulated lenders (including lenders that executed an SBA Form 3506) and SBA Supervised Lenders (including lenders that executed an SBA Form 3507).

Banks should review their current record retention schedules and procedures to ensure both align with SBA's new retention period for PPP loans. If the bank has already destroyed PPP loan records, the bank should be prepared to explain how such destruction was in accordance with its general internal records retention policy. The interim final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-08-23/pdf/2024-18083.pdf

Agencies Announce 2025 Sunset of Cybersecurity Assessment Tool

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, announced that the Cybersecurity Assessment Tool (CAT) will sunset in

September 2024
Volume 30, Number 4

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

SBA stated that the interim final rule was necessary to harmonize PPP lender records retention requirements with subsequent legislation extending the statute of limitations for criminal charges and civil enforcement actions for alleged PPP borrower fraud to ten years after the offense. In particular, the Bank Fraud Enforcement Harmonization Act was signed into law in August 2022 which amended section 7(a) of the Small Business Act to provide, for both First Draw PPP Loans and Second Draw PPP Loans, that notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a PPP loan guaranteed by SBA shall be filed not later than 10 years after the offense was committed.

SBA further provided that the majority of lenders that participated in PPP are federally-regulated lenders having participated under existing SBA Form 750 (Loan Guaranty Agreement (Deferred Participation)) or by signing Form 3506 (CARES Act Section 1102 Lender Agreement). Under the Consolidated Forgiveness and Loan Review Interim Final Rule, federally-regulated lenders that participated in the PPP Program are currently required to retain their PPP loan records in accordance with the records retention requirements imposed by their federal financial institution regulator. SBA has determined that there does not appear to be any consistent or specific time requirements imposed by federal financial institution regulators that are applicable to PPP records retention as a whole. Instead, federally-regulated PPP lenders may implement and follow general internal records retention policies that are acceptable to their regulators. SBA believes it is likely that many of these general internal records retention policies allow for periodic destruction of certain records after a loan is paid in full, which for PPP would include payment in full through forgiveness or otherwise. SBA has extended the record retention period to allow law enforcement to continue to investigate fraud cases.

The interim final rule applies to all PPP lender loan records. This includes PPP loan applications that were withdrawn, approved, denied, or cancelled, and all other PPP lender loan records for PPP loans with an outstanding balance, PPP loans that have been forgiven, and PPP loans that are in repayment or have been paid in full by the borrower as of the effective date of the interim final rule. To the extent that a federally-regulated PPP lender destroyed any PPP loan records before the effective date of the interim final rule in accordance with a general internal records retention policy that was acceptable to the PPP lender's federal regulator, SBA will not enforce compliance by that federally-regulated PPP lender with respect to the PPP loan records that were destroyed before the effective date of this rule.

The extended records retention requirements apply equally to federally-regulated lenders (including lenders that executed an SBA Form 3506) and SBA Supervised Lenders (including lenders that executed an SBA Form 3507).

Banks should review their current record retention schedules and procedures to ensure both align with SBA's new retention period for PPP loans. If the bank has already destroyed PPP loan records, the bank should be prepared to explain how such destruction was in accordance with its general internal records retention policy. The interim final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-08-23/pdf/2024-18083.pdf

Agencies Announce 2025 Sunset of Cybersecurity Assessment Tool

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, announced that the Cybersecurity Assessment Tool (CAT) will sunset in

September 2024
Volume 30, Number 4

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

2025. First released in 2015, the tool was used to help financial institutions identify risks and determine cybersecurity preparedness. In review of CAT, the agencies determined that new and updated resources are now available that financial institutions can leverage to better manage cybersecurity risks. The CAT will be removed from FFIEC's website **August 31, 2025**.

FFIEC also determined not to update CAT to reflect new government resources, including the National Institute of Standards and Technology (NIST) Cybersecurity Framework 2.0 and the Cybersecurity and Infrastructure Security Agency's (CISA) Cybersecurity Performance Goals. Supervised financial institutions can instead refer directly to the resources. FFIEC also shared that CISA released Cross-Sector Cybersecurity Performance Goals in 2023 and is preparing to release Cybersecurity Performance Goals for the Financial Sector later this year. FFIEC plans to discuss cybersecurity resources during a banker webinar this Fall.

While not endorsing any particular tool, FFIEC also shared that financial institutions may also consider use of industry-developed resources, such as the Cyber Risk Institute's (CRI) Cyber Profile, and the Center for Internet Security Critical Security Controls. The tools can be used in conjunction with other resources (e.g., frameworks, standards, guidelines, and leading practices) to better address and inform management of continuously evolving cybersecurity risk. FFIEC also reminds financial institutions to ensure that any self-assessment tool(s) utilized supports an effective control environment and is commensurate with the institution's risk. The following is a brief mention of each alternative resource listed by FFIEC in its announcement and a link to find more information about the resource:

NIST Cybersecurity Framework 2.0

The National Institute of Standards and Technology (NIST) is part of the U.S. Department of Commerce. Its mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve quality of life. In February 2024, NIST released an updated Cybersecurity Framework (CSF 2.0) which is a guidance document designed for all audiences, industry sectors, and organization types. The CSF 2.0 supports implementation of the National Cybersecurity Strategy.

The CSF 2.0 includes core components which are a hierarchy of functions, categories, and subcategories which detail each outcome; organizational profiles which are a mechanism for describing an organization's current and/or target cybersecurity posture in terms of core components outcomes; and tiers which can be applied to organizational profiles to characterize the rigor of an organization's cybersecurity risk governance and management practices. Tiers can also provide context for how an organization views cybersecurity risks and the processes in place to manage the risks. The core components include:

- **Govern**: The organization's cybersecurity risk management strategy, expectations, and policy are established, communicated, and monitored.
- **Identify**: The organization's current cybersecurity risks are understood.
- **Protect**: Safeguards to manage the organization's cybersecurity risks are used.
- **Detect**: Possible cybersecurity attacks and compromises are found and analyzed.
- **Respond**: Actions regarding a detected cybersecurity incident are taken.
- **Recover**: Assets and operations affected by a cybersecurity incident are restored.

More information about CSF 2.0 and related tools may be viewed at the NIST CSF 2.0 Resource Center: https://www.nist.gov/cyberframework

CISA Cybersecurity Performance Goals

The Cybersecurity and Infrastructure Security Agency's (CISA) Cybersecurity Performance Goals (CPGs) are a set of cybersecurity practices meant to reduce risks. The CPGs have been organized to align with NIST's CSF and are currently being updated to NIST's CSF 2.0.

The CPGs are meant to be a baseline set of cybersecurity practices broadly applicable across critical infrastructure with known risk-reduction value, act as a benchmark for critical infrastructure operators to measure and improve cybersecurity maturity, be a combination of recommended practices for information technology and operational technology owners, and also consider the aggregate risk to the nation.

CISA is also working on sector-specific goals which will include new, unique additional goals with direct applicability to a given sector, including for financial services sectors. More information about CISA and its goals may be viewed at: https://www.cisa.gov/cross-sector-cybersecurity-performance-goals

Cyber Risk Institute Cyber Profile

The Cyber Risk Institute (CRI) is a non-profit coalition of financial institutions and trade associations that work to protect the global economy by enhancing cybersecurity and resiliency through standardization. The CRI Profile is a cybersecurity framework developed by and for the financial sector based upon recognized standards. The Profile is based on NIST's Framework and includes a guidebook to help implement the Profile, a user guide, an impact questionnaire, fact sheet, and a mapping between the Profile and NIST's Framework 2.0. The CRI Profile and resources may be viewed at: https://cyberriskinstitute.org/the-profile/

Center for Internet Security Controls

The Center for Internet Security (CIS), Inc. is a non-profit organization responsible for CIS Controls® and CIS Benchmarks™ which are a set of best practices that financial institutions and other organizations can use to strengthen its cybersecurity controls to protect against threats. The CIS Controls tool consists of eighteen measures to help prioritize activities over roles and devise ownership. More information regarding CIS Controls and other resources may be viewed at: https://www.cisecurity.org/

Updated Examiner Guidance on Information Technology

FFIEC also separately announced a new booklet to the *FFIEC IT Examination Manual* to help examiners assess information technology (IT) practices. The booklet, titled "Development, Acquisition, and Maintenance," provides fundamental examination expectations regarding entities' development and acquisition planning and execution, governance and risk management, and maintenance and change management practices. It discusses the interconnectedness of an entity's assets and processes and those of its third-party service providers along with information to help examiners assess whether management adequately addresses risks and complies with applicable laws and regulations.

The booklet reflects the changing technological environment and increasing need for security and resilience. It also highlights the importance of providing examiners with current information regarding safety and soundness, consumer protection, and provision of secure and resilient business services to customers. The new booklet replaces the April 2004 booklet titled, Development and Acquisition. The updated booklet may be viewed at: https://ithandbook.ffiec.gov/

Conclusion

FFIEC announced the sunset of the Cybersecurity Assessment Tool. FFIEC will remove the tool from its website **August 31, 2025**. FFIEC determined new and updated resources are now available that financial institutions can leverage to better manage cybersecurity risks. FFIEC also announced the release of an updated Development, Acquisition, and Maintenance booklet to the *FFIEC IT Examination Manual* to help examiners assess IT practices.

The announcement of the CAT sunset may be viewed at:
https://www.ffiec.gov/press/pdf/CAT_Sunset_Statement_FFIEC_Letterhead.pdf

The National Cybersecurity Strategy may be viewed at:
https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf

Wisconsin Bankers ASSOCIATION

Compliance Journal
August 2024

Special Focus

Agencies Issue New Guidance and Rule Regarding Certain Methods of Determining Values of Residential Real Estate

Over the past several weeks 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), Federal Housing Finance Agency (FHFA), and National Credit Union Administration (NCUA) (collectively, the agencies) have issued final guidance and a final rule regarding certain methods for determining values of residential real estate.

The final guidance (Guidance) addresses reconsiderations of value (ROVs) for residential real estate transactions. An ROV is a request from a bank to an appraiser or other preparer of a valuation report to reassess the report based upon deficiencies or information that may affect the value conclusion. A bank may initiate a request for an ROV because of its valuation review activities or after consideration of information received from a consumer through a complaint, or request to the loan officer or other lender representative. The Guidance provides examples of policies and procedures that a bank may choose to implement to help identify, address, and mitigate the risk of discrimination impacting residential real estate valuations.

In addition to the Guidance, the agencies also issued a final rule (Rule) designed to help ensure the credibility and integrity of models used in valuations for certain mortgages secured by a consumer's principal dwelling. In particular, the Rule establishes quality control standards for automated valuation models (AVMs) used by mortgage originators and secondary market issuers. An AVM is a computer program that estimates a property's value and is used for a variety of purposes, including loan underwriting and portfolio monitoring. The following is a summary of both the Guidance and the Rule. The Guidance is final as of **July 26, 2024**. The Rule is effective **October 1, 2025**.

Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations

Background

The agencies created the Guidance as creditable collateral valuations, including appraisals, are essential to the integrity of the residential real estate lending process. Deficiencies identified in valuations, either through a bank's valuation review processes or through consumer-provided information, may be a basis for the bank to question the credibility of the appraisal or valuation report. Collateral valuations may be deficient due to prohibited discrimination, errors or omissions, or valuation methods, assumptions, data sources, or conclusions that are otherwise unreasonable, unsupported, unrealistic, or inappropriate. Deficient valuations may pose risks to the financial condition and operations of the bank. Such risks may include loan losses, violations of law, fines, civil money penalties, payment of damages, and civil litigation.

Reconsideration of Value (ROV)

The Guidance sets forth that an ROV request made by the bank to the appraiser or other preparer of the valuation report encompasses a request to reassess the report based upon deficiencies or information that may affect the value conclusion. The bank may initiate a request for an ROV because of its valuation review activities or after consideration of information received from a consumer through a complaint, or request to the loan officer or other lender representative.

A consumer inquiry or complaint regarding a valuation would generally occur after the bank has conducted its initial appraisal or evaluation review and resolved any issues that it has identified. Given this timing, a consumer may provide specific and verifiable information that may not have been available or considered when the initial valuation and review were performed. Regardless of how the request for an ROV is initiated, the Guidance provides that a consumer inquiry or complaint could be resolved through the bank's independent valuation review or other processes to ensure credible appraisals and evaluations.

An ROV request may include consideration of comparable properties not previously identified, property characteristics, or other information about the property that may have been incorrectly reported or not previously considered, which may affect the value conclusion. To resolve deficiencies, including those related to potential discrimination, the bank can communicate relevant information to the original preparer of the valuation and, when appropriate, request an ROV.

Complaint Process

Banks can capture consumer feedback regarding potential valuation deficiencies through existing complaint resolution processes. The complaint resolution process may capture complaints and inquiries about the bank's products and services offered across all lines of business, including those offered by third parties, as well as complaints from various channels (such as letters, phone calls, in person, transmittal from regulators, third-party valuation service providers, emails, and social media). Depending on the nature and volume, the agencies state in the Guidance that appraisal and other valuation-based complaints and inquiries can be an important indicator of potential risks and risk management weaknesses. Appropriate policies, procedures, and control systems can adequately address the monitoring, escalating, and resolving of complaints including a determination of the merits of the complaint and whether the bank should initiate an ROV.

Examples of Policies, Procedures, and Control Systems

The Guidance provides that banks may consider developing risk-based ROV-related policies, procedures, control systems, and complaint resolution processes that identify, address, and mitigate the risk of deficient valuations. The Guidance provides the following examples of what to consider when doing so:

Consider ROVs as a possible resolution for consumer complaints or inquiries related to residential property valuations. If a complaint or inquiry includes allegations of discrimination, the bank may also consider separately initiating the process the bank may have to respond to allegations of discrimination.

Consider whether any information or other process requirements related to a consumer's request for the bank to initiate an ROV create unreasonable barriers or discourage consumers from requesting the bank initiate an ROV.

Establish a process that provides for the identification, management, analysis, escalation, and resolution of valuation-related complaints or inquiries across all relevant lines of business, from various channels and sources (i.e., letters, phone calls, in person, regulators, third-party service providers, emails, and social media).

Establish a process to inform consumers how to raise concerns about the valuation early enough in the underwriting process for any errors or issues to be resolved before a final credit decision is made. The Guidance provides that this may include educating consumers on the type of information they may provide when communicating with the bank about potential valuation deficiencies.

August 2024
Volume 30, Number 3

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

Identify stakeholders and clearly outline each business unit's roles and responsibilities for processing an ROV request (e.g., loan origination, processing, underwriting, collateral valuation, compliance, customer experience, or complaints).

Establish risk-based ROV systems that route the request to the appropriate business unit (*e.g.*, requests that include concerns or inquiries that allege discrimination could be routed to the appropriate compliance, legal, and appraisal review staff that have the requisite skills and authority to research and resolve the request).

Establish standardized processes to increase the consistency of consideration of requests for ROVs. The agencies recommend using clear, plain language in notices to consumers of how to request the ROV. The Guidance states to establish guidelines for the information the bank may need to initiate the ROV process and establish timelines in the complaint or ROV processes for when milestones need to be achieved. The bank should also establish guidelines for when a second appraisal could be ordered and identify who assumes the cost. The bank should also establish protocols for communicating the status of the complaint or ROV and the lender's determination to consumers.

Lastly, the Guidance recommends banks ensure relevant lending and valuation-related staff are trained to identify deficiencies (including practices that may result in discrimination) through the valuation review process. Banks should question how the third parties they work with (*i.e.*, appraisal management companies, fee-appraisers, mortgage brokers, and mortgage services) are trained to identify such deficiencies.

Quality Control Standards for Automated Valuation Models (AVMs)

The Rule, a requirement of the Dodd-Frank Act, requires banks to adopt policies, practices, procedures, and control systems that ensure AVMs used in certain transactions to determine the value of mortgage collateral adhere to quality control standards designed to provide a high level of confidence in estimates, protect against data manipulation, avoid conflicts of interest, conduct random sample testing and reviews, and comply with nondiscrimination laws.

The Rule applies to entities regulated by the agencies that are mortgage originators or secondary market issuers. The Rule does not apply to AVMs used in monitoring the quality or performance of mortgages or mortgage-backed securities, reviews of the quality of already completed determinations of value of collateral, or to the development of an appraisal by a certified or licensed appraiser.

Definitions

Automated valuation model means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

Control systems means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

Covered securitization determination means a determination regarding: (1) whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or (2) structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

Credit decision means a decision regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage, including a decision whether to extend new or additional credit or change the credit limit on a line of credit.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one "principal" dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of the Rule.

Mortgage means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Mortgage originator means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, (a) takes a mortgage application, (b) assists a consumer in obtaining or applying to obtain a mortgage, or (c) offers or negotiates terms of a mortgage. The definition includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described above as mortgage originator.

The definition does not include any person who is not otherwise described above and who performs purely administrative or clerical tasks on behalf of a person who is described above or is retailer of manufactured or modular homes or an employee of the retailer as further outlined in the Rule. The definition also does not include a person or entity that only performs real estate brokerage activities, a person that provides seller financing, or a natural person, estate, or trust as further set forth in the Rule.

Person means a natural person or an organization.

Secondary market issuer means any party that creates, structures, or organizes a mortgage-backed securities transaction.

Quality Control Standards

The Rule sets forth the requirement that mortgage originators and secondary market issuers that engage in credit decisions or covered securitization determinations themselves, or through or in cooperation with a third-party or affiliate, must adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in these transactions adhere to quality control standards designed to:

- Ensure a high level of confidence in the estimates produced;
- Protect against the manipulation of data;
- Seek to avoid conflicts of interest;
- Require random sample testing and reviews; and
- Comply with applicable nondiscrimination laws.

The Rule does not mandate prescribed elements, thresholds, or activities for a AVM quality control standards thereby allowing each bank the broad flexibility to base their policies and procedures upon on the bank's size, complexity and risk profile, and on the transactions for which the bank would use an AVM covered by the Rule. The flexible approach also allows banks to modify their policy and procedures as AVM technology evolves.

Summary

The agencies have issued Guidance and a separate Rule regarding methods for determining values of residential real estate. The Guidance provides examples of policies and procedures that a bank may choose to implement for an ROV to help identify, address, and mitigate the risk of discrimination impacting residential real estate valuations. The Rule establishes quality control standards for AVMs used by mortgage originators and secondary market issuers.

While only just finalized, banks should expect examiners to question bank's plans to implement considerations set forth in the Guidance to identify the need for or to respond to a request for ROV. Additionally, banks using AVMs covered by the Rule need consider, before the October 1, 2025 effective date, how to implement the quality controls standards for the AVM, when applicable.

The Guidance may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-07-26/pdf/2024-16200.pdf

The Rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-08-07/pdf/2024-16197.pdf

Agencies Remind Banks of Third-Party Deposit Arrangement Risks.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a joint statement (Statement) in late July to note potential risks related to arrangements between banks and third parties to deliver bank deposit products and services to consumers and businesses (collectively, end users).

While the agencies stated support of responsible innovation and for banks pursing third-party arrangements in a safe and sound manner and in compliance with applicable law, the agencies have observed an expansion of third-party arrangements which involve the third party delivering the deposit product or service to end users versus the bank. The agencies have identified increased risk as a result of the evolution.

The Statement details potential risks and provides examples of effective risk management practices for banks when engaged in third-party deposit arrangements. In addition, the Statement reminds banks of relevant existing legal requirements, guidance, and related resources. The Statement does not alter existing legal or regulatory requirements nor establish new supervisory expectations. The following is a summary of the Statement.

Potential Risks

Depending on the structure, the agencies have observed that risks may be elevated in third-party arrangements for the delivery of deposit products and services, particularly in the areas of operational and compliance, growth, and in end-user confusion and misrepresentation of deposit insurance coverage. The agencies included the following examples of each type of potential risk.

Operational and Compliance

- *Significant operations performed by a third party*. The agencies caution of a bank substantially relying on third parties to manage its deposit operations as such reliance can eliminate or reduce a bank's crucial existing controls over and management of the deposit function. Without adequate initial due diligence and ongoing monitoring, risks to the integrity of a bank's deposit function are heightened.

  Depending upon the arrangement structure, the agencies also caution that the third party arrangement may introduce security vulnerabilities, including by providing another access point into the bank's systems. The agencies warn that integration may amplify operational risks, such as fraud, cybersecurity, and data privacy incidents occurring at the third party that then affect the bank.

- *Fragmented operations*. The agencies also warn that fragmented operational functions for deposit products and services among multiple third parties may make it more difficult for the bank to effectively assess risks and assess whether all third parties can and do perform assigned functions as intended.

- *Lack of access to records*. A potential lack of sufficient access by a bank to the deposit and transaction system of record and other crucial information and data maintained by the third party can impair the bank's ability to determine its deposit obligations. In some circumstances, the agencies warn that such uncertainty can lead to delays in customers' access to their deposits, which in turn can expose the bank to additional legal and compliance risks.

- *Third parties performing compliance functions*. The agencies caution that a bank's reliance on third parties to perform regulatory compliance functions may increase the risk of the bank not meeting its regulatory requirements. Specifically, the third party may perform certain regulatory compliance functions such as monitoring and reporting suspicious activity, customer identification programs, customer due diligence, and sanctions compliance on behalf of the bank. Regardless of whether the functions are shared between the bank and the third party, the agencies remind banks that the bank remains responsible for failure to comply with applicable requirements.

- *Insufficient risk management to meet consumer protection obligations*. The agencies emphasize that insufficient oversight of third party deposit arrangements may impact a bank's compliance with consumer protection laws and regulations, such as requirements under Regulation E to investigate and resolve certain payment disputes within required timeframes, and under Regulation DD to provide consumer deposit account disclosures.

Presenting insufficient or misleading information to customers also may result in violations of laws and regulations, including consumer protection requirements. In addition, the agencies emphasize that inadequate complaint administration and error resolution processes may limit a bank's ability to effectively identify and address issues impacting users of the deposit accounts and result in potential consumer harm.

- *Lack of contracts*. Multiple levels of third party and subcontractor relationships, where the bank does not have direct contracts with entities that perform crucial functions may pose challenges to the bank's ability to identify, assess, monitor, and control various risks.

- *Lack of experience with new methods*. Third party deposit arrangements leveraging new technologies or new methods of facilitating deposit products and services with which bank management and staff do not have prior experience may result in inadequate risk and compliance management practices to manage or oversee the arrangements and associated risks.

- *Weak audit coverage*. Lastly, the agencies caution that lack of sufficient audit scope and coverage, follow-up processes, and remediation may result in inadequate oversight of third party deposit arrangements and reduce the effectiveness of the audit function

Growth

In the area of growth, the Statement sets forth concerns that banks need to be mindful of when using a third party to deliver bank deposit products and services.

- *Misaligned incentives*. Banks should be aware that a third party's incentives may not be aligned with those of the bank, such as when a third party may be incentivized to promote growth in a manner that is not aligned with the bank's regulatory obligations, resulting in insufficient attention to risk management and compliance obligations.

- *Operational capabilities lag growth*. The agencies also warn that rapid growth as a result of third party deposit arrangements (either in the overall number of arrangements or in the size of specific arrangements) may result in risk management and operational processes struggling to keep pace.

- *Financial risks from funding concentrations*. Third party deposit arrangements may result in significant and rapidly increasing funding concentrations, which may make it more challenging for the bank to manage and mitigate liquidity and funding risks, particularly when funding is deployed in illiquid or long-term assets.

- *Inability to manage emerging liquidity risks*. Arrangements where a significant proportion of a bank's deposits or revenue are associated with a third party may pose liquidity risks, such that the bank may be reluctant to make decisions necessary to manage those risks, including, if necessary, to terminate the arrangement.

- *Pressure on capital levels*. Third party deposit arrangements may result in material and rapid balance sheet growth, including significant intraday balance sheet levels, without commensurate capital formation.

End User Confusion and Misrepresentation of Deposit Insurance Coverage

The Statement also sets forth examples of how third party deposit arrangements may confuse or misrepresent deposit insurance coverage to end users. In particular,

- *Potentially misleading statements and marketing*. Third party arrangements for the delivery of deposit products and services can pose risks of end user confusion related to deposit insurance, which may be exacerbated by marketing materials or other statements by nonbank third parties. Some nonbank third parties could be reasonably mistaken for an insured depository institution (IDI) by end users, particularly when they refer to FDIC deposit insurance in marketing and other public-facing materials. End users may not be aware that access to their funds may depend on the third party and that deposit insurance does not protect against losses resulting from the failure of the third party.

Special Focus

- *Regulatory violations*: Inaccurate or misleading information regarding the extent or manner under which deposit insurance coverage is available could constitute a violation under Part 328, Subpart B. Such deposit insurance misrepresentations may occur, for example, when nonbank third parties have communicated to end users that their funds are FDIC-insured, without disclosing that FDIC insurance protects only against the failure of an IDI, and not against the failure of the nonbank entity. Also, deposit insurance misrepresentations may also occur when parties to the arrangements communicate to end users that their funds are insured by FDIC on a pass-through basis without disclosing that certain regulatory requirements must be satisfied for pass-through deposit insurance coverage to apply.

Risk Management and Governance Considerations

The Statement sets forth that banks are expected to operate in a safe and sound manner and in compliance with applicable laws and regulations, including those related to safety and soundness, consumer protection, and anti-money laundering/countering the financing of terrorism (AML/CFT).

Furthermore, effective board and senior management oversight is crucial to ensure a bank's risk management practices are commensurate with the complexity, risk, size, and nature of the activity and relationship, both when the relationship commences and as it evolves over time. In this regard, banks should ensure practices are consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness*. The agencies also encourage banks to review and consider the risk management principles for third-party relationships set forth in the *Interagency Guidance on Third-Party Relationships: Risk Management.*

The agencies have observed examples of effective risk management practices that a bank may consider when managing third-party arrangements for the delivery of deposit products and services. The examples including the Statement pertain to governance and third-party risk management; managing operational and compliance implications; having adequate policies, procedures, oversight, and controls to help ensure the bank complies with applicable AML/CFT requirements; managing growth, liquidity, and capital implications; and addressing misrepresentations of deposit insurance coverage.

Summary

The agencies issued a Statement to note potential risks related to arrangements between banks and third parties to deliver bank deposit products and services to consumers and businesses. Included in the Statement are identified risks and suggested risk management and governance examples to help manage the potential risks to banks for using third party deposit arrangements. Also included is a list of helpful risk-management related resources.

The Statement: https://www.occ.treas.gov/news-issuances/news-releases/2024/nr-ia-2024-85a.pdf

Regulatory Spotlight

Agencies to Commence Drafting Insurance Capital Standard Report.

The Board of Governors of the Federal Reserve System (FRB) and the Federal Insurance Office of the Department of the Treasury (Treasury) (collectively, the agencies) announce they intend to commence drafting a report to Congress on the impact on consumers and markets in the United States before supporting or consenting to the adoption of any final international insurance capital standard. The International Association of Insurance Supervisors (IAIS) is developing the Insurance Capital Standard (ICS) as a consolidated group-wide capital standard for internationally active insurance groups, for the purposes of creating a common language for supervisory discussions of group solvency and enhancing global convergence among group capital standards. The IAIS is also assessing whether the Aggregation Method under development by the United States provides comparable outcomes to ICS, and if so, will be considered an outcome-equivalent approach for implementation of ICS as a prescribed capital requirement. The agencies intend to commence drafting the report after **07/12/2024.** The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-07-12/pdf/2024-15348.pdf. *Federal Register*, Vol. 89, No. 134, 07/12/2024, 57154.

Wisconsin Bankers ASSOCIATION

Compliance Journal
July 2024

Special Focus

TRID Clarifications and FDIC Expectations

WBA has recently received clarification from FDIC regarding two Truth in Lending-Real Estate Settlement Procedures Act Integrated Disclosures (TRID) questions. While these are not new requirements, FDIC's interpretations are meant to clear up ambiguity regarding expectations on how existing disclosure requirements must be met. The two questions discussed in this article are:

1. How must owner's title be disclosed on the Loan Estimate when paid by the seller?
2. Who must be listed on the Closing Disclosure as the government entity charging transfer taxes?

WBA has received the following information from FDIC's field management team and Chicago regional office regarding these issues. FDIC supervised banks can expect examiners to follow these interpretations. Non-FDIC supervised banks will need to confirm with their prudential regulator as to whether they have similar expectations.

Owner's Title

Owner's title is an insurance product that protects the homeowner from title issues. Because owner's title is not typically required by the creditor as part of the transaction, it is optional for the consumer to purchase. In Wisconsin, owner's title is typically paid for by the seller, and the standard real estate purchase contract contains default language that the seller is responsible for paying for owner's title insurance.

TRID requires disclosure of all costs associated with a loan transaction under a heading labeled as "closing cost details." The costs disclosed include "loan costs" and "other costs." Loan costs are those services that the creditor requires for making the loan and other costs are all additional costs associated with the transaction. Because lenders typically do not require owner's title, it would not be required to be disclosed as a loan cost, leaving the question as to whether it must be disclosed as an other cost. This has been a question subject to multiple interpretations since the inception of TRID. FDIC has clarified its expectations that owner's title must be disclosed as an other cost, even when paid by the seller.

Prior to this clarification, interpretations of this requirement have varied. Prior to sharing FDIC's rationale, the following is presented as a matter of background. Starting with the rule, Regulation Z section 1026.37(g)(4) requires an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, a descriptive label of each such amount, and the subtotal of all such amounts.

One interpretation of this requirement was based upon a strict reading of the rule, that when owner's title is an amount owed by the seller pursuant to the sale's contract it is not a fee that would appear on the Loan Estimate. This interpretation relied upon the fact that the rule requires disclosure of fees charged to the borrower. The theory being that when the contract requires the seller to pay the fee, it is not a fee charged to the borrower and thus, would not be a credit, either paid by the borrower or paid by others, but rather, a fee charged directly to the seller. Another interpretation reached the opposite conclusion, that even when the seller paid owner's title, because it's an amount that the owner "contracted with another person" to pay, it must be disclosed as an other cost.

Putting the above interpretations aside, FDIC has offered its interpretation on the matter. FDIC's interpretation is based upon the June 9, 2020, CFPB Fact Sheet - TRID Title Insurance Disclosures, which details how both owner's and lender's title insurance should be calculated and disclosed. The Fact Sheet does not reference that the owner's title would need to be on or off the Loan Estimate if seller paid, only that: "Instead, the cost of owner's title insurance is disclosed using the following formula: ((full owner's policy premium) + (the simultaneous premium for the lender's policy, i.e., simultaneous amount)) – (full lender's premium). Comments 37(g)(4)-2 and 38(g)(4)-2."

FDIC has informed WBA that its examiners are following the CFPB Fact Sheet/regulation, where the Loan Estimate includes the owner's title insurance since it is part of the formula to calculate how title insurance, both lender's and owner's, are disclosed on the Loan Estimate and Closing Disclosure, and indicated that this approach is consistent with calculations and disclosure methods used by various Wisconsin title insurance companies, CFPB guides, and national training its staff received.

In summary, FDIC's expectations are that owner's title must be disclosed as an other cost when paid by the seller. Form examples from FDIC to illustrate their expectations may be found at the end of this *WBA Compliance Journal*.

Transfer Tax

Transfer taxes are charges for the transfer of ownership of property. In Wisconsin, this fee is known as a real estate transfer fee, the value of which is determined by the State of Wisconsin, and collected at a county level by the Register of Deeds when the deed or other instrument of conveyance is recorded.

As discussed above, TRID requires disclosure of all costs associated with a loan, such as taxes and other government fees, which includes an itemization of transfer taxes paid as part of the transaction. Specifically, on the Closing Disclosure, Regulation Z section 1026.38(g)(1)(ii) requires an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

The rule does not elaborate beyond that, leaving a question as to what specific government entity assessing the transfer tax should be disclosed. One interpretation is that the Register of Deeds could be listed, as it is the entity which assesses the tax in Wisconsin on a county level. Another interpretation is that the State of Wisconsin should be listed.

FDIC has clarified its expectation that the State of Wisconsin must be listed. FDIC's interpretation is based upon the language within the regulation, which states the following: "(ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax." Based upon this, FDIC has informed WBA that it is state statute that assesses the transfer tax; therefore, the State of Wisconsin is the government entity that should be listed.

In summary, FDIC's expectations are that the State of Wisconsin is the only appropriate government entity to list as assessing the transfer tax.

Conclusion

WBA is appreciative of FDIC for sharing its interpretations of TRID, along with its examiner expectations, for purposes of sharing the information with the membership. FDIC supervised banks should be aware that examiners will expect owner's title to be disclosed under Section H – Other, when paid by the seller. Of course, in the event where a lender requires owner's title to be paid as a loan cost, then it should be disclosed in the

July 2024
Volume 30, Number 2

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

appropriate loan cost section instead. Wisconsin banks should also be aware that FDIC examiners will expect that the State of Wisconsin be listed as the name of the government entity assessing the transfer tax. FDIC's expectations are prospective in nature, meaning banks are not required to change past practices. FDIC supervised banks should expect FDIC examiners will express their interpretations in upcoming compliance examinations.

Non-FDIC supervised banks should clarify with their prudential regulator what their examination expectations are regarding owner's title paid by the seller and any requirements of what specific government entity assessing the transfer tax should be disclosed.

Loan documentation systems, including Compliance Concierge through FIPCO®, are in the process of revising programming to allow for seller-paid owner's title to appear in the Loan Estimate in Section H as an other charge if such is not already available. As a work around for the time being, FIPCO has indicated that Compliance Concierge users should indicate the owner's title insurance charge as being paid by the Borrower. In addition, the "Lender Required Service" box should not be checked, and the "Borrower Identified" box should be checked. The charge will then appear in the Loan Estimate under Section H as an other charge. As mentioned above, this instruction is for when owner's title is not required by the lender.

Q. Do the current WBA municipal borrowing form sets offered through FIPCO accommodate a 20-year term now available under Wisconsin law? An instructional page within the form sets references 10-years within its contents.

A. Yes. The current WBA municipal borrowing form sets offered through FIPCO will accommodate a 20-year loan term. These forms include the WBA 200-205 form sets and the WBA 220-225 form sets. The reference to "10-years" is only in the instructional cover page to each series and is not in the contents of the forms themselves which are executed with a municipal borrowing customer.

As background, during the 2023-2024 Wisconsin legislative session, 2023 Wisconsin Act 128 was signed into law which revised several banking-related areas of Wisconsin law. Included was a revision which extends the maximum maturity date of a promissory note issued by a municipality, county, or school district.

In particular, Act 128 revised Wis. Stat. Sec. 67.12 (12) as follows:

> **67.12 (12) (a)** Any municipality may issue promissory notes as evidence of indebtedness for any public purpose, as defined in s. 67.04 (1) (b), including but not limited to paying any general and current municipal expense, and refunding any municipal obligations, including interest on them. Each note, plus interest if any, shall be repaid ~~within 10 years after the original date of the note, except that notes issued under this section for purposes of ss. 119.498, 281.58, 281.59, 281.61, and 292.72 and s. 281.60, 2021 stats., issued to raise funds to pay a portion of the capital costs of a metropolitan sewerage district, or issued by a 1st class city or a county having a population of 750,000 or more, to pay unfunded prior service liability with respect to an employee retirement system, shall be repaid~~ within 20 years after original date of the note.

As a result of Act 128, the maximum maturity date of a promissory note issued by a municipality, county, or school district is now 20 years

Each of the WBA municipal form sets listed above reference Wis. Stat. 67.12(12) within the forms themselves. As section 67.12(12) was the section revised by Act 128 to allow for a 20-year term, the WBA municipal borrowing form sets will accommodate a 20-year loan term.

FIPCO is currently working on revisions to the WBA municipal borrowing form sets which include a revision to strike the reference of the "10 years" from the instructional cover page and change it to 20 years, changing any reference of "bank" within the forms to "financial institutions," and adding other clarifying language. The revised forms are planned for release later this summer. Until such release, the current WBA municipal borrowing forms, WBA 200-205 form sets and the WBA 220-225 form sets, will accommodate a 20-year loan term.

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
SALE PRICE **$270,000**

LOAN TERM
PURPOSE **Purchase**
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ ____________
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$243,000	
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

Costs at Closing

Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

Title - Lender's Title Insurance **$1323**

Lender's Title Insurance without the Title Premium Adjustment (Simultaneous Purchase Credit)

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

Title - Owner's Title Insurance (Optional) **$525**

Include Owner's Title Insurance as (Optional)
Dollar Amount = Full Owner's Policy (Charged to Seller) subtract the Premium Adjustment Amount (See Title Insurance Calculations)

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)	
Closing Costs Financed (Paid from your Loan Amount)	
Down Payment/Funds from Borrower	
Deposit	
Funds for Borrower	
Seller Credits	
Adjustments and Other Credits	**-$873**
Estimated Cash to Close	

The Title Premium Adjustment (Simultaneous Purchase Credit) is slotted in the Calculating Cash to Close to reduce the Lender's Title Insurance to the actual cost of $450 ($1323 - $873 = $450).

The Title Premium Adjustment (Simultaneous Purchase Credit) can be slotted in either the Seller's Credits line or the Adjustments and Other Credits line as long as the slotting is **consistent from the LE to the CD.**

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal — We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption — If you sell or transfer this property to another person, we
- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☐ will not allow assumption of this loan on the original terms.

Homeowner's Insurance — This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment — If your payment is more than ___ days late, we will charge a late fee of ________________
____

Refinance — Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing — We intend
- ☐ to service your loan. If so, you will make your payments to us.
- ☐ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature ____________ Date ____________

Co-Applicant Signature ____________ Date ____________

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose** Purchase
Disbursement Date		**Product**
Settlement Agent	**Seller**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ ____________
Property		
	Lender	**Loan ID #**
Sale Price $270,000		**MIC #**

Loan Terms

		Can this amount increase after closing?
Loan Amount	**$243,000**	
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	**This estimate includes** / **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing

Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
A. Origination Charges					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01 **Title - Lender's Title Insurance** **to ABC Title**	**$1323.00**				
02					
03 Full Lender's Title Insurance **without the Title Premium Adjustment**					
04 (Simultaneous Purchase Credit) is slotted in either Box B or C based on					
05 who the borrower selected for the Service.					
06					
07 Lender's Title Insurance should match the LE, Box B or C.					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					
Other Costs					
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
F. Prepaids					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (per day from to)					
04 Property Taxes (mo.)					
05					
G. Initial Escrow Payment at Closing					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08 Aggregate Adjustment					
H. Other					
01 **Title - Owner's Title Insurance (Optional)** **to ABC Title**			**$525.00**		
02					
03 Include Owner's Title Insurance as (Optional).			The Dollar Amount = Full Owner's Policy		
04			(Charged to Seller) **minus the Title Premium**		
05			**Adjustment** (Simultaneous Purchase Credit).		
06			This matches the LE, Box H.		
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					
Lender Credits					

The Calculating Cash to Close Matches the LE.

Calculating Cash to Close — Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits	-$873	-$873	
Cash to Close			

Summaries of Transactions — Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03	Closing Costs Paid at Closing (J)	
04		
Adjustments		
05		
06		
07		
Adjustments for Items Paid by Seller in Advance		
08	City/Town Taxes to	
09	County Taxes to	
10	Assessments to	
11		
12		
13		
14		
15		
L. Paid Already by or on Behalf of Borrower at Closing		
01	Deposit	
02	Loan Amount	
03	Existing Loan(s) Assumed or Taken Subject to	
04		
05	Seller Credit	
Other Credits		
06	Title - Lender's Title Premium Adjustment	$873.00
07		
Adjustments		
08		
09	Borrower receives the Title Premium Adjustment (Simultaneous	
10	Purchase Credit) here. This **reduces** the Lender's Title Insurance to	
11	the actual cost of $450 ($1323 - $873).	
Adjustments for Items Unpaid by Seller		
12	City/Town Taxes to	
13	County Taxes to	
14	Assessments to	
15		
16		
17		
CALCULATION		
Total Due from Borrower at Closing (K)		
Total Paid Already by or on Behalf of Borrower at Closing (L)		
Cash to Close ☐ From ☐ To Borrower		

SELLER'S TRANSACTION

M. Due to Seller at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/Town Taxes to	
10	County Taxes to	
11	Assessments to	
12		
13		
14		
15		
16		
N. Due from Seller at Closing		
01	Excess Deposit	
02	Closing Costs Paid at Closing (J)	
03	Existing Loan(s) Assumed or Taken Subject to	
04	Payoff of First Mortgage Loan	
05	Payoff of Second Mortgage Loan	
06		
07	Title - Lender's Title Premium Adjustment	$873.00
08	Seller Credit	
09		
10	Seller is charged the Title Premium Adjustment (Simultaneous Purchase	
11	Credit) here. This **increases** the Owner's Title Insurance to the actual cost	
12	of $1398 ($873 + $525).	
13		
Adjustments for Items Unpaid by Seller		
14	City/Town Taxes to	
15	County Taxes to	
16	Assessments to	
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing (M)		
Total Due from Seller at Closing (N)		
Cash ☐ From ☐ To Seller		

CLOSING DISCLOSURE

PAGE 3 OF 5 • LOAN ID #

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than ___ days late, your lender will charge a late fee of ____

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in ___________________________

____

____

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

?

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
__ License ID					
Contact					
Contact NMLS ID					
Contact __ License ID					
Email					
Phone					

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

Your actual rate, payment and costs could be higher. Get an official Loan Estimate before choosing a loan.

Quote Requested Date : 12/11/2023 at 6:51:22 AM PT

Transaction Information			
Property State:	**WI**		
Property County:	**Not Applicable**		
Property Type:	**Residential**		
Transaction Type:	**Sale w/ Mortgage**		
Loan Application Date:	**09/25/2023**		
Sale Amount:	**$270,000.00**	**Loan Amount:**	**$243,000.00**

If you use this calculator, do not do the the Quick Quote. It will include the GAP insurance and the numbers will be confusing. Do a manual quote and remove GAP insurance.

Title Fees		Buyer Charges	Seller Charges	Total
ALTA Owner's Policy		$0.00	$1,398.00	**$1,398.00**
Owner's premium (Full premium rate - Actual)				
Owner's premium (Incremental cost - Disclosed)		$0.00	$525.00	$525.00
Liability Amount	$270,000.00			
Rate Type	Basic			
ALTA Loan Policy		$450.00	$0.00	**$450.00**
Loan simultaneous charge (Actual)				
Loan premium (Full premium rate - Disclosed)		$1,323.00	$0.00	$1,323.00
Liability Amount	$243,000.00			
Rate Type	Simultaneous			
Total for Title Fees - Actual		**$450.00**	**$1,398.00**	**$1,848.00**
Total for Title Fees - Disclosed		$1,323.00	$525.00	$1,848.00
For Closing Disclosure Pg.3 - Title Premium Adjustment Amount		**$-873.00**	**$873.00**	

And on the LE

	Buyer Total	Seller Total	
Grand Total	$450.00	$1,398.00	**$1,848.00**

Disclaimer Regarding Simultaneous Title Insurance Premium Rate in Purchase Transactions:

For most policies, in order to comply with federal consumer protection laws, including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the regulations and other guidance promulgated pursuant thereto (see: 12 CFR Part 1026 – Supplement I – comments 37(f)(2)-4, 37(g)(4)-2, 38(f)(2)-1, and 38(g)(4)-2), the premium when a special rate may be available based on the simultaneous issuance of a loan policy and an owner's policy will be calculated and disclosed as follows:

1. The title insurance premium for a lender's title policy is calculated using the full rate based on the principal of the loan amount.
2. The title insurance premium for an owner's policy is calculated using the full rate based on the full market value/purchase price, adding the simultaneous issuance premium for the lender's coverage, and then subtracting the full premium for lender's coverage (as calculated in item 1 above).

Disclaimer:

The First American Comprehensive Calculator (FACC) is an Internet-based platform, which provides our customers with a user-friendly method of obtaining estimates for certain categories of settlement related costs. There may be variables that need to be considered in determining the final rate to be charged, including geographic and transaction specific items, which are beyond the functionality provided by the FACC. All estimates obtained through the use of this calculator are dependent upon the accuracy of the information entered into the calculator and no guarantee of issuance is expressed or implied. Please contact your local First American office or agent to confirm your quote. Contact information for First American offices and agents in your area is available at www.firstam.com.

Your CFPB Loan Estimate by Chicago Title

Transaction Details

Quote ID:	4738102
Quote Date:	12/11/2023 09:14:41 AM
Property State/County/City:	WI/Jefferson/Fort Atkinson
Closing State/County/City:	WI/Jefferson/Fort Atkinson
Transaction Type:	Purchase
Purchase Price:	$270,000.00
Loan Amount:	$243,000.00

CFPB Calculations - for informational purposes only		
CFPB Owner's Title Policy Disclosure Calculation		
Owner's Policy (Actual Premium)	+	$1,398.00
Simultaneous Loan Policy (Actual Premium)	+	$450.00
Stand-alone Loan Policy (Actual Premium)	-	$1,323.00
CFPB - Owner's Policy Disclosed Amount	=	$525.00
Title Insurance Premium Adjustment		($873.00)

Note: Amounts shown for Items noted with an asterisk (*) below are disclosed as required by CFPB Rule. Actual charges for such services are shown in the box above.

Loan Costs		Other Costs	
A. Origination Charges (Info Only)	**$0.00**	**E. Taxes and Other Government Fees**	**$0.00**
		No government recording charges are due for this transaction.	$0.00
		Transfer Tax (includes state, county, and local taxes) 0% Buyer/Borrower Responsibility of $810.00	$0.00
Title - Services	**$1,323.00**	**F. Prepaids**	
Title - ALTA Standard Coverage Loan Policy (*)	**$1,323.00**	**G. Initial Escrow Payment at Closing**	
Title - Closing Fees/Escrow Fees This quote does not include escrow fees and charges. To obtain escrow fees and charges contact the office that is handling the transaction.		**H. Other**	**$525.00**
		Title - ALTA Standard Coverage Owner's Policy (*)	**$525.00**

Disclaimers

Title Services And Lender's Title Insurance
To obtain other title related fees and charges, contact the Attorney or Agent that is handling the transaction.

The totals that the Rate Calculator Engine calculates include the charge for the title insurance policy premium and any additional endorsement charges that apply. The totals may not include any other amounts, such as charges/fees related to title search, examination, additional work charges, certification, or closing; inspection charges; additional chain or parcel charges; fees related to delayed release/reconveyance; order cancellation charges; release issuance fees; costs for reinsurance; and premiums or charges applicable to transactions involving extra-hazardous risk.

At this time, the Rate Calculator does not support endorsement-only transactions. If you want to price an endorsement(s) that is being issued subsequent to the underlying policy, you can still use this Calculator to arrive at the correct price for the endorsement(s). In that situation, the only charge incurred for the transaction will be the Endorsement Total(s) shown on the Rate Summary page; ignore the policy premium(s) and total(s).

Standard ALTA endorsements adopted 2021 will have the same rate-rules as their counterpart endorsements identified as ALTA -06 endorsements.

Owner's Title Insurance
The buyer should purchase an owner's title insurance policy to protect their interest in the property.

Government Recording Charges
No government recording charges are due for this transaction.

Closing Fees/Escrow Fees
To obtain other closing related fees and charges, contact the Agent or Closing Attorney that is handling the transaction.

If seller will ultimately pay the owner's title policy premium, adjust the cash-to-close using the amount shown as the Title Insurance Premium Adjustment .

Closing Protection Letters
A fee for Closing Protection Letter, or similar coverage will be charged if the state where the closing takes place charges a closing protection fee. Closing is defined as signing the insured property related documents under the Company's supervision, either in a FNTG office or using a FNTG selected and approved mobile notary. If the insured documents are not signed under the Company's supervision, closing is deemed to take place in the location where the funds are disbursed. For closings that take place in a different state than the property location, please contact your settlement agent for a quote.

Title Pricing Model
Processed via Rate Services

Limitation of Liability for Quote; Limited Indemnity

The information used or statement of fees (the Quote) produced from or through this site is provided as is as available and all warranties, express or implied, are expressly disclaimed (including but not limited to the disclaimer of any implied warranties of merchantability and fitness for a particular purpose). The Quote may contain errors, inaccuracies or other limitations.

Notwithstanding the foregoing limitation of liability, the Company agrees to indemnify against actual monetary loss incurred resulting from the inaccuracy of the fees or charges quoted for services actually performed and products provided by the Company as incorporated into the Quote for which compensation has been received. The Company is not responsible for the accuracy of any fees for any products or services provided by third parties, including agents of the Company.

The Company's entire maximum liability under the indemnity above shall be limited to the amount by which the aggregate of the Company's actual fees and charges received for the products and services provided in this Quote exceed one hundred ten percent (110%) of the aggregate amounts quoted in this quote for such products and services. In no event shall the Company be liable for indirect, special, incidental or consequential damages incurred by any party.

The Calculator is provided as a Residential Transaction tool. It is not intended to be used for Commercial Transactions.

Fidelity National Financial
National Rate Calculator

General Info	Reference Number:	Quote Number: 76136751
Property Location: State	Wisconsin	
Property Location: County	Any County	
Underwriter:	Fidelity National Title Insurance Company	
Quote Effective Date:	9/25/2023	

Transaction Information

Q. Transaction Type?
- Property Purchase or Acquisition (with or without financing)

Q. Purchase Amount/Value of Property
- $270,000.00

Q. Amount of Loan #1
- $243,000.00

Q. Property Type
- Residential

Q. Is this Company issuing the Owner's policy as part of this transaction?
- Yes

Q. Is this transaction eligible for the Concurrent Owner's & Loan rate? [1]
- Yes

Q. Does this transaction qualify under CFPB's TILA-RESPA Integrated Disclosure rule?
- Yes

Q. Is this transaction eligible for the Reissue rate?
- No

Owners Policy Information	
Policy Question(s):	
Q. Policy Form? *- ALTA Standard Coverage Owner's Policy*	
Liability Amount:	$270,000.00
Total Policy Premium (Owner's Policy Purchased):	$1,398.00
Title Charges - Owner's Policy Disclosure Amount: $525.00	
Owner's Policy - Adjustment: $873.00	
Endorsements	**Cost**

No endorsements were selected.	--
Endorsement Total:	$0.00
Total Charges for the Policy (Owner's Policy Purchased):	$1,398.00

Loan 1 Information	
Policy Question(s):	
Q. Policy Form? *- ALTA Standard Coverage Loan Policy*	
Liability Amount:	$243,000.00
Total Policy Premium (Owner's Policy Purchased):	$450.00
Title Charges - Loan Policy Disclosure Amount (If Owner's policy not purchased): $1,323.00	
Endorsements	**Cost**
No endorsements were selected.	--
Endorsement Total:	$0.00
Total Charges for the Policy (Owner's Policy Purchased):	$450.00

Grand Total (Owner's Policy Purchased):	$1,848.00

Qualifying Criteria

Concurrent Owner's & Loan Rate

[1] To be eligible for the Concurrent Owner's & Loan rate...

- The Loan policy(s) must be issued at the same time and by the same issuing office as the Owner's policy.
- The Loan policy(s) must insure the lien of one or more mortgages that are executed by the insured on the Owner's policy and recorded simultaneously with the insured instruments.

Rates calculated on this website reflect those applied in a typical transaction. The rate you are actually charged may differ from the rate calculated here if the details of your transaction differ from those you selected in order to calculate the rate. Premium quotes are based on rates in effect on the date of this quote. Any changes to the approved rates between the date of this quote and the closing date may result in a change in the premium(s) charged. Under certain circumstances, you may qualify for a lower rate than the one shown here.

The totals that the Rate Calculator Engine calculates include the charge for the title insurance policy premium and any additional endorsement charges that apply. The totals may not include any other amounts, such as charges/fees related to title search, examination, additional work charges, certification, or closing; inspection charges; additional chain or parcel charges; fees related to delayed release/reconveyance; order cancellation charges; release issuance fees; costs for reinsurance; and premiums or charges applicable to transactions involving extra-hazardous risk.

At this time, the Rate Calculator does not support endorsement-only transactions. If you want to price an endorsement(s) that is being issued subsequent to the underlying policy, you can still use this Calculator to arrive at the correct price for the endorsement(s). In that situation, the only charge

incurred for the transaction will be the Endorsement Total(s) shown on the Rate Summary page; ignore the policy premium(s) and total(s).

A fee for Closing Protection Letter, or similar coverage will be charged if the state where the closing takes place charges a closing protection fee. Closing is defined as signing the insured property related documents under the Company's supervision, either in a FNTG office or using a FNTG selected and approved mobile notary. If the insured documents are not signed under the Company's supervision, closing is deemed to take place in the location where the funds are disbursed.

For closings that take place in a different state than the property location, please contact your settlement agent for a quote.

Standard ALTA endorsements adopted 2021 will have the same rate-rules as their counterpart endorsements identified as ALTA -06 endorsements.

© 2023 Fidelity National Financial. All Rights Reserved.

appropriate loan cost section instead. Wisconsin banks should also be aware that FDIC examiners will expect that the State of Wisconsin be listed as the name of the government entity assessing the transfer tax. FDIC's expectations are prospective in nature, meaning banks are not required to change past practices. FDIC supervised banks should expect FDIC examiners will express their interpretations in upcoming compliance examinations.

Non-FDIC supervised banks should clarify with their prudential regulator what their examination expectations are regarding owner's title paid by the seller and any requirements of what specific government entity assessing the transfer tax should be disclosed.

Loan documentation systems, including Compliance Concierge through FIPCO®, are in the process of revising programming to allow for seller-paid owner's title to appear in the Loan Estimate in Section H as an other charge if such is not already available. As a work around for the time being, FIPCO has indicated that Compliance Concierge users should indicate the owner's title insurance charge as being paid by the Borrower. In addition, the "Lender Required Service" box should not be checked, and the "Borrower Identified" box should be checked. The charge will then appear in the Loan Estimate under Section H as an other charge. As mentioned above, this instruction is for when owner's title is not required by the lender.

Q. Do the current WBA municipal borrowing form sets offered through FIPCO accommodate a 20-year term now available under Wisconsin law? An instructional page within the form sets references 10-years within its contents.

A. Yes. The current WBA municipal borrowing form sets offered through FIPCO will accommodate a 20-year loan term. These forms include the WBA 200-205 form sets and the WBA 220-225 form sets. The reference to "10-years" is only in the instructional cover page to each series and is not in the contents of the forms themselves which are executed with a municipal borrowing customer.

As background, during the 2023-2024 Wisconsin legislative session, 2023 Wisconsin Act 128 was signed into law which revised several banking-related areas of Wisconsin law. Included was a revision which extends the maximum maturity date of a promissory note issued by a municipality, county, or school district.

In particular, Act 128 revised Wis. Stat. Sec. 67.12 (12) as follows:

> **67.12 (12) (a)** Any municipality may issue promissory notes as evidence of indebtedness for any public purpose, as defined in s. 67.04 (1) (b), including but not limited to paying any general and current municipal expense, and refunding any municipal obligations, including interest on them. Each note, plus interest if any, shall be repaid ~~within 10 years after the original date of the note, except that notes issued under this section for purposes of ss. 119.498, 281.58, 281.59, 281.61, and 292.72 and s. 281.60, 2021 stats., issued to raise funds to pay a portion of the capital costs of a metropolitan sewerage district, or issued by a 1st class city or a county having a population of 750,000 or more, to pay unfunded prior service liability with respect to an employee retirement system, shall be repaid~~ within 20 years after original date of the note.

As a result of Act 128, the maximum maturity date of a promissory note issued by a municipality, county, or school district is now 20 years

Each of the WBA municipal form sets listed above reference Wis. Stat. 67.12(12) within the forms themselves. As section 67.12(12) was the section revised by Act 128 to allow for a 20-year term, the WBA municipal borrowing form sets will accommodate a 20-year loan term.

FIPCO is currently working on revisions to the WBA municipal borrowing form sets which include a revision to strike the reference of the "10 years" from the instructional cover page and change it to 20 years, changing any reference of "bank" within the forms to "financial institutions," and adding other clarifying language. The revised forms are planned for release later this summer. Until such release, the current WBA municipal borrowing forms, WBA 200-205 form sets and the WBA 220-225 form sets, will accommodate a 20-year loan term.

Wisconsin Bankers Association

Compliance Journal
June 2024

Special Focus

Regulation CC Reminders and Inflation Adjustments to Certain Dollar Thresholds

By law, the Board of Governors of the Federal Reserve System (FRB) and Bureau of Consumer Financial Protection (CFPB) (collectively, the agencies) are required to adjust certain dollar thresholds of Regulation CC every five years by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). As a result of a 21.8 percent increase in the CPI-1 between July 2018 and July 2023, dollar thresholds for several Regulation CC funds availability sections will increase effective in 2025. The specific adjustments are listed below. In addition, given the frequency of calls to the WBA Legal Call Program regarding Regulation CC, this article also provides reminders regarding two frequently discussed topics—funds availability disclosure and remote deposit capture.

Funds Availability Policy and Disclosure

Regulation CC requires a bank to provide a funds availability disclosure which describes its policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay. For example, Applesauce Bank has a funds availability disclosure and policy that is next day availability. However, in practice, the bank generally does not delay availability and instead provides same day availability. In this case, Applesauce Bank's disclosure and policy does not match its actual practice. If Applesauce Bank's standard practice is to offer same day availability, then its policy and disclosure should match that practice.

Regulation CC also states that in disclosing a bank's funds availability policy that it follows in most cases, the bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its funds availability disclosure, those customers must receive disclosures that reflect the longer applicable availability periods.

In either case, a bank's funds availability disclosure should reflect its policy, which should be consistent with practice. In the scenario that some customers may receive faster availability, despite a policy to the contrary, it is important to note that faster availability in this scenario is the exception, rather than a reflection of bank's typical practice. Regulation CC requires disclosures for customers to understand their relationship to the accounts and when their funds are available, so the disclosures should reflect bank's actual practices.

On occasion, a bank could find that its actual funds availability practice has morphed from its fund availability disclosure and policy inadvertently. In the example above, it could be that Applesauce Bank did not make a board-level decision to alter its funds availability policy to same day availability, but that over time, the actual practice at the teller line has changed to routinely provide same day availability. Banks should be mindful to monitor actual practice to ensure the bank's Regulation CC funds availability disclosure reflects the availability policy followed by the bank in most cases. Banks in Wisconsin have been criticized in compliance examinations for the bank's Regulation CC funds availability disclosure and policy not reflecting its actual practice in most cases.

Remote Deposit Capture

Another frequent question through the WBA Legal Call Program recently is in regard to coverage under Regulation CC for deposits made via remote deposit capture. Meaning, for example, whether Regulation CC applies to checks deposited through mobile deposit technologies, such as through a customer's phone. Regulation CC's schedule of funds availability does not apply to remotely deposited items. Regulation CC's funds availability requirements apply to checks, electronic payments, and cash, which does not include checks deposited through a mobile device (see the definition of "check" under 229.2(k)(1)). However, banks should still disclose their funds availability with regard to remote deposits. As a matter of practice, some banks may apply their standard funds availability policy to remotely deposited items. Others apply a separate availability schedule. As with the reminder above, disclosure should be made clearly, and reflect bank's actual practices of availability. The disclosure may be part of a bank's funds availability schedule or may be part of a remote deposit capture services agreement or other deposit account terms.

As an additional reminder, while Regulation CC's funds availability requirements do not include remotely deposited items, that does not mean that remotely deposited items are "not subject to Reg CC." For example, the indemnities and warranties under Regulation CC still apply to remotely deposited items. More specifically, the indemnities for mobile deposit can be found under Regulation CC 229.34. That rule discusses indemnities for multiple deposits. Generally speaking, a bank that receives a remotely deposited check indemnifies another bank that accepts the original paper check unless the original has a restrictive endorsement. For this reason, banks should consider their policies with respect to remotely deposited items and treatment of a restrictive endorsement with Regulation CC in mind.

Inflation Adjustments

As mentioned above, the agencies have revised Regulation CC to adjust certain dollar thresholds. More specifically, on May 20, 2024, the agencies issued a final rule to amend Regulation CC to fulfill a statutory requirement in the Expedited Funds Availability Act to adjust the dollar amounts under the Act for inflation. As a result of a 21.8 percent increase in the CPI-1 between July 2018 and July 2023, the thresholds for several Regulation CC sections will increase. In particular,

- Section 229.10(c)(1)(vii), the minimum amount under next day availability rules increases to **$275** from $225.
- Section 229.12(d), the cash withdrawal amount under general availability schedules increases to **$550** from $450.
- Section 229.13(a)(i)(ii), the new account exception hold amount increases to **$6,725** from $5,525.
- Section 229.13(b), the large deposit exception threshold increases to **$6,725** from $5,525.
- Section 229.13(d)(2), repeated overdraft exception threshold increases to **$6,725** from $5,525.

In addition, the civil liability penalty amounts under sections 229.21(a)(2)(i) and (a)(2)(ii)(b) also increase. The final rule is effective **July 1, 2025**.

A change in policy notification to consumer accounts will be required as well. Regulation CC section 229.18(e) requires notice to consumer accounts at least 30 days before

June 2024
Volume 30, Number 1

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

implementing a change to the bank's funds availability policy, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation. Because the threshold adjustments made by the final rule mean that more funds are available to the customer sooner, the change will expedite funds availability. Thus, consumer accounts must be notified of the changes no later than July 31, 2025. However, nothing prohibits a bank from sending a notice sooner if it chooses to do so.

A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability schedule, the bank must direct the customer to the changed term in the disclosure by use of a letter or insert, or by highlighting the changed term in the disclosure.

Conclusion

Banks are reminded to review their funds availability policy in order to ensure it reflects their actual practice, as well as necessary updates to correspond with the inflation adjustments. Additionally, while Regulation CC's funds availability requirements do not apply to remotely deposited items, banks should still ensure their deposit contract represents the availability of remotely deposited items, such as in bank's remote deposit capture services agreement. For any questions, please contact WBA legal at wbalegal@wisbank.com or call us at 608-441-1200.

The final Regulation CC rule which adjusts cash thresholds for inflation may be viewed at:
https://www.govinfo.gov/content/pkg/FR-2024-05-20/pdf/2024-10844.pdf

Reminder of July 1 Effective Date of DOL New Salary Levels – Pending Court Injunction

As reported in the "Regulatory Spotlight" section of the May 2024 WBA *Compliance Journal*, the Department of Labor (DOL) issued a final rule to revise the regulations issued under the Fair Labor Standards Act (FLSA) to implement the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. Significant revisions include increasing the standard salary level, increasing the highly compensated employee (HCE) total annual compensation threshold, and adding to the regulations a mechanism that will allow for the timely and efficient updating of the salary and compensation thresholds.

The final rule revises the salary threshold for the exemption under FLSA referred to as the "white collar" exemption. This exemption comprises of a salary threshold and a "duties test." The final rule did not change the current duties test. Under the final rule, as of **July 1, 2024**, the salary threshold to consider an employee exempt from FLSA overtime rules is raised to **$844** weekly, up from $684/week. The weekly salary level will increase again to $1,128 weekly on January 1, 2025.

The final rule also revises the total annual compensation threshold for the HCE exemption. As of **July 1, 2024**, the annual compensation threshold requirement for the HCE exemption increases to **$132,964** annually, up from $107,432/year. The annual compensation threshold under the HCE exemption will increase to $151,164 annually on January 1, 2025.

The final rule provides that future increases will occur for both exemptions every three years, beginning January 1, 2027.

Several lawsuits have been filed against DOL regarding the final rule, including one by the Texas Attorney General who with the filing requested the court to grant an injunction to stay the implementation of the final rule until the court decides the merits of the case. A hearing on the motion is anticipated for late June.

As there has been no court injunction yet to stay the effective date of the final rule, banks need to prepare to implement the adjustments effective July 1. Banks should have identified those employees impacted by the final rule and should consider whether to have those exempt employees who fall below the new salary thresholds reclassified as non-exempt or increase the employee's salary. WBA will continue to monitor the court case actions and alert the membership of any injunction. Without an injunction, the DOL final rule remains effective July 1, 2024.

The DOL final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-04-26/pdf/2024-08038.pdf

implementing a change to the bank's funds availability policy, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation. Because the threshold adjustments made by the final rule mean that more funds are available to the customer sooner, the change will expedite funds availability. Thus, consumer accounts must be notified of the changes no later than July 31, 2025. However, nothing prohibits a bank from sending a notice sooner if it chooses to do so.

A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability schedule, the bank must direct the customer to the changed term in the disclosure by use of a letter or insert, or by highlighting the changed term in the disclosure.

Conclusion

Banks are reminded to review their funds availability policy in order to ensure it reflects their actual practice, as well as necessary updates to correspond with the inflation adjustments. Additionally, while Regulation CC's funds availability requirements do not apply to remotely deposited items, banks should still ensure their deposit contract represents the availability of remotely deposited items, such as in bank's remote deposit capture services agreement. For any questions, please contact WBA legal at wbalegal@wisbank.com or call us at 608-441-1200.

The final Regulation CC rule which adjusts cash thresholds for inflation may be viewed at:
https://www.govinfo.gov/content/pkg/FR-2024-05-20/pdf/2024-10844.pdf

---

Reminder of July 1 Effective Date of DOL New Salary Levels – Pending Court Injunction

As reported in the "Regulatory Spotlight" section of the May 2024 WBA *Compliance Journal*, the Department of Labor (DOL) issued a final rule to revise the regulations issued under the Fair Labor Standards Act (FLSA) to implement the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. Significant revisions include increasing the standard salary level, increasing the highly compensated employee (HCE) total annual compensation threshold, and adding to the regulations a mechanism that will allow for the timely and efficient updating of the salary and compensation thresholds.

The final rule revises the salary threshold for the exemption under FLSA referred to as the "white collar" exemption. This exemption comprises of a salary threshold and a "duties test." The final rule did not change the current duties test. Under the final rule, as of **July 1, 2024**, the salary threshold to consider an employee exempt from FLSA overtime rules is raised to **$844** weekly, up from $684/week. The weekly salary level will increase again to $1,128 weekly on January 1, 2025.

The final rule also revises the total annual compensation threshold for the HCE exemption. As of **July 1, 2024**, the annual compensation threshold requirement for the HCE exemption increases to **$132,964** annually, up from $107,432/year. The annual compensation threshold under the HCE exemption will increase to $151,164 annually on January 1, 2025.

The final rule provides that future increases will occur for both exemptions every three years, beginning January 1, 2027.

Several lawsuits have been filed against DOL regarding the final rule, including one by the Texas Attorney General who with the filing requested the court to grant an injunction to stay the implementation of the final rule until the court decides the merits of the case. A hearing on the motion is anticipated for late June.

As there has been no court injunction yet to stay the effective date of the final rule, banks need to prepare to implement the adjustments effective July 1. Banks should have identified those employees impacted by the final rule and should consider whether to have those exempt employees who fall below the new salary thresholds reclassified as non-exempt or increase the employee's salary. WBA will continue to monitor the court case actions and alert the membership of any injunction. Without an injunction, the DOL final rule remains effective July 1, 2024.

The DOL final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-04-26/pdf/2024-08038.pdf

Wisconsin Bankers Association

Compliance Journal

May 2024

Special Focus

Agencies Release Third Party Risk Management: A Guide for Community Banks

Earlier this month, 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) released a Third Party Risk Management: Guide for Community Banks (Guide) to assist community banks with developing and implementing third-party risk-management practices.

The Guide is based upon the Agencies' Interagency Guidance on Third-Party Relationships: Risk Management which was published in the *Federal Register* last June. The Agencies intend for the new Guide to be a resource for community banks to consider when managing the risk of third-party relationships. The Guide; however, is not a substitute for the Interagency Guidance.

The new Guide focuses on four areas which are summarized below. Included within the focused areas are helpful considerations and information sources for banks to review when managing risk of their third-party relationships. The Guide also provides an illustrative example for each of the main four areas.

Risk Management

The first area of focus is that of overall risk management of a third-party relationship. Certainly, not all third-party relationships present the same level of risk to a bank. As such, not all relationships require the same level of oversight. A bank is permitted to adjust and update its third-party risk-management practices commensurate with its size, complexity, and risk profile by periodically analyzing the risks associated with each third-party relationship. In taking this approach, bank management need involve those staff members with the requisite knowledge and skills in each stage of the risk-management life cycle.

In determining whether an activity is higher risk, and therefore involving more oversight of a third party performing any higher risk duties, banks may assess various factors, such as if the third party has access to sensitive data (including customer data), processes transactions, or provides essential technology and business services.

Characteristics of critical activities can include those activities that could cause a bank to face significant risk if the third party fails to meet expectations, have significant customer impacts, or have a significant impact on a bank's financial condition or operations.

Third-Party Relationship Life Cycle

The Agencies set forth that effective third-party risk management generally follows a continuous life cycle for third-party relationships. The five stages of the life cycle, which include (1) planning, (2) due diligence and third-party selection, (3) contract negotiations, (4) ongoing monitoring, and (5) termination, are surrounded by the governance practices of oversight and accountability, independent reviews, and documentation and reporting.

For every stage, a bank's level or type of oversight may vary, commensurate with its size, complexity, and risk profile as well as with the nature of the specific third-party relationship.

Special Focus

Planning

The first stage of effective third-party relationship risk management is planning. Careful planning enables a bank to consider potential risks in the proposed third-party relationship. Potential considerations include:

- What are the underlying activities to be performed, and what are the bank and third party's prospective roles in the activities?
- What legal and compliance requirements will apply to the prospective third-party activities?
- What are the benefits of the relationship, and how would the relationship align with the bank's strategic plan?
- What risk-management and governance practices (including internal controls) will be necessary to manage and mitigate the potential risks?
- What are the financial implications of entering into and maintaining the business arrangement?
- What are the direct contractual costs and indirect costs to augment or alter bank staffing, processes, and technology?
- Do the expected benefits of the relationship exceed the potential costs and risks?
- How will the bank integrate third-party technology with the bank's existing systems and infrastructure?
- What changes would need to be made to the bank's technology to ensure compatibility, and what would be the associated risks and costs?
- Does staff have the requisite skills to manage risks associated with integrating the third party's technology into the bank's environment (if not, how will the bank integrate the technology)?
- What physical and/or system access would the third party have to bank facilities, systems, and records, and what recordkeeping processes would the bank require the third party to implement?
- What interaction will the third party have with customers, and how would customer complaints be handled?
- What are the information security implications, and how will the third party access, process, and protect customers' information?
- Has the bank considered how to exit the activity or transition the activity to an alternative third party or in-house?

While in the planning stage, banks should also identify potential sources of information. This can include a review of the bank's:

- Strategic plan to assess the proposed activity's alignment with the bank's risk appetite, policies, and business objectives.
- Budget or cost-benefit analysis to assess the financial considerations of the relationship.

May 2024
Volume 29, Number 12

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

- Human resources staff to assess whether management and staff have the expertise and capacity to manage the relationship.
- Internal policies, processes, and controls to assess the impact to the bank of entering into and managing the proposed relationship.
- Bank's inventory of existing third-party relationships to assess whether an existing relationship could support the new activity.
- Bank's technology infrastructure and staff to assess how readily it could integrate with a third party to support the new activity.
- Subject matter experts' perspectives, including those in information technology, legal, and compliance risk.
- Board policies, including risk limits, to assess alignment with the proposed third-party relationship.

The Guide includes an illustrative example of the Agencies' expectations surrounding the planning efforts of a bank when first planning for the use of a third party.

Dule Diligence and Third-Party Selection

The second stage of effective third-party relationship risk management is due diligence and third-party selection. Due diligence is the process by which a bank assesses, before entering into a third-party relationship, a particular third party's ability to perform the activity as expected, adhere to the bank's policies, comply with all applicable laws and regulations, and conduct the activity in a safe and sound manner.

Conducting due diligence on third parties before selecting and entering into third-party relationships is an important part of sound risk management. It provides management with the information needed about potential third parties to determine if a relationship would help achieve a bank's strategic and financial goals.

Potential considerations for this stage of third-party vendor risk management include:

- Has the third party demonstrated financial and operational capability to meet its obligations to the bank? If not, what alternative information is available?
- What resources and expertise are available at the third party to support the activity?
- What third-party policies, processes, and internal controls support performance of the service in alignment with the bank's expectations and standards?
- Has the third party demonstrated an ability to comply with applicable laws and regulations, including anti-money laundering and countering the financing of terrorism (AML/CFT) as well as fair lending and consumer protection laws and regulations (as applicable)?
- Is the third party's information security program consistent with the bank's program and expectations related to protecting the confidentiality, integrity, and availability of information?
- Does the third party demonstrate the ability to effectively operate through and recover from both internal and external operational incidents or disruptions?
- How has the third party performed in the past during periods of economic or financial stress?
- Does the third party rely on subcontractors, and could that reliance pose additional or heightened risk to the bank?
- Does the third party use technologies that could introduce additional risk?

- Does the third party have a robust consumer complaint program?
- Is the third party involved in ongoing litigation or other public matters of concern?
- Can the third party demonstrate that it has successfully provided the prospective services for other banks or similar clients?

When weighing its considerations, potential sources of information for the bank to review include the third party's:

- Audited financial statements and other financial information to assess the third party's financial condition.
- Licenses and any other legal authority necessary to perform the activity.
- Relevant policies and procedures, including those related to AML/ CFT, to assess the effectiveness of its risk-management practices, control environment, and alignment with the bank's expectations and standards and with applicable legal requirements.
- Independent reviews of the effectiveness of those policies and procedures, including AML/CFT.
- Strategic plan or other disclosures to assess whether the business strategy and its agreements with other entities pose new or increased risks.
- Staffing levels and qualifications to assess whether the third party's resources can fulfill its obligations to the bank, including those of principals and other key personnel related to the activity.
- Training program to assess if its employees understand their duties and responsibilities, are knowledgeable about applicable laws and regulations, and have requisite certifications and licenses.
- Volume and nature of consumer complaints against the third party.
- Current insurance coverage to determine if sufficient for the activity.
- Audit reports to assess the third party's risk management and internal controls.

In performing its due diligence review of a prospective third party vendor, a community bank should also review:

- The Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons list (SDN List) and all other sanctions lists to ensure the third party and its employees, contractors, or grantees are not sanctioned by the U.S. government.
- System and Organization Controls (SOC) reports, independent assessments, and industry certifications to assess the third party's operational risk management and internal controls.
- References and feedback from peer institutions or clients that are currently using the third party's service.
- Disclosures and information in the media or in any of the third party's publications, including its website, to assess potential risks to the bank.
- Internet searches of the third party's company name to determine whether it has been partnered with institutions subject to consent orders related to third-party transactions or conducts business with companies that misrepresent deposit insurance coverage.

The Guide provides an illustrative example of the Agencies' expectations surrounding the bank's due diligence when first deciding which third party vendor to engage with.

Contract Negotiations

As mentioned above, the third stage of effective third-party relationship risk management is contract negotiations. Before entering into a contractual relationship with a third party, a bank typically considers contract provisions that meet its business objectives, regulatory obligations, and risk-management policies and procedures. The community bank typically negotiates contract provisions that facilitate effective risk management and oversight, including terms that specify the expectations and obligations of both the community bank and the third party.

However, when a community bank has limited negotiating power, the Agencies believe it is important for bank management to understand any resulting limitations and consequent risks. Possible actions that bank management might take in such circumstances include determining whether the contract can still meet the community bank's needs, whether the contract would result in increased risk to the community bank, and whether residual risks are acceptable.

At this stage of its risk management review, a bank could consider in its contract negotiations:

- To what extent does the contract specify the parties' responsibilities and cover all aspects of the relationship (including costs, reimbursements, and other liabilities)?
- What provisions does the bank need to include regarding termination events (for example, default or force majeure), continuity planning, and associated costs and fees?
- What are the governance and escalation protocols regarding the third party's performance and security measures or benchmarks?
- To what extent does the contract enable the bank to obtain timely information it needs to perform adequate ongoing monitoring, demonstrate compliance with applicable laws and regulations, and respond to regulatory requests? For example, will the bank have access to application and loan data, account opening and customer information, audit reports, suspicious activity monitoring information, and reports to identify safety and soundness and consumer compliance issues?
- What arrangements will be negotiated for sharing and using information, technology, and intellectual property?
- Does the contract specify limitations on the third party's use and retention of data (including customer data) related to the activity, including its disclosure, storage, delivery to the bank, and destruction?
- Does the contract appropriately address the bank's right to access its data at the third party and the process by which the bank will access its records and data (including customer data)?
- When and how will the third party notify the bank of a disruption, including degradation or interruptions in delivery, and how will the third party assist the bank with continuation of the activity?
- When and how will the third party notify the bank of strategic changes, such as mergers and acquisitions and leadership changes?
- What continuity plans, processes, and controls will the third party maintain to ensure contract adherence, including recovery time and recovery point objectives?
- For higher-risk activities, including critical activities, what are likely scenarios for breach of contract, and has the bank considered the potential exposure and cost?

Banks have several potential sources of information to consider when working through contract negotiations, including:

- The bank's risk assessment and due diligence findings to determine the provisions to include in the contract.
- The third party's proposed service level agreements to set applicable performance and security metrics.

- Assessments from business units regarding their business needs and customer service objectives to determine performance and security measures to include in the contract.
- Contract provisions outlining the bank's access to the third party's audit, testing, and self-assessment reports for ongoing monitoring.
- Legal, compliance, and other stakeholders' perspectives to advise bank management on the contract provisions to appropriately protect the bank's interests.

The Guide also provides an illustrative example of a bank's contract negotiation with a third party based upon challenges with a service provider.

Ongoing Monitoring

The fourth stage of effective third-party relationship risk management is ongoing monitoring. A bank's ongoing monitoring of the third party's performance enables bank management to determine if the third party is performing as required for the duration of the contract. The bank may also use information from ongoing monitoring to adapt and refine its risk-management practices.

Potential considerations for a community bank during this stage include:

- Is the third party performing its obligations under the contract?
- Has the third party's financial condition changed, including declining revenues or increasing debt obligations?
- Has the third party complied with applicable laws, regulations, and service level agreements?
- Do audit and test results indicate the third party is managing risks and meeting contractual obligations and regulatory requirements effectively?
- Is the third party demonstrating an ability to maintain its systems within the bank's availability requirements (e.g., latency, bandwidth, and uptime)?
- Is the third party demonstrating reliability throughout its relationship with the bank?
- How do the third party's business continuity and disaster recovery plans and practices demonstrate its capability to respond and recover from service disruptions?
- Has the third party maintained the confidentiality, availability, and integrity of customer data (where applicable) and the bank's systems, information, and data?
- Do reports from the third party align with the bank's internal reports and observations?
- Has the third party's performance changed due to mergers, acquisitions, or divestitures?
- Has the bank's reliance on the third party to conduct bank activities changed over the life of the relationship?
- For third parties that interact with customers or access customer data, has the third party responded appropriately to the bank's requests for its records and information?
- Have there been changes in the third party's strategy, corporate culture, leadership, or risk exposure? If so, what is the impact on the relationship with the bank?

There are several potential sources of information for a bank to consider when performing its ongoing monitoring of a third party, including:

- Service level agreements and standards to assess the third party's performance and to confirm that existing provisions continue to address risks and the bank's expectations.
- Audited and other financial reports to confirm the third party's financial condition remains sound and in compliance with contractual requirements.
- Audits and reports to confirm the third party's compliance with all applicable laws and regulations.
- Internal reports to review changes in the bank's risk assessment and supporting risk-management processes.
- The bank and third party's contingency testing results to evaluate the ability to respond to and recover from service disruptions or degradations.
- Review and testing of control effectiveness to assess whether the third party's control environment remains sound, including SOC reports and self-assessments to industry standards.
- Information security testing results to assess the third party's ability to maintain the confidentiality, availability, and integrity of customer data (where applicable) and the bank's systems, information, and data.
- Customer complaints to assess the volume and subject matter of complaints and the timeliness and appropriateness of the third party's response to them.
- Communication with the third party to assess changes in key processes.
- The third party's staffing and succession plans and organizational charts to assess changes in the third party's key personnel involved in the activity and to determine whether key personnel have assumed responsibilities that may detract from their ability to perform under the third party's agreement with the bank (e.g., affiliation with other entities).
- Training materials provided to the third party and bank staff for continued education.
- Public filings, news articles, social media, and customer feedback about experiences with the third party.

Similar to other sections, the Guide provides an illustrative example of ongoing monitoring by a bank of its relationship with a non-bank third party.

Termination

The final stage of effective third-party relationship risk management is termination. A community bank may choose to end its relationship with a third party for a variety of reasons and the bank typically considers the impact of a potential termination during the planning stage of the third-party life cycle. This consideration early on in the process of determining whether to utilize a third party's services may help to mitigate costs and disruptions caused by termination, particularly for higher-risk activities, including critical activities.

Potential considerations for a community bank when terminating a third party relationship include:

- How will the termination affect the bank's operations and its compliance with applicable laws and regulations?
- Will any higher-risk activities, including critical activities, be affected?
- What are the financial implications of terminating the relationship?
- What alternative third parties are available to which the bank can transition, or can the bank perform the activity in-house?
- How ready are bank staff, systems, and control environments to move the outsourced activity in-house, if needed?

- How will the bank and the third party handle intellectual property?
- What access to bank systems or information has the third party been granted? How and when will the access be removed?
- If the third party has access to bank or customer data, when and how will the bank confirm that the data has been returned or destroyed?
- Will the bank have access to data to meet its AML/CFT requirements and other recordkeeping obligations?
- How will the bank manage risks associated with the termination or migration, including the impact on customers?
- What additional controls and processes will the bank put in place during the transition?

Several information sources are available to community banks when terminating a third party relationship, including the bank's:

- Contract with the third party, to verify how parties may exit the relationship and the conditions under which fees or penalties will be imposed for early termination.
- Budget to assess the impact of costs and fees associated with termination.
- Outlines of steps or resources that the bank had previously developed to support its exit from the activity or to transition the activity to an alternative third party or in-house.
- Inventory of its or customers' data at the third party to support risk management associated with data retention and destruction, information system connections and access control, or other control concerns.
- Assessments of its systems, processes, and human resources to determine whether the bank has the capability, resources, and time to transition the activity to another third party or bring the activity in-house with limited disruption to the bank's operations.
- Third-party inventory to assess existing relationships with other third parties to transition the activity to them, if appropriate.
- Considerations for transitioning customer accounts with limited disruption to customers and the bank's operations.

The termination-related example illustrates practices taken by a community bank when terminating a third-party relationship.

Governance

In managing risks of third-party relationships, community banks also consider oversight and accountability of the third party, independent reviews of the adequacy of the third party, and documentation as typical governance practices throughout a third-party relationship.

Potential considerations of the bank include:

- How do the bank's policies and procedures promote effective third-party risk-management governance?
- How do documentation and reporting enable the bank's board of directors to consistently oversee third-party risk management?
- How does the bank's board of directors hold management accountable for third-party risk management?

- Do the bank's governance structure and internal control environment effectively promote compliance with bank policies and procedures and applicable laws and regulations?
- Has the bank accurately assessed the resources required (including level and expertise of staffing) to manage third-party risks?
- Does the bank effectively document and maintain a current inventory of all third-party relationships that clearly identifies those relationships associated with higher-risk activities, including critical activities?
- Has the bank effectively evaluated the accuracy and timeliness of risk and performance reporting?
- Has the bank effectively conducted periodic independent reviews of the bank's third-party risk management?
- When and how does the bank's management inform its board of directors about third-party risks?

Potential sources of information for community banks in this area of third-party risk management efforts include:

- The bank's strategic plan to verify that the bank's third-party risk-management practices are aligned with its strategic objectives.
- Applicable policies and procedures to assess whether they address risks posed by third-party relationships.
- The bank's contingency testing plans to understand how the bank maintains operations during disruptions.
- Audit reports to assess the bank's risk management and pertinent internal controls.
- The bank management's periodic reporting to the board of directors on third parties that support higher-risk activities, including critical activities.
- Documentation of the bank's actions to remedy material third-party issues, including performance deterioration.
- Other internal reports regarding the bank's third-party relationships.

Summary

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency released a Third Party Risk Management: Guide for Community Banks to assist community banks with developing and implementing third-party risk-management practices. The guide is based upon the Interagency Guidance on Third-Party Relationships: Risk Management which was published in June 2023.

The guide provides helpful considerations, information sources, and illustrative examples for effective third-party relationship risk management. The guide may be viewed at: https://www.fdic.gov/resources/bankers/third-party-relationships/third-party-risk-management-guide.pdf

---

Wisconsin Financial Exploitation of Vulnerable Adults

As was mentioned in last month's *WBA Compliance Journal*, a new law was recently enacted which creates the concept of a List of Authorized Contacts. The concept was created to help financial service providers combat financial exploitation of certain customers. The law may be found in a new section of Wisconsin Statute Chapter 224 Miscellaneous Banking and Financial Institutions Provisions.

Created as Financial Exploitation of Vulnerable Adults, the following definitions and procedures were recently created under new Wis. Stat. § 224.45.

- Do the bank's governance structure and internal control environment effectively promote compliance with bank policies and procedures and applicable laws and regulations?
- Has the bank accurately assessed the resources required (including level and expertise of staffing) to manage third-party risks?
- Does the bank effectively document and maintain a current inventory of all third-party relationships that clearly identifies those relationships associated with higher-risk activities, including critical activities?
- Has the bank effectively evaluated the accuracy and timeliness of risk and performance reporting?
- Has the bank effectively conducted periodic independent reviews of the bank's third-party risk management?
- When and how does the bank's management inform its board of directors about third-party risks?

Potential sources of information for community banks in this area of third-party risk management efforts include:

- The bank's strategic plan to verify that the bank's third-party risk-management practices are aligned with its strategic objectives.
- Applicable policies and procedures to assess whether they address risks posed by third-party relationships.
- The bank's contingency testing plans to understand how the bank maintains operations during disruptions.
- Audit reports to assess the bank's risk management and pertinent internal controls.
- The bank management's periodic reporting to the board of directors on third parties that support higher-risk activities, including critical activities.
- Documentation of the bank's actions to remedy material third-party issues, including performance deterioration.
- Other internal reports regarding the bank's third-party relationships.

Summary

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency released a Third Party Risk Management: Guide for Community Banks to assist community banks with developing and implementing third-party risk-management practices. The guide is based upon the Interagency Guidance on Third-Party Relationships: Risk Management which was published in June 2023.

The guide provides helpful considerations, information sources, and illustrative examples for effective third-party relationship risk management. The guide may be viewed at: https://www.fdic.gov/resources/bankers/third-party-relationships/third-party-risk-management-guide.pdf

Wisconsin Financial Exploitation of Vulnerable Adults

As was mentioned in last month's *WBA Compliance Journal*, a new law was recently enacted which creates the concept of a List of Authorized Contacts. The concept was created to help financial service providers combat financial exploitation of certain customers. The law may be found in a new section of Wisconsin Statute Chapter 224 Miscellaneous Banking and Financial Institutions Provisions.

Created as Financial Exploitation of Vulnerable Adults, the following definitions and procedures were recently created under new Wis. Stat. § 224.45.

Definitions

"Account" means funds or assets held by a financial service provider, including a deposit account, savings account, share account, certificate of deposit, trust account, guardianship or conservatorship account, or retirement account, and also including an account associated with a loan or other extension of credit.

"Financial exploitation" has the meaning given in s. 46.90(1)(ed) which is the section of law which allows for financial institutions to voluntarily report financial exploitation to a County Elder-Adult-at-Risk Agency if a financial institution suspects financial exploitation of an elder adult at risk person. Section 46.90(1)(ed) defines "financial exploitation" to mean any of the following:

1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against their will without their informed consent.

2. Theft, as prohibited in Wis. Stat. § 943.20.

3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.

4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in Wis. Stat. § 943.201.

5. Unauthorized use of an entity's identifying information or documents, as prohibited in Wis. Stat. § 943.203.

6. Forgery, as prohibited in Wis. Stat. § 943.38.

7. Financial transaction card crimes, as prohibited in Wis. Stat. § 943.41.

"Financial institution" means a bank, savings bank, savings and loan association, trust company, or credit union chartered under the laws of Wisconsin.

"Financial service provider" means any of the following engaged in or transacting business in Wisconsin:

1. A financial institution.

2. A mortgage banker, mortgage broker, or mortgage loan originator, as defined in Wis. Stat. §§ 224.71(3), (4), or (6).

3. A seller of checks, as defined in Wis. Stat. § 217.02(9).

4. A community currency exchange, as defined in Wis. Stat. § 218.05(1)(b).

5. A payday loan licensee under Wis. Stat. § 138.14.

6. A title loan licensee under Wis. Stat. § 138.16.

7. A lender licensed under Wis. Stat. § 138.09.

8. An insurance premium finance company, as defined in Wis. Stat. § 138.12(1)(b).

9. A sales finance company, as defined in Wis. Stat. § 218.0101(34).

"Vulnerable adult" means an adult at risk, as defined in Wis. Stat. § 55.01(1e), or an individual who is at least 65 years of age. Wisconsin Statute Chapter 55 is titled, Protected Service System. Under s. 55.01(1e), "adult at risk" means any adult who has a physical or mental condition that substantially impairs their ability to care for their needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self–neglect, or financial exploitation.

It is important to note that the age is different under this new law than under the longstanding state law regarding the voluntary reporting of suspected financial exploitation of an elder adult at risk to a County Elder-Adult-at-Risk Agency

under procedures established under Wis. Stat. § 46.90. An elder adult at risk under s. 46.90 is defined as a person age 60 or older. It is also important to note that the new law regarding financial exploitation of vulnerable adults does not change existing law under s. 46.90. Procedures for voluntarily reporting suspected financial exploitation of an elder adult at risk to a County Elder-Adult-at-Risk Agency are unaffected by the new law under s. 224.45.

List of Authorized Contacts

A financial service provider may offer to a vulnerable adult the opportunity to submit and periodically update a list of persons that the vulnerable adult authorizes the financial service provider to contact when the financial service provider has reasonable cause to suspect that the vulnerable adult is a victim or a target of financial exploitation. The financial service provider may rely on information provided by the customer in compiling a list of contact persons.

A financial service provider, or an officer or employee of the financial service provider, that has reasonable cause to suspect that a vulnerable adult is the victim or target of financial exploitation may convey the suspicion to any of the following if the person is not the suspected perpetrator:

1. Any person on the List of Authorized Contacts, if a list has been provided by the vulnerable adult.

2. Any co–owner, additional authorized signatory, or beneficiary on the account of the vulnerable adult.

3. Any person known by the financial service provider to be a family member, including a parent, spouse, adult child, or sibling.

When the financial institution provides information to a person as permitted under the new law, the financial service provider may limit the information and disclose only that the financial service provider has reasonable cause to suspect that the vulnerable adult may be a victim or target of financial exploitation without disclosing any other details or confidential personal information regarding the financial affairs of the vulnerable adult.

The financial service provider may choose not to contact any person on the list if the financial service provider suspects that the person is engaged in financial exploitation. Financial institutions should keep in mind however, that while the financial institution may not be required to act under this state law, facts and circumstances may be such that the institution need report activity under its responsibilities of the suspicious activity reporting (SARs) under Bank Secrecy Act (BSA) rules.

The new law also provides that a financial service provider, or an employee of a financial service provider, acting in good faith is immune from all criminal, civil, and administrative liability for contacting a person or electing not to contact a person under the new rule and for actions taken in furtherance of that determination if the determination was made based on reasonable suspicion.

Summary

Financial service providers in Wisconsin have a new tool to help combat financial exploitation of vulnerable adults. Under the new law, a financial service provider, or an officer or employee of the financial service provider, that has reasonable cause to suspect that a vulnerable adult is the victim or target of financial exploitation may convey the suspicion to certain persons if the person is not the suspected perpetrator. Financial service providers may reach out to any person on a List of Authorized Contacts provided to the financial service provider by the vulnerable adult, any co–owner, additional authorized signatory, or beneficiary on the account of the vulnerable adult, or any person known by the financial service provider to be a family member, including a parent, spouse, adult child, or sibling.

Financial service providers should consider whether any existing procedures need be modified given the new law, including to determine if and when a list of authorized contacts is to be used, when such list should be updated by customers, identify how to monitor or recognize that an account has a list on file, and to establish what steps frontline staff should take to alert management, the BSA officer, or other staff of a particular situation for further review and determination of next steps.

The new law, Wisconsin Financial Exploitation of Vulnerable Adults, 2013 Wisconsin Act 132 may be found at: https://docs.legis.wisconsin.gov/2023/related/acts/132.pdf

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.

March 2024
Volume 29, Number 11

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

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.

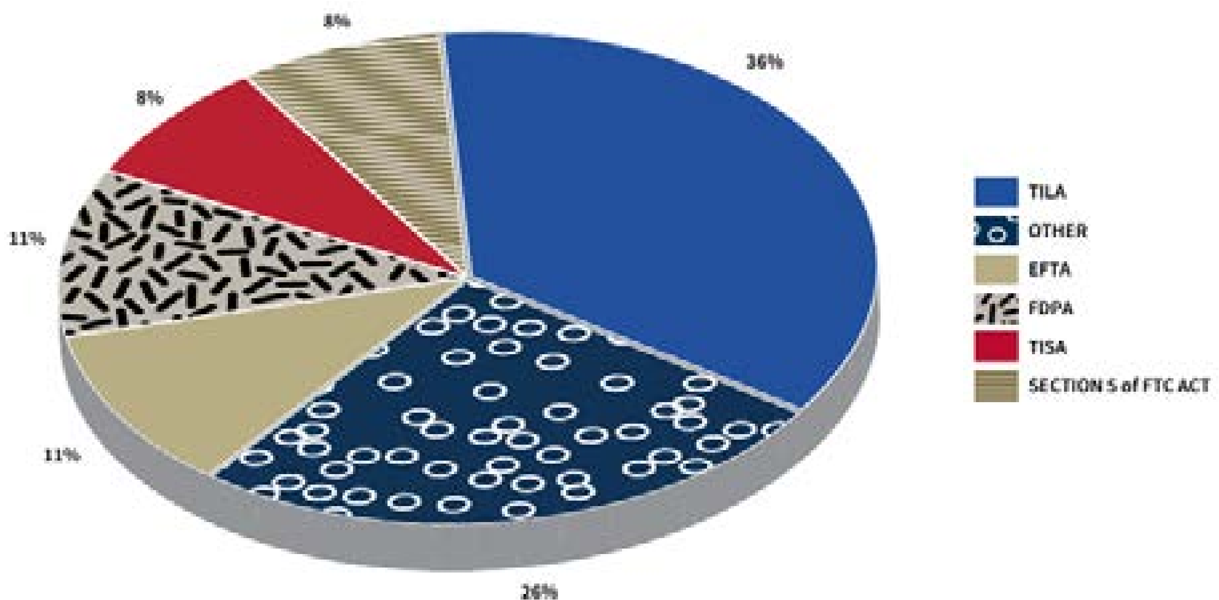
- **TISA/Regulation DD:** Sections 1030.4(a) and (b) of Regulation DD set forth timing and content requirements for deposit account disclosures. While TISA violations cited during 2023 were widely distributed among the various provisions of the regulation, this section represented 9 percent of the total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



Consumer Compliance Examination Observations

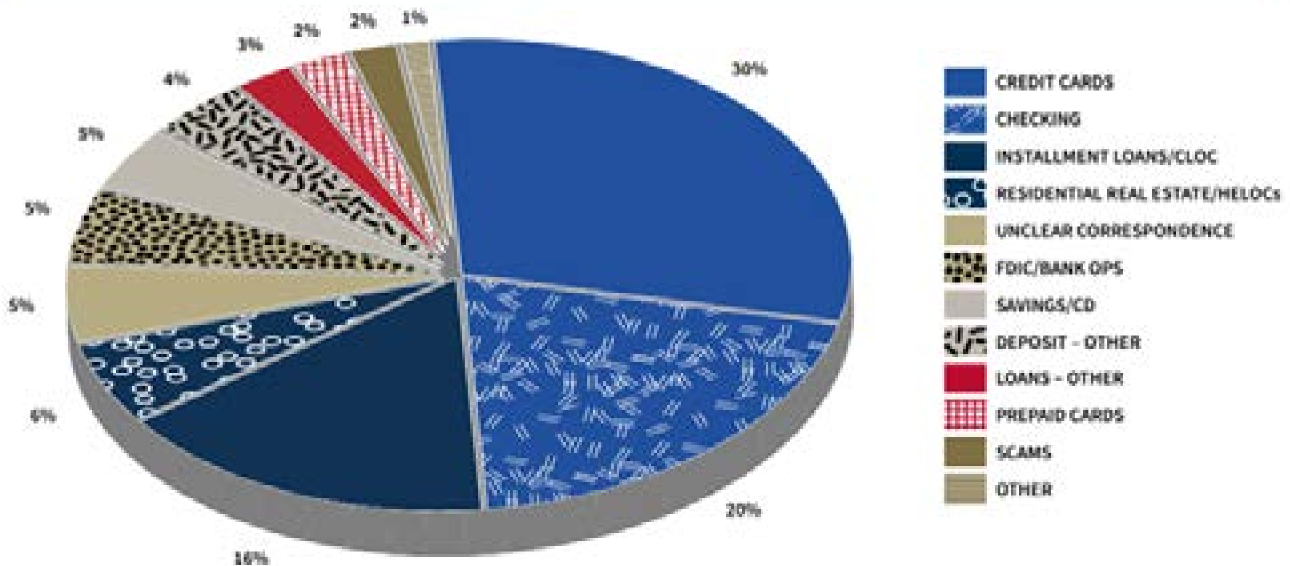
FDIC's Highlights also includes a description of some of the more significant consumer compliance issues identified by examiners in 2023. Many consumer compliance examination observations involve deficiencies in bank oversight of its third-party relationships. In some cases, the third-party relationships 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.

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.

March 2024
Volume 29, Number 10

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Ramon Morales

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

"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.**

(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.

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.

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

Wisconsin Bankers ASSOCIATION

Compliance Journal
February 2024

Special Focus

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

February 2024
Volume 29, Number 9

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Layout
Cassandra Krause

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

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

---

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.

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

---

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.

Special Focus

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

Wisconsin Bankers ASSOCIATION

Compliance Journal
January 2024

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.

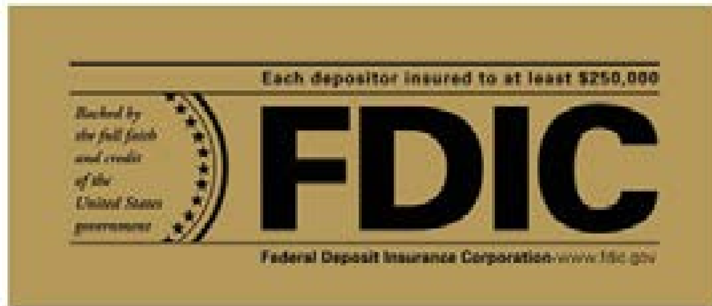
Insured depository institution has the same meaning as set forth under section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

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

January 2024
Volume 29, Number 8

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

Senior Writers
Heather MacKinnon
Scott Birrenkott

Editor
Katie Reiser

Layout
Christian Heo

Copyright ©2024 Wisconsin Bankers Association. All rights reserved. Reproduction by any means of the entire contents or any portion of this publication without prior written permission is strictly prohibited. This publication is intended to provide accurate information in regard to the subject matter covered as of the date of publication; however, the information does not constitute legal advice. If legal advice or other expert assistance is required, the services of a competent and professional person should be sought.

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**.

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.