Wisconsin Bankers ASSOCIATION

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Special Focus

IRS Interim Guidance on IRC 139L Regarding Interest on Loans Secured by Rural or Agricultural Real Property

The Internal Revenue Service (IRS) has recently issued interim guidance regarding the new exclusion for interest on loans secured by rural or agricultural real property under Internal Revenue Code (IRC) section 139L. Section 139L was added to the IRC by the One, Big, Beautiful Bill Act (OBBBA), effective July 4, 2025. IRS plans to issue a proposed rule similar to the interim guidance and seeks information regarding its approach to the new section.

The purpose of this article is to identify who is a qualified lender, what is considered a qualified real estate loan, and describe other key definitions under the interim guidance to help bankers determine what loans to identify for tracking under the new exclusion. Banks are reminded to work closely with their accounting resources to further identify how the new exclusion effects the bank's financial reporting, to consider the impact on interest expense deductions, and other accounting-related matters or documentation and recordkeeping best practices.

New IRC Exclusion

As stated above, OBBBA created a new IRC exclusion, ILC 139L. IRC Section 139L(a) excludes from gross income twenty-five (25) percent of the interest received by a qualified lender on any qualified real estate loan and includes in gross income seventy-five (75) percent of the interest received on a qualified real estate loan in the taxable year.

A qualified lender is not required to have been the original holder of a qualified real estate loan on the issue date of the qualified real estate loan in order to exclude interest income under section 139L(a). For example, a qualified lender may include a subsequent holder of a qualified real estate loan, if the subsequent holder is a qualified lender.

Definitions

Qualified Lender
For purposes of the interim guidance, the term "qualified lender" includes an FDIC-insured bank or savings association and any state- or federally-regulated insurance company. The term also means any entity wholly owned, directly or indirectly, by a bank or insurance holding company if the entity is organized, incorporated, or established under the laws of the U.S. or any State, and the principal place of business of such entity is in the U.S., including any territory of the U.S.

Qualified Real Estate Loan
The interim guidance provides that the term "qualified real estate loan" means a loan secured by rural or agricultural real estate, or a leasehold mortgage (with a status as a lien) on rural or agricultural real estate, that is made to a U.S. person, and made after July 4, 2025. The determination of whether a property securing the loan is rural or agricultural real estate is made as of the time the interest income on the loan is accrued.

For purposes of determining whether a loan was made before (pre-enactment loan) or after July 4, 2025, if the proceeds of a loan (new loan) are used in part to refinance a pre-enactment loan and in part for other purposes, the portion of the new loan used to refinance the pre-enactment loan is treated as made on or before July 4, 2025. The amount of the new loan that may be treated as a qualified real estate loan is limited to the portion of the new loan that exceeds the outstanding balance of the pre-enactment loan as of the date of the refinancing. In such case, a qualified lender must allocate the principal of the new loan between amounts used to refinance any pre-enactment loan and amounts

borrowed for other purposes accordingly. Any payments of interest or principal on the new loan are allocated to the portion of the new loan that is a pre-enactment loan and the portion that may be a qualified real estate loan on a pro rata basis.

A significant modification of a pre-enactment loan is treated as a refinancing of the pre-enactment loan. The interim guidance refers to Treasury regulation section 1.1101-3 regarding what is to be considered a significant modification.

Furthermore, a borrowing after the date of enactment that is added to the principal amount of any pre-enactment loan or a borrowing after the date of enactment pursuant to a line of credit or similar agreement entered into on or before the date of enactment that allows the borrower to borrow periodically under the agreement (post-enactment amount), is not treated as a pre-enactment loan to the extent of the post-enactment amount. For purposes of this condition, the post-enactment amount does not include any amount that is used to refinance a pre-enactment loan.

In cases where the outstanding principal includes both a pre-enactment loan and a post-enactment amount, a qualified lender must allocate the principal amount between the pre-enactment loan and the post-enactment amount and must allocate payments of principal or interest on a pro rata basis.

Rural or Agricultural Real Estate

The interim guidance defines the term "rural or agricultural real estate" to mean any real property that is substantially used for the production of one or more agricultural products; any real property which is substantially used in the trade or business of fishing or seafood processing; and any aquaculture facility. The term does not include any property which is not located in a state or possession of the U.S.

The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture (including any hatchery, rearing pond, raceway, pen, or incubator).

The presence of a residence on qualified or agricultural property, or intermittent periods when such property is not used for the production of one or more agricultural products due to seasonality, fallowing, or similar circumstances, does not prevent the property from being qualified rural or agricultural property as long as the property satisfies the substantial use requirement. However, by contrast, property with only minimal or incidental agricultural activity generally would not be considered to be used for the production of one or more agricultural products, including for the purpose of a small personal garden, backyard beekeeping, and keeping chickens to produce eggs for household use.

Interest Received

The term "interest received" means the interest, including amounts treated as interest under the IRC, that is includible in gross income by a qualified lender. For purposes of the preceding sentence, the amount of interest includible in gross income by a qualified lender is determined without regard to section 139L, and the time at which interest is includible in gross income is determined under the qualified lender's overall method of accounting (for example, the cash receipts and disbursements method of accounting or an accrual method of accounting) or, if applicable, under a special method of accounting (for example, section 1272 for original issue discount).

Determining Whether a Loan is Secured by Qualified Rural or Agricultural Property

A qualified real estate loan is secured by qualified rural or agricultural property only if, at the time interest income on such loan accrues, the qualified lender holds a valid and enforceable security interest with respect to the qualified rural or agricultural property under applicable law.

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As a general rule under the interim guidance, the amount of a loan that is a qualified real estate loan is limited to the fair market value (FMV) of the qualified rural or agricultural property securing the loan, determined as of the issue date of the loan. If the amount of the loan, that is, the issue price of the loan, exceeds the FMV of the qualified rural or agricultural property securing the loan, determined as of the issue date of the loan, only the portion of the loan that does not exceed such value is a qualified real estate loan. For example, if, on the issue date of a loan, the loan is secured by qualified rural or agricultural property with a FMV of $10,000 and the amount of the loan is $100,000, then only $10,000 of the loan is a qualified real estate loan.

A qualified lender that is a subsequent holder makes the determination of whether the loan is secured by qualified rural or agricultural property either based on the FMV of the qualified rural or agricultural property securing the loan and the issue price of the loan on the issue date, or based on the FMV of such property and the adjusted issue price of the loan on the date the qualified lender acquires the loan.

IRS has created a safe harbor for determining whether a loan is secured by qualified rural or agricultural property. Notwithstanding the general determination outlined above, a qualified lender may treat a loan as fully secured by qualified rural or agricultural property for purposes of the interim guidance if: (1) the terms of the loan provide the qualified lender holds a valid and enforceable security interest with respect to the qualified rural or agricultural property under applicable law; and (2) the FMV of the qualified rural or agricultural property securing the loan is at least 80 percent of the issue price of the loan on the issue date. For example, if, on the issue date of a loan, the loan is secured by qualified rural or agricultural property with a FMV of $85,000 and the issue price of the loan is $100,000, then the entire loan is treated as a qualified real estate loan.

A qualified lender that is a subsequent holder may apply the safe harbor either based on the FMV of the qualified rural or agricultural property securing the loan and the issue price of the loan on the issue date, or based on the FMV of such property and the adjusted issue price of the loan on the date the qualified lender acquires the loan.

To determine the FMV of the property, the qualified lender may use any commercially reasonable valuation method which includes a method the qualified lender uses in the ordinary course of its trade or business for valuing property that secures loans. A commercially reasonable valuation method may take into account expectations regarding the rural or agricultural real estate's production of income from the activities conducted on such real estate. For example, a qualified lender's commercially reasonable valuation method may take into account the value of crops on or the projected income from harvesting crops on the rural or agricultural real estate securing the loan.

The interim guidance also sets forth that for purposes of a qualified real estate loan, a qualified lender may, subject to the limitation in the following sentence, add to the FMV of the rural or agricultural real estate the FMV of any personal property used in the course of the activities conducted on such real estate, such as farm equipment and machinery or livestock. A qualified lender may include the value of personal property in such determination only if the qualified lender holds a valid and enforceable security interest with respect to such personal property under applicable law, and only if the relevant loan is secured to a substantial extent by rural or agricultural real estate. For example, if real property substantially used for the production of corn is valued at $500,000, and farm equipment and machinery used for the production of corn on such real property is valued at $50,000, the total value that may be used to determine the FMV of the qualified rural and agricultural property for purposes of determining whether a loan is secured by qualified rural or agricultural property and the safe harbor would be $550,000.

Subsequent FMV testing is not required so long as the qualified real estate loan continues to be secured by the qualified rural or agricultural property and there is not a subsequent significant modification of such loan. The borrower's use of the loan proceeds does not affect whether a loan may be treated as a qualified real estate loan.

Reasonable Belief Standard

If a qualified lender initially determined a loan was secured by qualified rural or agricultural property under the interim guidance and reasonably believes in good faith that the loan continues to be so secured, then the qualified lender may rely on that initial determination at the time interest income on such loan accrues for purposes of a qualified real estate loan.

A reasonable, good-faith belief exists only if the qualified lender reasonably believes in good faith both that the security

interest remains in place and that the rural or agricultural real estate continues to be used in a manner that qualifies it as rural or agricultural real estate. A qualified lender may base the reasonable, good-faith belief on covenants or other certifications made by the borrower of the loan or other parties that have actual knowledge or reason to know that the loan is secured by qualified rural or agricultural property.

If, despite the qualified lender's reasonable, good-faith belief, the qualified lender, on a later date, learns or has reason to believe that a loan is no longer secured by qualified rural or agricultural property, the loan will lose its status as a qualified real estate loan under section 139L on that date. In such an instance, the loan will not loss its status if within 90 days following the date on which the qualified lender learns or has reason to believe that the loan is not secured by qualified rural or agricultural property, the qualified lender, borrower, or other party causes the loan to be secured by qualified rural or agricultural property.

Forthcoming Proposed Rule

As mentioned initially, IRS will be issuing a proposed rule regarding IRC 139L. It is anticipated the proposed rule will include provisions consistent with the interim guidance. Once finalized, the rules will apply for taxable years beginning after the final rule is published in the *Federal Register*. Banks may rely on the interim guidance for loans made after July 4, 2025, and on or before the date that is thirty (30) days after the forthcoming proposed rule is published in the *Federal Register*.

The interim guidance includes several questions for which IRS seeks comments and information. The questions include the meaning of the terms included in this article; if factors should be considered to address whether property is substantially used for the production of one or more agricultural products, or in the trade or business of fishing or seafood processing; and for other factors such as mixed-use property or changes in use of real property. Comments regarding the interim guidance are due **January 20, 2026**.

Conclusion

In late November, IRS issued interim guidance regarding the new exclusion for interest on loans secured by rural or agricultural real property under IRC section 139L to help lenders identify what loans may qualify for the new exclusion. The guidance also creates a safe harbor for determining the FMV of property and how to treat refinancings, and additional borrowings made to the principal amount of any pre-enactment loan.

WBA will be filing comments with the IRS regarding its interim guidance. If you have questions or wish to discuss comments or concerns regarding the guidance, please be sure to contact WBA Legal at wbalegal@wisbank.com or at 608-441-1200. WBA will be filing comments by **January 20, 2026**.

The Internal Revenue Code Section 139L may be viewed at: https://uscode.house.gov/browse/prelim@title26/subtitleA/chapter1/subchapterB/part3&edition=prelim

The IRS Interim Guidance may be viewed at: https://www.irs.gov/pub/irs-drop/n-25-71.pdf

Privacy Considerations When Banks Suspect Elder Financial Abuse

Elder financial abuse continues to be a significant issue in Wisconsin. In 2023, Dane County Adult Protective Services investigated 408 reports of elder abuse. Financial exploitation was the most common category, with losses exceeding $1 million. Based on conversations WBA has had with law enforcement and state officials, the true scope is likely much larger, as many incidents go unreported.

Banks are often the first line of defense against elder financial abuse. Because they regularly observe customer behavior and transaction patterns, Wisconsin banks are uniquely positioned to spot activity that may suggest financial exploitation. At the same time, banks frequently express uncertainty about how to balance their obligation to protect customers with their duty to comply with privacy laws and regulatory expectations. The Gramm Leach Bliley Act (GLBA), implemented through Regulation P, establishes strict privacy rules, while Wisconsin statutes create avenues for reporting suspected elder financial abuse. Many banks have questions regarding how these frameworks work together in practice.

This article provides an overview of privacy laws, the relevant exceptions, how Wisconsin's reporting structure for suspected elder financial abuse fits within those requirements, as well as some practical considerations.

Privacy Requirements

GLBA establishes the primary federal privacy framework that banks must follow when handling customer financial information. It requires banks to safeguard nonpublic personal information, limit its disclosure, and provide clear privacy notices that describe the bank's information sharing practices. Regulation P implements these requirements.[1]

Generally speaking, GLBA restricts disclosure of nonpublic personal information to nonaffiliated third parties unless a specific exception applies. These exceptions are found in 15 U.S.C. § 6802(e) and implemented through Regulation P at 12 C.F.R. § 1016.15. Together, these provisions recognize that protecting customer information must be balanced with situations where disclosure is necessary for legal compliance or customer protection.

Several of GLBA's exceptions directly support the ability of banks to report suspected elder financial exploitation. GLBA permits disclosure of information that is necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.[2] GLBA also allows disclosure to comply with federal, state, or local laws, regulations, or other legal requirements, including Wisconsin's adult protective services reporting laws.[3] In addition, GLBA authorizes disclosures to law enforcement or other government authorities for investigations related to public safety, which encompasses county elder adult-at-risk and adult-at-risk agencies acting within their investigative authority.[4] These exceptions provide the federal foundation that allows banks to cooperate with county agencies and law enforcement when exploitation is suspected while remaining compliant with federal privacy law.

Additionally, in 2013, the agencies issued guidance on privacy laws and reporting financial abuse of older adults. The guidance acknowledges that various federal and state authorities either require or encourage reporting of this type of information to the appropriate agency. It also clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the GLBA or its implementing regulations. A link to this guidance is included at the end of the article.

Wisconsin Elder Financial Abuse Reporting

In 2005, Wisconsin significantly modernized its system for responding to elder abuse and financial exploitation. A new law revised Wisconsin's elder abuse statute in Wis. Stat. § 46.90 and created a parallel framework in Wis. Stat. § 55.043 for "adults at risk." Counties must designate an elder-adult-at-risk agency, and those agencies are required to establish an abuse reporting system and enter into memoranda of understanding (MOU) with county departments and other public or private agencies that participate in the system. The MOU must, at a minimum, identify which agencies are responsible for investigating reports of abuse, financial exploitation, neglect, or self-neglect and which entities will provide direct services to affected adults.

Under current law, any person, including bank personnel, may report suspected abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk.[5] Reports may be made to the county elder-adult-at-risk (or adult-at-risk agency), the county department of human or social services, state or local law enforcement, the Department of Health Services, or the Board on Aging and Long-Term Care as authorized.[6] Certain professionals are mandatory reporters, but bank employees are not included in the list of mandated reporters.[7] Both statutes provide strong protections for voluntary reporters. Anyone who reports in good faith is immune from civil and criminal liability and from findings of unprofessional conduct, and retaliation against reporters is prohibited.[8]

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1 Regulation P also requires certain notices, opt-out provisions, among other requirements. These requirements will not be discussed in this article which will instead focus on the more general expectation of privacy requirements and exceptions.
2 15 U.S.C. § 6802(e)(3)(B) and 12 C.F.R. § 1016.15(a)(2)(ii).
3 15 U.S.C. § 6802(e)(8) and 12 C.F.R. § 1016.15(a)(7)(i).
4 15 U.S.C. § 6802(e)(5) and 12 C.F.R. § 1016.15(a)(7)(ii)
5 Wis. Stat. § 46.90(4)(ar) and Wis. Stat. § 55.043(1m)(br).
6 Wis. Stat. § 46.90(4)(ac) and Wis. Stat. § 55.043(1m)(br).
7 Wis. Stat. § 46.90(4)(ab) and Wis. Stat. § 55.043(1m)(a).
8 Wis. Stat. § 46.90(4)(b)–(c), (e) and Wis. Stat. § 55.043(1m)(c)–(d), (f).

For investigations of suspected financial exploitation, the elder-adult-at-risk and adult-at-risk agencies are expressly authorized to obtain and review a customer's financial records. Wisconsin law requires banks and other financial record holders to release financial records of an elder adult at risk or adult at risk without the customer's informed consent when the release is to the elder-adult-at-risk or adult-at-risk agency or another investigative agency acting under Wis. Stat. § 46.90 or § 55.043, or when release is directed by a lawful court order. In addition, the statutes permit the financial record holder to initiate contact and release financial record information to the elder-adult-at-risk or adult-at-risk agency without first receiving a formal request.

Federal regulators have confirmed that this Wisconsin reporting framework is compatible with GLBA privacy requirements.

Wisconsin's New "Trusted Contacts" Law

Wisconsin recently created an additional tool to help financial service providers address potential financial exploitation. Enacted in 2024 and codified in Wis. Stat. § 224.45, the new law establishes a process for identifying "vulnerable adults" and creates a mechanism for customers to designate a List of Authorized Contacts. A "vulnerable adult" includes any adult at risk under Wis. Stat. § 55.01(1e) as well as any individual age 65 or older. This definition is different, and broader in certain respects, than the elder adult at risk standard in Wis. Stat. § 46.90, which applies beginning at age 60. Importantly, § 224.45 does not change or limit the long-standing voluntary reporting procedures under § 46.90. Instead, the new law provides an additional avenue for early intervention.

Under § 224.45, financial service providers may offer a vulnerable adult the option to submit and update a list of individuals the provider is authorized to contact when the provider has reasonable cause to suspect that the customer is a victim or target of financial exploitation. The bank may rely on information provided by the customer when creating or updating this list. If concerns arise, the bank may convey its suspicion to any listed contact, a co-owner or authorized signer on the account, a beneficiary, or certain known family members, provided the individual contacted is not a suspect. The provider may also choose not to contact someone on the list.

When a bank communicates with an authorized contact under this law, it may limit the disclosure to a general statement that it has reasonable cause to suspect financial exploitation. The bank is not required to share details of the customer's financial records or confidential information. As always, the bank should consider whether the facts also trigger reporting obligations under the Bank Secrecy Act (BSA) or internal escalation procedures.

The law also provides strong protections for banks and employees who act in good faith. A financial service provider that makes or declines to make a contact under § 224.45 based on reasonable suspicion is immune from civil, criminal, and administrative liability.

Practical Considerations

The above frameworks create several practical considerations for banks facing situations of potential elder financial abuse. When a bank has reason to suspect financial exploitation, it is permitted to act. Both federal and Wisconsin law give banks authority to raise concerns, share relevant information with the appropriate county agency, and take reasonable steps to prevent harm. Absolute certainty is not required. A report may be made based on reasonable suspicion supported by observable facts, and in many situations, bank personnel may be the first or only individuals positioned to identify warning signs.

Privacy requirements should not be viewed as a barrier to protecting vulnerable customers. GLBA and Regulation P contain specific exceptions that allow disclosures related to fraud, unauthorized transactions, safety concerns, and compliance with state reporting laws. Wisconsin's elder abuse statutes not only permit banks to report suspected exploitation, they also provide legal protections for employees who report in good faith. These frameworks operate together to ensure that reporting concerns to county agencies is both permissible and aligned with a bank's responsibility to safeguard its customers.

The new Wis. Stat. § 224.45 provides banks with an additional early intervention tool. Banks may choose to offer customers the option to designate a List of Authorized Contacts and may notify those contacts when the bank has reasonable cause to suspect that a vulnerable adult is being targeted for financial exploitation. This process can

be particularly valuable in situations where a trusted family member or contact can help verify concerns, clarify the customer's intentions, or assist the customer before harm occurs. Banks should evaluate when and how they will offer this option to customers, how lists will be maintained, and how staff will be trained to identify when contacting an authorized individual is appropriate.

When a county elder-adult-at-risk or adult-at-risk agency initiates an investigation, banks must provide financial records relevant to the inquiry. These disclosures do not violate federal privacy rules and may be made even if the customer has not provided consent. Banks may also initiate contact with a county agency when they believe exploitation is occurring. Early communication often allows county agencies to intervene sooner and provide needed support to vulnerable customers.

Internal procedures remain essential for guiding staff in identifying and responding to suspected financial exploitation. Banks should ensure that employees understand red flags, escalation pathways, and how the Wisconsin laws discussed above interact with existing reporting options. Procedures should also address coordination with bank's BSA program, including when a suspicious activity report (SAR) or other action may be appropriate, and how information should be documented and communicated internally.

For example, banks should ensure that frontline staff receive training on how to spot financial exploitation and also know who within a management team suspected financial exploitation should be reported to for further investigation. Branch managers, compliance officers, and other staff investigating reports from frontline staff should be aware of reporting duties and opportunities discussed above to further weigh bank action and next steps. Bank's BSA staff should also be involved to further identify whether a SAR needs to be filed, whether other action is appropriate, and how best to document bank's decisions and actions. Similarly, for banks that have implemented a process for the designation of a List of Authorized Contacts under Wis. Stat. § 224.45, bank staff should know the process to obtain a designation, how to check whether there is a designation on file, and the process for determining who to contact and when to act.

While Wisconsin's elder abuse reporting system only requires certain individuals and agencies to enter into an MOU, banks may still consider utilizing one as a matter of policy. While not required to report, an MOU could still be used to clarify communication expectations, establish clear points of contact, streamline the process when an investigation arises, and help ensure adherence to regulatory expectations. Having this framework in place often makes it easier for staff to know how and when to report concerns and can improve coordination with county agencies when timely action is critical.

Lastly, good faith remains the general governing standard. When a bank acts to protect a vulnerable customer based on reasonable observations and within established procedures, the law supports those efforts. Banks should focus on safeguarding customers, documenting their decision making, and engaging the appropriate authorities when necessary. When uncertainty arises, consultation with appropriate staff is appropriate, but it should not delay protective action that may prevent significant financial harm.

Conclusion

Protecting older and vulnerable customers from financial exploitation requires both vigilance and confidence in the legal tools available to banks. Federal privacy law, Wisconsin's adult protective services framework, and the newer contact-authorization process under Wis. Stat. § 224.45 all work together to support the important role banks play in identifying and responding to suspected financial abuse. When banks understand how these frameworks align, develop appropriate policies and procedures, and training, responding to elder financial abuse situations becomes more straightforward, prompt, and clear. It can also make all the difference in helping to protect customers. A well-informed and well-prepared banking workforce remains one of the most effective safeguards Wisconsin has to help fight against elder financial abuse.

Additional Resources:

Information regarding access to information (including sample MOU): https://www.dhs.wisconsin.gov/aps/sn5finex.pdf

Additional documents such as MOU Guidelines for Financial Institutions, Signs of Elder Financial Abuse, among others, can be found in the Wisconsin Department of Health Services Information and Publication Library here: https://www.dhs.wisconsin.gov/publications/index.htm

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Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults: https://occ.gov/news-issuances/news-releases/2013/nr-ia-2013-148a.pdf

WDFI Division of Banking 2026 Escrow Rate – 0.17%

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 **0.17%** for 2026. The interest rate be in effect **January 1, 2026** through **December 31, 2026**.

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 2026 Escrow Rate: https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/EscrowNotice.aspx

Regulatory Spotlight

Agencies Modify Enhanced Supplemental Leverage Ratio Standards.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a final rule to modify the enhanced supplementary leverage ratio standards applicable to U.S. bank holding companies identified as global systemically important bank holding companies (GSIBs), their subsidiary depository institutions that are FRB- or FDIC-regulated, and national banks and Federal savings associations that are subsidiaries of a U.S. top-tier bank holding company with total consolidated assets of more than $700 billion or assets under custody of more than $10 trillion. FRB has also finalized conforming amendments to its total loss-absorbing capacity and long-term debt requirements. In addition, FRB has made conforming amendments to relevant regulatory reporting forms, and FRB and FDIC have made final certain technical corrections to the capital rule and the prompt corrective action framework. Banking organizations subject to the final rule may elect to early adopt the final rule as of **01/01/2026**. The final rule is effective **04/01/2026**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-12-01/pdf/2025-21626.pdf. *Federal Register*, Vol. 90, No. 228, 12/01/2026, 55248-55292.

Agencies Rescind Guidance on Climate-Related Financial Risk Management.

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) announced the rescission of the Interagency Principles for Climate-Related Financial Risk Management for Large Financial Institutions. The interagency guidance published in the *Federal Register* **10/30/2023**, is rescinded as of **11/18/2025**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-11-18/pdf/2025-20213.pdf. *Federal Register*, Vol. 90, No. 220, 11/18/2025, 51756-51757.

Agencies Propose Revisions to CBLR Framework.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) seek comment regarding a proposed rule that would

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Special Focus

Recap of Recent Discussion with Supervisory Agencies at WBA Compliance Forum

At the November WBA Compliance Forum, attendees participated in a discussion with representatives of the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Supervisory Agencies). In a panel format the Supervisory Agencies answered questions submitted by attendees which ranged in topics from technical compliance requirements to expectations of recently reduced examination schedules.

The following is a summary of the discussion and recommendations by the Supervisory Agencies. As with all compliance-related matters, specific facts of each situation are important. Answers to the compliance questions discussed with the Supervisory Agencies could be different with new or differing facts.

Overall Statements by the Supervisory Agencies

The discussion opened with remarks from each representative of the Supervisory Agencies of important information related to recent releases and regulatory findings. The OCC outlined several actions taken to reduce regulatory burden for community banks, including: (1) updates to OCC policies to eliminate mandatory examination activities not required by statute or regulation; (2) a shift in the review of retail nondeposit investment products, which will no longer rely on OCC's "Retail Nondeposit Investment Products" booklet, but instead on the bank's compliance with applicable laws and regulations; and (3) a reminder that community banks should tailor model risk management practices to their own risk exposures, business activities, and model complexity.

The OCC also mentioned proposals meant to: (1) eliminate its Fair Housing Loan Data System regulation citing that the information is largely duplicative in nature to the data collected and reported under the Home Mortgage Disclosure Act (HMDA) and other fair lending regulations; and (2) broaden eligibility for quicker and more streamlined licensing decisions for community banks. Each of these initiatives define "community banks" as an institution with up to $30 billion in assets.

Lastly, OCC reminded attendees of a recent update to its Equal Housing Lending poster template which added a new statement to the Spanish version of the template. Links to the releases referenced by OCC are found at the end of this article.

The FRB recommended attendees review 2013–19 Consumer Affairs Letter, updated in June 2025 to clarify that reputational risk will not be a component of examination programs in FRB-supervised banks, as the primer of FRB's *Community Bank Risk-Focused Consumer Compliance Supervision Program*. The program remains the focus of FRB compliance examinations for community banks.

Consistent with the risk-focused compliance program, FRB mentioned that examiners would likely look to review what training had been completed by bank staff in the areas of fair lending, Community Reinvestment Act (CRA), and for unfair, deceptive, or abusive acts or practices (UDAAP). FRB also recommended that banks: (1) monitor policy exceptions and to better understand the reason for and frequency of exceptions; (2) monitor customer complaints and ensure bank staff understand what constitutes a complaint and how to escalate the compliant to find resolution; and (3) understand their CRA efforts and have documentation to help explain the bank's community development activities.

The FDIC shared information about changes to examination frequency and mentioned that information will be shared via a Financial Institution Letter (FIL) when the compliance examination manual is updated. Since the WBA Compliance Forum event, the FDIC has released its updated *Consumer Compliance Examination Manual* to reflect new examination schedules. Section II-12.1 of the updated manual sets forth that compliance examinations will generally be on cycles of 66-78 months, 54-66 months, or 24-36 months depending upon the asset size of the bank. Examination cycles are based on the date of the last joint consumer compliance examination/CRA evaluation. For banks with a Consumer Compliance Rating of "3", "4", or "5" and a CRA rating of "needs to improve" or "substantial noncompliance", the examination cycle will be shorter at either 1-12 months or 12-24 months cycle. A more detailed article regarding the expanded examination schedules will be forthcoming in next month's *WBA Compliance Journal* so that the focus of this article can be on the discussion had with the Supervisory Agencies. A link to the updated *Consumer Compliance Examination Manual* may be found at the end of this article.

Similar to recommendations by FRB, FDIC emphasized the importance of strong documentation of CRA efforts, especially regarding community development activities. The documentation should help explain how the bank determined it should receive credit for its identified activities. The documentation and explanation further assist examiners to better understand bank's rationale. The FDIC also mentioned its proposed rules to further amend Part 328 regarding FDIC official signs usage and advertisement of membership; to update regulatory thresholds; and remove reputational risks from supervisory activities.

The FDIC also recommended banks offering adjustable rate mortgages (ARMs) verify that their operating systems apply rate adjustments at the frequencies specified in the note. FDIC noted recent findings of discrepancies. FDIC recommended banks review periodic statements for home equity lines of credit (HELOC) to ensure that if closing costs are financed, the periodic statement indicates such activity accurately versus merely stating "advance" as a description within the statement. FDIC also reminded attendees to be mindful to address Regulation E unauthorized error claims in a timely fashion and to keep a log of error resolution activity. FDIC stated that having improved documentation helps support banks' claims of compliance with error investigation and resolution requirements.

FDIC also recommended that banks keep track of Metropolitan Statistical Area (MSA) changes for both CRA and HMDA purposes. FDIC shared that a few banks have lost track of such changes. Regarding HMDA, FDIC reminded attendees that HMDA training is available for banks new to having to collect and report HMDA data.

Questions Shared and Answered by Supervisory Agencies

In advance of the November WBA Compliance Forum, questions were collected from program participants and shared with the Supervisory Agencies for their review. Completing this step in advance of the program allowed the agencies the opportunity to conduct any necessary research. The following is a summary of the panel discussion.

Expansion of Certain Examination Timelines

Several questions directed to the Supervisory Agencies focused on recent announcements by the OCC and FDIC to potentially lengthen time periods between certain bank examinations. Questions to the Supervisory Agencies included whether banks should expect a longer "look back" period by examiners in their review; whether the new examinations may be more intense a review given the longer time period between examinations; and whether the expanded examinations timelines would result in potentially broader examiner scrutiny.

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In response, the Supervisory Agencies shared that they do not anticipate a change in their current examination approach. Each agency stated they take a risk-based approach in examinations and that the current approach will continue. In review of loan files for transaction testing, the Supervisory Agencies stated their current approach is to review the most recent files first; that process will also continue. The Supervisory Agencies stated that they follow all standard record retention periods and just as is currently the case in examinations, if a record is not available because of a retention period, then a record is not available. A change of examination frequency does not change record retention schedules. For example, under Regulation B creditors are to retain loan application materials for 25 months (12 months for business credit, except as provided under Regulation B) after the date the bank notifies the applicant of the action taken on the application. The record retention period under the regulation is not altered by the new examination schedules. Banks would not be required to retain application information beyond the retention period within a regulation just because of a revised examination schedule. Examiners will continue to work with existing regulatory record retention periods.

As to the question of "look back" periods, the Supervisory Agencies reminded attendees that some areas of law have statutory time periods for lookback. For example, flood insurance. When an examiner finds evidence of violations of the Federal flood insurance statutes, the rules provide for a four-year look back period from the time the violation occurred to impose a civil money penalty (CMP) for a violation unless CMPs were imposed at the previous examination. The statutory time period does not change because of a change in examination frequency.

Regulation E Error Resolution

The Supervisory Agencies answered questions related to Regulation E error resolution procedures. Regulation E sets forth that when a consumer notifies the bank of an error the bank has ten (10) business days to resolve their investigation before a provisional credit is required to be given to the consumer while the bank continues its investigation. The Supervisory Agencies were asked whether the 10 business day time period begins the day the bank was notified of the error or the day following notification. The FRB and FDIC stated that Regulation E sets forth that banks are to "promptly investigate" the error and thus the bank should not delay its investigation. Absent some other factor (e.g., notification occurred after hours which prevents the investigation from starting the day of notification), the investigation should begin the day the bank received notification of the error. The OCC responded they allow banks 10 business days to investigate the error.

The Supervisory Agencies also responded to a question about descriptions within a deposit account periodic statement. When providing provisional credit under Regulation E, the deposit account periodic statement likely would provide a description of "provisional credit." In some cases, the provisional credit becomes the final credit to the consumer yet there is no other mention in a periodic statement that the previously provided provisional credit is now permanent. The Supervisory Agencies stated the description in the periodic statement is fine. The agencies understand the events, as does the consumer. The Supervisory Agencies stated that the important component for banks is to document how and when they communicated with consumers that the previously provided provisional credit was a final credit and that the matter was resolved. The agencies would look to those separate records than to a previous statement description.

RESPA Section 8

The Supervisory Agencies were given a fact pattern to consider whether the situation was one that could violate the Real Estate Settlement Procedures Act (RESPA) Section 8 prohibition against the payment or acceptance of kickbacks, referral fees, or unearned fess in connection with the referring of settlement service business involving a federally related mortgage loan. The specific situation was one whereby the bank lists a provider of title insurance and settlement services on its TRID settlement services shopping list. The provider posted a testimonial from one of the bank's mortgage lenders on its website. The testimonial included the bank's logo, a picture of the lender, contact information for the lender, and a link to the lender's online application website. The Supervisory Agencies were asked whether such activity would be considered a RESPA Section 8 violation because it is a thing of value (*i.e.*, advertisement) in exchange for a referral of business for a mortgage-related settlement service (*i.e.*, included on bank's TRID settlement services shopping list).

In response, the Supervisory Agencies stated that whether the situation rose to the level of a Section 8 violation depended upon matters not included as facts within the question. The agencies stated it would be helpful in a Section 8 situation for the bank to provide an explanation of the steps taken to review the activity and of the bank's rationale for the conclusion it came to regarding the activity. For example, was there some type of payment made by the lender for the

"advertisement." The Supervisory Agencies stated that matters regarding potential Section 8 violations are very closely reviewed and discussed at regional and national levels with subject matter experts.

HMDA Data Reporting

The Supervisory Agencies were presented with a fact pattern and asked to respond to how the scenario should be treated under HMDA. The fact pattern is one in which a bank has a mortgage loan application which it conditionally approved. The bank made its underwriting decision on the application, had an appraisal, and completed title work. The bank had not yet completed its verification of employment as that is a step the bank typically waits to complete right before closing. If the loan applicant decides to walk away from the loan application at this point the bank typically would "code" the loan application for HMDA purposes as loan approved but not accepted. Bank had heard in a recent virtual compliance conference that the loan should instead be considered "withdrawn" for HMDA purposes given that the loan application was not "totally" approved and verified. The verification of employment had not been completed to confirm employment.

The Supervisory Agencies stated that typically, if the bank made its credit decision and approved the loan application, the application would not be considered "withdrawn" for HMDA purposes, citing Regulation C section 1003.4(a)(8)(i) comments—3,5, and 13. The agencies also cautioned against a bank having an unusually high number of loan withdrawals as it could raise concerns under fair lending.

Interagency SAR Guidance

The Supervisory Agencies were asked to comment on the recently released Interagency Frequently Asked Questions Regarding Suspicious Activity Reporting (SARs) Requirements guidance, in particular about whether it is an accurate take away from the guidance that banks are not to be filing SARs based upon an assumption [*emphasis added*] that a customer is structuring transactions.

The Supervisory Agencies confirmed that defensive SAR filings are not necessary and read from the guidance that: "the mere presence of a transaction or series of transactions by or on behalf of the same person at or near the $10,000 CTR threshold is not information sufficient to require the filing of a SAR. Financial institutions are only required to file a SAR if the institution knows, suspects, or has reason to suspect that the transaction or series of transactions are designed to evade CTR reporting requirements. Absent this knowledge, suspicion, or reason to suspect, financial institutions are not required to file a SAR."

TRID Disclosure Questions

When asked if FDIC still wanted owner's title to be disclosed as previously recommended last summer (see the July 2024 *WBA Compliance Journal*), FDIC stated they have not changed their position on the disclosure. The Supervisory Agencies confirmed that the 2020 CFPB Fact Sheet, for which FDIC's standard is based upon, has not been rescinded. The Supervisory Agencies were asked of how best to disclose a new "transaction security fee" under TRID. The agencies were not familiar with the charge but took the same approach as for any charge under the regulation. If the charge is for a service required by the bank, depending upon whether the borrower may shop for the service or not, the fee may appear in Block B or Block C, as applicable. The charge could potentially be found in Section H as optional if in fact the charge is optional.

When discussing changing settlement service charges, the Supervisory Agencies stated they try to take a reasonable approach of how loan documentation systems and processes need be updated to reflect changes. The agencies consider steps such as when was a change made, what needs to be changed for implementation, are the actions internal or vendor reliant, and then also consider what actions have been taken by the bank.

Overall Recommendations of the Supervisory Agencies

When asked what banks should focus on or consider in the current regulatory environment, the Supervisory Agencies recommended banks continue to monitor changes in regulation, be apprised of law changes, continue to take a risk-based approach to identifying what risks specifically impact a bank as products and services change, continue to monitor third-party vendors including for artificial intelligence (AI), as applicable, and continue to review and modify

the bank's compliance management system (CMS) to ensure that it grows and changes with the bank. Attendees were reminded that banks' CMS program is not a set-and-forget program but should change and adapt based upon how a bank grows and changes through product- and service-offerings, service provider changes, process and policy changes, and other changes impacting a bank's CMS.

Conclusion and Resources

The November WBA Compliance Forum attendees were treated to a discussion with representatives of the OCC, FRB, and FDIC whereby the agencies answered questions ranging from technical compliance requirements to expectations of newly reduced examination schedules. It is helpful to have such direct discussion with the Supervisory Agencies. We appreciate their insights, recommendations, and the information shared.

Resources:

https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-95.html
https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-32.html
https://www.federalreserve.gov/supervisionreg/caletters/caltr1319.htm
https://www.fdic.gov/news/financial-institution-letters/2025/fdic-updates-its-consumer-compliance-examination-schedule
https://www.fincen.gov/system/files/2025-10/SAR-FAQs-October-2025.pdf

IRS Guidance Regarding No Tax on Car Loan Interest Information Reporting

A new tax deduction included in the One, Big, Beautiful Bill Act (Act) applies to interest paid on certain consumer vehicle loans. Effective for 2025 through 2028, individuals may deduct interest paid on a loan used to purchase a qualified vehicle. Lease payments to not qualify for the deduction. The maximum annual amount of the deduction is $10,000. The deduction phases out for taxpayers with modified adjusted gross income over $100,000 for single filers/$200,000 for joint filers. The deduction is available for both itemizing and non-itemizing taxpayers.

To qualify for the deduction, the interest must be paid on a loan that is (1) originated after **December 31, 2024**; (2) used to purchase a vehicle, the original use starts with the taxpayer (used vehicles do not qualify); (3) the vehicle is used only for personal use; and (4) the loan is secured by a lien on the vehicle. If the qualifying vehicle loan is later refinanced, interest paid on the refinanced amount is generally eligible for the deduction.

A "qualified vehicle" is a car, minivan, van, SUV, pick-up truck, or motorcycle, with a gross vehicle weight rating of less than 14,000 pounds, and has undergone final assembly in the United States. The location of the final assembly is listed on the vehicle information label attached to the vehicle on the dealer's premises.

The new law requires recipients of interest (e.g., a bank) to report information to taxpayers who paid $600 or more in interest during the year for a qualified consumer vehicle loan. The Internal Revenue Service (IRS) created a new reporting form, 1098-VLI, Vehicle Loan Interest Statement; however, it is still in draft form and has not yet been finalized.

To assist recipients of interest with reporting responsibilities for interest received in 2025, the IRS issued transitional guidance. The IRS has instructed that reporting obligations for interest received in calendar year 2025 may be met by making a statement available to the individual on or before **January 31, 2026**, indicating the total amount of interest received in calendar year 2025 on the loan. The bank can make the statement available to the individual via, for example, an online account portal that the individual can easily access, a regular monthly statement, an annual statement that is provided to the individual, or by other similar means designed to provide accurate information to the individual regarding the total amount of interest received in calendar year 2025 on the loan.

In addition, the IRS stated it will not impose penalties on recipients of interest that have satisfied the reporting obligations as described in the transitional guidance. Banks should be sure to work with their accounting resources for further instruction on how best to report information related to the new tax deduction.

Special Focus

More information about the deduction and the IRS transitional guidance may be viewed at the following links, respectively: https://www.irs.gov/newsroom/one-big-beautiful-bill-act-tax-deductions-for-working-americans-and-seniors and https://www.irs.gov/pub/irs-drop/n-25-57.pdf

Regulatory Spotlight

Agencies Issue Proposed Rules to Prohibit Use of Reputational Risk.

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a proposed rule to codify the elimination of reputation risk from their supervisory programs. The proposed rule would prohibit the agencies from criticizing or taking adverse action against an institution on the basis of reputation risk. The proposed rule would also prohibit the agencies from requiring, instructing, or encouraging an institution to close an account, refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk. Comments are due **12/29/2025**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-10-30/pdf/2025-19715.pdf. *Federal Register*, Vol. 90, No. 208, 10/30/2025, 48825-48835.

The National Credit Union Administration (NCUA) issued a proposed rule to codify the elimination of reputation risk from its supervisory programs. The proposed rule would prohibit NCUA from criticizing or taking adverse action against an institution, defined as an entity for which NCUA makes or will make supervisory determinations or other decisions, either solely or jointly on the basis of reputation risk. The proposed rule would also prohibit NCUA from requiring, instructing, or encouraging an institution to close an account, to refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or on the basis of politically disfavored but lawful business activities perceived to present reputation risk. Comments are due **12/22/2025**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-10-21/pdf/2025-19623.pdf. *Federal Register*, Vol. 90, No. 201, 10/21/2025, 48409-48414.

Agencies Seek to Define "Unsafe or Unsound Practice."

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a proposed rule to define the term "unsafe or unsound practice" for purposes of section 8 of the Federal Deposit Insurance Act and to revise the supervisory framework for the issuance of matters requiring attention and other supervisory communications. Comments are due **12/29/2025**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-10-30/pdf/2025-19711.pdf. *Federal Register*, Vol. 90, No. 208, 10/30/2025, 48835-48849.

CFPB Amends its Rules of Practice.

The Rules of Practice for Adjudication Proceedings govern adjudication proceedings conducted by the Consumer Financial Protection Bureau (CFPB). CFPB adopted amendments to the rules **02/22/2022**, and **03/29/2023**. The 2022 and 2023 amendments included a new deposition process, amendments concerning timing and deadlines, bifurcation of proceedings, the process for deciding dispositive motions, and requirements for issue exhaustion, as well as other technical changes. CFPB has rescinded the 2022 and 2023 amendments as previously proposed, except as related to narrow clarificatory and procedural changes further explained in the final rule. The final rule is effective **10/29/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-10-29/pdf/2025-19687.pdf. *Federal Register*, Vol. 90, No. 207, 10/29/2025, 48737-78760.

CFPB Rescinds Registry of Nonbank Covered Persons Subject to Certain Orders.

CFPB issued a final rule to rescind its rule requiring certain types of nonbank covered persons subject to certain final public orders obtained or issued by a government agency in connection with the offering or provision of a consumer financial product or service to report the existence of the orders and related information to a CFPB registry. The final

Wisconsin Bankers ASSOCIATION

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Special Focus

WI Court of Appeals Confirms UCC Safe-Harbor Notice Requirements Not Altered by WCA Deficiency Judgment Provision

The Wisconsin Court of Appeals (Court) recently concluded that a creditor's use of the Uniform Commercial Code's (UCC) statutory safe-harbor language in pre- and post-sale notices is legally sufficient, and those requirements are not altered or influenced by the Wisconsin Consumer Act (WCA). By affirming the judgment of the circuit court, the Court's decision provides clarity for Wisconsin banks seeking to rely upon the safe-harbor language provided in the UCC's notice provisions.

The case involves a lawsuit against a credit union claiming that its pre- and post-sale notices were legally insufficient because it did not incorporate language from the WCA. While this case was the first of its type to advance to the appellate level, WBA members have confronted similar challenges. WBA joined the Wisconsin Credit Union League in the filing of an amicus curiae brief to present a united industry front in the matter.

Summary of Actions

As summarized by the Court, the relevant facts begin with the Birges defaulting on a $4,222.42 loan agreement with Simplicity Credit Union (Simplicity) to finance vehicle repairs. The loan was secured by the vehicle and after the Birges defaulted, Simplicity repossessed the vehicle and issued a pre-sale notice using the safe-harbor language provided in the UCC at Wis. Stat. § 409.614(3). The vehicle was sold at a private auction for $500. Simplicity then issued a post-sale notice showing a deficiency of $4,233.48, calculated after fees.

The Birges filed a class action lawsuit, alleging that both Simplicity's pre- and post-sale notices were legally insufficient. The Birges argued that, based upon the WCA at Wis. Stat. § 425.210, the notices were required to describe the deficiency as the difference between the loan balance and the fair market value of the vehicle, rather than as the difference between the loan balance and the vehicle's sale price. The Court affirmed the circuit court's summary judgment in favor of Simplicity, dismissing the Birges' complaint and concluding that the WCA does not alter the UCC's notice requirements, and that Simplicity's notices were legally sufficient.

Issue at Hand

Whether the WCA's deficiency judgment provision, Wis. Stat. § 425.210, which requires use of fair market value in calculating a deficiency, alters the UCC's notice requirements under Wis. Stat. §§ 409.614 and 409.616.

Applicable State Law

Pursuant to Wis. Stat. § 409.614, a secured party must provide a debtor with a pre-sale notice before disposing of repossessed collateral. The notice must include, among other things, a description of any liability for deficiency. Wis. Stat. § 409.614(3) provides a safe-harbor form to meet the notification requirement. When a creditor uses the form, it is deemed to have provided sufficient information to satisfy the statutory requirements. The safe-harbor language includes a standardized explanation of how sale proceeds will be applied to the debt and whether the debtor may still owe a deficiency.

Similarly, Wis. Stat. § 409.616 governs post-sale notices and requires that a secured party must provide an explanation

of how the deficiency or surplus was calculated, including a statement of the amount of the deficiency and the figures used in the calculation.

Separately, the WCA at Wis. Stat. § 425.210 provides how to calculate a deficiency judgment. It requires that if a creditor is entitled to a deficiency judgment under Wis. Stat. § 425.209(1), the amount recoverable is the difference between the unpaid loan balance and the fair market value of the collateral.

As emphasized by the Court, Wis. Stat. § 425.210 does not impose any notice requirements. It applies only in the context of judicial actions to recover a deficiency judgment but does not alter the UCC's safe-harbor provision. The Court further noted that Wis. Stat. § 421.103(3) clarifies the relationship between the UCC and the WCA in that unless a WCA provision specifically supersedes a UCC provision, the UCC continues to govern the transaction. Thus, because Wis. Stat. § 425.210 does not expressly supersede Wis. Stat. §§ 409.614 or 409.616, the UCC's safe-harbor provisions remain fully applicable.

Court's Analysis

The Court rejected all the Birges' arguments. First, the Birges contended that Simplicity's notices were insufficient because they failed to describe the deficiency using the fair market value of the repossessed vehicle, as required under Wis. Stat. § 425.210. The Birges argued that this WCA provision should be read to modify the UCC's notice requirements, effectively requiring creditors to inform debtors that any deficiency would be calculated based on fair market value rather than the actual sale price.

Pursuant to Wis. Stat. § 421.103(3), the WCA does not displace the UCC unless a WCA provision specifically provides otherwise. The Court relied upon this section as well as the standard of irreconcilable conflict in addressing the Birges' argument. When two statutes address the same subject matter, courts attempt to harmonize them so that both can be given effect. One will be deemed to supersede the other only if the provisions cannot reasonably operate together, that is, if they irreconcilably conflict.

Applying that standard, the Court concluded that there was no irreconcilable conflict between the UCC and the WCA. The UCC provisions in Wis. Stat. §§ 409.614 and 409.616 directly regulate the content of pre- and post-sale notices and include a safe-harbor form in § 409.614(3) that, when properly completed, is deemed to provide sufficient information. The Court emphasized that this statutory language must be given full effect. Because Wis. Stat. § 425.210 contains no express notice requirement and governs only judicial deficiency judgments, importing its fair market value concept into UCC notice provisions would contradict the Legislature's clear separation of these frameworks. Accordingly, the Court held that Simplicity's use of the UCC safe-harbor form fully satisfied its statutory obligations.

The Birges further argued that the UCC and WCA should be read in *pari materia*, that is, in relation to each other as parts of a unified statutory scheme, with the WCA's fair market value standard informing the meaning of the UCC's deficiency notice requirements. The Court acknowledged that Wisconsin courts sometimes interpret related statutes together when they address the same subject matter and can be harmonized without contradiction. However, the Court concluded that this interpretive principle did not apply here.

The Court reasoned that the UCC and WCA serve distinct purposes and operate in different contexts. The UCC provisions govern secured transactions generally, including notice procedures following repossession, while the WCA addresses remedies available in judicial actions involving consumer credit transactions. Because Wis. Stat. § 425.210 specifically applies to judicial deficiency judgments and not to nonjudicial repossession

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notices, the two statutes do not cover the same subject matter in a way that would justify reading them in *pari materia*. Accordingly, the Court declined to interpret the WCA as supplementing or modifying the UCC's notice requirements. Instead, it reaffirmed that each statutory framework operates independently within its own sphere, consistent with Wis. Stat. § 421.103(3), which provides that the UCC governs unless a WCA provision expressly supersedes it.

The Birges also claimed that Simplicity's post-sale notice was legally insufficient using similar rationale. The Court reviewed Wis. Stat. § 409.616 which governs post-sale notices and sets forth the required content, which includes providing the debtor "an explanation of how the surplus or deficiency is calculated," specifying the amount and the figures used in the calculation. Simplicity's post-sale notice, which relied on the UCC's safe-harbor language, clearly identified the sale price, application of proceeds, and remaining deficiency.

Industry Impact

Banks may continue using statutory pre- and post-sale notice forms without incorporating WCA language. However, banks should still review the language within their notices to ensure legal sufficiency under the UCC. All statutorily required elements must be included, and while the safe-harbor language is optional, any deviations, including additional information, must not be misleading. Banks choosing not to rely on the safe-harbor language should carefully consider the implications.

More specifically, banks should consider reviewing their policies and procedures regarding nonjudicial repossessions. The safe-harbor form is deemed to "provide sufficient information," but Wis. Stat. § 409.614(2) clarifies that "[a] particular phrasing of the notification is not required." Use of the form is optional. Thus, if a bank opts not to use it or adds language beyond what the UCC requires, it should evaluate that decision carefully. For example, the UCC states that "a notification in the form of § 409.614(3) is sufficient, even if it includes errors in information not required by § 409.614(1), unless the error is misleading with respect to rights arising under this chapter." While additional information may be included, it must not be misleading. Banks deviating from the safe-harbor form should be prepared for potential challenges under this standard.

Conclusion

The Wisconsin Court of Appeals' decision provides important clarity for lenders, reaffirming that the UCC's safe-harbor notice provisions remain fully effective and are not modified by the WCA's deficiency judgment rules. Banks can continue to rely on the statutory pre- and post-sale notice forms when conducting nonjudicial repossessions.

The court's full opinion may be found here:
https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=1012075

Regulatory Spotlight

Agencies Issue Semiannual Regulatory Agendas.

The Bureau of Consumer Financial Protection (CFPB) published its agenda as part of the Spring 2025 Unified Agenda of Federal Regulatory and Deregulatory Actions. CFPB reasonably anticipates having the regulatory matters identified in the agenda under consideration during the period from June 2025 to May 2026. The next agenda will be published in Fall 2025 and will update the agenda through Fall 2026. The information is current as of **04/21/2025**. The agenda may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-09-22/pdf/2025-18317.pdf. *Federal Register*, Vol. 90, No. 181, 09/22/2025, 45586.

The Board of Governors of the Federal Reserve System (FRB) issued its agenda under the Regulatory Flexibility Act and its Statement of Policy Regarding Expanded Rulemaking Procedures. FRB anticipates having under consideration the regulatory matters indicated in the agenda during the period July 2025 through December 2025. The next agenda will be

Wisconsin Bankers ASSOCIATION

Compliance Journal

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Special Focus

Debanking Executive Order and Agency Actions

In early August, President Trump issued Executive Order 14331 titled, Guaranteeing Fair Banking For All Americans. Among other identified purposes, the Order states that: "Bank regulators have used supervisory scrutiny and other influence over regulated banks to direct or otherwise encourage politicized or unlawful debanking activities."

The Order defines "politicized or unlawful debanking" as any act by a financial institution to directly or indirectly restrict access to, or modify the conditions of, accounts, loans, or other banking services on the basis of a customer's political or religious beliefs, or based on lawful business activities disfavored by the institution for political reasons.

Fair lending and related laws have existed for decades, and bankers have followed those laws throughout time. As a result, the Order is codifying or clarifying current law. That said, banks are encouraged to review recent account closures, loan application denials, and customer complaints to ensure no violation of the Order. The following is a summary of the Order and agency actions in response to the Order, including expectations of the Small Business Administration (SBA) of its program lenders. Recommended actions are also included.

Executive Order

The Order directs the federal banking supervisory agencies to take various actions to implement intent, including removing reputational risk or equivalent concepts from guidance documents, manuals, and other materials used to regulate or examine banks. The removal of such concepts must also be made clear to examiners. The agencies are also to conduct a review to identify banks that have had any past or current, formal or informal, policies or practices that require, encourage, or otherwise influence the bank to engage in politicized or unlawful debanking and to take appropriate remedial action. Such review includes unlawful banking on the basis of religion.

The Order also directs SBA to give notice to banks with which it guarantees loans under SBA lending programs requiring each to (a) identify and reinstate any previous customers of the bank or its subsidiaries that were denied service through politicized or unlawful debanking action; (b) identify any potential customers denied access to financial services provided by the bank or its subsidiaries; and (c) identify any potential customers denied access to payment processing services provided by the bank or its subsidiaries. The bank is to provide notice to each identified party of the denied access and of reinstatement or renewed option to engage in services previously denied.

Banking Agencies Actions

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) have each taken steps regarding reputational risk. OCC was the first banking supervisory agency to act with an announcement in March that it would no longer examine its regulated banks for reputational risk and that references to the risk were being removed from its *Comptroller's Handbook* booklets and guidance issuances. In early September, OCC then announced how it considers politicized or unlawful debanking in bank licensing filings and in banks' records of performance under the Community Reinvestment Act (CRA). OCC also issued a reminder to its banks of privacy-related rules that banks need to comply with to protect customers' financial information under the Right to Financial Privacy Act and Bank Secrecy Act suspicious activity reports (SARs).

Similarly, FRB announced that reputational risk was no longer a component of examination programs of its supervised banks, that it was in the process of reviewing and removing references of reputation and reputational risk from supervisory materials, and that examiners will be trained to help ensure the change is implemented consistently across all FRB-supervised banks. FRB is replacing reputational risk with more specific discussions of financial risk.

FDIC announced a similar approach to the removal of reputational risk in examinations. FDIC announced plans to issue a rulemaking that would prohibit examiners from criticizing banks on the basis of reputational risk or directing or encouraging banks to close accounts on the basis of political, social, religion, or other views. Each of the agencies also announced plans to review whether a supervised bank had engaged in politicized or unlawful debanking.

SBA Letter to its Program Lenders

Early this month, SBA sent a letter to its lender of actions to be taken by early December. The letter was sent by email; some have reported receiving the letter via their SBA-portal. Through its letter, SBA is requiring program lenders to take the following specific actions:

- Identify any past or current formal or informal policies or practices that require, encourage, or otherwise influence the bank to engage in politicized or unlawful debanking as specified by the Order.
- Make reasonable efforts to identify and reinstate any previous customers of the bank or any subsidiary denied service through a politicized or unlawful debanking action in violation of a statutory or regulatory requirement under section 7(a) of the Small Business Act or any requirement in a Standard Operating Procedures Manual or Policy Notice. The bank is required to send notice of the reinstatement to the party.
- Identify all potential customers denied access to financial services provided by the bank or any subsidiaries through a politicized or unlawful debanking action in violation of a statutory or regulatory requirement under section 7(a) of the Small Business Act or any requirement in a Standard Operating Procedures Manual or Policy Notice. The bank is required to provide notice to each otherwise qualified customer advising of the denied access and the renewed option to engage in such services previously denied.
- Identify all potential customers denied access to payment processing services provided by the bank or any subsidiaries through a politicized or unlawful debanking action in violation of a statutory or regulatory requirement under section 7(a) of the Small Business Act or any requirement in a Standard Operating Procedures Manual or Policy Notice. The bank is required to provide notice to each party advising of the denied access and the renewed option to engage in such services previously denied.

The above steps need to be completed by **December 5, 2025**. Then within thirty days thereafter, the bank is to provide SBA with a detailed report addressing and evidencing compliance with each of the requirements. The reports are to be submitted to debanking@sba.gov

SBA is demanding the above requirements be met in order for the bank to remain in good standing status under 13 CFR §§ 120.410(e) and 120.420(e).

Considerations

As mentioned initially, fair lending and related laws have existed for decades, and bankers have followed those laws throughout time. However, given the most recent focus as a result of the Order, banks are encouraged to review recent account closures, loan application denials, and customer complaints to ensure it is not violating the Order, can respond to a regulator inquiry or customer complaint, and can satisfy the requirements of SBA, as appropriate.

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If taking such steps, with the definition of "politicized or unlawful debanking" in mind, the bank could consider its deposit account opening and closing policy and procedures to ensure action taken was not in violation of the Order. Same could be done for review of deposit services, for example peer to peer payment services. When a deposit account or deposit services request is refused or terminated, banks should document rationale for the decision in the event later questioned in an exam. Additionally, should the bank need to respond to a consumer complaint, the information is already documented for response. Banks likely already have such procedures in place but now may be a good time for review.

A similar review could be completed for loan application denials. Under Regulation B banks have adverse action information to review for the primary reasons why an application was denied. The information can be reviewed to ensure any action taken was not in violation of the Order.

If the bank received the SBA letter, the bank needs to take specific action by December 5, 2025, and prepare a report to be filed with SBA by January 5, 2026, to remain in good standing with SBA. For those banks with significant SBA activity, the efforts put forth in review and reporting are likely more significant than a bank with little SBA activity.

To complete a report the bank will first need to review policies and procedures to identify whether any require, encourage, or otherwise influence the bank to engage in politicized or unlawful debanking. The bank also needs to identify whether any customer or potential customer was denied service through a politicized or unlawful debanking action and provide notice to the party in accordance with SBA's letter. Any required notice needs to be provided to the impacted party by December 5th. To assist with the review, banks should consider establishing a committee and delegate duties of investigation and review to different committee members. Each committee member can then review and prepare information about their findings within a designated timeline.

The contents of the report to SBA should include information about what policies and practices were reviewed and whether any adjustments were made. While unlikely, if a finding was identified of denied service or access through a politicized or unlawful debanking action, the name of the affected party should not be included in the report for privacy purposes. In such a case, the report should also reflect that a notice was provided the party in accordance with the letter.

Prior to a report being shared with SBA it should be shared first with the bank's board of directors allowing the board to ask questions and for any follow-up research to be completed. A final report should be shared with and approved by the board before submission to SBA.

Conclusion and Resources

Executive Order 14331 titled, Guaranteeing Fair Banking For All Americans directs the federal banking supervisory agencies to take actions to implement intent meant to stop banking decisions which the President believes directed or otherwise encouraged politicized or unlawful debanking activities. As a result of the Order federal banking supervisory agencies have taken actions to remove reputational risk from examination materials and guidance and are retraining examiners. SBA issued a letter to SBA program lenders instructing steps that are to be taken and to file a report with SBA.

Fair lending and related laws have existed for decades, and bankers have followed those laws throughout time. However, given the most recent focus as a result of the Order, banks are encouraged to review recent account closures, loan application denials, and customer complaints to ensure it is not violating the Order, can respond to a regulator inquiry or customer complaint, and can satisfy the requirements of SBA, as appropriate.

Regarding the SBA letter, WBA has posed several questions to SBA regarding their debanking letter and any clarifying information from SBA will be promptly shared with the membership.

Executive Order 14331 may be viewed at: https://www.whitehouse.gov/presidential-actions/2025/08/guaranteeing-fair-banking-for-all-americans/

Banking Agencies Releases may be viewed at:
https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm
https://fdic.gov/news/press-releases/2025/statement-acting-chairman-travis-hill-executive-order-titled-guaranteeing
https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-4.html

Special Focus

https://www.comptrollerofthecurrency.gov/news-issuances/bulletins/2025/bulletin-2025-22.html
https://www.comptrollerofthecurrency.gov/news-issuances/bulletins/2025/bulletin-2025-23.html

SBA Letter may be viewed at:
https://www.sba.gov/article/2025/08/26/sba-orders-lenders-end-practice-debanking

Regulatory Spotlight

Agencies Remove Obsolete Regulations.

The Federal Crop Insurance Corporation (FCIC) issued final rules to remove obsolete regulations. FCIC is reviewing all regulations within its purview to reduce regulatory burdens and costs. Pursuant to the review, FCIC identified several regulations which are obsolete, unnecessary, and outdated provisions in title 7 of the Code of Federal Regulation. FCIC has removed the provisions listed in the final rules to streamline and clarify the dictates of title 7. The changes in the final rules have no impact on past or present FCIC customers. The final rules may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-08-14/pdf/2025-15487.pdf. *Federal Register*, Vol. 90, No. 155, 08/14/2025, 39089-39090; and https://www.govinfo.gov/content/pkg/FR-2025-08-27/pdf/2025-16452.pdf. *Federal Register*, Vol. 90, No. 164, 08/27/2025, 41761.

The Rural Business Cooperative Service (RBC), Rural Utilities Service (RUS), and Rural Housing Service (RHS) (collectively, the agencies) issued a final rule to remove obsolete regulations. The agencies are reviewing all regulations within their purview to reduce regulatory burdens and costs. Pursuant to the review, the agencies have identified provisions in 7 CFR part 1930 as obsolete, unnecessary, and outdated due to lack of substantive material. The agencies have removed the provisions to streamline and clarify the dictates of title 7. The final rule is effective **08/18/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-08-18/pdf/2025-15642.pdf. *Federal Register*, Vol. 90, No. 157, 08/18/2025, 40025.

The Federal Communications Commission (FCC) issued a direct final rule to eliminate certain outdated, obsolete, and unnecessary rules. The final rule continues FCC efforts to modernize its regulatory framework by rescinding obsolete provisions in parts 2 and 73 of FCC rules. FCC has undertaken a review aimed at eliminating outdated rules, reducing unnecessary regulatory burdens, accelerating infrastructure deployment, promoting network modernization, and spurring innovation. The final rule is effective **10/20/2025**. Comments are due **09/09/2025**. If FCC receives significant adverse comment, FCC will publish a withdrawal in the *Federal Register* informing of the provisions for which significant adverse comments were received and elimination will not take effect. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-08-20/pdf/2025-15919.pdf. *Federal Register*, Vol. 90, No. 159, 08/20/2025, 40536-40538.

CFPB Proposes Legal Standard for Supervisory Designation Proceedings.

The Bureau of Consumer Financial Protection (CFPB) issued a proposed rule to adopt a standard definition of "risks to consumers with regard to the offering or provision of consumer financial products or services" that will bind CFPB in proceedings to designate nonbank covered persons for CFPB supervision. Adoption of a standard definition will ensure that CFPB acts within the bounds of its statutory authority and will provide clarity about the standard CFPB applies. Comments are due **09/25/2025**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-08-26/pdf/2025-16352.pdf. *Federal Register*, Vol. 90, No. 163, 08/26/2025, 41520-41523.

CFPB Issues Section 1033 ANPR.

CFPB issued an advance notice of proposed rulemaking (ANPR) to collect comment and data to inform its consideration of four issues related to implementation of section 1033 of the Dodd-Frank Act. The issues are: (1) the proper understanding of who can serve as a "representative" making a request on behalf of the consumer; (2) the optimal

Wisconsin Bankers ASSOCIATION

Compliance Journal

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Special Focus

Highlights of the GENIUS Act

There has been much buzz in newsfeeds lately of the Guiding and Establishing National Innovation for U.S. Stablecoin Act (GENIUS Act or Act) which was signed into law early last month. The intention of the Act is to establish regulation around payment stablecoin issuers. This article highlights main components of the Act to help Wisconsin's compliance officers understand its scope and what is to happen next on the regulatory front. The article does not cover requirements for foreign issuers under the Act.

In general, the GENIUS Act sets forth who may issue payment stablecoins, the requirements for issuing payment stablecoins, regulatory oversight of such processes, and the treatment of payment stablecoins overall. The federal banking regulators, (*i.e.*, 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)) have rule-writing authority to implement requirements under the Act. The Department of the Treasury is the first agency to start such process with a recently published request for information regarding the use of innovative or novel methods, techniques, or strategies to detect and mitigate illicit finance risks involving digital assets.

State regulators have also been given rulemaking authority under the Act; however, their framework need be substantially similar to what is created at the federal level. Additionally, the state regulators need share information with FRB on an ongoing basis to ensure consistency. The agencies also have supervisory and enforcement authority over subsidiaries of banks that are approved to issue payment stablecoins.

Generally, the GENIUS Act becomes effective upon the earlier of January 18, 2027, or the date that is 120 days after the date for which the agencies issue final rules to implement the Act.

Definition of Payment Stablecoin

First, consider what is a payment stablecoin. Under the GENIUS Act, a "payment stablecoin" means a "digital asset" that is designed to be used as a means of payment or settlement and the issuer of which (a) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; and (b) represents that it will maintain, or creates the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value.

A "digital asset" means any digital representation of value that is recorded on a cryptographically secured "distributed ledger" which is technology in which data is shared across a network that creates a public digital ledger of verified transactions or information among network participants whereby cryptography is used to link the data to maintain the integrity of the public ledger and execute other functions.

Excluded from the definition of "payment stablecoin" is a digital asset that is a national currency; a deposit (as defined in section 3 of the Federal Deposit Insurance Act), including a deposit recorded using distributed ledger technology; or is a security (as defined in section 2 of the Securities Act, section 3 of the Securities Exchange Act, or section 2 of the Investment Company Act).

Who Can Issue Payment Stablecoins

The GENIUS Act places a limitation on issuers such that beginning three years after enactment, it is unlawful for any person, other than a permitted payment stablecoin issuer, to issue a payment stablecoin in the United States. The Act defines a "permitted payment stablecoin issuer" to be a person formed in the United States that is (a) a subsidiary of an insured depository institution that has been approved to issue payment stablecoins by its primary federal regulator; (b) a federal-qualified payment stablecoin issuer; or (c) a state-qualified payment stablecoin issuer.

A "subsidiary" in this context has the same meaning given the term in section 3 of the Federal Deposit Insurance Act. "Person" in this context means an individual, partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, incorporated or unincorporated.

There is to be an application, review, and approval process to be a permitted payment stablecoin issuer. If an application is denied, the applicant is to be provided an explanation for denial and an opportunity to appeal the denial determination. These procedures will further be formalized through rulemaking by the agencies.

What Permitted Payment Stablecoins Issuers Need to Know

In general, to issue a payment stablecoin, a permitted payment stablecoin issuer must maintain identifiable reserves backing the outstanding payment stablecoins on an at least 1 to 1 basis. The reserves must be comprised of certain cash or instruments as listed under the Act and cannot be pledged, rehypothecated, or reused by the permitted payment stablecoin issuer, either directly or indirectly, except for the purpose of the limited reasons stated within the Act.

The permitted payment stablecoin issuer must publicly disclose its redemption policy. The policy need establish clear and conspicuous procedures for timely redemption of outstanding payment stablecoins and must publicly, clearly, and conspicuously disclose in plain language all fees associated with purchasing or redeeming the payment stablecoins. Such fees can only be changed upon not less than seven days' prior notice to consumers.

The permitted payment stablecoin issuer must also publish the monthly composition of its reserves on its website. The publication need include (a) the total number of outstanding payment stablecoins issued by the issuer; and (b) the amount and composition of the reserves, including the average tenor and geographic location of custody of each category of reserve instruments.

Of the required monthly report, a permitted payment stablecoin issuer must have the report examined monthly by a registered public accounting firm and must have the issuer's Chief Executive Officer and Chief Financial Officer submit a certification as to the accuracy of the report to the applicable agency. There is a criminal penalty for any person who submits a certification knowing that such is false. Certain permitted payment stablecoin issuers must also provide annual audited financial statements to their regulators and make them publicly available.

As mentioned earlier, the agencies are to issue regulations to implement requirements under the GENIUS Act. The regulations are to address capital requirements applicable to permitted payment stablecoin issuers and be tailored to the business model and risk profile of the issuer, establish liquidity standards, address reserve asset diversification, and identify appropriate operational, compliance, and IT risk-management standards.

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Also, a permitted payment stablecoin issuer is to be treated as a financial institution for purposes of the Bank Secrecy Act and be subject to all federal laws applicable for financial institutions located in the United States relating to economic sanctions, prevention of money laundering, customer identification, and customer due diligence. A permitted payment stablecoin issuer that is subsidiary of an insured depository institution is also considered a financial institution for purposes of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801.

Under section 4(a)(11) of the GENIUS Act, a permitted payment stablecoin issuer is also prohibited from paying the holder of any payment stablecoin any form of interest or yield (whether it be cash, tokens, or other consideration) solely in connection with the holding, use, or retention of the payment stablecoin.

Limitations of Stablecoin Activities

In general, a permitted payment stablecoin issuer may only (a) issue payment stablecoins; (b) redeem payment stablecoins; (c) manage related reserves (including purchasing and holding reserve asset); (d) provide custodial or safekeeping services for payment stablecoins, required reserves, or private keys of payment stablecoins; and (e) undertake other functions that directly support the work of issuing and redeeming payment stablecoins. That said, nothing under the GENIUS Act prevents a permitted stablecoin issuer from engaging in non-stablecoin activities that are explicitly allowed by a relevant regulator (e.g., permitted activities under OCC regulations).

Authority of Banking Institutions

Depository institutions are also not limited by the GENIUS Act from engaging in activities permissible under state and federal law, including (a) accepting or receiving deposits and issuing digital assets that represent deposits; (b) utilizing a distributed ledger for the books and records of the entity and to affect intrabank transfers; and (c) providing custodial services for payment stablecoins, private keys of payment stablecoins, or reserve banking payment stablecoins.

Other Provisions

The GENIUS Act also includes provisions meant to clarify preemption rules between the authorities of state and federal regulators, interests in bankruptcy should a permitted payment stablecoin issuer declare bankruptcy, and revisions to securities-related rules so that payment stablecoins issued by a permitted payment stablecoin issuer are not considered securities under those rules.

The Act also includes provisions meant to protect consumers' interests in that only entities who are regulated by state or federal banking supervisory agencies can provide custodial or safekeeping services for permitted payment stablecoins or private keys of permitted payment stablecoins. These entities must also comply with segregation requirements. The Act also requires the agencies conduct a study of endogenously collateralized payment stablecoins, as defined in Section 11 of the Act, and submit various reports to Congress.

Conclusion and Next Steps

The GENIUS Act has recently been enacted which sets forth a foundation for who may issue payment stablecoins and the requirements which must be met to do so. The Act provides rulemaking authority to the banking agencies, including state banking regulators, to promulgate rules and application procedures. The next step for the agencies is to begin rulemaking and take comments regarding how best to implement the requirements and prohibitions set forth under the Act.

Treasury is the first of the agencies to act with a recently published request for information regarding the use of innovative or novel methods, techniques, or strategies to detect and mitigate illicit finance risks involving digital assets. Comments are due October 17, 2025.

There is also other Congressional action currently underway. The U.S. House of Representatives has passed the Digital Asset Market Clarity Act (CLARITY Act) which is now to be taken up by the U.S. Senate for review and debate. The CLARITY Act is meant to establish a framework for digital commodities which are digital assets that rely upon a blockchain for their value. WBA will continue to monitor the provisions of the CLARITY Act and will ask for revisions where appropriate to continue to protect the interests of Wisconsin's banks. Included in those efforts is to strengthen

the GENIUS Act language which prohibits the payment of yields or interest on stablecoins to close unintended loopholes which may otherwise allow some to skirt the prohibition and to change the priority interests under bankruptcy to protect perfected secured creditors' interests.

WBA also continues to monitor the Anti-CBDC Surveillance State Act which prohibits FRB from offering products or services directly to individuals, maintaining an account on behalf of an individual, or issuing a central bank digital currency (CBDC).

Wisconsin's compliance officers should continue to become familiar with the terms and conditions affecting payment stablecoins to identify roles, requirements, and opportunities for the bank. Compliance officers should also keep an eye to WBA Legal's best practices library for upcoming banker-related resources on digital assets, including payment stablecoins and others.

The GENIUS Act may be viewed at: https://www.congress.gov/119/plaws/publ27/PLAW-119publ27.pdf

Treasury's request for comment on innovative methods to detect illicit activity involving digital assets may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-08-18/pdf/2025-15697.pdf

The CLARITY Act may be viewed at: https://www.congress.gov/bill/119th-congress/house-bill/3633

The Anti-CBDC Surveillance State Act may be viewed at: https://www.congress.gov/119/bills/hr1919/BILLS-119hr1919eh.pdf

"Trigger Lead" Bill to Become Law

After two Congressional sessions of advocacy work, WBA is happy to announce that the Homebuyers Privacy Protection Act (H.R. 2808), known as the "Trigger Lead" bill has been passed by the Senate. The bill cleared the House earlier this year and will now advance to the President's desk to be signed into law. Passage of this legislation has been top priority for WBA.

Once signed into law, credit reporting agencies will be prohibited from providing a consumer's credit report to third parties in connection with a residential mortgage transaction unless strict criteria are met. A consumer's credit report may only be shared if: the transaction consists of a firm offer of credit or insurance and:

1. The third party provides documentation certifying that it has the consumer's consent; or
2. The third party has originated a mortgage on behalf of the consumer, is a current mortgage loan servicer to the consumer, or is a bank or credit union and holds a current account for the consumer.

The provisions take effect 180 days after the bill's enactment. A success such as this underscores the power of WBA advocacy. Consumers will no longer be pestered with numerous unwanted phone calls or text messages within hours of applying of a mortgage loan. More importantly, customers will no longer be confused or upset from believing that the bank had improperly shared their credit information with a third party.

Thank you to all our members who submitted letters or spoke directly with lawmakers about the passage of this important bill and of the relevant ways it would benefit consumers. The Homebuyers Privacy Protection Act may be found at: https://www.congress.gov/bill/119th-congress/house-bill/2808

More information about becoming part of a WBA Committee or becoming an Advocacy Officer may be found at: https://www.wisbank.com/community/get-involved/ and https://www.wisbank.com/advocacy/advocacy-officers/

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Wisconsin Bankers ASSOCIATION

Compliance Journal

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Special Focus

Wisconsin 2025–2027 State Budget Enacted

Wisconsin's state budget has officially been signed into law as 2025 Wisconsin Act 15 (budget) following final legislative action and a series of partial vetoes by Governor Tony Evers. The $111.1 billion package includes a mix of tax relief, education funding, and investments in key state programs. The budget deal, struck early July between GOP legislative leaders and Governor Evers, preserves a $1.5 billion tax cut previously advanced by the Legislature. It also adds $1.2 billion in new spending for K-12 education, childcare, and the University of Wisconsin system.

The Joint Finance Committee advanced the final package on a 12-4 party-line vote. Both chambers followed with bipartisan approval: the Senate passed the bill 19-14 and the Assembly 59-39, with members from both parties crossing lines in support and opposition. Governor Evers signed the budget while exercising his partial veto authority on 23 items. While the budget presents no major changes for the banking industry, there are several items of potential interest worth being aware of which are covered in this article.

Department of Financial Institutions

The budget allocates over $22.8 million in FY 2025–26 and $22.3 million in FY 2026–27 for the Department of Financial Institutions (DFI). These funds support regulatory oversight, licensing, consumer protection, and key educational initiatives. Highlights include:

- $900,000 annually for the payday loan database and financial literacy programming.
- Continued funding for investor education, credit union and bank supervision.

Additionally, DFI receives over $1 million in segregated revenue each year to administer the college savings trust fund, supporting long-term savings, and family financial planning.

Loan Programs and Financial Development Tools

While no new state-backed loan funds were established, the budget maintains or authorizes key financial infrastructure including the following:

- Broadband Expansion Grants: $2 million annually to support broadband infrastructure via the Public Service Commission, boosting rural access to digital banking and economic participation.
- Water Infrastructure: Over $732 million in bonding authority for clean and safe drinking water programs, often implemented with bank partnership or private capital leverage.
- Brownfield Site Assessment: $1 million annually through the Wisconsin Economic Development Corporation (WEDC) for redevelopment of underutilized property, often involving commercial lending and municipal finance.

Special Focus

The following programs received no appropriated funds this biennium, but the budget maintains statutory authority for the Wisconsin Housing and Economic Development Authority to administer:

- Housing rehabilitation loans.
- Conversion of commercial space to housing.
- Loan guarantees for disadvantaged businesses.

These programs could see activation through federal funding or supplemental state legislation.

Agricultural Investments

The 2025–27 Wisconsin state budget includes targeted appropriations aimed at strengthening the state's agricultural sector. These investments focus on supporting farm infrastructure, conservation efforts, market development, and producer security.

- Processing Facility Grants: $600,000 annually for dairy processing and $700,000 for meat processing plant grants support local ag supply chains and infrastructure.
- Soil and Water Conservation: Over $20 million annually fund conservation programs and chemical cleanup efforts.
- Farmland Preservation & Working Lands: Planning grants and program support help protect productive farmland.
- Agricultural Development and Market Expansion: Funding supports export initiatives, farmer mental health programs, and rural development grants.
- Agricultural Producer Security: A $200,000 allocation protects farmers against buyer defaults.

Talent Attraction and Economic Development

A notable new initiative is WEDC's Talent Recruitment Grant Program, which provides municipalities up to $500,000 annually to attract out-of-state residents, especially higher-income households. WEDC is also funded with over $87 million across the biennium for general programming, operations, and site-specific development efforts.

State Borrowing and Capital Investment

The budget authorizes more than $3.1 billion in new bonding authority, including:

- $2.2 billion in general obligation bonds for state buildings, UW System campuses, and public health facilities.
- $946 million in revenue obligation bonds, particularly in environmental and transportation sectors.

WBA will continue to monitor and assess how provisions in the final budget affect the banking industry, including regulatory changes, economic development funding, and state-level investment priorities.

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Agencies Seek Comment on Potential Actions to Address Payments Fraud

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) seek input on questions related to payments fraud. The agencies seek ways the agencies could take actions collectively or independently in their varying respective roles to help consumers, businesses, and financial institutions mitigate check, automated clearing house (ACH), wire, and instant payments fraud.

As further explained below, WBA is currently collecting information in response to the agencies' questions. Comments are due **September 18, 2025**. A summary of the agencies' request of information (ROI) to address payments fraud follows.

Introduction

Payments fraud inflicts significant harm on consumers, businesses, and financial institutions. Payments fraud also has the potential to erode public trust in—and undermine the safety, accessibility, and efficiency of—the nation's payments system, upon which the U.S. financial system depends. As part of their objectives to promote the safety of the U.S. financial system, the agencies have overlapping but also discrete roles and authorities related to the issue of payments fraud. For example, the agencies all engage in supervision of financial institutions. In addition to supervising financial institutions, FDIC has the mission to maintain stability and public confidence in the nation's financial system as the insurer of bank deposits. The Federal Reserve Service (FRS), which includes FRB and the Federal Reserve Bank (Reserve Banks), also focuses on payment system safety as a payment system operator and catalyst for payment system improvements. Therefore, the agencies stated interest in exploring ways to help mitigate risk of payments fraud. Given that the agencies have specific differing roles and authorities, mitigation could take the form of collective action where roles align, such as joint supervisory guidance, or independent action where roles differ, such as changes to the payment systems operated by the Reserve Banks.

Background

While there is no consensus on the definition of "payments fraud," for purposes of the agencies' ROI, "payments fraud" generally refers to the use of illegal means, including intentional deception, misrepresentation, or manipulation, to make or receive payments for personal gain. The term "payments fraud" also includes scams, a subset of fraud.

As WBA members know firsthand, payments fraud is growing. The agencies provide examples and data of such fact within the ROI, including data that supports the notable rise in check fraud despite overall decreases in check usage.

The agencies further point out that checks can be stolen, altered, or forged; the physical nature of paper checks makes them susceptible to theft while in transit or when left in unsecured locations. Products and services to detect altered or forged checks during the clearing process have varying degrees of effectiveness given that checks do not inherently include explicit security features. The agencies also recognize that checks contain sensitive information, including the payor's name, account number, routing number, address, and signature, that can be used by criminals to conduct other forms of payments fraud.

Also complicating matters, a payments fraud scheme may involve multiple institutions and payment methods, each of which may fall within the remit of different Federal and State agencies. As a result and given the scope and complexity of payments fraud schemes, the agencies recognize that no agency or private-sector entity can address payments fraud on its own. Nonetheless, the agencies are considering whether they may be able to take certain discrete steps, collectively or independently, to mitigate payments fraud through their various roles, such as regulator and supervisor. In addition, Reserve Banks may be able to further support the industry in addressing fraud as payments system operator and payments improvement catalyst.

Request of Information

The agencies request comment on five potential areas for improvement and collaboration that could help mitigate payments fraud: external collaboration; consumer, business, industry education; regulation and supervision; payments fraud data collection and information sharing; and Reserve Banks' operator tools and services. The agencies also seek for commenters to provide perspectives relative to payments fraud more generally.

External Collaboration

The agencies collaborate with stakeholders in various ways to support the safety and efficiency of the U.S. financial system (e.g., guidance on elder financial exploitation). The agencies question whether there may be opportunities to facilitate further collaboration among industry stakeholders to better address payments fraud. In particular, the agencies question:

1. What actions could increase collaboration among stakeholders to address payments fraud?
2. What types of collaboration, including standard setting, could be most effective in addressing payments fraud? What are some of the biggest obstacles to these types of collaboration?
3. Which organizations outside of the payments or banking industry might provide additional insights related to payments fraud and be effective collaborators in detecting, preventing, and mitigating payments fraud?
4. Could increased collaboration among Federal and State agencies help detect, prevent, and mitigate payments fraud? If so, how?

Consumer, Business, and Industry Education

Banks, consumers, businesses, and other industry stakeholders currently have access to education on a range of financial topics, including payments fraud. The agencies question the need for further education specific to payments fraud. To assist in developing potential new payments fraud education, the agencies question:

1. In general, what types of payments fraud education are most effective, and why? Would different audiences (for example, industry and consumers) benefit from different types of payments fraud education?
2. Would additional education informing consumers and businesses about safe payment practices be helpful to reduce payments fraud and promote access to safe, secure payment options?
3. Which approaches could make existing payments fraud education more effective? For example, would targeting outreach to particular audiences or conducting additional education in collaboration with other key stakeholders be effective?
4. Are current online resources effective in providing education on payments fraud? If not, how could they be improved?

Regulation and Supervision

While no agency has plenary regulatory or supervisory authority over the U.S. payments system, the agencies have certain limited, and in some cases unique, statutory authorities that may apply to payments fraud. The agencies provide examples of such authorities within the ROI; and, although the agencies state they believe they are exercising their authorities appropriately, the agencies question whether there may be opportunities to take additional regulatory or supervisory actions to address payments fraud within their authorities and, where appropriate, in coordination with other agencies. The agencies question:

1. What potential changes to regulations (apart from FRB's Regulation CC, discussed separately below) could address payments fraud and mitigate the harms from payments fraud to consumers, businesses, and supervised institutions?
2. The agencies have issued supervisory guidance on numerous topics that relate to payments fraud detection, prevention, and mitigation. Is existing supervisory guidance related to payments fraud sufficient and clear? If not, what new or revised supervisory guidance should the agencies consider issuing on the topic within the respective authorities?
3. How might new or revised supervisory guidance assist small community banks in detecting, preventing, and mitigating payments fraud?
4. What is the experience of consumers and businesses when supervised institutions place holds on depositors' funds because of suspected payments fraud? (Regulation CC's "reasonable cause to doubt collectability'' exception is discussed separately below.)
    a. For instance, how frequently are consumers and businesses affected by holds, delays, or account freezes, and how responsive are supervised institutions to inquiries from consumers and businesses regarding these issues?
    b. Do current disclosure requirements effectively address consumer and business concerns when supervised institutions hold customer funds due to suspected payments fraud? For example, should changes be considered with respect to permissible customer communications under SAR confidentiality rules?

5. The agencies have received complaints from supervised institutions regarding challenges in resolving disputes about liability for allegedly fraudulent checks. What is the experience of banks when trying to resolve these types of interbank disputes regarding allegedly fraudulent checks? Do these types of interbank disputes arise more frequently in connection with certain types of checks or parties? What actions could the agencies consider, including potential amendments by FRB to Regulation CC, that could improve banks' ability to resolve interbank disputes over liability for allegedly fraudulent checks?

Although FRB stated in the ROI that it is not proposing changes to Regulation CC at this time, FRB seeks comment on the following questions regarding Regulation CC. Regulation CC seeks to balance prompt funds availability with the risk of checks being returned unpaid for reasons that include fraud.

1. What potential amendments to Regulation CC would support timely access to funds from check deposits while providing depository institutions with sufficient time to identify suspected payments fraud?
    a. Have technological advancements in check processing reduced the time it takes for depository institutions to learn of nonpayment or fraud such that funds availability requirements for local checks and nonproprietary ATMs should be shortened?
    b. What effects would shortening the funds availability requirements have on payments fraud, consumers who rely on timely access to funds, and depository institutions?
    c. Are there any changes FRB should consider to the expeditious return requirement to better balance providing expeditious notice to the receiving depository institution with ensuring adequate time for the paying depository institution to investigate potentially fraudulent checks?
2. Regulation CC provides six exceptions that allow depository institutions to extend deposit hold periods for certain types of deposits, including deposits for which the depository institution has reasonable cause to doubt the collectability of a check. Is this exception effective in allowing depository institutions to mitigate check fraud while also allowing timely access to funds? Would depository institutions benefit from further clarification on when it may be appropriate to invoke this exception? What are the experiences of businesses and consumers when depository institutions invoke this exception in order to delay the availability of depositors' funds?

Payments Fraud Data Collection and Information Sharing

In the ROI, the agencies stated that payments fraud data, such as value and volume of fraudulent payments and industry negative lists, is currently collected in an incomplete, non-standardized, ad hoc, and fragmented way—citing the Federal Trade Commission's website where consumers can report payments fraud, the Federal Bureau of Investigation's Internet Crime Complaint Center, and the banking industry (SAR) and recordkeeping requirements under Bank Secrecy Act rules and requirements.

The agencies question whether further promoting, standardizing, and centralizing payments fraud data collection and information sharing could provide a more comprehensive understanding of the prevalence and impact of payments fraud. The agencies question:

1. Broadly, how could payments fraud data collection and information sharing be improved?
2. What barriers limit the collection and sharing of payments fraud data between industry stakeholders, and how could these barriers be alleviated? For example, have specific barriers limited development of solutions or participation in bilateral or multilateral payments fraud data collection and information sharing? What changes would address these barriers?
3. What role should the agencies take in supporting further standardization of payments fraud data? For instance, can FRS better leverage or improve its fraud and scam models?
4. What types of payments fraud data, if available, would have the largest impact on addressing payments fraud? If these data are not currently being collected or shared, what entities are best positioned to collect and share such data?
5. Is there a need for centralized databases or repositories for the sharing of payments fraud data across entities? What legal, privacy, or practical risks and challenges could such a centralized database or repository pose? Which entities are best positioned to develop and participate in a centralized database or repository?

Reserve Banks' Operator Tools and Services

The Reserve Banks offer check processing, ACH transfers, instant payments, and wire services, among other services. In its operational role, the Reserve Banks have taken important steps to prevent and mitigate payments fraud. The ROI provides for the example that the Reserve Banks provide risk management tools and services that participating financial institutions may use as part of their payments fraud detection, prevention, and mitigation programs. FRS questions that there may be further opportunities for the Reserve Banks, as a payments system operator, to provide additional tools and services designed to reduce payments fraud. In considering potential additional actions the Reserve Banks can take in their operator role to mitigate payments fraud, the agencies question:

1. How can the Reserve Banks enhance their existing risk management tools and services, operations, rules, or procedures to better meet the needs of participating financial institutions in addressing payments fraud? For example, should the Reserve Banks consider requiring fraud reporting for payment rails (as they already do for the FedNow® Service) or adopting any particular payments fraud standards?
2. Are there risk management tools or services that the Reserve Banks should consider offering or expanding, such as (a) developing a payments fraud contact directory for financial institutions, (b) offering tools that can provide notification of atypical payment activity, or (c) introducing confirmation of payee services to help mitigate fraudulent payment origination?

General Questions

In addition to the more specific questions set forth above, the agencies also question:

1. What types of payments fraud have most impacted your bank and its stakeholders? What tactics have criminals employed when perpetrating these types of payments fraud?
2. What measures, including technological solutions or services, have been most effective in identifying, preventing, and mitigating payments fraud at your bank? Are there actions that consumers can take that help the bank? For example, do banks find it helpful when consumers alert the bank in advance when making large purchases, transferring large amounts of money, and traveling abroad?
3. To the extent not already addressed here, are there other actions that would support stakeholders in identifying, preventing, and mitigating payments fraud?
4. Are there specific actions that could encourage the use of payments methods with strong security features?

Conclusion

The agencies seek information on questions related to payments fraud, which includes the use of illegal means, including intentional deception, misrepresentation, or manipulation, to make or receive payments for personal gain. Payments fraud also includes scams, a subset of fraud. The ROI is intended to help the agencies identify whether additional actions could be undertaken by the agencies to help consumers, businesses, and financial institutions mitigate check, automated clearing house (ACH), wire, and instant payments fraud.

The WBA has actively advocated on behalf of the membership against payments fraud with state and federal law enforcement and supervisory agencies. WBA has also created several consumer-facing educational pieces to create awareness to help protect bank customers from fraud and scams. In addition, last month WBA hosted its Fraud Summit where members gathered to explore the latest fraud trends, emerging threats, and innovative strategies to protect bank and customers.

To continue in its fight to further protect members and their customers from fraud and scams, WBA will be filing a comment letter with the agencies in response to the ROI. Comments are due **September 18, 2025**. WBA is currently collecting information in response to the agencies' questions. If you wish to discuss the ROI and/or to share information, please contact WBA Legal's Scott Birrenkott and Heather MacKinnon at wbalegal@wisbank.com

The ROI may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-06-20/pdf/2025-11280.pdf. *Federal Register*, Vol. 90, No. 117, 06/20/2025, 26293-26298.

Wisconsin Bankers ASSOCIATION

Compliance Journal

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Special Focus

Regulation X COVID-19 Emergency Mitigation Protections Rescinded

The Bureau of Consumer Financial Protection (CPFB) issued an interim final rule to rescind the final rule titled, Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (2021 COVID RESPA Rule), Regulation X. The interim final rule is effective **July 15, 2025**.

CFPB rescinded the 2021 COVID RESPA Rule for two reasons. First, the rule adopted temporary procedural safeguards related to mortgage foreclosure, temporarily permitted mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19 related hardship, and finalized certain temporary amendments to Regulation X related to the COVID-19 pandemic.

The rule stated that the temporary procedural safeguards do not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022. In addition, the rule stated that the temporary COVID-19 related live contact requirements would only be required until October 1, 2022. On April 10, 2023, then-President Biden signed a joint resolution of Congress declaring that "the national emergency declared by the finding of the President on March 13, 2020" related to the COVID-19 pandemic "is hereby terminated."

CFPB determined that it has good cause to remove, without prior notice and comment, language relating to the COVID-19 pandemic added by the 2021 COVID RESPA Rule, as prior notice and comment is unnecessary. Both the temporary additional early intervention live contact requirements and the temporary special COVID-19 loss mitigation procedural safeguards have been sunset by their own terms, and the COVID-19 Public Health Emergency expired May 11, 2023. Thus, borrowers and servicers are no longer utilizing these safeguards.

Moreover, CFPB proposed a rule in July 2024 that would provide additional flexibility to servicers to offer streamlined loss mitigation options when borrowers seek payment assistance. As part of the revised framework, the proposal would have removed the provisions implemented in response to the COVID-19 pandemic. CFPB stated it did not receive comments on the proposed removal of those provisions. As part of any future rulemaking, CFPB stated it would consider and address comments received in response to the 2024 proposed rule, including comments related to applying the loss mitigation lessons learned from the COVID-19 pandemic.

Second, CFPB stated it had determined that, in light of the end of the COVID-19 pandemic, the COVID-19 related regulations needlessly complicate Regulation X without commensurate benefits.

Revisions to Regulation X

Under the interim final rule, the following revisions have been made to Regulation X:

- Section 1024.31, Definitions:
  - Amended to remove the definition of "COVID-19 Related Hardship."
- Section 1024.39, Early Intervention Requirements for Certain Borrowers:
  - Paragraph (a) regarding Live Contact amended to remove the reference within to paragraph (e) regarding Temporary COVID-19 Related Live Contact.
  - Paragraph (e) Temporary COVID-19 Related Live Contact removed.

- Section 1024.41, Loss Mitigation Procedures:
    - Paragraphs (c)(2)(i) and (c)(2)(v)(A)(1) amended to remove references within to COVID-19 related loan mitigation options and modifications.
    - Paragraph (c)(2)(iv) regarding COVID-19 related loan mitigation options and paragraph (f)(3) regarding the prohibition on foreclosure referral removed.
- Official commentary to sections 1024.39, Early Intervention Requirements for Certain Borrowers; and section 1024.41, Loss Mitigation Procedures amended to remove references to COVID-19 related requirements.

To the extent loan policy includes procedures related to COVID-19 related loan mitigation options and modifications, COVID-19 related live contact, and the prohibition on foreclosure referral related to COVID-19, financial institutions should consider updating both policy and procedures to remove the 2021 COVID RESPA Rule related provisions.

The interim final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-16/pdf/2025-08643.pdf

CFPB Postpones Section 1071 Rule One Year

In light of court orders in ongoing litigation, the Bureau of Consumer Financial Protection (CFPB) issued an interim final rule to amend Regulation B to extend the compliance dates set forth in its 2023 small business lending rule (Section 1071), as amended in 2024. The interim final rule also makes other date-related conforming adjustments. The interim final rule is effective **July 18, 2025**.

Background

In 2010, Congress passed the Dodd-Frank Act. Section 1071 of that Act amended the Equal Credit Opportunity Act (ECOA) to require that financial institutions collect and report to CFPB certain data regarding applications for credit for women-owned, minority-owned, and small businesses. Section 1071 gave CFPB rulewriting authority to implement the requirements.

In 2023, CFPB issued a final rule to implement Section 1071 by adding subpart B to Regulation B (2023 final rule). In 2024, CFPB issued an interim final rule (2024 interim final rule) to extend the rule's compliance dates in accordance with orders issued by the United States District Court for the Southern District of Texas.

Challenges to the 2023 final rule filed by some lenders remain ongoing in three jurisdictions; each of those courts have stayed the rule's compliance deadlines for some market participants. Specifically, the United States Court of Appeals for the Fifth Circuit stayed the rule and tolled the compliance deadlines for plaintiffs and intervenors in that case, until further order of the court. The United States District Court for the Eastern District of Kentucky stayed the deadlines for plaintiffs to comply with the rule until further order of the court. And, the United States District Court for the Southern District of Florida stayed the rule and tolled the rule's compliance deadlines with respect to plaintiff and its members for the length of time that the Fifth Circuit stay order is in effect, subject to modification at any time by the court.

CFPB has noted in its litigation, it intends to initiate a new Section 1071 rulemaking and anticipates issuing a proposed rule as expeditiously as reasonably possible.

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One Year Extension of Compliance Dates

Under its interim final rule, CFPB extended the compliance dates set forth in the 2023 final rule, as amended by the 2024 interim final rule, by approximately one year. The rule also makes conforming adjustments. Thus, covered financial institutions must begin collecting data as follows:

Compliance Dates and Filing Deadlines

Compliance Tier	Original Compliance Date in 2023 Final Rule	Revised Compliance Date in 2024 Interim Final Rule	New Compliance Date	New First Filing Deadline
Highest Volume Lenders (Tier 1)	October 1, 2024	July 18, 2025	July 1, 2026	June 1, 2027
Moderate Volume Lenders (Tier 2)	April 1, 2025	January 16, 2026	January 1, 2027	June 1, 2028
Smallest Volume Lenders (Tier 3)	January 1, 2026	October 18, 2026	October 1, 2027	June 1, 2028

Covered financial institutions are permitted to continue using their small business originations from 2022 and 2023 to determine their compliance tier, or may instead use originations from 2023 and 2024, or from 2024 and 2025. Additionally, covered financial institutions are permitted to begin collecting protected demographic data required under the 2023 final rule 12 months before the new compliance date, in order to test procedures and systems. As illustrated in the chart above, the deadline for submitting small business lending data will remain June 1 following the calendar year for which data are collected.

Grace Period Policy Statement

CFPB also updated its Grace Period Policy Statement to reflect the revised compliance date. In the 2023 final rule, CFPB adopted a 12-month grace period during which CFPB, for covered financial institutions under its supervisory and enforcement jurisdiction, would not intend to assess penalties for errors in data reporting, and would intend to conduct examinations only to diagnose compliance weaknesses, to the extent that the institutions engaged in good faith compliance efforts. CFPB updated the Grace Period Policy Statement in the 2024 interim final rule, and in April of this year, CFPB announced that it will not prioritize enforcement or supervision actions with regard to entities outside the stay imposed by the Fifth Circuit in Texas Bankers Ass'n v. CFPB, mentioned above.

CFPB has again updated its Grace Period Policy Statement to reflect the new compliance dates set forth in the interim final rule, for the avoidance of any doubt as to its intentions regarding a grace period when the rule goes into effect.

As discussed in the 2023 final rule and the 2024 interim final rule, CFPB believes that a 12-month grace period for each compliance tier will give institutions time to diagnose and address unintentional errors without the prospect of penalties for inadvertent compliance issues, and may ultimately assist other covered financial institutions, especially those in later compliance tiers, in identifying best practices.

During the grace period, if CFPB identifies errors in a financial institution's initial data submissions, it does not intend to require data resubmission unless data errors are material. Further, CFPB does not intend to assess penalties with respect to unintentional and good faith errors in the initial data submissions. Any examinations of initial data submissions will be diagnostic and will help to identify compliance weaknesses. However, errors that are not the result of good faith compliance efforts by financial institutions, especially attempts to discourage applicants from providing data, will remain subject to the CFPB's supervisory and enforcement authority.

Special Focus

With respect to covered financial institutions subject to the CFPB's supervisory or enforcement jurisdiction that make good faith efforts to comply with the 2023 final rule, CFPB intends to provide a grace period to reflect the new compliance dates as follows:

Grace Periods

Financial Institutions Covered by Grace Period	Data Covered by Grace Period
Financial institutions with a compliance date of Tier 1, as well as any that make a voluntary submission for the first time for data collected in 2026	Data collected in 2026 (From Jul. 1, 2026 – Dec. 31, 2026) as well as a portion of data collected in 2027 (From Jan. 1, 2027 – Jun. 30, 2027)
Financial institutions with a compliance date of Tier 2, as well as any that make a voluntary submission for the first time for data collected in 2027	Data collected in 2027 (from Jan. 1, 2027 – Dec. 31, 2027)
Financial institutions with a compliance date of Tier 3, as well as any that make a voluntary submission for the first time for data collected in 2028	Data collected in 2027 (from Oct. 1, 2027 – Dec 31, 2027) as well as a portion of data collected in 2028 (from Jan. 1, 2028 – Sep. 30, 2028)

WBA anticipates other regulators will follow a similar grace period process or implement an approach similar to CFPB to allow for financial institutions to diagnose and address unintentional errors without the prospect of penalties for inadvertent compliance issues identified during initial implementation of the new rule.

Conclusion

CFPB has extended the compliance dates set forth in its 2023 small business lending rule (Section 1071), as amended by a 2024 interim final rule. CFPB also made other date-related conforming adjustments. The interim final rule, effective **July 18, 2025**, may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-06-18/pdf/2025-11244.pdf

Regulatory Spotlight

CFPB Withdraws and Rescinds Guidance Documents and Interpretive Rules.

The Bureau of Consumer Financial Protection (CFPB) announced the withdrawal of many guidance documents issued since CFPB assumed its functions in 2011. See the notice for the list of policy statements, interpretive rules, advisory opinions, and other guidance that has been withdrawn. The withdrawals are applicable as of **05/12/2025**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-12/pdf/2025-08286.pdf. *Federal Register*, Vol. 90, No. 90, 05/12/2025, 20084-20087.

CFPB announced the rescission of its May 2022 interpretive rule regarding the scope of State enforcement under section 1042 of the Consumer Financial Protection Act (CFPA) and related provisions. On **05/26/2022**, CFPB issued an interpretive rule clarifying that (1) section 1042 allows states to enforce any provision of CFPA; (2) the limitation on CFPB's authority in CFPA sections 1027 and 1029 does not constrain States' enforcement authority under section

1042; and (3) section 1042 does not restrict States from bringing concurrent enforcement actions with CFPB. The interpretations are improper for the reasons stated within the notice. As of **05/15/2025**, the interpretive rule published in the *Federal Register* on **05/26/20222**, is withdrawn. The interpretive rule is effective **05/15/2025**. The interpretive rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-15/pdf/2025-08641.pdf. *Federal Register*, Vol. 90, No. 93, 05/15/2025, 20565-20567.

CFPB Withdraws Proposed Rules.

CFPB announced the withdrawal of proposed interpretive rule, Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms. CFPB also announced it will not take any further action on the proposed interpretive rule. The proposed interpretive rule is withdrawn as of **05/15/2025**. The withdrawal may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-15/pdf/2025-08646.pdf. *Federal Register*, Vol. 90, No. 93, 05/15/2025, 20568.

CFPB announced the withdrawal of a proposed rule titled, Protecting Americans from Harmful Data Broker Practices, Regulation V. CFPB determined the legislative rulemaking is not necessary or appropriate at this time to address the subject matter of the proposed rule. CFPB also announced it will not take any further action on the proposed rule. The proposed rule published in the *Federal Register* **12/13/2024**, is withdrawn as of **05/15/2025**. The withdrawal may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-15/pdf/2025-08644.pdf. *Federal Register*, Vol. 90, No. 93, 05/15/2025, 20568-20569.

CFPB announced the withdrawal of a proposed rule titled, Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services, Regulation AA. CFPB determined the legislative rulemaking is not necessary or appropriate at this time to address the subject matter of the proposed rule. CFPB also announced it will not take any further action on the proposed rule. The proposed rule published in the *Federal Register* **01/14/2025**, is withdrawn as of **05/15/2025**. The withdrawal may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-15/pdf/2025-08645.pdf. *Federal Register*, Vol. 90, No. 93, 05/15/2025, 20569.

CFPB Issues Interim Final Rule to Rescind COVID-19 Mitigation Procedures.

CFPB issued an interim final rule to rescind the final rule, Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X. CFPB determined it has good cause to remove language relating to the COVID-19 pandemic added by the 2021 COVID RESPA Rule, without prior notice and comment. Both the temporary additional early intervention live contact requirements and the temporary special COVID-19 loss mitigation procedural safeguards have been sunset by their own terms, and the COVID-19 Public Health Emergency expired **05/11/2023**. The interim final rule is effective **07/15/2025**. Comments are due **06/16/2025**. The interim final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-16/pdf/2025-08643.pdf. *Federal Register*, Vol. 90, No. 94, 05/16/2025, 20791-20795.

CFPB Issues Direct Final Rule to Rescind State Notification Rule.

CFPB issued a direct final rule to rescind the procedures by which a state official must notify CFPB when the official takes an action to enforce the Consumer Financial Protection Act (CFPA). Pursuant to CFPB's policy of eliminating unnecessary regulatory burdens and rescinding rules that are not necessary to effectuate Congress' statutes, CFPB is rescinding the regulations related to state notification codified at 12 CFR 1082.1. CFPB determined the regulations merely restate the notification requirements codified in CFPA section 1042(b). As such, the notification regulations are unnecessary and should be eliminated from the Code of Federal Regulations. The direct final rule is effective **07/21/2025**, unless significant adverse comments are received by **06/20/2025**. The direct final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-21/pdf/2025-08640.pdf. *Federal Register*, Vol. 90, No. 97, 05/21/2025, 21691-21692.

CFPB Seeks Comment on Rescission of Past Amendments to Procedures and Registry Reporting.

CFPB proposes to rescind the amendments it adopted to the Rules of Practice for Adjudication Proceedings (Rules of Practice) on **02/22/2025**, and **03/29/2023**. The changes expanded parties' opportunities to conduct depositions in adjudication proceedings and made amendments concerning timing and deadlines, the content of answers, the

Wisconsin Bankers ASSOCIATION

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Special Focus

July Effective Date for Inflation Adjustments to Regulation CC and Other Reminders

Recently, Regulation CC was amended to adjust certain dollar amounts of what must be made available to customers from a deposit to account for inflation. While this was a regular and anticipated update, the update provides an opportunity to discuss the changes and how they may apply to a bank's funds availability policy and check hold procedures. This is also an opportunity to discuss Regulation CC change in policy notification requirements, as well as a separate topic, being that of ensuring that bank's funds availability policy reflects its actual practice. In some circumstances, banks may have a practice that do not match their funds availability policy. This article will discuss Regulation CC from the perspective of inflation adjustments, change in policy notifications, and accuracy of funds availability policies.

Inflation Adjustments

Every five years, the agencies amend Regulation CC to adjust for inflation dollar amounts relating to availability of funds. In May of 2024, the Board of Governors of the Federal Reserve System (FRB) and the Bureau of Consumer Financial Protection (CFPB) (collectively, the agencies) issued a final rule to amend Regulation CC with inflation adjustments. The effective date for the adjustments is **July 1, 2025**. However, banks are permitted to implement the changes sooner if so desired.

The inflation adjustments for 2025 are as follows:

- The first $225 becomes $275.
  - Regulation CC requires the first $100 of a deposit made by check be made available on the next business day. This requirement, often referred to as the "first $100" rule, was adjusted to $200 in 2011, then again to $225 in 2020, and will now become $275 in 2025.
  - Note that while the amount to be made available has been updated over the years, when reviewing Regulation CC, particularly the commentary to the regulation, this amount may still be referred to as "$100" despite the adjustments made for inflation as discussed.
- The $450 for non-next day items becomes $550.
  - Regulation CC provides that cash withdrawals from local and non-local checks need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule, but currently, at least $450 of the deposit must be made available for cash withdrawal before 5:00 p.m. This amount increases to $550 in 2025.
  - Note that this $550 is in addition to the $275 available pursuant to the requirements above.
- The $5,525 of the "large deposit" exception hold, "new account" exception hold, and the "repeated overdraft" exception hold becomes $6,725.
  - Regulation CC currently permits an exception hold on large deposits in excess of $5,525, which becomes $6,725 in 2025.
  - Regulation CC currently permits funds to be held for new accounts in excess of $5,525, which becomes $6,725 in 2025.
  - Regulation CC currently permits when an account is repeatedly overdrawn, as defined by Regulation CC, for funds to be held in excess of $5,525, which becomes $6,725 in 2025.
- As of July 1, 2025, the amounts for civil liability in an individual action shall not be greater than $1,350 and $672,950 for class action.

Special Focus

Inflation Adjustments Impact Upon Change in Policy Notifications

As a result of the inflation adjustments, banks should be mindful that it may require change in funds availability policy notification to holders of consumer accounts. Regulation CC requires notice to holders of consumer accounts at least 30 days before implementing a change to the bank's funds availability policy regarding applicable accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation. Meaning that 30-day advance notice is required for any change, except for changes that will make funds available to the customer sooner. For situations where funds will become available sooner, the bank must still provide notice to holders of consumer accounts, but it must be within 30 days after the change is implemented. Because the inflation adjustments covered above mean that more funds are available to the customer sooner, the change will expedite availability. Thus, holders of 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.

Banks should also review any hold notice to identify whether the notice has preprinted language which references a dollar amount that will change because of the inflation adjustments. For example, a hold notice which has the first $5,525 dollar amount listed within the preprinted language of the notice will no longer be accurate and should instead read as $6,725.

Regulation CC also requires that a bank post in a conspicuous place in each location where bank employees receive deposits to consumer accounts a notice which sets forth the time periods applicable to the availability of funds deposited in a consumer account. Banks may need to update language within its posted availability policy. For example, if the bank has within the posted policy a reference to $225 being made available on the next business day, the posted policy will need to be updated to reflect the adjusted $275 amount.

Reminder Regarding Funds Availability Policies

As discussed in the introduction, banks should be mindful of situations where their funds availability policy differs from their practice. A bank's funds availability disclosure must reflect the availability policy followed by the bank in most cases, even though the bank may in some cases make funds available sooner or impose a longer delay.

Regulation CC requires a bank to provide a disclosure describing its policy as to when funds deposited in an account are available for withdrawal. This disclosure must reflect the policy followed by the bank in most cases. For example, consider a bank which has a policy of next day availability. However, in practice, this bank generally does not delay availability and instead provides same day availability. In this case, the bank's disclosure and policy does not match its actual practice. If this 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 the availability policy that it follows in most cases, a 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 disclosure, those customers must receive disclosures that reflect the longer applicable availability periods.

In either case, a bank's disclosure should reflect its policy, which should be consistent with practice. In the scenario that some customers may receive sooner availability of funds, despite a policy to the contrary, it is important to note that sooner availability in

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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 those disclosures should reflect the bank's actual practices. Another way to consider it is that the whole purpose of a disclosure, in this case the funds availability policy, is for the customer to receive accurate information. If the funds availability policy does not match the bank's actual practice, it is not serving that purpose, or meeting the requirements of Regulation CC.

Conclusion

Banks should be preparing for the **July 1, 2025**, effective date of the inflation adjustments to Regulation CC regarding the amounts to now be made available to customers from a deposit. Banks should be sure to review hold notices and funds availability lobby postings to ensure the adjusted amounts are incorporated, as applicable. Change in policy notifications need be shared with holders of consumer accounts within 30 days after the change is implemented. This update may also be an opportunity for the bank to review its policy and practice to ensure the bank's funds availability policy accurately reflects the actual availability customers receive.

CFPB Withdraws Guidance, Interpretive Rules, Policy Statement, and Advisory Opinions

In a notice recently published in the *Federal Register*, the Bureau of Consumer Financial Protection (CFPB) announced the withdraw of many guidance documents issued since CFPB assumed its functions in 2011. The withdrawals are applicable **May 12, 2025**.

The action was in response to Executive Order 13891 which directed agencies to not issue guidance documents to attempt to create new rights or obligations binding on persons or entities outside the Federal government. Agencies were instead instructed to impose legally binding requirements on the public only through regulations and adjudications, and only after appropriate process, except as otherwise authorized.

CFPB has issued a significant amount of guidance since it was established, much of which has taken the form of guidance documents, interpretive rules, advisory opinions, and policy statements. CFPB leadership has conducted an initial review of guidance documents and will continue to review all guidance documents to determine whether they should ultimately be retained. However, CFPB stated in the notice that it has determined the guidance listed below should not be enforced or otherwise relied upon by CFPB while the review is ongoing.

Policy Statements

1. Policy Statement on No Action Letters (Jan. 10, 2025)
2. Policy Statement on Compliance Assistance Sandbox Approvals (Jan. 10, 2025)
3. Statement of Policy Regarding Prohibition on Abusive Acts or Practices (Apr. 12, 2023)
4. Statement on Enforcement and Supervisory Practices Relating to the Small Business Lending Rule Under the Equal Credit Opportunity Act and Regulation B (May 31, 2023)
5. Statement on Supervisory and Enforcement Practices Regarding the Remittance Rule in Light of the COVID-19 Pandemic (Apr. 10, 2020)
6. Disclosure of Consumer Complaint Narrative Data (Mar. 24, 2015)
7. Disclosure of Consumer Complaint Data (Apr. 10, 2013)
8. Disclosure of Certain Credit Card Complaint Data (Jun. 22, 2012)

Interpretive Rules

1. Use of Digital User Accounts to Access Buy Now, Pay Later Loans (May 31, 2024)
2. Limited Applicability of Consumer Financial Protection Act's 'Time or Space' Exception to Digital Marketers (Aug. 17, 2022)
3. The Fair Credit Reporting Act's Limited Preemption of State Laws (Jul. 11, 2022)
4. Authority of States to Enforce the Consumer Financial Protection Act of 2010 (May 26, 2022)

5. Examinations for Risks to Active-Duty Servicemembers and Their Covered Dependents (Jun. 23, 2021)
6. Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity (Mar. 16, 2021)
7. Bulletin clarifying mortgage lending rules to assist surviving family members (Jul. 8, 2014)

Advisory Opinions

1. Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work (Jan. 15, 2025)
2. Fair Credit Reporting; File Disclosure (Jan. 23, 2024)
3. Debt Collection Practices (Regulation F); Deceptive and Unfair Collection of Medical Debt (Oct. 4, 2024).
4. Fair Credit Reporting; Background Screening (Jan. 23, 2024)
5. Truth in Lending (Regulation Z); Consumer Protections for Home Sales Financed Under Contracts for Deed (Aug. 23, 2024)
6. Consumer Information Requests to Large Banks and Credit Unions (Oct. 16, 2023)
7. Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt (May 1, 2023)
8. Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports (Jul. 12, 2022)
9. Debt Collection Practices (Regulation F); Pay-to-Pay Fees (Jul. 5, 2022)
10. Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements (May 18, 2022)
11. Fair Credit Reporting; Name-Only Matching Procedures (Nov. 10, 2021)
12. Truth in Lending (Regulation Z); Earned Wage Access Programs (Dec. 10, 2020)
13. Truth in Lending (Regulation Z); Private Education Loans (Dec. 10, 2020)

Other Guidance

1. Consumer Financial Protection Circular 2024-06: Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment Decisions (Nov. 12, 2024)
2. Consumer Financial Protection Circular 2024-05: Improper Overdraft Opt-in Practices (Oct. 2, 2024)
3. Consumer Financial Protection Circular 2024-04: Whistleblower protections under CFPA Section 1057 (Aug. 9, 2024)
4. Consumer Financial Protection Circular 2024-03: Unlawful and unenforceable contract terms and conditions (Jun. 21, 2024)
5. Consumer Financial Protection Circular 2024-02: Deceptive marketing practices about the speed or cost of sending a remittance transfer (Apr. 17, 2024)
6. Consumer Financial Protection Circular 2024-01: Preferencing and steering practices by digital intermediaries for consumer financial products or services (Mar. 12, 2024)
7. Consumer Financial Protection Circular 2023-03: Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B (Apr. 17, 2024)
8. Consumer Financial Protection Circular 2023-02: Reopening deposit accounts that consumers previously closed (May 24, 2023)
9. Consumer Financial Protection Circular 2023-01: Unlawful negative option marketing practices (Jan. 30, 2023)
10. Consumer Financial Protection Circular 2022-07: Reasonable investigation of consumer reporting disputes (Nov. 23, 2022)
11. Consumer Financial Protection Circular 2022-06: Unanticipated overdraft fee assessment practices (Nov. 7, 2022)
12. Consumer Financial Protection Circular 2022-05: Debt collection and consumer reporting practices involving invalid nursing home debts (Sep. 20, 2022)
13. Consumer Financial Protection Circular 2022-04: Insufficient data protection or security for sensitive consumer information (Sep. 6, 2022)
14. Consumer Financial Protection Circular 2022-03: Adverse action notification requirements in connection with credit decisions based on complex algorithms (Jun. 14, 2022)
15. Consumer Financial Protection Circular 2022-02: Deceptive representations involving the FDIC's name or logo or deposit insurance (Jun. 14, 2022)
16. Consumer Financial Protection Circular 2022-01: System of Consumer Financial Protection Circulars to agencies enforcing federal consumer financial law (Jun. 14, 2022)

17. Bulletin 2023-01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts (Mar. 23, 2023)
18. Bulletin 2022-06: Unfair Returned Deposited Item Fee Assessment Practices (Nov. 7, 2022)
19. Bulletin 2022-05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews (Mar. 28, 2022)
20. Bulletin 2022-04: Mitigating Harm from Repossession of Automobiles (Mar. 3, 2022)
21. Bulletin 2022-03: Servicer Responsibilities in Public Service Loan Forgiveness Communications (Mar. 1, 2022)
22. Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act (Jan. 20, 2022)
23. Enforcement Compliance Bulletin 2021-03: Consumer Reporting of Rental Information (Jul. 7, 2021)
24. Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity (Apr. 7, 2021)
25. Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance with the 2016 Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Jun. 30, 2017)
26. Bulletin 2016-03: Detecting and Preventing Consumer Harm from Production Incentives (Jan. 18, 2017)
27. Bulletin 2015-07 re: in-person collection of consumer debt (Dec. 16, 2015)
28. Bulletin 2015-02 re: Section 8 housing choice voucher homeownership program (May 11, 2015)
29. Bulletin 2014-02 re: marketing of credit card promotional APR offers (Sep. 3, 2014)
30. Bulletin 2014-01 re: FCRA requirement that furnishers conduct investigations (Feb. 27, 2014)
31. Bulletin 2013-09 re: the FCRA's requirement to investigate disputes and review "all relevant" information (Sep. 4, 2013)
32. Bulletin 2013-07 re: prohibition of unfair, deceptive, or abusive acts or practices in the collection of consumer debts (Jul. 10, 2013)
33. Bulletin 2013-01 re: indirect auto lending and compliance with the Equal Credit Opportunity Act (Mar. 21, 2013)
34. Bulletin 2012-09 re: FCRA's streamlined process requirement for consumers to obtain free annual reports (Nov. 29, 2012)
35. Bulletin 2012-08 re: implementation of the remittance rule (Regulation E, Subpart B) (Nov. 27, 2012)
36. Bulletin 2012-06 re: marketing of credit card add-on products (Jun. 27, 2011)
37. Bulletin 2012-04 re: lending discrimination
38. Bulletin 2012-02 re: the payment of compensation to loan originators (Apr. 2, 2012)
39. Bulletin 11-2 re: the Interstate Land Sales Full Disclosure Act

By way of explanation, CFPB stated in the notice that there were three independent reasons for the withdrawal of the above listed items, in particular: (1) as a commitment by CFPB to issue guidance only where necessary and to reduce compliance costs rather than increase costs, (2) to reduce its enforcement activities in light of the President's directive to deregulate and streamline bureaucracy; and (3) to the extent guidance materials or portions thereof go beyond the relevant statute or regulation, they are unlawful, which in turn undermines any reliance interest in retaining the guidance.

The notice may be viewed at: https://www.federalregister.gov/documents/2025/05/12/2025-08286/interpretive-rules-policy-statements-and-advisory-opinions-withdrawal

Regulatory Spotlight

Agencies Seek Comment on FFIEC 102 and 009 Reports.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) seek comment regarding an information collection titled, Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102). The FFIEC 102 is filed quarterly with the agencies and provides information for market risk institutions, defined as institutions that are subject to the market risk capital rule as incorporated into Subpart F of the agencies' regulatory capital rules. Comments are due **07/01/2025**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-05-02/pdf/2025-07631.pdf. *Federal Register*, Vol. 90, No. 84, 05/02/2025, 18893-18894.

Wisconsin Bankers ASSOCIATION

Compliance Journal

April 2025

Special Focus

Notice of Right to Cure Default – When Notice Need Be Provided

The Wisconsin Court of Appeals recently concluded that the notice of right to cure default procedures under the Wisconsin Consumer Act are not preempted by the National Bank Act. Given that conclusion, WBA Legal thought it was good time for a refresher of those sections of Wisconsin law. For more information about the recent Wisconsin Court of Appeals case, see last month's edition of the *WBA Compliance Journa*l.

The following is a summary of the scope of the Wisconsin Consumer Act (WCA or the Act), what is considered "default" under the Act due to nonpayment or nonperformance, what information need be included in a notice of right to cure default form, and steps involving a customer's right to cure a default.

Wisconsin Consumer Act – Scope

First enacted in 1973 and amended in 1984, 1996, 1997, and 2006, the WCA is an area of law meant to provide consumer safeguards by placing limitations on charges and requires certain disclosures, including disclosures about the right to cure default. The following statute chapters make up the Act:

- Chapter 421: Consumer Transactions, General Provisions and Definitions
- Chapter 422: Consumer Credit Transactions
- Chapter 423: Consumer Approval Transaction and Other Consumer Rights
- Chapter 424: Consumer Transactions, Insurance
- Chapter 425: Consumer Transactions, Remedies and Penalties
- Chapter 426: Consumer Transactions, Administration
- Chapter 427, Consumer Transactions, Debt Collection

In addition, the Wisconsin Department of Financial Institutions (DFI) has Administrative Code Chapter DFI-WCA which provides further interpretations of the WCA.

The WCA governs consumer loans and credit sales to individuals primarily for personal, family, or household purposes; where the amount financed is $25,000 or less; and the loan is not secured by a first lien real estate mortgage or equivalent security interest. The Act does not apply to business purpose loans, loans to organizations, consumer credit where the amount financed exceeds $25,000, loans secured by a first lien real estate mortgage or equivalent security interest, or to certain government loans (e.g., VA loans).

In 1997, the WCA was amended to generally exclude agricultural purpose loans from the Act with the exception of one provision which still applies. Pursuant to Wis. Stat. s. 422.210, a creditor is prohibited from charging a finance charge or fee for an agricultural credit transaction, unless the charge or fee is clearly disclosed in writing and agreed upon by the creditor and the customer. The term "agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person, other than an organization, which cultivates, plants, propagates or nurtures those agricultural products. The term includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof. See Wis. Stat. s. 421.301(4).

Special Focus

Default under WCA

Default is defined under the WCA. Under Wis. Stat. s. 425.103, default with respect to a consumer credit transaction can occur due to: (1) nonpayment of amounts required in accordance with the payment schedule of an agreement; or (2) as a result of nonperformance of an action otherwise agreed upon. The WCA further sets forth when creditors can consider a consumer credit transaction to be in default for either instance.

With respect to default based upon nonpayment, factors to consider include whether the credit transaction is closed-end or open-end, the timing of when payments are due, and the length of time a payment is outstanding. For nonpayment of amounts required by the terms of the agreement, default:

- For closed-end credit, where the interval between scheduled payments is two months or less is:
  - To have outstanding an amount that exceeds one full payment which has remained unpaid for more than ten days after the due date; or
  - The failure to pay the first or last payment within forty days of its due date.
- For closed-end credit, where the interval between scheduled payments is more than two months is:
  - To have outstanding all or any part of a scheduled payment for more than sixty days after its due date.
- For closed-end, single payment transaction is:
  - To have all or any part of the payment unpaid for more than forty days after its due date.
- For open-end credit, is:
  - The failure to pay when due on two occasions within any twelve-month period.

When identifying outstanding amounts for purposes of determining default by nonpayment, the outstanding amounts may not include any delinquency or deferral charges and are to be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due.

Default under the WCA due to a customer's nonperformance means the breach of any covenant which materially impairs the condition, value, protection of or the bank's rights in any collateral. Also, the breach of any covenant which materially impairs the customer's ability to pay when due.

Lenders should know the terms of their WCA-governed credit agreements, including any covenant or agreement made by the customer. Knowing how default is incorporated within such agreements helps lenders better determine what actions result in default and how the bank has contracted for its enforcement of the terms. Many times, default provisions of a WCA-governed credit agreement include language which incorporates the timing, actions, and notice components of Chapter 425 notice of right to cure default provisions.

Notice of Right to Cure Default

If the bank believes the customer is in default based upon the above standards, a written notice of the alleged default is to be given, and where applicable, the customer is given a right to cure the default.

The notice given under Wis. Stat. s. 425.104 must contain the: name, address, and telephone number of the creditor; a brief identification of the consumer credit transaction; a statement of the nature of the alleged default; a clear statement of the total payment,

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including an itemization of any delinquency charges, or other performance necessary to cure the alleged default; the exact date by which the amount must be paid or performance tendered; and the name, address, and telephone number of the person to whom any payment must be made, if other than the creditor.

If the consumer credit transaction involves multiple customers, one copy of the notice is sufficient if the customers reside in the same last known address at the time the notice is given and if the notice is addressed to all such customers. In all other instances, a separate notice must be sent to each consumer. A copy of the notice should also be sent to co-signers (e.g., guarantors, endorsers, etc.). When providing notice, the notice of the right to cure default is deemed to have been given on the date of the mailing. See Wis. Stat. s. 425.104.

Right to Cure Default

Generally speaking, the customer has the right to cure a default. The customer may cure the default as identified in the notice of right to cure default during a 15-day period after the notice was given. The customer may cure the default during the 15-day period by paying unpaid installments, without acceleration, plus any delinquency or deferral charges, and by tendering performance necessary to cure any other default.

The default is cured on the date of mailing or personal delivery of the amount due. For this reason, it is recommended that a bank wait a reasonable time after the 15-day cure period in the event the customer cured the default by mail on the 15th day. In accordance with Wis. Stats. s. 425.105(2), the act of curing a default restores to the customer the customer's rights under the agreement as though no default had occurred.

Until the expiration of the 15-day cure period, the bank may not accelerate the obligation, may not commence any legal proceedings, and may not demand to take possession of any collateral, other than voluntary surrender. The steps for voluntary surrender are beyond the scope of this article and are not included in this discussion.

There are occasions when the right to cure a default does not exist and the notice of right to cure default is not required to be provided. In particular, under Wis. Stat. s. 425.105(3), a right to cure default does not exist and the notice of right to cure is not required if twice in the preceding twelve months: (a) the customer was in default on the same transaction or open-end credit plan; (b) the bank gave the notice of right to cure; and (c) the customer cured the previous default.

Conclusion

The sections of Chapter 425 regarding default, the notice of right to cure default, and the timing and procedures surrounding the cure of default are established procedures. However, occasional refreshers of the default cure requirements under the WCA are helpful for banks when reviewing collection practices. Before pursuing an action in court for enforcement of creditor rights under a consumer credit agreement, banks need to be sure to first review whether right to cure default provisions were met, as applicable. Failure to do so may result in the court dismissing bank's claim due to the failure to comply with the right to cure default provisions under the WCA.

Wisconsin Statutes may be viewed at: https://docs.legis.wisconsin.gov/statutes/prefaces/toc

Wisconsin Administrative Code may be viewed at: https://docs.legis.wisconsin.gov/code/admin_code

Wisconsin Bankers ASSOCIATION

Compliance Journal

March 2025

Special Focus

Compliance Date Postponed Again for Certain Portions of FDIC Part 328 Rule.

The Federal Deposit Insurance Corporation (FDIC) has announced the postponement of the mandatory compliance date of Part 328.4 and 328.5 of its final advertising rule until **March 1, 2026**. Section 328.4 sets forth requirements of an official digital sign on automated teller machines (ATMs) and like devices. Section 328.5 includes signage requirements of digital deposit-taking channels. The delay is to allow additional time for implementation of the new signage and to resolve questions meant to alleviate customer confusion.

On December 20, 2023, FDIC adopted a final rule that, among other things, amended FDIC's sign and advertisement of membership requirements for insured depository institutions (IDIs). The amendments made by the final rule took effect on April 1, 2024; however, full compliance with the amendments was delayed to January 1, 2025. On October 17, 2024, full compliance with the amendments was delayed to May 1, 2025.

As mentioned above, FDIC has further postponed the compliance date for the requirement to display the FDIC official digital sign on an IDI's digital channels, as well as on the screen of an IDI's ATMs and like devices. During this time, FDIC will continue to review the feedback received regarding implementation issues and potential consumer confusion that may result from requirements related to the display of the digital sign. After completing its review, FDIC expects to propose changes to the regulation to address implementation concerns and potential sources of confusion.

FDIC acknowledges that some IDIs have implemented aspects of the final rule. However, aspects under section 328.5 to display the FDIC official digital sign on certain digital channel pages continue to generate questions regarding implementation. Compliance with other provisions in subpart A remains unchanged and generally is required by **May 1, 2025**. The announcement may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-03-11/pdf/2025-03790.pdf

Judicial Spotlight

WI Court of Appeals Concludes NBA Does Not Preempt WCA Notice of Right to Cure Default Requirements

The State of Wisconsin Court of Appeals (Court) recently concluded that the National Bank Act (NBA) does not preempt the Wisconsin Consumer Act (WCA) notice of right to cure default requirements. When the issue previously arose in Wisconsin, the Eastern and Western Districts were divided over whether the WCA provision is preempted. The Eastern District of Wisconsin in Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767, 776-77 (E.D. Wis. 2019), held that the WCA provision is not preempted, while the Western District of Wisconsin in *Lako v. Portfolio Recovery Associates*, No. 20-cv-355-wmc (W.D. Wis. Aug. 4, 2021), held that it is preempted.

As a result of the Court's recent decision, nationally-chartered banks need be aware of the applicability of the notice of right to cure default requirements under Wisconsin Statute Chapter 425 for loans subject to WCA.

WBA joined the amicus brief of the American Bankers Association (ABA), Bank Policy Institute (BPI), and the Wisconsin Chamber (Chamber) to be filed on behalf of the banking industry in the matter in *Bank of America, N.A. v. Jean-Pierre*

Wisconsin Bankers ASSOCIATION

Compliance Journal

February 2025



New Adminstration

For compliance officers and others who are responsible for mastering, planning, implementing, and training staff on regulations affecting both internal and external matters of a financial institution, the past several weeks have been very interesting times. Like a version of the playground game “Red Light Green Light,” we all are grappling with whether a recently published rule or guidance is effective (Green Light), or not (Red Light). Such matters are further complicated with ongoing lawsuits involving many rules and the status of several recently signed executive orders. Confused? Rest assured; you are not the only one.

What we currently know for certain is that agency figureheads are in the midst of being appointed, or nominated and approved, as the process which places new persons in leadership positions of the federal agencies plays out. This includes the appointment of Travis Hill as Acting Chairperson of the Federal Deposit Insurance Corporation (FDIC), the nomination of Jonathan McKernan to serve as the next Director of the Bureau of Consumer Financial Protection (CFPB), and the nomination of Jonathan Gould to serve as the Comptroller of the Office of Comptroller of the Currency (OCC). Currently, Russell Vought, who has been confirmed as Director of the Office of Management and Budget (OMB), is the CFPB Acting Director.

New Adminstration

Actions Involving CFPB

Recently, CFPB Acting Director Vought ordered CFPB employees to "cease all supervision and examination activity" and "stakeholder engagement" and further indicated he would not take CFPB's next drawdown of funding from the Federal Reserve. The full impact of these orders, and how long they will last, is unknown.

One recent effect playing out is how lawyers for the CFPB were able to respond in ongoing litigation involving the Section 1071 Small Business Data Collection and Reporting rule. In these actions, counsels for the involved banks and trade associations recently made their arguments to the court of how CFPB acted beyond its scope of authority in a capricious and arbitrary manner when finalizing the rule and of the need for the rule to be repealed and reproposed as a result. As a result of recent events, counsel for the CFPB did not present further arguments in defense of their rule. Such actions were not something previously experienced. It is expected the court will issue its decision regarding Section 1071 within the next two to six months.

Recent Executive Orders

Under the new administration, numerous executive orders have been issued. One of the most significant executive orders to compliance officers is titled, "Regulatory Freeze Pending Review," whereby government agencies may not propose or issue any rule, including sending it to the Office of the Federal Register (OFR), until a department or agency head reviews and approves the rule. The Director or Acting Director of the OMB has the ability to exempt any rule from the executive order deemed necessary to address emergency or other urgent situations. Rules which had been sent to OFR but not yet published are to be withdrawn for review and approval.

Additionally, the agencies are to consider postponing for 60 days the effective date of any rule that had been published in the *Federal Register* but had not yet taken effect for the purpose of reviewing any questions of fact, law, and policy that the rules may raise. During the 60-day period, where appropriate and consistent with applicable law, the agencies are to consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the rules postponed, and consider reevaluating pending petitions involving such rules. The 60-day period may be extended, where appropriate and consistent with applicable law. Use of the word "rule" within the executive order includes guidance, advanced notice of proposed rulemaking, notices, proposed and final rules.

Also of interest is the "Strengthening American Leadership in Digital Financial Technology" executive order. While promoting and protecting fiat currency, this order seeks to bring regulatory clarity of digital assets. For purpose of the order, "digital asset" refers to any digital representation of value that is recorded on a distributed ledger, including cryptocurrencies, digital tokens, and stablecoins. The order defines "Central Bank Digital Currency (CBDC)" as a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank. The term "blockchain" means any technology where data is:

- Shared across a network to create a public ledger of verified transactions or information among network participants;
- Linked using cryptography to maintain the integrity of the public ledger and to execute other functions;
- Distributed among network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and
- Composed of source code that is publicly available.

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The new order revokes the 2022 Executive Order 14067: "Ensuring Responsible Development of Digital Assets" and the Department of Treasury's "Framework for International Engagement on Digital Assets." Treasury was also ordered to rescind all policies, directives, and guidance issued pursuant to the 2022 order and framework.

The digital technology order establishes the "National Economic Council the President's Working Group on Digital Asset Markets" to be chaired by the Special Advisor for AI and Crypto. Within 30-days of the order, certain agencies are to identify all regulations, guidance documents, orders, or other items that affect the digital asset sector. Within 60 days, each are to submit recommendations to whether each identified regulation, guidance document, order, or other item should be rescinded or modified, or, for items other than regulations, adopted in a regulation. Within 180-days, a report is to be made to the President which is to recommend regulatory and legislative proposals that advance the policies established in the order. In particular, the report is to:

- Propose a Federal regulatory framework governing the issuance and operation of digital assets, including stablecoins, in the United States. The report is to consider provisions for market structure, oversight, consumer protection, and risk management.
- Evaluate the potential creation and maintenance of a national digital asset stockpile and propose criteria for establishing such a stockpile, potentially derived from cryptocurrencies lawfully seized by the Federal Government through its law enforcement efforts.

More is yet to come as this initiative continues to develop.

Customer Concerns Amid Regulatory Freeze

One impact of the recent actions discussed above, particularly in freezing activity at both United States Agency for International Development and the CFPB, is the raising of unfounded fears among the public. Particularly, fears of how these actions relate to many daily banking functions. WBA is aware that myths are spreading quickly on social media and in chat rooms about whether access to bank accounts will be restricted, or the government is taking money from personal bank accounts, or even that the FDIC will also "disappear," and deposit insurance will no longer be provided, among other concerns.

Compliance officers should work with frontline staff and others who engage with the public to be prepared to respond to these concerns as appropriate. Additionally, customers might have more specific questions regarding deposit insurance, such as wanting to know whether their bank is insured, how FDIC deposit insurance works, and what accounts are covered. Even with this information, customers may remain anxious. The following ideas have been provided for compliance officers to assist frontline bankers in their efforts of addressing these questions, and reassuring customers of the safety and reliability of the banking system.

Customer Questions and Concerns

When a customer has questions regarding deposit insurance, there are many resources available to assist them, such as those provided at the end of this article. However, what about a situation where a customer comes into the bank out of fear, looking to close out their accounts and leave the bank with cash? In these situations, there are ways to reassure the customer that the safest place for their money is with a bank such as the following talking points:

- Emphasize the financial strength of your bank, and the fact that banks are the safest place for their money.
- Reinforce the fact that FDIC insurance is not being eliminated, and customers' deposits are protected by FDIC insurance. In the 90-year history of the FDIC, no one has ever lost a penny of an insured deposit.
- The FDIC insures up to $250,000 in eight separate account categories per depositor per bank.
- The FDIC is completely funded by the banking industry and backed by the full faith and credit of the United States government. The FDIC is stronger than ever before.
- The FDIC insurance fund and all of the agency's costs come entirely from premiums paid by banks, for which every bank pays risk-based premiums every quarter to support the fund.
- In total, more than 99 percent of banks are "highly capitalized" and far above the most stringent regulatory standards.

It may also help to personalize any explanation of FDIC deposit insurance coverage to the specific customer expressing concern. For example, if the customer has both personal accounts and business accounts at the bank, frontline staff

could explain how FDIC deposit insurance coverage would apply to the customer's personal accounts separate from the business accounts. Also from a more personalized standpoint, it may also help the customer to hone in on the first bullet point above and offer some perspective on the strength of your bank in particular and offer reassurances as to your bank's strength. This messaging should of course be confirmed with management, and compliance officers should make certain frontline staff respond to customer concerns with the appropriate bank-specific message so there is unity in messaging by frontline staff.

It's also important to understand that any legal advice, or specific calculations, should come directly from FDIC. For this, bankers can direct customers to FDIC's Electronic Deposit Insurance Estimator to give an estimated calculation as to customer's insured amounts. While only FDIC can make guarantees as to the customer's coverage, bank can use these tools to reassure the customer and provide FDIC's contact information should the customer seek additional assurances.

Despite all of the reassurances and information provided, a customer may remain determined to withdraw their funds. In such an event, compliance officers should ensure bank management, such as branch manager or others, be involved, and discuss this matter with the customer. If the customer is set on withdrawing large amounts of cash, bank's security officer should also be involved in order to explain the risks of handling large amounts of cash and be present to ensure that bank's security procedures are followed. Advance notice of large withdrawals may be necessary so that bank can arrange a special cash order.

Working with Troubled Borrowers

From a broader business of banking perspective, banks should be prepared, as they have been during past moments of customer uncertainty, to help federal workers, non-profit organizations, and other similar customers who may be temporarily impacted by funding freezes. Bank staff should also be prepared to handle increased stress and concerns from immigrant customers about access to their bank accounts. Compliance officers can work with bank loan operations areas to incorporate modifications or other loan deferment arrangements, if applicable or necessary.

Conclusion

As a final point, WBA will continue to track, monitor, and stay involved as new developments occur. Publicly, WBA is speaking carefully about the recent CFPB actions as you may have heard in a recent interview by Rose on Wisconsin Public Radio on February 10. WBA will continue its strong advocacy with regulators and Congress in pushing back on the overreach that has occurred from CFPB against the industry. If CFPB were refocused to align with what WBA believes its original intent to be, which is the oversight and examination of non-regulated entities engaging in "banking" activities, then perhaps the agency would be of value.

The banking industry has always acted in ways to protect consumers and will continue to do so whether CFPB exists or not. WBA believes this latter message is important to repeat with customers and the public as needed, rather than allowing individuals to start another myth that somehow bankers oppose consumer protection.

Please let us know how WBA can further help you and your team during this period of rapid change.

Resources

Regulatory Freeze Pending Review Executive Order:
https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/

Strengthening American Leadership in Digital Financial Technology Executive Order:
https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/

Rose on Wisconsin Public Radio Interview:
https://www.wpr.org/news/national-economic-policy-wisconsin-banks

Deposit Account Coverage including Brochures and Videos: https://www.fdic.gov/resources/deposit-insurance/financial-products-insured/

New Adminstration

FDIC Electronic Deposit Insurance Estimator: https://edie.fdic.gov/index.html

FDIC Support Center: https://ask.fdic.gov/fdicinformationandsupportcenter/s/?language=en_US

Bank Employee's Guide to Deposit Insurance: https://www.fdic.gov/resources/deposit-insurance/diguidebankers/index.html

WBA Consumer Resources including FDIC Deposit Insurance Infographic: https://www.wisbank.com/resources/consumer-resources/

Regulatory Spotlight

Agencies Adjust CMPs for Inflation

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. The final rule is effective **01/13/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-13/pdf/2025-00419.pdf. *Federal Register*, Vol. 90, No. 7, 01/13/2025, 2607-2609.

The Federal Deposit Insurance Corporation (FDIC) issued a notice to provide the maximum civil money penalties (CMPs) as adjusted for inflation. The adjusted maximum amounts of CMPs in the notice are applicable to penalties assessed after **01/15/2025**, for conduct occurring on or after **11/02/2015**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-14/pdf/2025-00643.pdf. *Federal Register*, Vol. 90, No. 8, 01/14/2025, 3212-3213.

The Financial Crimes Enforcement Network (FinCEN) issued a final rule to reflect inflation adjustments to its civil monetary penalties (CMPs) as mandated by the Federal Civil Penalties Inflation Adjustment Act, as amended. The final rule adjusts certain maximum CMPs within the jurisdiction of FinCEN to the amounts required by the Act. The final rule is effective **01/17/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-17/pdf/2025-01374.pdf. *Federal Register*, Vol. 90, No. 11, 01/17/2025, 5629-5630.

The Federal Housing Finance Agency (FHFA) issued a final rule to amend its Rules of Practice and Procedure and other regulations to adjust each civil money penalty (CMP) within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The final rule is effective **01/16/2025** and is applicable beginning **01/15/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-16/pdf/2025-00775.pdf. *Federal Register*, Vol. 90, No. 10, 01/16/2025, 4607-4609.

The Farm Credit Administration (FCA) issued a final rule to implement inflation adjustments to civil money penalties (CMPs) that FCA may impose or enforce pursuant to the Farm Credit Act, as amended, and pursuant to the Flood Disaster Protection Act, as amended by the National Flood Insurance Reform Act, and the Biggert-Waters Flood Insurance Reform Act, as amended. The final rule is effective **01/15/2025**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00963.pdf. *Federal Register*, Vol. 90, No. 9, 01/15/2025, 3617-3618.

The Farm Credit System Insurance Corporation (FCSIC) issued a final rule to implement inflation adjustments to civil money penalties (CMPs) that FCSIC may impose under the Farm Credit Act, as amended. The adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act. The final rule is effective **01/14/2025**. The adjusted amounts of CMPs are applicable to penalties assessed on or after **01/15/2025**, for conduct occurring on or after **11/02/2015**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2025-01-14/pdf/2025-00574.pdf. *Federal Register*, Vol. 90, No. 8, 01/14/2025, 2922.

The Commodity Futures Trading Commission (CFTC) issued a final rule to amend its rule that governs the maximum amount of civil monetary penalties (CMPs) imposed under the Commodity Exchange Act (CEA), to adjust for inflation.

Wisconsin Bankers ASSOCIATION

Compliance Journal

January 2025

Special Focus

2025 Adjusted Regulatory Thresholds and Limits

As we enter 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 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 **$2.717** billion, up from $2.640 billion; and
  - o The exemption threshold for certain insured depository institutions with assets of $10 billion or less is adjusted to **$12.179** billion, up from $11.835 billion. https://www.govinfo.gov/content/pkg/FR-2024-12-23/pdf/2024-30653.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 **$26,968**.

  - o The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,348**.

  - 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 **$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

Regulation C, HMDA

- The asset-size threshold to be exempt from collecting HMDA data in 2023 is adjusted to **$58 million**, up from $56 million. https://www.govinfo.gov/content/pkg/FR-2024-12-27/pdf/2024-30652.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:
  - Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than **$1.609** billion; and
  - Intermediate small bank means a small bank with assets of at least **$402 million** as of December 31 of both of the prior two calendar years and less than **$1.609 billion** as of December 31 of either of the prior two calendar years. https://www. govinfo.gov/content/pkg/FR-2024-12-30/pdf/2024-30849.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/2024/bulletin-2024-36.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 **0.20%**. https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/HistoricalEscrowInterestRates.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 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

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Special Focus

- 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

- Beginning January 1, 2025, 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.
  - **70 cents** per mile driven for business use, up 3 cents from 2024;
  - **21 cents** per mile driven for medical or moving purposes for qualified active-duty members of the Armed Forces, the same as in 2024; and
  - **14 cents** per mile driven in service of charitable organizations; the same as in 2024.

  https://www.irs.gov/newsroom/irs-increases-the-standard-mileage-rate-for-business-use-in-2025-key-rate-increases-3-cents-to-70-cents-per-mile

Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information

In a final rule released January 7, 2025, the Bureau of Consumer Financial Protection (CFPB) amended Regulation V concerning medical information. Regulation V implements the Fair Credit Reporting Act (FCRA). As further explained below, the FCRA prohibits creditors from considering medical information in credit eligibility determinations. Through the final rule, CFPB has removed the regulatory exception which had permitted creditors to obtain and use information on medical debts. The final rule also provides that a consumer reporting agency (CRA) generally may not furnish to a creditor a consumer report containing information on medical debt that the creditor is prohibited from using. The final rule is effective sixty days from publication of the rule in the *Federal Register*.

The following is a summary of the changes made under the final rule.

Background

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (FACT Act) which, among other things, limited the use and sharing of medical information in the financial system by amending FCRA. In particular, FCRA section 604(g) generally prohibited creditors from obtaining and using medical information in connection with any determination of the consumer's eligibility or continued eligibility for credit. The statute contains no prohibition on creditors obtaining or using medical information for other purposes that are not in connection with a determination of the consumer's eligibility or continued eligibility for credit.

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FCRA section 604(g)(5)(A) also required the federal banking supervisory agencies to prescribe regulations that permit transactions that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with congressional intent to restrict the use of medical information for inappropriate purposes. In November 2005, the agencies issued a rule which provided exceptions for the limited circumstances when a creditor may use medical information. The exception was referred to as the "Financial Information Exception."

Under the Financial Information Exception, a creditor was allowed to obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility or continued eligibility for credit if:

1. The information was the type routinely used in making credit eligibility determinations, such as information related to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the loan proceeds;

2. The creditor used the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

3. The creditor does not take the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis into account as part of any such determination.

The Financial Information Exception was found in section 1022.30(d) of Regulation V. The section also had examples to help illustrate how medical information may be used in connection with the exception.

Regulation V also provides a separate list of nine specific exceptions under which a creditor may obtain and use medical information in the determination of a consumer's eligibility or continued eligibility for credit. The list of specific exceptions is found in Regulation V section 1022.30(e), and includes the following:

1. To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate, or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as a legal representative for a consumer based on an asserted medical condition or event.

2. To comply with applicable requirements of local, State, or Federal laws.

3. To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is designed to meet the special needs of consumers with medical conditions and is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program.

4. To the extent necessary for purposes of fraud prevention or detection.

5. In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of the loan and the use of the proceeds.

6. Consistent with safe and sound banking practices, if the consumer or the consumer's legal representative requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor.

7. Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer.

8. To determine the consumer's eligibility for the triggering of, or the reactivation of, a debt cancellation contract or debt suspension agreement, if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement.

9. To determine the consumer's eligibility for the triggering of, or the reactivation of, a credit insurance product, if a medical condition or event is a triggering event for the provision of benefits under the product.

Final Rule Changes to Regulation V

The final rule made a number of changes to Regulation V regarding the use of medical information. First, the final rule establishes a definition of "medical debt information" as the term was not previously defined. Under new paragraph (j) to section 1022.3, the final rule defines "medical debt information" to mean medical information that pertains to a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to such person's agent or assignee, for the provision of such medical services, products, or devices. Medical debt information includes but is not limited to medical bills that are not past due or that have been paid.

Next, the final rule eliminates section 1022.30(d) to remove the Financial Information Exception. As a result, a creditor is no longer able to consider medical information related to a consumer's medical debt in connection with a determination of the consumer's eligibility or continued eligibility for credit unless one of the specific exceptions under section 1022.30(e) applies.

While CFPB eliminated the Financial Information Exception, CFPB retained a portion of the exception related to income, benefits, and purpose of the loan by adding a new specific exception to the list within Regulation V section 1022.30(e). The final rule creates the following as section 1022.30(e)(1)(x), to the specific exceptions listed above:

10. So long as the conditions in this section are met:

    a. The medical information is included in the transaction information of an account for a consumer financial product or service described in 12 CFR 1033.111(b)(1) through (3) and accessed with the consumer's authorization; or the medical information relates to income, benefits, or the purpose of the loan, including the use of proceeds. Medical information relating to income and benefits includes, for example, the dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment. The reference of 1033.111 within this element is for a covered consumer financial product or service under the section 1033, Required Rulemaking on Personal Financial Data Rights.

    b. The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction.

    c. The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of the determination of the consumer's eligibility, or continued eligibility, for credit.

As mentioned above, Regulation V has examples which illustrate exceptions regarding the use of medial information. With the removal of section 1022.30(d), the final rule also eliminated the examples within that section. However, Regulation V also has illustrative examples within section 1022.30(e) regarding the list of specific exceptions under which a creditor may obtain and use medical information in the determination of a consumer's eligibility or continued eligibility for credit. In the final rule, CFPB retained one example regarding medical information relating to income and benefits from the eliminated 1022.30(d) section and moved it to become a new example (Example 7) with the revised Regulation V 1022.30(e) section.

In addition, the final rule creates an example for the second specific exception listed above regarding using medical information to comply with applicable requirements of local, State, or Federal laws. The new example is intended to illustrate use of medical information in connection with Regulation Z ability-to-repay rules of sections 1026.43(c), 1026.34(a)(4), or 1026.51(a). The new example provides the following:

> A consumer applies for a mortgage loan subject to Regulation Z section 1026.43(c) or section 1026.34(a)(4), or an open-end (not home-secured) credit card account subject to Regulation Z section 1026.51(a). The application does not specifically request medical information, but the consumer provides unsolicited medical information on the application. The creditor or the card issuer is permitted under the Regulation V final rule paragraph 1022.30(e)(1)(ii) to use such medical information in connection with any determination of the consumer's eligibility, or continued

eligibility, for credit only to the extent required by the applicable Federal law and implementing regulation. For example, assume a consumer applies for a mortgage loan subject to Regulation Z ability-to-repay section 1026.43(c). Assume further that the creditor has not specifically requested medical information on the application, but the consumer provides information on a current debt obligation, such as a monthly medical payment plan, that is medical information. The creditor is permitted under the final rule to consider the existence and the amount of the medical payment plan as required in considering factors under Regulation Z 1026.43(c)(2), such as the current debt obligations, consumer's monthly debt-to-income ratio, and residual income, in making the repayment ability determination required under Regulation Z 1026.43(c)(1). In this circumstance, the creditor would not be required to independently verify the existence and amount of the monthly medical payment plan, as provided for under Regulation Z 1026.43(c)(3)(iii). See Regulation Z section 1026.43(c)(3), comment 43(c)(3)-6, describing a situation in which a consumer provides a creditor with information on a debt obligation that is not listed on a consumer report.

Further, CFPB set forth in the final rule that a creditor or card issuer is not permitted to obtain or use any medical information from a CRA to comply with the ability-to-repay rule under Regulation Z section 1026.43(c) for closed-end mortgages, the repayment ability rule under Regulation Z 1026.34(a)(4) for open-end, high-cost mortgages, or the ability-to-pay rule under Regulation Z section 1026.51(a) for open-end (not home-secured) credit card accounts, because the creditor or card issuer can comply with those rules using information provided by the consumer. The new example only relates to the specific exception identified as item two above, to comply with applicable requirements of local, State, or Federal laws. A creditor or card issuer may obtain and use medical information for purposes of Regulation Z's ability-to-repay or pay determinations pursuant to other specific exceptions listed in 1022.30(e), as applicable.

Lastly, the final rule also creates new Regulation V section 1022.38 regarding the duty of CRAs regarding medical debt information. Under the new section, a CRA may include medical debt information, as newly defined, in a consumer report furnished to a creditor only if the CRA has reason to believe the creditor intends to use the medical debt information in a manner not prohibited by Regulation V section 1022.30 and has reason to believe the creditor is not otherwise legally prohibited from obtaining or using the medical debt information, including by a State law that prohibits a creditor from obtaining or using medical debt information.

Conclusion

CFPB has released a final rule regarding the use of medical information within a consumer report. The final rule eliminates the Financial Information Exception formerly found in Regulation V section 1022.30(d) and revises the list of specific exemptions under section 1022.30(e) to include an exception related to income, benefits, and purpose of the loan so long as the conditions within the exception are met. The final rule also relocates an example relating to the income, benefits, and loan purpose exception from eliminated section 1022.30(d) to section 1022.30(e) and creates a new example to illustrate the specific exception related to use of medical information to comply with applicable requirements of local, State, or Federal laws under Regulation V section 1022.30(e)(1)(ii). In particular, the example helps illustrate compliance with ability-to-repay requirements under Regulation Z sections 1026.43(c) for closed-end mortgages, section 1026.34(a)(4) for open-end, high-cost mortgages, and section 1026.51(a) regarding open-end (not home-secured) credit card accounts.

The final rule also creates new section 1022.38 which prohibits a CRA from including medical debt information in consumer reports furnished to creditors unless the CRA has reason to believe the creditor will use the information only as permitted under Regulation V section 1022.30. Lastly, the final rule creates a definition of "medical debt information."

Banks should consider a review of underwriting procedures to ensure that it is not asking for or using medical information when not otherwise allowed for unless permitted by a specific exception under Regulation V section 1022.30(e). Bank should also consider how underwriting procedures may differ if an applicant were to voluntarily share such information in an application, such as illustrated under the income, benefits, and loan purpose exception example. That said, banks should be mindful that a complaint has been filed in a Texas court against CFPB regarding its rule by the Consumer Data Industry Association, a trade group for CRAs, and a credit union. The complaint challenges that CFPB lacks the authority to prohibit creditors from considering medical debt and that CFPB lacks authority to state what is to be included within a consumer report.

The final rule may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_med-debt-final-rule_2025-01.pdf

Reference Chart

Late Fees (Delinquency)		Default Rate (Interest Rate After Maturity)
1st Lien or 1st Lien Equivalent Mortgages on Borrower's Principal Dwelling: • Max of 5% of unpaid amount after at least 15 days. • May only be imposed once on the unpaid amount of any installment. Payments applied first to current installments. • Applies to loans for any purpose except primarily business or ag purpose loans and loans to corporations and limited liability companies. (§138.052(6), Wis. Stats.)	1st Lien or 1st Lien Equivalent Real Estate Loans ≤$25K for Personal, Family, Household or Agricultural use; not secured by 1-4 dwelling used as borrower's principal residence: • No specified amount, but 10 day grace period. (§428.102,103, Wis. Stats.)	1st Lien or 1st Lien Equivalent Mortgages on Borrower's Principal Dwelling: • Contract rate in effect before default. • Applies to loans for any purpose except primarily business or ag purpose loans and loans to corporations and limited liability companies. (§138.052(7), Wis. Stats.) (12 C.F.R. 1026.30)
Mobile Home Transactions ≤ $25K (except if secured by 1st lien or 1st lien equivalent on real estate): • Max of $10 or 5% of unpaid amount, whichever is less, after at least 10 days. • May only be imposed once on the unpaid amount of any installment. Payments are applied to current installments. (§422.203(1), Wis. Stats.)	High-Cost Mortgage Loans: • Max of 4% of past due payment. (12 C.F.R 1026.34(a)(8))	High-Cost Mortgage Loans: Interest rate cannot increase after default. (12 C.F.R. 1026.32(d)(4))
Wisconsin Consumer Act Closed End Credit: • Max of $10 or 5% of unpaid amount, whichever is less, after at least 10 days. • May only be imposed once on the unpaid amount of any installment. Payments are applied to current installments. (§422.203(1), Wis. Stats.)	Wisconsin Consumer Act Open-End Credit: Effective 02-01-1997 there are no longer any limitations for these types of loans; however, lenders are bound by the terms of their contracts.	WCA Loans: • Greater of 12% or annual rate of finance charge assessed on the loan. (§422.203(4), Wis. Stats.)

Reminder

Loans subject to the Wisconsin Consumer Act:

- Amount financed is $25,000 or less.
- Made primarily for personal, family or household purposes.
- Does not apply to loans secured by 1st lien or 1st lien equivalent mortgages.
- Effective 07-01-1998, WCA no longer applies to ag purpose loans except to the extent provided for in: §427,
- Wis. Stats., on debt collection practices; and §422.210, Wis. Stats., on disclosure of fees and charges.

However, lenders must bear in mind they are bound by the terms of their contracts.

This reference chart is not a complete description of applicable law and is accurate as of January 1, 2025. Refer to the Wisconsin statute section listed for further information, particularly as changes occur in the law.

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