Wisconsin Bankers ASSOCIATION

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Special Focus

Change to Federal Definition of "Hemp" Will Cause Some Hemp-Derived Cannabinoid Products to Become Illegal

The status of hemp has gone through some changes over recent years but ultimately settled into place as a legal commodity. As of publication of this article, under current federal and state law, "hemp" is defined based upon a delta-9-tetrahydrocannabinol (THC) concentration of up to 0.3 percent. However, a recent federal law which goes into effect **December 11, 2026** (and in part on November 12, 2026) will revise this definition. Once effective, the revised definition will cause some hemp-derived cannabinoid products currently on the market to become illegal under federal controlled substances laws.

The new law does not place any specific requirements upon banks. Theoretically, it also should not impact legitimate hemp growers or producers. Rather, it is aimed at closing a loophole which unintentionally legalizes certain cannabinoid products.

The definition of "hemp" is highly technical, and this article does not attempt to address every technical detail. However, the article will, at times, discuss and present highly technical definitions. It is not necessary that bankers understand every nuance of the technical details presented. That said, as the issue has impact on Bank Secrecy Act (BSA) programs, know-your-customer considerations, and overall banking business risk decisions, it is important to be aware of the changes. To that extent, this article is designed to provide an overview of what is changing, how the change interacts with Wisconsin law, and considerations on how to prepare.

Background

The current federal definition of "hemp" was enacted on a federal level through the 2018 Farm Bill and, on the state level, by 2019 Wisconsin Act 68 (Act 68), which WBA has written about extensively (see the September 2021 *WBA Compliance Journal* for WBA's most recent article on the matter). Under these laws, "hemp" is generally defined as the Cannabis sativa L. plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis. Hemp meeting this definition is exempt from federal and state controlled substances laws and is treated as a legal agricultural commodity. Since January 1, 2022, Wisconsin hemp growers have been subject to the U.S. Department of Agriculture (USDA) under the framework created by the 2018 Farm Bill. In this way, licensed and regulated farmers have been able to legally grow and process hemp.

The purpose of the 2018 Farm Bill and Act 68 was to legalize hemp and support farmers looking to grow the plant for fiber, seed, and other agricultural uses. However, because the definition measures only delta-9 THC, it created an unintended loophole. As a result, a market developed for intoxicating products derived from hemp in unexpected ways, such as hemp flower high in tetrahydrocannabinolic acid (THCA), delta-8 THC, and THC edibles and beverages, which were treated as legal because they met the delta-9 THC threshold.

Section 781 Changes to the Federal Definition

On November 12, 2025, the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (Public Law 119-37) was signed into law. Section 781 of Division B of that Act (Section 781) was intended to close the loophole described above.

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Very generally, Section 781 makes three changes to the federal definition of hemp:

- Applies the 0.3 percent threshold to total THC, including THCA, rather than to delta-9 THC alone;
- Expressly includes "industrial hemp," which is hemp grown for the use of non-cannabinoid portions of the plant (such as fiber and seed) and certain other specified purposes; and
- Expressly excludes certain hemp-derived cannabinoid (HDC) products.

Section 781 defines an HDC product as any intermediate or final product derived from hemp, other than industrial hemp, that contains cannabinoids in any form and is intended for human or animal use, such as through inhalation, ingestion, or topical application. Under Section 781, the following are excluded from the definition of hemp:

- HDC products containing cannabinoids that are not capable of being naturally produced by a cannabis plant;
- HDC products containing cannabinoids that are capable of being naturally produced by a cannabis plant but were synthesized or manufactured outside of the plant;
- Intermediate HDC products containing more than 0.3 percent combined total THC;
- Final HDC products containing more than 0.4 milligrams of combined total THC per container; and
- Viable seeds from a cannabis plant that exceeds 0.3 percent total THC.

The total THC thresholds include THCA, as well as any other cannabinoids that have, or are marketed to have, similar effects as THC, as determined by the Secretary of the U.S. Department of Health and Human Services. Section 781 also directed the U.S. Food and Drug Administration (FDA) to publish, within 90 days of enactment, lists of the relevant cannabinoids and additional information about the term "container." That deadline passed in February 2026. However, as of mid-October 2026, FDA had not published the lists.

In effect, products excluded from the definition of "hemp" are no longer exempt from the federal Controlled Substances Act (CSA) and are instead treated as marijuana under federal law. In practical terms, the 0.4 milligram per container limit is well below the amount of THC contained in a typical intoxicating hemp gummy or beverage, and most THCA flower is expected to exceed the total THC threshold. As a result, the change is expected to render most intoxicating hemp-derived products federally unlawful. Some non-intoxicating products, such as certain CBD products containing trace amounts of THC, may also be affected depending on their THC content.

Effective Dates

When passed in 2025, Section 781 was originally set to take effect 365 days after enactment, on November 12, 2026. However, on September 2, 2026, the Continuing Appropriations and Extensions Act, 2027 (Public Law 119-103) was signed into law. Section 2019 of Division B of that Act provides that, until December 11, 2026, the Section 781 amendments apply only to HDC products containing cannabinoids that are not capable of being naturally produced by a cannabis plant. As a result, the change takes effect in two stages:

- **November 12, 2026**: HDC products containing cannabinoids that cannot be naturally produced by a cannabis plant are excluded from the definition of "hemp."
- **December 11, 2026**: The remainder of Section 781 takes effect, including the total THC standard, the 0.4 milligram per container limit, and the exclusion for naturally occurring cannabinoids synthesized or manufactured outside of the plant.

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In simple terms, these stages mean that the change to the definition of "hemp" is extended from November 12 to December 11. Only a ban on pure synthetic products will go into effect in November.

It is worth mentioning that December 11, 2026, is also the date on which the continuing appropriations provided by Public Law 119-103 expires. Meaning, Congress could act again before that date. However, absent further legislation, WBA recommends that banks plan around these current dates.

Wisconsin Law

Section 781 affects only the federal definition of "hemp" and Wisconsin has not enacted legislation mirroring the federal change. The state definition continues to rely on delta-9 THC concentration and does not automatically change when the federal definition becomes more restrictive. As a result, a particular plant or product may be lawful as hemp, or as a "derivative, extract, or cannabinoid" of hemp, under state law but not meet the federal definition, and would therefore be unlawful under federal controlled substances laws. As a general matter of preemption, legality under state law is not a defense to a violation of federal law.

Considerations from a Banking Perspective

As a reminder, Section 781 places no specific requirements on banks. However, banks with hemp farmers or producers operating under the original intent of the 2018 Farm Bill and Act 68 (for example, growing hemp for fiber, grain, or seed) should generally see little change to those relationships. That said, banks may still wish to confirm that hemp-growing customers are aware of the change, including the total THC standard and the exclusion for certain seeds, and that they remain properly licensed with USDA.

The more significant impact is likely to fall on customers that process, manufacture, distribute, or sell hemp-derived cannabinoid products. In Wisconsin, these may include not only dedicated hemp and CBD businesses, but also convenience stores, gas stations, smoke and vape shops, liquor stores, bars and restaurants, and breweries or other beverage producers that make or sell THC beverages. As mentioned above, banks should identify which customers may fall into this category. These businesses will need to make decisions as to how to treat their products. Some of these businesses may reformulate their products, sell down inventory before the effective dates, exit the line of business, or continue selling products that remain lawful under state law. These are business decisions that must be made by those within industries that will be impacted. It is important that banks check with these customers to understand their plans and perspective. Once the revised definition takes effect, a customer whose products no longer meet the federal definition of "hemp" is, under federal law, engaged in illegal marijuana-related activity.

In summary, Wisconsin hemp producers currently licensed by USDA will remain licensed by USDA and as a result, their hemp-related activities will likely remain legal in order to obtain or maintain a license. However, banks should be mindful of business customers further down the supply chain. Banks should consider identifying those businesses engaged in this area and ensuring they are licensed or otherwise not engaged with illegal products.

For example, assume a bank has a customer who is a long-time dairy farmer. In 2021, this farmer owned 15 acres used primarily for hay. After hearing of the new hemp laws, and with milk sales weakening every year, this farmer decided to dedicate a small portion of their acreage to hemp. They became licensed with USDA, purchased certified seed, and obtained a production contract with a local processor who buys hemp stalks for rope. As of today, this customer has expanded their operation, but the overall premise remains the same. Assuming this customer maintains that same operation going into 2027, it is likely to remain legal. However, given the changes to the definition of hemp, the bank should still consider contacting the customer to ensure they are aware of the change and obtain confirmation that they are still operating legally under the new definition.

Contrast this with another business that same bank has as a customer. This business operates a drug store which sells a variety of different hemp and THC products. Because they are a retailer, they are not licensed with USDA. These products include edibles, vape pens, and drinks. Bank knows that many of their products are advertised as recreational drugs designed to create a high. Given that these products are likely to fall within the loophole that the law change is designed to close, the bank will likely treat this customer differently from the hemp grower. Similarly, the bank will want to confirm that the customer is aware of the change and inquire as to what steps the business is taking to ensure they are still operating legally. Depending on their situation, the bank's response and risk-weighting will likely be different from that of the farmer in the first example.

Conclusion

Banks should consider how the soon to be narrowed definition of "hemp" potentially impacts their business customers. Customers engaged in business activity previously permitted by the loophole may need to make adjustments if they wish to avoid illegal activity under federal law. This also means that banks need to consider from their own business risk perspective what that means for those relationships, and overall policies and procedures.

Banks should take steps now to identify and contact affected customers regarding the change to further understand the impact on the customer, learn of any plans the customer may be taking in response to the federal law change, and how such actions may impact the bank before the effective dates.

WBA will continue to monitor for further congressional action and agency guidance and will keep members informed. For additional information, please contact WBA Legal at wbalegal@wisbank.com.

Resources

Public Law 119-37 (Section 781 is located in Division B) may be viewed at: https://www.congress.gov/119/plaws/publ37/PLAW-119publ37.pdf

Public Law 119-103 (H.R. 6500; Section 2019 is located in Division B) may be viewed at: https://www.congress.gov/bill/119th-congress/house-bill/6500/text

The Wisconsin Legislative Council issue brief, Change to Federal Definition of "Hemp" (May 2026), may be viewed at: https://docs.legis.wisconsin.gov/misc/lc/issue_briefs/2026/alcohol_beverages_and_cannabis/ib_federal_hemp_legislation_ao_2026_05_19

The Congressional Research Service report, Changes to the Statutory Definition of Hemp and Issues for Congress, may be viewed at: https://www.congress.gov/crs-product/IF13136



Lock Out Fraud: WBA has Added New Resources to Help Keep Consumers Informed

To help fight the growing threat of fraud, WBA has added new resources to the Lock Out Fraud library. As fraud continues to evolve, one thing remains constant: informed consumers are better protected consumers. In addition to the spoofing scams, dealer clone scams, and Bitcoin ATM resources, new Lock Out Fraud flyers warning consumers about romance scams and check fraud have been added to the web page.

Visit wisbank.com/lock-out-fraud/ to access the latest resources and share the valuable information with your bank customers.

The Lock Out Fraud initiative reflects WBA's ongoing commitment to supporting the well-being of both member banks and the customers they serve. By providing timely information on emerging fraud trends and prevention strategies, WBA aims to empower consumers with the knowledge they need to remain vigilant and avoid becoming victims.

WBA-member banks may customize these materials by adding their own logo and distributing them directly to customers through branches, newsletters, websites, social media channels, and community outreach efforts. This allows banks to reinforce fraud awareness while providing valuable educational content from a trusted source.

What are other fraud schemes plaguing your customers? Email wbasocial@wisbank.com if you have a resource request.

FRB Issues Update to Expanded Exam Cycle for Certain State Member Banks

The Board of Governors of the Federal Reserve System (FRB) issued Supervisory Letter 26-8 to provide an update to the expanded examination cycle for certain state member banks and U.S. branches and agencies of foreign banking organizations. The summary below focuses only on the criteria set forth by FRB for state member banks.

History

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate federal banking agency for an insured depository institution (IDI) to conduct a full-scope, on-site examination at least once every 12 months but permits a longer cycle—at least once every 18 months—for IDIs that meet certain criteria, including the requirement that the IDI must have total assets below a specified size limit. Section 903 of the 21st Century ROAD to Housing Act amended section 10(d) to increase from $3 billion to $6 billion the total asset threshold for an IDI to qualify for the 18-month examination cycle.

On **September 14, 2026**, FRB published in the *Federal Register* an interim final rule that amended Regulation H to raise the asset threshold for a state member bank to be eligible for the 18-month examination cycle from less than $3 billion in total assets to less than $6 billion in total assets. The interim final rule was made effective September 14, 2026, and was published jointly with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), both of which adopted similar changes to their regulations.

Criteria

Accordingly, a state member bank may be eligible for an 18-month examination cycle if it satisfies the following criteria:

- The bank has total assets of less than $6 billion;
- The bank is well capitalized;
- At the most recent FRB or applicable state banking agency examination the bank was assigned
    - A management component CAMELS rating of “1” or “2”; and
    - A CAMELS composite rating of “1” or “2”
- The bank is currently not subject to a formal enforcement proceeding or order by FRB or FDIC; and
- No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for the 18-month examination cycle eligibility provision.

Implementation

The expanded 18-month examination cycle examination cycle eligibility for state member banks that have total assets of less than $6 billion and that meet the other criteria was made effective September 14, 2026, the date of publication in the *Federal Register*. FRB is required to complete a Bank Secrecy Act (BSA)/anti-money laundering (AML) compliance program review at each safety and soundness examination conducted at a state member bank. It is expected for FRB to conduct a BSA/AML compliance review every 18 months at each state member bank.

A state member bank should also expect further communication from FRB regarding an extended 18-month examination cycle and for updates to existing alternative examination program (AEP) agreements with relevant state banking agencies, *i.e.*, Department of Financial Institutions (DFI).

The FRB Supervision and Regulation Letter SR 26-8 may be viewed at: https://www.federalreserve.gov/supervisionreg/srletters/SR2608.htm

Wisconsin Bankers ASSOCIATION

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Special Focus

Joint Agency Statement on SAR Confidentiality

And Available Fraud Resources for Wisconsin Compliance Officers

A joint agency statement has been released regarding the confidentiality requirements related to suspicious activity reports (SARs) filed in accordance with the Bank Secrecy Act (BSA). The statement was issued partially in response to comments received in connection with a request of information (ROI) initiative by the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) on potential actions the agencies could take to help consumers, businesses, and banks mitigate the risk of payments fraud, with a particular focus on check fraud.

Commenters requested the agencies and the Financial Crimes Enforcement Network (FinCEN) to clarify how banks can ensure compliance with SAR confidentiality requirements and provide customers with transparent and timely communication as part of a bank's fraud investigation, which may result in one or more SAR filings and potential closure of a customer's account.

This article includes information about the joint agency statement and given the inter-connectiveness of the reason for the issuance of the statement and of banks' efforts to continue the fight against fraud, this article also includes fraud-prevention and reporting resources for compliance officers.

Joint Statement of SAR Confidentiality

As mentioned above, the agencies issued a statement to clarify confidentiality requirements related to SARs, particularly when banks communicate with customers regarding potentially fraudulent transactions, other suspicious activity, or account closures. The statement was issued **September 2, 2026**, and does not alter existing BSA legal or regulatory requirements or establish new supervisory expectations.

SAR Confidentiality

The statement sets forth that SAR confidentiality is a statutory and regulatory requirement that helps to ensure that SAR information is disclosed only for appropriate purposes. In particular, BSA prohibits the disclosure of a SAR or information that would reveal the existence of a SAR, including to a customer or other person who is the subject of the SAR. Unauthorized disclosure of a SAR to that person, and any information that would reveal the existence of a SAR to that person, could undermine ongoing and future law enforcement investigations by alerting potential suspects, deterring financial institutions from reporting suspicious activity and filing SARs, and even endangering SAR filers.

However, under FinCEN's implementing regulation for SAR confidentiality, "a SAR or any information that would reveal the existence of a SAR" does not include "the underlying facts, transactions, and documents upon which a SAR is based." Accordingly, BSA and its implementing regulations do not prohibit banks from communicating with a customer or other person who is the subject of a SAR or with other third parties, including other banks or credit unions, about potentially fraudulent or other suspicious transactions involving the customer's account or notifying the customer of the bank's intention to close the account for potentially fraudulent or other suspicious activity, so long as that communication does not reveal the existence of a SAR.

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SAR confidentiality does not, for instance, prohibit banks from communicating with a customer or other person who may be the subject of a SAR or with third parties, including other banks or credit unions, when such communication involves the underlying facts, transactions, and documents upon which a SAR is based. Specifically, the factual information related to transactions, including, but not limited to, transaction dates, amounts, and parties, may be discussed assuming there is no communication that would reveal the existence of a SAR to a customer or other person who is the subject of a SAR or to other third parties including other banks or credit unions.

The statement includes examples of communications with bank customers that typically are not prohibited by BSA. The statement may be viewed at: https://www.fincen.gov/system/files/2026-09/Joint-Statement-on-SAR-Confidentiality.pdf

Fraud Resources Available to Wisconsin Compliance Officers

The following is a list of resources for compliance officers to assist in fraud investigation, fraud reporting, and for overall connection to others helping to combat fraud and create awareness of fraud prevention with customers. Relevant links are provided at the end of the article.

Wisconsin Resources

Wisconsin Department of Financial Institutions (DFI) has many resources on its website, including information about the recent law regarding cryptocurrency kiosks. The information includes a reporting page for complaints of violations.

Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) operates a Consumer Protection Hotline (800-422-7128) and will provide fact sheets or may send a speaker to a community event on request. DATCP also maintains a "Senior Scams" presentation toolkit that banks can use directly for branch or community presentations rather than building materials in-house.

Wisconsin Department of Justice (DOJ) investigates and prosecutes state consumer-law violations and publishes a "Stop Financial Scams" flyer along with elder-protection materials. DOJ also co-runs the Wisconsin Elder Abuse Hotline with the Greater Wisconsin Agency on Aging Resources (GWAAR). The Wisconsin Elder Abuse Hotline is a toll-free line connecting victims, family members, and concerned bankers to local resources and law enforcement referrals.

Wisconsin Department of Health Services (DHS) is home for county Adult Protective Services (APS) which is the front-line reporting channel for suspected financial exploitation of an elder or at-risk adult. These agencies are managed on a county level, and DHS maintains a statewide directory.

Federal Resources

FBI Milwaukee Field Office (IC3) regularly issues fraud-alert tip sheets banks can adapt for customer communications. The IC3 (ic3.gov) is also the standard reporting portal to point customers toward, including its annual Elder Fraud Report.

U.S. Secret Service Milwaukee Financial Crimes Task Force is a long-running task force combining Secret Service agents with state and local investigators on financial crimes that frequently target businesses and elderly victims.

FinCEN Section 314(b) is a source many bankers are likely already familiar with; however,

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just this June, FinCEN issued updated guidance explicitly extending the Section 314(b) safe harbor to cover suspected fraud, as part of Treasury's participation in the federal Task Force to Eliminate Fraud. The goal is to enable participating institutions to utilize it more than as a BSA tool, but directly as a fraud-prevention tool.

WBA Resources

As mentioned elsewhere in this publication, WBA has launched its "Lock Out Fraud" resource library. This brand new, ever-growing set of consumer-facing fraud materials is designed for member banks to use as they wish. Feel free to use, distribute, and brand with your bank's logo and distribute through branches, newsletters, and social media.

The WBA Fraud Summit and other educational offerings are excellent opportunities to network, receive the latest news, understand recent trends, and stay on top of fraud topics. Many fraud-related educational offerings are made available through the WBA Education department each year. Be sure to visit the Education section of the WBA website for the latest offerings.

The Midwest Bankers Insurance Services (MBIS), a WBA-subsidiary, reviews Financial Institution Bond and Cyber Liability applications to help banks assess internal controls and fraud vulnerabilities before a loss occurs.

The WBA Financial Crimes Committee is one of WBA's volunteer banker committees. The group meets throughout the year to plan educational conferences, update resources, work on advocacy and legislative efforts, network, and share ongoing fraud trends, technologies, and overall tips. Committee membership is on an annual basis with new applications accepted in early Spring. Space is limited.

Others

The ABA Fraud Directory is designed to put banks in touch with the right person at any participating bank. A bank is not required to be an ABA member to use the directory, however, any participating bank must reciprocate directory information so that all may benefit from the information. This is an exceptionally useful tool for when you need to get in touch with a fraud department, or the correct individual to resolve a situation involving another bank you might not already have a working relationship with or otherwise be familiar with.

Various fraud email lists also exist for bankers to participate in. These lists often include state agencies and law enforcement. Through collaboration, the banking industry and these partners are able to share information and respond quickly to sudden fraud trends, schemes, and rings.

Recommendations for Compliance Officers

Perhaps one of the most practical recommendations is to be engaged. Among the resources above, there is not one specific one which will solve every fraud problem. However, by being engaged with many, Wisconsin banks can stay on top of financial crime trends happening across the state (and the nation). Becoming familiar with local law enforcement, the county elder abuse agency, available email lists, and other banks and financial institutions in the area, can go a long way.

Additionally, many Wisconsin banks host town-hall-style events within their communities in partnership with local law enforcement or other local officials. The goal is to bring community members together to discuss how to spot and stop fraud. WBA knows that many banks have found success in these events as a way to help distribute information and resources to their local community.

Banks should also not hesitate to reach out to law enforcement when the situation warrants it. While banks need to think through privacy matters, also consider whether the situation is one that falls within the privacy regulation exception to protect against or prevent actual fraud, unauthorized transactions, claims, or other liability. Also consider that in circumstances where bank has filed a SAR, it may still be worth reaching out to law enforcement directly to alert them of a situation. The banking agencies allow banks to reach out to law enforcement to discuss a SAR the bank filed.

Frontline staff should also be encouraged and reassured to involve management if staff senses that something is off or if additional questions need to be asked and answered before proceeding with a transaction. Fraudsters often plan and hope that bank staff will feel rushed or pressured not to stop to first check with others.

Resources:

Joint Agency Statement on SAR Confidentiality:
https://www.fincen.gov/system/files/2026-09/Joint-Statement-on-SAR-Confidentiality.pdf

Wisconsin DFI
Investment Scam Tracker announcement: https://dfi.wi.gov/Pages/About/NewsEvents/NewsReleases/20240730DFIInvestmentScamTracker.aspx
Investor Advisories: https://dfi.wi.gov/Pages/Securities/InvestorResources/InvestorAdvisories.aspx
Complaint Reporting Tool: https://apps.dfi.wi.gov/apps/OnlineComplaintSystem/

WI DATCP
Consumer Protection: https://datcp.wi.gov/Pages/Programs_Services/ConsumerProtection.aspx
Elder Abuse Awareness resources: https://datcp.wi.gov/Pages/WorldElderAbuseAwarenessDay.aspx
Wisconsin Elder Abuse Hotline: https://reportelderabusewi.org/

WI DHS Adult Protective Services Directory and Reporting Tool: https://www.dhs.wisconsin.gov/aps/report.htm

AARP Effective Ways to Protect Yourself From Scams: https://elearn.aarp.org/Public/Catalog/Home.aspx?Option=463

Milwaukee Police Department Financial Crimes Unit resources: https://city.milwaukee.gov/police/Police-Units-Partners/Financial-Crimes-Unit/FinancialCrimesResources

FBI Milwaukee fraud alert tips: https://www.fbi.gov/contact-us/field-offices/milwaukee/news/fbi-provides-fraud-alert-tips-to-identify-potential-scams

FinCEN Section 314(b) Fact Sheet: https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf

MBIS: https://mbisllc.com/

WBA Items
Education: https://www.wisbank.com/education/
Article of Fraud Prevention Actions by WBA Members: https://www.wisbank.com/four-wba-member-banks-share-fraud-prevention-release-scammers-are-pretending-to-help-but-theyre-really-hacking-into-your-life/
Lock Out Fraud resource library: https://www.wisbank.com/lock-out-fraud/



Agency Statement on Community Banks' Engagement with Core Service Providers

On **September 11, 2026**, 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 statement to provide clarity on their risk-based supervision of certain services provided to community banking organizations (CBOs).

The agencies believe there is a need for additional clarification regarding a subset of CBOs' third-party relationships, based on the agencies' supervision of CBOs and their service providers, and reinforced by the agencies' outreach to CBOs and other relevant stakeholders. The subset consists of third parties that provide the critical systems applications and infrastructure that support the operation and essential functions of one or more of a CBO's lines of business, including the following examples. For purposes of the statement, the agencies refer to the following activities broadly as core providers:

- Transaction processing,
- Account management,
- Payments processing,
- Customer relationship management,
- Compliance and reporting,
- Online banking, and
- Other material functions.

These relationships are essential to the safe and sound operations of CBOs, yet certain core provider business practices and market dynamics may pose obstacles to a CBO's ability to efficiently and effectively identify, assess, and address the attendant risks.

As such, the agencies issued the statement to address select aspects of how CBOs engage with core providers, the extent to which the agencies will take these aspects into consideration when determining the level of supervisory oversight of core provider services, and the agencies' supervisory and enforcement authorities where a core provider engages or causes a CBO to engage in unsafe or unsound practices or violations of law or regulation.

Background

The agencies stated they are committed to prioritizing reforms targeted at reducing the supervisory and regulatory burden for CBOs and tailoring supervisory and regulatory frameworks to better fit their business models and unique risks. The reforms will better position CBOs to serve their communities and drive economic growth.

Most CBOs rely on core providers to support their ability to operate effectively and compete in the rapidly evolving marketplace. The agencies recognize the significant benefits these relationships offer and that core providers represent CBOs' most material, complex, and highest-risk third-party relationships. While use of core providers can create operational efficiencies, the agencies state it also creates heightened risk, especially if the core provider experiences financial distress, operational failures, or security compromises.

The agencies are also aware that a significant percentage of the core provider market is represented by just a few large providers, which limits CBOs' negotiating power. Given these constraints, CBOs report they often experience challenges obtaining reasonable due diligence information, negotiating contract terms, or conducting effective ongoing monitoring. It can be difficult for CBOs to hold core providers accountable for delivering quality services.

Risk-Based Supervision of Core Providers

The agencies set forth that each banking organization is responsible for operating in a safe and sound manner and in compliance with applicable laws and regulations and that an important aspect of this responsibility is adopting third-party risk management practices that are commensurate with the organization's size, complexity, and risk profile and with the nature of its third-party relationships.

As part of standard supervisory processes, the agencies examine a banking organization for its management of third-party risk and its operations involving third parties. The agencies also conduct risk-based examinations of certain third parties' provision of services, including those of certain core providers.

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Based on the agencies' supervisory experience and stakeholders' input, the agencies have determined that core provider business practices that unreasonably limit CBOs' ability to conduct due diligence and ongoing monitoring or to negotiate contract terms that address their business needs are associated with greater risks to CBOs and a reduced ability of CBOs to identify, assess, and address such risks. Accordingly, the agencies will consider the following factors when making supervisory allocation decisions relevant to core providers who provide services to CBOs (e.g., decisions regarding the nature, extent, and frequency of supervisory activities applicable to core providers; the contents of examination reports provided to core providers' client financial institutions; and whether to add a core provider to the agencies' service provider examination program):

- **Transparency**: As part of safe and sound third-party risk management, banking organizations collect information from their third-party service providers through due diligence, contractual mechanisms, and ongoing oversight, tailored to the banking organization's size, complexity, and risk profile, as well as the nature of its third-party relationships. CBOs that are unable to collect this information are more likely to face challenges effectively and efficiently managing their third-party risks, which, given the criticality of core providers, may be more difficult to mitigate, compared to other less critical third parties. These informational gaps also may present challenges for the agencies' supervision of these CBOs.

  As such, the agencies will take into consideration the level of a core provider's transparency with CBOs in making supervisory allocation decisions regarding core provider examinations. This will be determined through an assessment of a provider's:

  1. Willingness to provide reasonably relevant and timely due diligence information necessary for a CBO to decide whether to enter into a core provider relationship and engage in ongoing monitoring thereafter,
  2. Contractual provisions that limit a CBO's reasonable attempts to compare the core provider's offerings with those of other providers,
  3. Use of, transparency regarding, and compliance with service level agreements using measurable performance standards that reflect a CBO's individual needs and risk profile, along with provisions that enable a CBO to monitor and enforce the agreements,
  4. Transparency and timely disclosure regarding operational issues and security incidents impacting the delivery of services, and
  5. Use of complex billing practices that are difficult to reconcile to the services CBOs are receiving.

- **Contract Features**: As part of effective management of third-party risks, a CBO may determine that it either needs to exit a relationship with a core provider that does not meet its needs or has failed to perform adequately or seek supplemental services from alternative providers. However, core provider contract provisions may act as obstacles to a CBO seeking such an exit or supplemental services. As a result, CBOs may be forced to acquiesce to suboptimal core provider relationships wherein CBO needs are less likely to be adequately met and CBOs may have a limited ability to manage third-party risk.

  In making supervisory resource allocation decisions, the agencies will take into consideration a core provider's business practices and use of contract terms that make it difficult for CBOs to manage their core provider relationships in a manner that aligns with the CBO's business needs, such as by seeking an alternative core provider or supplementary services. Such contract terms and practices include, for example,

  1. Opaque pricing structures and practices,
  2. Opaque billing practices, including extensive "back billing" windows during which the core provider may issue retroactive charges for items missing from prior invoices,
  3. Unsupported or contractually undefined core deconversion fees, especially in instances in which the core provider breached contractual terms, provided inadequate services as measured by service level agreements, or violated or may have caused the CBO to violate any laws or regulations, and
  4. Excessive limitations on the ability of unaffiliated service providers to integrate with the core platform.

- **Technology**: Core providers that fail to invest in maintaining up-to-date technological solutions may be more likely to experience data breaches or service outages or disruptions, which CBOs have limited ability to oversee or mitigate. As such, the agencies will take into consideration a core provider's technology investments and capabilities in making supervisory allocation decisions. This includes, for example:

1. The number and severity of computer security incidents,
2. Appropriate management of end-of-support and end-of-life assets that enable client CBOs to transition to updated platforms, and
3. Lack of demonstrated operational resilience capabilities.

Supervisory and Enforcement Actions

The agencies monitor services that core providers deliver to CBOs to identify issues related to safety and soundness or violations of law. When such issues are identified, the agencies may bring the appropriate actions against core providers and/or the CBO pursuant to their statutory authorities. This does not eliminate or reduce a CBO's responsibility for ensuring activities are consistent with safe and sound banking practices and in compliance with applicable laws and regulations, regardless of whether they are outsourced to a third party.

Among other bases for bringing appropriate actions against core providers, the agencies may have a reasonable basis to determine that certain core providers qualify as "institution-affiliated parties" (IAP) under the Federal Deposit Insurance Act—specifically, as "persons . . . who participate[] in the conduct of the affairs of an insured depository institution." This determination reflects the operational reality of the CBO-core provider relationship. While CBOs contract with core providers for services, many of the services provided by core providers address unique features of a CBO, are integral to the functioning of the institution and its delivery of banking products and services, and directly impact the customer banking experience. Many CBOs are wholly reliant on core providers for their back-end operations, as well as some of their customer interfaces and other functions.

In these arrangements, core providers undertake the most central operational aspects of banking for the CBO, and CBOs often could not provide their services otherwise. Because core providers are integral to carrying out the business of banking and the functions of CBOs, they may be held liable for the practices or violations of a CBO as an institution-affiliated party.

Conclusion

The interagency statement is meant to provide clarity regarding the agencies' risk-based supervision of certain services provided by core providers to CBOs. The statement addresses the agencies' supervisory and enforcement authorities where a core provider engages or causes a CBO to engage in unsafe or unsound practices or violations or law or regulations. When such issues are identified, the agencies may bring the appropriate actions against core providers and/or the CBO pursuant to their statutory authorities.

The joint statement may be viewed at: https://occ.gov/news-issuances/news-releases/2026/nr-ia-2026-77b.pdf

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Lock Out Fraud: New WBA Resources Help Consumers Stay One Step Ahead

Fraudsters are constantly changing their tactics, finding new ways to target consumers through phone calls, text messages, social media, cryptocurrency schemes, and other increasingly sophisticated scams. As these threats continue to evolve, education remains one of the strongest tools available to protect both consumers and the financial institutions they trust.

To help address this growing challenge, WBA has launched its new Lock Out Fraud resource page at wisbank.com/lock-out-fraud/. The initiative provides easy-to-understand, one-page educational resources designed to help consumers recognize common scams, understand warning signs, and take steps to protect themselves from fraud.

The growing library currently features resources on topics such as spoofing scams, dealer clone scams, and Bitcoin ATM fraud, schemes that continue to impact consumers across Wisconsin and the country. Each resource is presented in a concise, reader-friendly format that can be quickly shared with customers, family members, employees, and community members.

Importantly, WBA member banks may customize these materials by adding their own logo and distributing them directly to customers through branches, newsletters, websites, social media channels, and community outreach efforts. This allows banks to reinforce fraud awareness while providing valuable educational content from a trusted source.

Special Focus

The Lock Out Fraud initiative reflects WBA's ongoing commitment to supporting the well-being of both member banks and the customers they serve. By providing timely information on emerging fraud trends and prevention strategies, WBA aims to empower consumers with the knowledge they need to remain vigilant and avoid becoming victims.

By late fall 2026, the Lock Out Fraud page will feature a comprehensive collection of fraud education materials covering a wide range of scams and consumer protection topics.

As fraud threats continue to evolve, one thing remains constant: informed consumers are better protected consumers. Whether you are looking to learn more about a specific scam or seeking resources to share with family and friends, WBA encourages everyone to explore the growing collection of materials available through the Lock Out Fraud initiative.

Visit wisbank.com/lock-out-fraud/ today to access the latest resources and learn how to lock out fraud before it reaches your doorstep.



Regulatory Spotlight

Interagency Statement on Special Purpose Credit Programs.

The Bureau of Consumer Financial Protection (CFPB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Department of Housing and Urban Development (HUD), Federal Housing Finance Agency (FHFA), Department of Justice (DOJ), and National Credit Union Administration (NCUA) (collectively, the agencies) announced rescission of the Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B, dated **02/22/2022**. The agencies rescinded the statement to make clear that (1) creditors may not discriminate against borrowers based on prohibited characteristics and (2) creditors should not rely upon the statement or other related issuances going forward. The rescission is effective **08/25/2026**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-08-25/pdf/2026-17307.pdf. *Federal Register*, Vol. 91, No. 163, 08/25/2026, 54875-54877.

Agencies Define "Unsafe or Unsound Practices" Under Federal Deposit Insurance Act.

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a final 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. The final rule is effective **11/02/2026**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-09-01/pdf/2026-17823.pdf. *Federal Register*, Vol. 91, No. 168, 09/01/2026, 56004-56022.

Wisconsin Bankers ASSOCIATION

Compliance Journal

August 2026

Special Focus

The Long Tail of PPP

Why Bank Customers are Being Targeted Again

Jeff Otteson, vice president of sales, with the Midwest Bankers Insurance Services (MBIS) offers the following information about how scams involving Paycheck Protection Program (PPP) information work, why the fraudsters are so convincing, steps banks can take to help mitigate the fraud, and insurance considerations.

The PPP may have ended, but the information it generated continues to create opportunities for fraudsters.

Businesses that received PPP loans are now being targeted through highly personalized bank-impersonation schemes. Using publicly available PPP loan information, criminals can identify a business, its loan amount and, in many cases, the bank associated with the loan. That information gives a fraudster enough credibility to make an unexpected call, text message, or email sound legitimate.

This is not simply another generic phishing campaign. It is a targeted social-engineering attack built around real information and a trusted banking relationship.

How the Scam Works

The Small Business Administration maintains a public, loan-level dataset covering disbursed PPP loans. Fraudsters can combine that data with business websites, social media, and other public records to develop a convincing profile of a potential victim.

A fraudster may know:
- The business's legal name and address;
- The amount of its PPP loan;
- The lender associated with the loan;
- The names of owners, executives, or accounting employees; and
- The bank's treasury-management or fraud-department terminology

The criminal then contacts the business while impersonating an employee of its bank. Caller ID may be spoofed so the call appears to originate from the bank's actual telephone number. Emails and text messages may use the bank's name, logo, and branding.

The purported reason for the contact can vary. The customer may be told that:
- A suspicious ACH or wire transfer is pending;
- Someone attempted to access the company's online banking account;
- A check or electronic payment must be verified;
- The account must be frozen to prevent additional fraud;
- A security update is required;
- The bank needs to confirm the customer's credentials; or
- A one-time passcode is needed to stop or reverse a transaction.

The fraudster creates urgency and positions himself as the person trying to protect the customer. In reality, the criminal may already possess the customer's username and password. The call is designed to obtain the final piece needed to defeat multifactor authentication: the customer's one-time security code. The FBI has specifically warned about account-takeover schemes involving criminals impersonating financial institution support personnel. Once the customer provides the requested code, the fraudster may gain access to the account, establish a new device, change contact information, or initiate unauthorized ACH and wire transfers.

Why These Calls Are So Convincing

Traditional fraud-awareness training often instructs customers to look for spelling mistakes, unfamiliar senders, or vague messages. Those warning signs may not be present here.

The caller may correctly identify the customer's bank, PPP loan, and business information. The telephone number appearing on caller ID may match the number printed on the back of the customer's debit card or listed on the bank's website. The criminal may even transfer the victim between several supposed departments to create the appearance of a legitimate financial institution.

The use of accurate information does not make the caller legitimate. It only demonstrates that the criminal has done research.

Bank customers should understand that caller ID is not a reliable authentication method. A person who receives an unexpected banking call should hang up and contact the bank through a telephone number the customer independently knows to be correct, not a number provided by the caller or contained in an unsolicited message.

What Banks Should Be Telling Their Customers

Banks should communicate directly with business customers, particularly customers identified in public PPP data. The message should be simple and specific: The bank will never call and ask a customer to disclose a password, authentication token, or one-time security code.

Customers should also be reminded that a code generated by multifactor authentication is not merely an identification number. It may authorize access, approve a new device, or permit a transaction. Providing that code to another person can be the digital equivalent of handing over a key to the account.

Additional customer guidance should include:

- Never provide usernames, passwords, PINs, tokens, or one-time passcodes in response to an incoming call, email, or text.
- Do not click an online-banking link contained in an unsolicited message.
- Access online banking through the bank's official website or mobile application.
- Hang up and call the bank using a known, independently verified telephone number.
- Require dual control for ACH and wire activity.
- Establish transaction and daily exposure limits that reflect the company's actual needs.
- Review new users, authorized devices, and changes to account contact information.
- Enable alerts for password changes, new-device enrollment, and outgoing transactions.
- Report suspicious communications immediately, even if no money appears to have left the account.

Prompt reporting can help prevent or limit a loss. Customers should not wait until the next business day if they believe credentials or authentication codes have been disclosed.

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Banks Must Also Examine Their Own Procedures

Customer education is only one part of the response. Banks should review how employees handle calls involving compromised credentials, new-device enrollment, changes to telephone numbers or email addresses, and requests to add new treasury-management users.

A fraudster who has compromised a customer's email account may attempt to add a supposed new CFO or controller to the customer's wire agreement. The request may come from the customer's legitimate email address, but that does not establish that the request is authorized.

Material changes to authorized users, callback numbers, transaction authority, or security procedures should be independently verified with an existing authorized person using previously established contact information. Employees should not rely on the telephone number or contact information contained in the request being verified.

The bank should also confirm that its written wire-transfer agreement clearly identifies:

- Who is authorized to request wires;
- The predetermined telephone number to be used for callbacks;
- The PIN or passcode the requester must verify during the callback; and
- The procedures for changing authorized persons or callback information.

Having a written agreement is only the beginning. Employees must consistently follow the security procedures contained in it. A callback to a number supplied in the fraudulent request is not an effective callback. Similarly, completing a callback without requiring the agreed-upon PIN or passcode may undermine the protection the procedure was designed to provide.

The Insurance Question Is More Complicated Than It Appears

When an account-takeover loss occurs, the customer, bank, and their respective insurers may all examine who was compromised, who authorized the transaction, and which security procedures were followed.

Coverage is highly dependent on the specific facts and policy language. A bank's Financial Institution Bond may distinguish between a direct compromise of the bank's systems and a loss resulting from a customer voluntarily providing credentials or authentication codes. Computer-fraud, funds-transfer, fraudulent-instruction, and social-engineering provisions may contain materially different definitions, exclusions, and authentication requirements.

The customer's cyber or crime policy may also be relevant, particularly when the customer's employee was deceived into disclosing credentials or approving a fraudulent transaction. However, the existence of insurance should never be assumed to eliminate the potential dispute between the customer and the bank.

Banks should review both their operational procedures and insurance coverage before a loss occurs. That review should address customer credential compromise, account takeover, new-device authorization, fraudulent changes to authorized users, and the failure to follow agreed callback or authentication procedures.

The Takeaway for Community Banks

PPP data has created a lasting roadmap that criminals can use to identify businesses and their banking relationships. The immediate scam may target the customer, but the resulting financial loss, customer dispute, and reputational damage can quickly reach the bank.

Community banks are particularly well positioned to respond because they know their customers and can communicate with them directly. A timely warning from a trusted relationship manager may be more effective than a general fraud notice posted on a website.

Banks should not treat the end of the PPP lending period as the end of PPP-related risk. The loans may have been forgiven, but the publicly available information remains—and criminals are finding new ways to use it.

WBA thanks Jeff Otteson, vice president of sales at MBIS, a WBA subsidiary, for contributing this article; for more information, contact Jeff at jeffo@mbisllc.com or 608-217-5219.

DOT Warns of Auto Dealership Spoofing

The Wisconsin Department of Transportation (DOT) has reported on a recent trend where scammers pose as vehicle dealers online. DOT started tracking this pattern back in 2024 but has recently alerted WBA that they are seeing the scheme on the rise again in 2026. This scheme, often referred to as "dealer cloning," begins with a fake storefront. The criminals establish an online presence (through a website, social media, or even a fake review page) claiming to be a Wisconsin dealership. In some cases, the criminals have spoofed real, legitimate, licensed Wisconsin dealers. This article is designed to provide information on this scam, how to spot it, and how to assist customers who might be at risk of falling for dealer cloning fraud.

Key Aspects of the Scheme

Fake dealership sites appear legitimate. Indeed, their format, layout, images, and logos are often reproduced, stolen, or otherwise hijacked from legitimate websites. The criminals use real photos of real vehicles, including stock images, or photos ripped from actual dealerships. The vehicles on these pages are frequently listed below market value in an effort to draw consumers in. Fraudsters will typically interact with the potential buyer electronically, although DOT has reported they have communicated directly by phone as well. Since the dealership is fake, the transaction is entirely online. In fact, DOT has reported cases where criminals have even offered a discount to consumers simply to stop them from coming out to the dealership's physical presence (which does not exist) in order to maintain the fraud. The criminals request payment typically by wire and assure the buyer they will ship the vehicle directly to them upon payment.

According to DOT, there is a consistent pattern they have been tracking whereby a fake website, or social media page appears, featuring below-market price (often luxury vehicles, but sometimes including others as well, and even motorcycles), with no in-person contact. In some instances, the business behind the site never existed at all. DOT reported that in 2024 alone, its Field Investigation Unit investigated 1,259 consumer complaints on this issue.

Considerations for Compliance, BSA, and Security Programs

While this may seem like one scam among many, it is important to be aware of trending schemes to be better suited to spot them. As with all fraud, time and pressure are tools used by the criminals. They will pressure potential buyers with a deal and the threat of a limited offer. Bank customers, eager to take advantage of the deal, will be looking to withdraw money or send a wire. While banks do not know all the details of every transaction, there may be indicators a bank can spot to warn a customer that the deal may be fraudulent and give customers an opportunity to use DOT's resources and avoid being scammed. For example,

- Mismatched or erroneous name, address, and contact information as part of a wire (e.g., the receiving account holder's name does not match the dealership name).
- If a customer is excited to share of a deal they received that sounds too good to be true, features no in-person contact with the seller, and reluctance or refusal on the seller's part to have the vehicle inspected before payment.
- A dealership that cannot be verified independently (e.g., by phone, address, or email obtained outside the website itself).
- A dealership that does not appear on DOT's licensed dealer list.
- A bill of sale or purchase contract that is missing, informal, or does not resemble Wisconsin's required Motor Vehicle Purchase Contract.

While Wisconsin law does not require banks to take any particular steps regarding dealer cloning scams it is important to be aware of fraud that potentially impacts bank customers.

DOT Press Release: https://wisconsindot.gov/Pages/about-wisdot/newsroom/news-rel/022425clonescam.aspx
DOT Licensed Dealer Information: https://wisconsindot.gov/Pages/dmv/dlr-agents/tips-tls-dlr/buyerslicissued.aspx
DOT Consumer Rights Page: https://wisconsindot.gov/Pages/dmv/cons-protect/know-rghts/knowyourrights.aspx

FinCEN Eliminates Most BOI Reporting by Business Customers to FinCEN

The Financial Crimes Enforcement Network (FinCEN) recently issued a final rule that narrows the beneficial ownership information (BOI) reporting under the Corporate Transparency Act (CTA). As bankers may be fielding questions regarding the rule from business customers, the following article is presented as a short summary of what the final rule means, as well as links to additional resources.

Importantly, BOI reporting under the CTA applies only to "reporting companies" (which is discussed more below). It is also worth noting that the final rule relates only to BOI reporting by a reporting company. Nothing has changed regarding a bank's obligations under the Bank Secrecy Act-related Customer Due Diligence (CDD) rule. Banks must still comply with the requirements of the CDD rule.

As a quick matter of background, FinCEN previously issued an interim final rule in March, 2025 which narrowed BOI reporting requirements by reporting companies. The final rule permanently adopts that narrowing by finalizing certain exemptions.

Summary of Changes

As discussed above, the core of the final rule is to permanently adopt the exemptions provided by the March 2025 interim final rule. The final rule adopts all changes made by the interim final rule as permanent changes to BOI reporting requirements. This includes eliminating the requirement for U.S. companies and U.S. persons to report BOI to FinCEN. The final rule also exempts foreign companies from the requirement to report U.S. person "company applicants" (*i.e.*, the individuals who helped a foreign company register to do business in the U.S.) and exempts U.S. persons who have applied for FinCEN identifiers (FinCEN IDs) from having to update or correct the information they provided to FinCEN when they applied.

Only entities formed under foreign law and registered to do business in a U.S. state or tribal jurisdiction remain "reporting companies."

FinCEN also confirmed it will purge information about company applicants, beneficial owners, or FinCEN ID holders that it reasonably believes belongs to a U.S. person.

Conclusion

As a reminder, the final rule places no new requirements upon banks nor does it alter existing CDD requirements for banks. Bankers who receive questions from customers may find the following additional resources helpful to refer the customers to for more information. FinCEN will also be updating guidance on its website to reflect the final rule.

FinCEN Final Rule: https://www.govinfo.gov/content/pkg/FR-2026-08-14/pdf/2026-16576.pdf
FinCEN Press Release: https://home.treasury.gov/news/press-releases/sb0603
FinCEN BOI FAQs: https://www.fincen.gov/system/files/2026-08/QAs_BOIFinalRule.pdf
FinCEN BOI Webpage: https://www.fincen.gov/boi



Wisconsin Bankers ASSOCIATION

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Special Focus

Three New Free WBA Wisconsin Banker Resources Available

WBA has created three new WBA Wisconsin Bankers Guides which are available now on the WBA website through our best practices library and WBA member portal. These new guides provide a comprehensive overview regarding the topics of trusts, right of rescission, and authority.

The WBA Wisconsin Bankers Guide series is a collection of free resources designed to aid bankers in understanding a variety of different topics. While every guide covers the legal and compliance considerations of their respective topic, they are also more than that. The guides are written to give a deeper understanding of each topic. To this extent they provide an overview of what the topic is, why it matters, and include practical narratives. The guides are designed to be valuable resources both for beginner and veteran bankers.

Trusts are often one of the more elusive topics in banking. As trusts can come in a variety of types, complexities, and involve customers of varying levels of sophistication, they can seem intimidating. The WBA Wisconsin Bankers Guide to Trusts is designed to help demystify trusts. The guide presents the basics of what a trust is, how a trust is created, the parties involved, and how trusts operate, all from a banker's perspective. It includes numerous examples, designed to present actual situations that bankers often encounter, and assist in issue spotting, knowing what information and documentation to gather, which questions to ask, and how to better understand trusts in relation to a bank's own policies and procedures.

A consumer's right of rescission is a requirement of the Truth in Lending Act, implemented by Regulation Z. While right of rescission requirements have not changed in some time, the right is often misunderstood. The WBA Wisconsin Bankers Guide to Rescission breaks down in detail the nuances of the consumer right, including examples which cover a variety of scenarios to better understand when and to whom the right of rescission applies.

Lastly, the WBA Wisconsin Bankers Guide to Authority is one of WBA's first more "conceptual" guides. While the other guides focus on a specific topic, this guide does not cover just one type of authority. Rather, the guide aims to equip bankers with the tools to understand any form of authority that might be presented. Even new ones. For example, as discussed in another article of this issue of WBA Compliance Journal, Wisconsin recently created a new form of authority for a patient's representative. In addition to that article, a banker familiar with the tools provided by the guide to authority would be prepared to review and consider the important issues that come with the new authority.

While the WBA guides are designed to be comprehensive, situations may arise which raise further questions. Bankers are encouraged to contact the WBA Legal Call Program with any questions that may come up while reviewing a guide, or unique situations they may encounter. WBA Legal is always available to discuss a situation and assist.

The new WBA Wisconsin Banker Guides, along with additional resources, can be found within the WBA Best Practices Library which is located within a banker's own profile once logged into the WBA member portal. To access the portal, please sign in using the My Profile section from the WBA website. The WBA Best Practices Library may also be viewed from the WBA website. Please contact WBA Legal with any additional questions. If you need the password to access the WBA Best Practices Library, contact WBA Legal at: wbalegal@wisbank.com

Special Focus

Agencies Issue Guidance on Lending to Individuals Not Legally Authorized to Work in the United States

On **July 13, 2026**, the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the agencies) issued guidance regarding lending to individuals not legally authorized to work in the United States (referred to as non-work authorized borrowers). The guidance was issued as a result of Executive Order 14406, Restoring Integrity to America's Financial System.

The agencies intended the guidance a reminder for supervised financial institutions of existing obligations with respect to credit risk management, particularly as it relates to non-work authorized borrowers. The following is information from the guidance.

Credit Risk and Underwriting Considerations

The agencies set forth that lending to individuals who are not legally authorized to work in the United States may present elevated credit risk because a borrower's ability to generate income, maintain employment, and remain financially stable may be subject to greater uncertainty. The agencies direct that as with all lending activities, financial institutions should identify, measure, monitor, and control these risks through safe and sound underwriting practices that assess a borrower's willingness and capacity to repay according to the terms of the credit obligation.

The agencies also state that safe and sound underwriting is a key risk-management tool that helps financial institutions evaluate whether a borrower can repay a credit obligation according to its terms. The agencies list that such underwriting includes assessing the source of repayment, the borrower's repayment capacity, and the borrower's overall financial condition, resources, and willingness to repay as agreed. When lending to non-work authorized borrowers, the agencies state that financial institutions should consider whether uncertainties related to employment authorization may affect the stability and sustainability of income, repayment capacity, collateral recovery, or other factors relevant to credit risk.

The guidance includes a list of key underwriting considerations related to source of repayment, collateral considerations, documentation and verification, portfolio and concentration considerations, and consumer compliance risk.

Source of Repayment: The agencies mention that underwriting standards typically consider the stability and sustainability of a borrower's income and the likelihood that the income will continue throughout the term of the credit obligation. In retail lending, wages or self-employment income are often the primary source of repayment. When a borrower's income is derived from employment that is not legally authorized, the source of repayment may be less reliable and may present increased credit risk for various reasons, including:

- employment termination due to an employee not having legal work authorization;
- employment suspension or termination after discovering that an employee's employment authorization is expired;
- the borrower's inability to become lawfully reemployed; or
- the borrower's removal from the United States.

The agencies state that financial institutions should consider whether projected repayment capacity remains adequate under various scenarios including potential interruptions in employment or income resulting from the borrower's inability to maintain lawful employment.

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Collateral Considerations: The agencies state that financial institutions may face additional challenges enforcing security interests in collateralized loans, as it may be more difficult to contact non-work authorized borrowers or locate and repossess unaffixed collateral.

Documentation and Verification: The agencies also state that financial institutions might consider whether employment income is current, verifiable, stable, and likely to continue. The agencies state that financial institutions might consider, as relevant, requiring and reviewing paystubs, W-2s, tax returns, employer verifications, bank statements, or evidence of continuing work authorization.

Further, the agencies state that financial institutions may consider whether loans to non-work authorized borrowers, individually or segments, exhibit signs of credit weakness regardless of delinquency status for classification purposes and treatment in the allowance for credit losses.

Portfolio and Concentration Risk Considerations: The guidance provides that financial institutions with significant lending exposure to borrowers concentrated in specific geographic markets, employers, or industries that may be disproportionately affected by changes in immigration enforcement, employment verification practices, labor availability, or workforce disruptions may face elevated concentration risk. These changes could adversely affect the repayment capacity of multiple borrowers simultaneously. As a result, the agencies state that financial institutions may experience correlated credit deterioration within affected segments of the portfolio rather than isolated borrower-level stress.

Consumer Compliance Risk: For consumer compliance risk considerations, the agencies heavily referenced the recently published statement (Statement) of the Bureau of Consumer Financial Protection (CFPB) regarding creditors' obligation under the Truth in Lending Act (TILA), as implemented by Regulation Z.

In referring to the Statement, the agencies repeat CFPB's position that under TILA and Regulation Z, before lending to consumers for dwelling-secured transactions like mortgages, creditors must make "a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms." Regulation Z sets forth parameters that lenders need follow to make such "reasonable and good faith" determinations of a customer's ability to repay applicable consumer credit products. The agencies also repeat that CFPB advises that credit card issuers must "consider [ ] the consumer's ability to make required minimum periodic payments."

The agencies also repeat CFPB's advice from the Statement that, when determining repayment ability, creditors relying on an individual's income derived from U.S.-based employment are permitted and may, under certain facts and circumstances, be obligated, to consider information that bears on the consumer's underlying and continuing ability to earn income, when residency in the United States is a necessary component of such employment.

The agencies also repeat CFPB's reference to the Equal Credit Opportunity Act (ECOA), as implemented by Regulation B. The agencies incorporated CFPB's observation that ECOA expressly states that "[a] creditor may take the applicant's immigration status into account," and that a creditor "may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment."

The agencies also repeated CFPB's recommendation that consistent with applicable laws and regulations, financial institutions should consider the risks associated with non-work authorized borrowers in underwriting and account management policies and processes.

Lastly, the agencies advise financial institutions to review the Statement in light of the compliance obligations set forth in TILA and Regulation Z as well as ECOA and Regulation B.

Conclusion

The agencies issued guidance regarding lending to individuals not legally authorized to work in the United States as a result of Executive Order 14406, Restoring Integrity to America's Financial System. The agencies issued the guidance to remind supervised financial institutions of existing obligations with respect to credit risk management, particularly as it relates to non-work authorized borrowers.

The agencies identify key underwriting considerations and incorporated references to CFPB's recently published statement regarding creditors' obligation under TILA, as implemented by Regulation Z.

Since release of the guidance and Statement, WBA made inquiries to the agencies for further clarification of how either will be incorporated into compliance exams. In response to our inquiries, FDIC mentioned that the interagency guidance creates no new regulatory requirements. FDIC also referenced the FinCEN Joint Advisory, FIN-2026-A002 and the red flags within the release. FDIC also referenced 26 U.S.C. §6109(i) as the statutory definition of ITIN within the Internal Revenue Code. Depending upon how this topic may progress over the upcoming months, it likely may be further discussed at the WBA Compliance Forum in November during the agencies' panel discussion with attendees. If you have questions regarding the guidance and Statement, be sure to reach out to WBA Legal.

The Interagency Guidance on Lending to Individuals Not Legally Authorized to Work in the United States may be viewed at: https://www.occ.gov/news-issuances/news-releases/2026/nr-ia-2026-57a.pdf

The CFPB Statement on Ability to Repay and Immigration Status may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-06-08/pdf/2026-11447.pdf

DHS Creates Resources for Patient's Representative Authority Law

As reported in a previous WBA Compliance Journal, a law passed this legislative session (2025 Wisconsin Act 115) to help incapacitated patients access post-hospital care faster by providing authority to individuals known as a "patient's representative." The authority of a patient's representative includes the ability to "authorize expenditures" related to health care. The new law is effective as of **June 1, 2026**.

Only certain individuals may act as a patient's representative such as family members or adult close friends. If a person wishes to act as a patient's representative, they must follow the process outlined by the Act. This includes (among other things) confirming that no other authority currently stands (a POA for healthcare, for example), obtaining medical certification of capacity, notification to next-of-kin, and execution of a signed declaration. The forms associated with this process are maintained by the Wisconsin Department of Health Services (DHS).

Given the purpose of the Act, the authority of a patient's representative relates primarily to certain health care decisions. However, because it includes the ability to authorize expenditures related to health care, financial institutions may encounter a patient's representative seeking information regarding an incapacitated individual's account. They may even request to transact upon it. This may be necessary in order to verify Medicaid eligibility, or to collect financial information related to the patient's stay, or pay other expenditures related to health care services.

While the Act does not require financial institutions to verify all steps in the process necessary to become a patient's representative, it is still important to understand the process to the extent of confirming their authority. To that end, the best place to start is by understanding and reviewing the "Patient's Representative Declaration Form F-03436" recently developed by DHS. DHS maintains copies of the form, form instructions, and additional educational materials including a webinar on their website.

Financial institutions should also consider updating their policies, procedures, and staff training to accommodate the new authority so that the institution is prepared should a request by a patient's representative be received. For example, if the teller line receives a request for information or a request to transact on an account for the payment of a medical bill by someone claiming to be a patient's representative, what is the process at the branch in response to the request? Who is frontline staff to refer the party to? Who is to review that the patient's representative has the authority they claim? Who is to review the existing account relationship to identify whether or not there already is a POA or guardian designated for the account that can otherwise act? Once confirmed, who is to determine how the patient's representative may act regarding the information or payment request? As the authority granted a patient's representative under the Act is narrow in scope, carte blanche access to an account is unlikely.

Understanding the Act and the DHS-created declaration form in combination with overall "know your customer" protocols will be important to ensuring that customers are able to take advantage of the benefits behind the Act to obtain

Wisconsin Bankers ASSOCIATION

Compliance Journal
June 2026

Special Focus

Most Wisconsin Banks Exempt from Section 1071 Rule After Latest Round of Revisions

It has been a long process since the Bureau of Consumer Financial Protection (CFPB) issued its first rule in May 2023 to implement changes to the Equal Credit Opportunity Act made by Section 1071 of the Dodd-Frank Act (Section 1071). The changes require covered financial institutions to collect and report certain small business loan data. Litigation soon followed which resulted in revisions to the mandatory compliance dates via interim final rules. Then, in November 2025, CFPB proposed revisions to amend the 2023 rule having reconsidered the impact on smaller lenders and its approach to advancing the statutory purpose of Section 1071.

After reviewing comments received to proposed changes in November 2025, CFPB published a final rule in the *Federal Register* May 1, 2026, narrowing the rule's scope of applicability and reducing the number of data points. The final rule is effective **June 30, 2026**. The compliance date for the rule is **January 1, 2028**, for all covered financial institutions. The following is a summary of the changes.

May 2026 Revisions

The final rule made the following revisions to the definitions of "covered credit transactions", "covered financial institutions", and "small business" to better: reflect core products traditionally used for small businesses' formation and operation, recognize what is a true small business, and balance the need of collected data with the cost and burden of implementation on small creditors. CFPB also reconsidered the impacted data and eliminated several items from being collected and reported. The final rule also narrowed the scope of covered financial institutions and raised the origination threshold of covered credit transactions.

Revised Covered Credit Transactions Definition

In the May 2026 final rule, CFPB concluded that the initial iterations of data collection should focus on core, widely-used lending products most likely to be foundational to small businesses' formation and operation. The final rule therefore excludes merchant cash advances, agricultural lending, and small dollar loans in an amount of $1,000 or less from the definition of covered credit transaction.

The rule defines "agricultural lending" as a transaction to fund the production of crops, fruits, vegetables, and livestock, or to fund the purchase or refinance of capital assets such as farmland, machinery and equipment, breeder livestock, and farm real estate improvements. The final rule also includes an inflation adjuster such that the $1,000 small dollar loan amount will be adjusted for inflation in $100 increments every five years after January 1, 2030. The changes narrow the number of loans subject to the rule.

Revised Covered Financial Institutions Definition

Also, in the May 2026 final rule, CFPB concluded that the initial iterations of data collection should focus on larger core lenders. The final rule therefore contains two changes to the covered financial institutions definition. First, the final rule excludes Farm Credit System (FCS) lenders from coverage. Second, the final rule raised the origination threshold from 100 to 1,000 covered credit transactions for each of two consecutive years. As a result of the change, a "covered financial institution" is now defined as a financial institution, other than a FCS lender, that originated at least 1,000 covered credit transactions for small businesses in each of the two preceding calendar years.

Special Focus

Revised Small Business Definition

The May 2026 final rule revised the definition of "small business" to mean a business with gross annual revenue in the preceding fiscal year of $1 million or less. The $1 million threshold is to be adjusted for inflation in $100,000 increments every five years after January 1, 2030. The revised threshold is a decrease from the 2023 final rule threshold of $5 million or less.

Eliminated Data Points

The Section 1071 rule requires covered financial institutions to collect and report data regarding small business loans. Some data points were specially listed within the Dodd-Frank Act; others were items required at the discretion of CFPB. The May 2026 final rule eliminates several discretionary data points from collection. The discretionary data points eliminated are application method, application recipient, denial reasons, pricing information, and number of workers.

The May 2026 final rule also eliminated the requirement to obtain information about LBGTQI+ owned status and revisions were made to the text of the sample data form.

Removing References to Discouragement

In the original rule, sections 1002.107(c)(1) and (c)(2) and corresponding commentary set forth monitoring requirements and assumed low response rates were a result of lenders discouraging applicants from responding to a request of information. The May 2026 final rule revised section 1002.17(c) and the associated commentary to adopt a flexible standard and removed references to discouragement.

Revised Timing of Initial Request for Information

The original Section 1071 rule required an initial request for data to be provided prior to notification of the credit decision. Because of how some loan applications are routinely handled (*i.e.*, applications involving an intermediary), such timing was impractical. The May 2026 final rule revised the timing to provide that an initial request for applicant-provided data need occur prior to notifying the applicant of the final action taken on a covered application, or at another time reasonably designed to obtain a response.

Unresolved Industry Concerns

Throughout the entire Section 1071 rule promulgation process, financial institutions have shared strong concerns regarding privacy of customer information given the data required to be reported. The May 2026 final rule has not resolved these privacy concerns. CFPB has suggested it intends to publish aggregate data in the first year of receiving data and before it publishes any application-level data. CFPB also stated that it continues to reconsider customer privacy concerns and will continue to engage with stakeholders on the topic. WBA will continue to voice its concerns regarding the matter.

Efforts are also ongoing at the congressional level to advance a repeal of Section 1071. Those efforts will likely not be accomplished during this session given other pressing issues, such as trying to pass the SAFER Act, and available timelines.

Conclusion

As a result of CFPB's most recent Section 1071 revisions, most banks in Wisconsin are no longer subject to the rule. However, for those banks that originate at least 1,000 covered credit transactions for small businesses in 2026 and 2027, mandatory compliance with the May 2026 final Section 1071 rule is **January 1, 2028**.

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A "covered credit transaction" is an extension of business credit for small businesses. "Business credit" is an extension of credit primarily for business or commercial purposes, excluding public utilities credit, securities credit, incidental credit, government credit, trade credit, a HMDA-reportable transaction, insurance premium financing, merchant cash advance, agricultural lending, and small dollar business credit. A "small business" is a business with gross annual revenue in the preceding fiscal year of $1 million or less.

For purposes of determining whether a bank is a covered financial institution as of January 1, 2028, a bank is permitted to use its originations of covered credit transactions for small businesses in 2025 and 2026, rather than 2026 and 2027.

The May 2026 final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-05-01/pdf/2026-08494.pdf

New Executive Order and Guidance Potentially Affecting ITIN Customers

Recently issued Executive Order 14406 titled, Restoring Integrity to America's Financial System requires the banking agencies to issue guidance, advisories, and proposed rules which may ultimately have an impact on the establishment of deposit accounts and loans at financial institutions for customers with taxpayer identification numbers (ITINs). While further rule promulgation is required to change regulation and thereby potentially change formal policy and procedures, Wisconsin's banks need to be aware of the newly released items in anticipation of further agency action. WBA is closely following the releases and will be commenting on forthcoming rules or requests of information (ROIs) to help protect against unintended consequences and duplicative regulatory requirements under existing Bank Secrecy Act (BSA) regulations. The following is a summary of recently issued items.

Executive Order 14406

Issued **May 19, 2026,** Executive Order (EO) 14406 sets forth agency actions meant to "safeguard [the U.S.] financial system from illicit use and promote safe and sound lending and other practices by financial institutions." The EO requires the Department of the Treasury (Treasury) to issue a formal advisory to financial institutions regarding the risks associated with the exploitation of the U.S. financial system by non-work authorized populations and their employers. The order provides what the advisory is to cover. Treasury has since issued the advisory which is summarized below.

The EO also requires Treasury, in consultation with the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the agencies), to propose changes to BSA regulations to strengthen risk-based customer due diligence requirements. The changes are to ensure that financial institutions collect and verify sufficient customer identification information to reasonably identify the nominal and beneficial owners of accounts in order to access risks related to "illicit finance, sanctions evasion, or other unlawful activities."

The agencies' proposal is to also ensure that, where warranted, financial institutions obtain additional information necessary to resolve material compliance concerns, including whether account holders possess lawful immigration status and employment authorization in the U.S. when such information is "relevant to assessing risks associated with fraud, identity misrepresentation, sanctions evasion, or other illicit financial activity...." The actions are to be part of a risk-based customer due diligence program. Such action is to occur within ninety (90) days of the order.

Furthermore, within 180 days of the order, Treasury and the agencies must consider changes to BSA regulations to strengthen risk-based customer identification program requirements for financial institutions. Any change is to consider the "risks foreign consular identification cards pose" to the banking system.

The order also requires the Bureau of Consumer Financial Protection (CFPB) to clarity that deportation and loss of wages are factors that could adversely affect a non-work authorized borrower's ability to repay a loan under Regulation Z's "ability-to-repay" (ATR) provisions. CFPB has since issued its statement which is summarized below.

Finally, the EO also requires each agency to issue guidance regarding the management of potential credit risks posed by "the non-work authorized population." Executive Order 14406 may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-05-22/pdf/2026-10400.pdf

Joint Advisory on Non-Work Authorized Populations and Their Employers and Risks to the Integrity of the U.S. Financial System

Treasury's Financial Crimes Enforcement Network (FinCEN) released a joint advisory with FDIC, OCC, and NCUA in response to the EO. The advisory advises financial institutions to be vigilant against fraud schemes and other suspicious or potentially criminal activities involving the unlawful employment of illegal aliens and the risks to the integrity of the U.S. financial system. In particular, the agencies are concerned about access to financial services and unlawfully obtained wages could be leveraged to facilitate the financing of transnational criminal organizations.

The joint advisory provides methodologies and financial typologies associated with the hiring, concealment, and exploitation of unlawful alien workers, including the use of identity theft and payroll fraud schemes. The advisory also discusses enhanced due diligence for ITINs when used as documentation for valid employment authorization documentation. Several red flag indicators and key term for suspicious activity report (SAR) filing requests are also included. The FinCEN Advisory may be viewed at: https://www.fincen.gov/system/files/2026-06/FinCEN-Advisory-Non-Work-Authorized-Populations.pdf

CFPB Statement on Ability to Repay and Immigration Status

In response to the EO, CFPB published a statement in the *Federal Register* to remind creditors of their obligation under the Truth in Lending Act, as implemented by Regulation Z, to access consumers' ability to repay before offering mortgages and certain open-end credit products. The statement emphasizes that the requirements may obligate creditors to consider consumers' immigration status, especially where removal from the U.S. may disrupt the consumer's income.

Truth in Lending Act (TILA) and Regulation Z

TILA and Regulation Z require, when lending for dwelling-secured transactions, creditors to make a "reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms." In doing so, a creditor need consider a consumer's current or reasonably expected income or assets. When relying on current income, the creditor need consider the consumer's "current employment status." Credit card issuers have a similar requirement in that they must "consider [ ] the consumer's ability to make the required minimum periodic payments."

Regulation Z provides that in evaluating a consumer's ability to repay based on expected employment income, creditors need only consider repayment ability based on what is known when the decision to extend credit is made or the credit issued, depending on the type of credit. Commentary to the mortgage-related provisions states that a change in a consumer's circumstance after consummation that cannot be reasonably anticipated from the consumer's application or records is not relevant to the creditor's compliance with the ATR rule. For open-end credit, Regulation Z sets forth that credit card issuers are not required to make any particular predictions about the continued likelihood that a consumer will earn income in the absence of specific information that would reasonably allow them to make a determination about the nature of the income stream in the future.

However, if the information the creditor considers, when the decision to extend credit is made or the credit is issued, indicates that there will be a change in repayment ability after consummation, a creditor is to consider that information in order to have reasonably assessed a borrower's ability to repay.

Equal Credit Opportunity Act (ECOA)

The CFPB statement also added that when creditors make lending decisions, creditors are permitted to take into account a wide range of information in order to make a reasonable assessment of a consumer's ability to repay. Regulation B, which implements ECOA, states that "[a] creditor may take the applicant's immigration status into account," and that a creditor "may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment." CFPB adds that such a consideration may be necessary because an "applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing in a creditor's ability to obtain repayment."

CFPB Discussion

The CFPB sets forth that a borrower's income and indications of a change to that income are often critical to reasonably assessing a borrower's ability to repay. To that end, CFPB stressed that when determining repayment ability, creditors relying on an individual's income derived from U.S.-based employment are permitted (and may, under certain facts and circumstances, be obligated) to consider information that bears on the consumer's underlying and continuing ability to earn income, when residency in the U.S. is a necessary component of such employment. CFPB adds that where a change "cannot be reasonably anticipated" from the application and relevant records, the change need not be considered. This is in line with the requirements as set forth under TILA and Regulation Z as outlined above.

CFPB believes an obligation arises if documentation in the consumer's application or other records indicates that the consumer's repayment ability will change on account of their immigration status. In such circumstances, CFPB stated a creditor is to consider that information, just as it would consider anything else in the application or records at or before consummation indicating that there will be a change in a consumer's repayment ability after consummation.

Frustratingly, while placing emphasis on a consumer's immigration status with regards to ATR, CFPB did not provide guidance regarding what creditors should consider as reliable immigration status. CFPB did acknowledge that there are a wide variety of lawful immigration statuses in the U.S. and stated that assessing how each status might bear on an application is varied, and it "cannot be assumed that consumers with different lawful statuses have identical abilities to repay."

Considerations

Financial institutions should be aware of CFPB's statement and keep in mind that there is currently no new area of law. Existing BSA requirements, TILA and Regulation Z ATR requirements, ECOA and Regulation B prohibited basis lending rules, and Fair Housing Act fair lending rules all remain intact. Institutions should ensure account opening procedures and underwriting standards remain consistent. A decision to file a SAR, or not to file, remains a case-by-case determination based upon the particular facts and circumstances of a given situation. Existing customer identification procedures and customer due diligence rules under current BSA-related regulations are the standard.

Importantly, while the statement is silent as to the Fair Housing Act, creditors must be mindful to continue to comply with fair lending laws which prohibit discrimination based on national origin and race. This is a careful distinction. While creditors are to make a reasonable determination of consumers' ability to repay, which includes considering any changes to expected income for repayment, denying a loan application solely because a loan applicant is not a U.S. citizen or permanent resident is not a requirement under TILA, ECOA, or the Fair Housing Act.

The CFPB statement may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-06-08/pdf/2026-11447.pdf

Conclusion

The recent release of Executive Order 14406 titled, Restoring Integrity to America's Financial System has resulted in the release of new guidance. Additionally, proposed rules to potentially revise customer identification programs, customer due diligence, and other BSA-related risk-based expectations are anticipated. Some of the anticipated proposals are likely to focus on the reliance of ITIN and foreign consular identification cards. Until rule promulgation is finalized, existing BSA regulations remain unchanged.

Consumer lending rules are also not directly altered by the recently released items. Lenders still have the requirement to consider and document consumers' ability to repay certain credit obligations, may consider an applicant's immigration status as applicable to the particular facts and circumstance of the loan application, and must continue to adhere to all EOCA and fair lending laws. Denying credit based upon national origin or race remain prohibited activities.

WBA will continue to closely monitor releases based upon the directive set forth in the EO and plans to comment on forthcoming rules or ROIs to help protect against unintended consequences and duplicative regulatory requirements.

Wisconsin Bankers ASSOCIATION

Compliance Journal
May 2026

Special Focus

2025-2026 State Legislative Update (Part 2)

The March *Compliance Journal* included a special focus article which provided an update on the 2025-2026 Wisconsin legislative session (Part 1). As was discussed in that article, the most active portion of the session has come to a close. However, the biennial legislative term does not formally end until January 4, 2027. During the time since the release of Part 1, additional bills have been signed into law. This article presents a summary of new laws which vary from directly to indirectly relevant to the banking industry.

Most of the laws summarized below have been provided for information purposes and should not require action from banks. However, two are of note. First, WBA-supported legislation related to virtual currency kiosks was signed into law. Second, a new law expands the rights of patient representatives to authorize certain expenditures of incapacitated individuals. These two laws are presented at the beginning of this article. The remaining laws are presented in order of perceived relevance and include some notable items such as reorganization of law governing recordings with register of deeds and high school personal financial literacy requirements.

New Laws Passed This Session Since Part 1

Virtual Currency Kiosks

As discussed in Part 1, a bill was introduced this session designed to regulate virtual currency kiosks. These kiosks appear at many locations across the state and have been increasingly utilized for fraudulent transactions. WBA supported legislation designed to reduce fraud through the use of these kiosks. Specifically, provisions were incorporated into the bill to establish daily transaction limits and require refunds of fraudulent transactions. Since writing of Part 1, the bill regulating virtual currency kiosks was signed into law as 2025 Wisconsin Act 226 and includes those provisions supported by WBA.

Among other things, Act 226 requires all virtual currency kiosk operators (operators) to be licensed under state financial laws and creates consumer protection and antifraud measures aimed at reducing the extent of ongoing cryptocurrency-related scams. It also requires fraud warnings on the front of the kiosk, among other protections. One protection in particular creates a daily transaction limit whereby an operator may not accept from or dispense to a customer, by any means of any virtual currency kiosk, more than $1,000 in fiat currency in the same day. Another protection requires operators to refund the customer, upon request of the customer, the full amount of any transaction, including any fees charged in connection with the transaction, if, not later than 30 days after the transaction, the customer contacted the operator, the Department of Justice, Department of Financial Institutions, or a law enforcement agency to inform them of the fraudulent nature of the transaction. Operators must also provide live, toll-free customer service during all hours in which the virtual currency kiosk is operable, provide physical and electronic detailed transaction receipts, and maintain a written antifraud policy.

WBA is pleased to report this success in the industry's ongoing efforts to combat fraud. Act 226 is generally effective April 10, 2026; however, the customer identification requirements are delayed by sixty days to allow for creation and implementation of those provisions.

Patient's Representative

Another notable banking-relevant law passed since Part 1 is Act 115. Act 115 allows certain individuals to consent

to post-hospital care admissions for incapacitated individuals without first obtaining guardianship. The law was passed in order to reduce unnecessary hospital stays and delays in care transitions, particularly where it was untimely to obtain guardianship in relation to obtaining the necessary care for an incapacitated individual. Under the new law, some individuals, such as a patient's representative, now have the authority to authorize expenditures related to health care to the same extent as a guardian of the estate, unless the incapacitated individual has an agent under a financial POA who is authorized to make expenditures for health care. The procedure for obtaining this authority, and the exercise of it, is up to the individual. The Wisconsin Department of Health Services (DHS) is currently in the process of creating procedures, forms, and training related to the new law. WBA has been in conversations with DHS, who anticipates having implementation prepared by July 1, 2026.

The most significant provisions of Act 115 are effective June 1, 2026. Banks may be presented with requests by patient representatives to transact on accounts of incapacitated customers. These requests will need to be reviewed to confirm whether the patient representative has proper authority. While not yet available, DHS is currently designing forms related to the authority of patient representatives. WBA will continue to provide updates as more information becomes available.

Register of Deeds

2025 Wisconsin Act 234 reorganizes law governing registers of deeds and real property recordings. It clarifies terminology by consistently replacing "instrument" with "document," consolidates redundant provisions, and reorganizes duties, fee structures, and indexing requirements. Notably, it provides statutory authority for registers of deeds to refuse documents that materially impair accurate recording, indexing, or reproduction. It also clarifies and provides more explicit requirements for legal descriptions, among other changes.

While Act 234 does not make any explicit legal changes to recording procedures, the clarifications give register of deeds clearer authority to reject documents that do not comply with standard format requirements for recording documents under Wis. Stat. sec. 59.43.

To help prevent fraudulent recordings, Act 234 also prohibits register of deeds from recording certain types of documents unless they contain document numbers for previously recorded documents; recording a document that contains a scrivener's error, unless the error is clearly marked and initialed; recording certain court documents without a clerk of court certification; or recording a document that the register of deeds determines is not authorized to be recorded or that is being recorded for an unauthorized purpose. It is now also a crime, punishable as a Class I felony, to knowingly provide a forged document for recording. Act 234 is effective April 10, 2026.

High School Personal Financial Literacy Requirement

Another win for the industry this session is related to the ability of banks to assist students in meeting financial literacy requirements for graduation. For context, in 2024, Wisconsin passed a WBA-supported law that high school students complete at least 0.5 credits of personal financial literacy that includes financial mindset, education and employment, money management, saving and investing, credit and debt, and risk management and insurance. As a follow-up to that, Act 223 clarifies that the graduation requirement may be met by a pupil who successfully completes a financial literacy program offered by a financial institution through a branch located in a school if the school board determines the program satisfies the personal financial literacy requirement under Wis. Stat. sec. 118.33(1)(a)1.f. Act 223 is effective April 10, 2026.

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Independence Accounts

Act 225 creates new features related to independence accounts. An independence account is a savings account approved by DHS. These accounts existed prior to Act 225, but the new law changes how funds are treated in such accounts for purposes of DHS' program eligibility requirements. Specifically, DHS must exclude up to $40,000 in inherited assets when determining countable assets under existing eligibility rules. The law creates no monitoring or reporting requirements for banks. Administration of the program, eligibility criteria, registration, and approval of such accounts remains handled by DHS. Act 225 is effective April 10, 2026.

WHEDA Housing Programs

Act 237 modifies the Infrastructure Access Loan Program, Restore Main Street Loan Program, and Commercial-to-Housing Conversion Loan Program as administered by the Wisconsin Housing and Economic Development Authority (WHEDA). It expands eligibility to include tribal housing authorities, revises definitions of developers and governmental units, and streamlines program requirements. It implements cost-reduction measures by local governments by requiring documentation of zoning, regulatory, and fee changes designed to reduce housing costs.

The law increases maximum loan percentages and dollar limits across multiple programs, allows lower or zero interest rates, and updates security and guarantee requirements. Workforce and senior housing supported by these loans must generally remain restricted for ten years, with resale price and occupancy limits recorded as deed restrictions. Act 237 attempts to clarify that the purchaser-income requirements of the workforce and senior housing programs do not apply to any sale that occurs after the initial owner-occupier's purchase. Finally, the Act updates real estate disclosure forms to require sellers to disclose restrictive covenants or deed restrictions tied to WHEDA-funded developments. Most provisions of Act 237 are effective April 10, 2026. The changes made to real estate related disclosure forms under the programs are effective January 1, 2026.

Workforce Home Loan Program

2025 Wisconsin Act 239 creates a workforce home loan revolving loan program administered by WHEDA. The program is designed to support first-time homebuyers purchasing new construction homes by establishing a dedicated workforce home loan fund, financed in part by transfers from existing housing revolving loan funds, with authority to allocate up to $10 million. Eligible applicants must not have owned residential real property for three consecutive years and have an annual household income at or below 100 percent of area median income and meet underwriting, credit, and housing counseling requirements. Loans are interest-free, capped at the lesser of $60,000 or 25 percent of the home purchase price or fair market value of the home, and are secured as second mortgages. Repayment terms vary by income level, including deferred repayment options for lower-income households. The program prioritizes gap financing, sets aside funding for rural areas, and sunsets June 30, 2031. Act 239 is effective April 10, 2026.

Additional Changes to Vehicle Classifications

As discussed in Part 1, Wisconsin passed new laws related to the treatment of certain vehicles. While the changes generally do not have a direct impact on a vehicle as collateral, WBA found that the changes were still worth tracking and reporting on for purposes of awareness. For example, the changes may present implications for loan customers with all-terrain vehicles (ATVs), utility terrain vehicles (UTVs), off-highway motorcycles, and snowmobiles, which are helpful for lenders to be aware of in their customer relationships. Since writing of Part 1, an additional law included within this scope became effective.

2025 Wisconsin Act 114 updates requirements related to the operation of ATVs, UTVs, off-highway motorcycles, and snowmobiles. Including, those involved in emergency and law-enforcement use. The law revises equipment requirements for such vehicles, including headlamps, tail lamps, brake lights, and maintenance standards and creates new definitions for patrol versions of these vehicles. Act 114 is effective March 22, 2026.

Similarly, Act 162 expands requirements for trailer registration for transporting a modular housing unit or other portable building to include the transport of manufactured housing units. Act 162 is effective April 4, 2026.

Sports Betting

2025 Wisconsin Act 247 defines certain event or sports wagers as excluded from the statutory definition of a "bet." The new law applies to wagers made by individuals physically located in Wisconsin using electronic devices, when the wagering server is located on federally-recognized tribal lands in Wisconsin. The wagers must be conducted under an Indian gaming compact entered into before April 1, 1993, and are legally deemed to occur on those tribal lands. Act 247 is effective April 11, 2026.

Property Tax Exemption for Recreational Structures

Act 117, enacted March 27, 2026, creates a new property tax exemption for recreational prefabricated structures located in licensed campgrounds. The Act defines these structures as towable, temporary living units used for recreational or seasonal purposes, including related decks and sheds, when situated on land not owned by the structure's owner. Beginning with assessments as of January 1, 2026, qualifying structures are exempt from property taxation. To offset lost local revenue, starting in 2027, the state will provide payments to taxing jurisdictions equal to the property taxes levied on these structures for the January 1, 2025 assessment year. While this should not impact bank lending operations, it may be indirectly relevant to those who have business relationships with those who own or are involved in covered structures, or local governments. Act 117 is effective March 29, 2026.

Neighborhood Improvement District Infrastructure Financing

Act 120 makes changes to municipal authority related to financing certain infrastructure by special assessment approved by neighborhood improvement districts (NID). A municipality may establish a NID if all affected real property owners petition for it, and the NID's operating plan explicitly approves the special assessment. Proceeds must be used solely for residential development infrastructure and may be collected in installments through property tax rolls, even if not delinquent. The law also clarifies governance rules for NIDs with fewer than five property owners and provides that termination of a NID does not affect the enforceability of previously imposed assessments. It also updates Wisconsin's real estate condition report forms to require disclosure of existing neighborhood improvement special assessments.

While Act 120 places no obligations on banks, it is worth being aware of from the perspective of understanding a municipality's ability to create the new type of NID, how the proceeds of the special assessment may be used, of the impact on a borrower's financial situation if subject to a special assessment, and to be mindful to review certain real estate condition reports for information regarding the special assessment. Act 120 is effective March 29, 2026, except the real estate condition report change does not apply to reports furnished before October 1, 2026.

Manure-Derived Fertilizer Labeling

Act 121 updates fertilizer requirements for products made from composted or vermicomposted manure. The law creates new definitions for "beneficial substances," "vermicompost," "typical analysis," and "compost-based soil or plant additives." Generally speaking, it relates to requirements for labels of certain fertilizers based upon their components. It also exempts manure-based compost fertilizers from minimum nutrient percentage requirements that apply to mixed fertilizers. Additional changes related to controlled field tests and analyses for compost-based products.

While banks are not required to monitor fertilizers, their components, or labels for these requirements, agricultural lenders may have customers for which the changes are relevant to. Act 121 is effective March 29, 2026.

Conclusion

This session saw progress in furthering the industry's priorities to fight fraud with the passage of virtual currency kiosk law. WBA will continue to advocate on behalf of the industry for the remainder of this session and continue to monitor and report on any meaningful developments.

For more information about any of the 2025 Wisconsin Acts summarized in Part I or in this article, or for any other Act of the 2025-2026 legislative session, be sure to view the Wisconsin State Legislature website at: https://docs.legis.wisconsin.gov/2025/related/acts

Wisconsin Bankers ASSOCIATION

Compliance Journal

April 2026

Special Focus

Agencies Propose Revisions to BSA Rules

In January 2021, Congress enacted the William M. (Mac) Thornberry National Defense Authorization Act, of which the Anti-Money Laundering Act (AML Act) was a component. With the passage of the AML Act, Congress stated that it was seeking to modernize and strengthen the AML/CFT regulatory framework, which had not seen comprehensive reform or modernization since the Bank Secrecy Act (BSA) was enacted in 1970.

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) published a proposed rule in the *Federal Register* this month to amend regulations that prescribe anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements for banks in a way that aligns with the rule concurrently proposed by the Financial Crimes Enforcement Network (FinCEN) under BSA.

The agencies have proposed to amend their rules concurrently with FinCEN so that program requirements for banks remain consistent with those imposed by FinCEN. Further, with consistent regulatory text, banks will not be subject to additional burden or confusion from needing to comply with differing standards between FinCEN and the agencies.

Through proposed rules, FinCEN and the agencies seek to make the changes intended by Congress. The following in an overview of key components from the proposed rules.

FinCEN Proposed Rule

The AML Act mandates that FinCEN establish public government-wide AML/CFT priorities and issue regulations incorporating the priorities into revised program requirements. FinCEN's proposal requires financial institutions to review the AML/CFT Priorities (as that term is defined within the proposal) and, as appropriate, incorporate them into their risk assessment processes. Notably, financial institutions will not be required to incorporate the priorities into their risk-based AML/CFT programs until the final rule comes into effect.

Establishing and Maintaining an AML/CFT Program

The proposed rule also refocuses supervisory expectations on effectiveness by distinguishing between deficiencies stemming from the program's design ("establishment") on the one hand, or failures in the program's operation ("maintenance") on the other.

Under the proposed rule, establishing a program would require a financial institution to design a risk-based AML/CFT framework incorporating four core required pillars:

1. Internal policies, procedures, and controls including risk assessment processes and, when applicable, ongoing customer due diligence;
2. Independent program testing;
3. Designation of a U.S.-based compliance officer; and
4. Ongoing employee training.

Establishing an AML/CFT program would also require keeping the program current as a financial institution's risk profile evolves. Maintaining an AML/CFT program would require an institution to implement its program in all material respects, meaning to execute the program in practice.

Internal Policies, Procedures, and Controls

As noted, BSA requires financial institutions to develop "internal policies, procedures, and controls" as part of their AML/CFT programs. The proposed rule would require that a financial institution's internal policies, procedures, and controls be reasonably designed to identify, assess, and document money laundering, the financing of terrorism, and other illicit finance risks (ML/TF risks) through risk assessment processes. A financial institution would be required to mitigate ML/TF risks consistent with its risk assessment processes, including by allocating more attention and resources toward higher-risk customers and activities rather than toward lower-risk customers and activities. The proposed rule would place existing requirements for certain financial institutions to conduct ongoing Customer Due Diligence (CDD) under the internal policies, procedures, and controls pillar. FinCEN believes that including the ongoing CDD obligation under this pillar more accurately reflects how financial institutions operationalize ongoing CDD as part of their overall AML/CFT programs.

Risk Assessment Processes

Although financial institutions commonly maintain risk assessment processes, current AML/CFT program rules do not require them in a uniform manner across institution types. The proposed rule would use consistent language to require risk assessment processes as part of a financial institution's internal policies, procedures, and controls. Risk assessment processes would have to: (1) evaluate the ML/TF risks of the financial institution's business activities, including products, services, distribution channels, customers, and geographic locations; (2) review and, as appropriate, incorporate the AML/CFT Priorities; and (3) be updated promptly upon any change that the financial institution knows or has reason to know significantly changes the institution's ML/TF risks.

Independent Testing

The proposed rule would retain the BSA requirement that financial institutions have an independent audit function to test their AML/CFT programs. The proposal clarifies the expectation that independent testing should be based on objective criteria designed to assess whether a financial institution has effectively established, implemented, and resourced an AML/CFT program consistent with its risk assessment processes; auditors should not substitute their own subjective judgment in place of the financial institution when carrying out this requirement. Independent testing must assess compliance, focus on program effectiveness, be conducted by individuals or parties who are truly independent of the AML/CFT function, and avoid conflicts of interest. Financial institutions would retain flexibility in how this requirement is met.

AML/CFT Program Compliance Officer Located in the United States

The proposed rule includes the BSA requirement that financial institutions must have a designated compliance officer. The existing AML/CFT program rules contain variations in the description of this requirement, so the proposed rule would provide clarifying language. The proposed rule would require that financial institutions designate a person responsible for establishing, implementing, and overseeing day-to-day compliance with BSA requirements (the AML/CFT Officer). Consistent with the AML Act, the proposed rule would require that the AML/CFT Officer be located in the United States and accessible to FinCEN and the appropriate Federal regulators. However, while the AML/CFT Officer must be located in the United States, personnel located outside of the United States would still be permitted to perform certain AML/CFT functions. The proposed rule would not alter existing regulations and guidance that generally prohibit the sharing of suspicious activity reports (SARs) with personnel located outside of the United States other than in limited circumstances, such as sharing with a bank's foreign head office or controlling company.

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Ongoing Employee Training Program

The proposed rule would standardize the AML/CFT training requirement across all program rules by uniformly adopting the BSA's statutory language requiring an "ongoing employee training program," a clarifying rather than substantive change. FinCEN would generally expect training to reflect the institution's internal controls, risk assessment results, and current regulatory requirements, with frequency and content tailored to the institution's risk profile and personnel roles. The risk-based approach allows institutions flexibility in determining which employees and non-employees require ongoing training.

Access to and Approval of a Written AML/CFT Program

The proposed rule would standardize the generally applicable requirement in AML/CFT program rules that financial institutions maintain a written AML/CFT program and make it available upon request to FinCEN, appropriate Federal regulators, or their designees. The proposed rule would also require the program to be approved by the board of directors, an equivalent governing body, or appropriate senior management, clarifying and harmonizing existing approval requirements while allowing flexibility based on an institution's structure. The proposed changes are intended to promote consistency and strengthen oversight without creating new substantive documentation obligations.

Supervision and Enforcement of Banks' AML/CFT Programs

The proposed rule outlines a potential FinCEN enforcement and supervisory policy for banks' AML/CFT programs. Specifically, if a bank has established its AML/CFT program under the proposed rule, FinCEN generally would not take an enforcement action. FinCEN, or other agencies acting on its behalf, generally would not take a significant supervisory action against the bank, unless the bank has a significant or systemic failure to maintain that program. The proposed rule enhances FinCEN's role in AML/CFT supervision by introducing a notice and consultation framework requiring Federal banking supervisors, before initiating a significant AML/CFT supervisory action under delegated authority, to give FinCEN's Director at least 30 days' advance written notice, absent urgent circumstances, to review and provide input on the potential action. In determining whether to pursue an enforcement action or a significant supervisory action, or when reviewing a proposed supervisory action by a Federal banking supervisor, FinCEN's Director would consider (1) the four statutory factors noted above that are required by the AML Act, (2) the extent to which the bank advances AML/CFT priorities by providing highly useful information to law enforcement or national security officials, and (3) whether the bank is employing innovative tools such as artificial intelligence that demonstrate the effectiveness of the bank's AML/CFT program, among other considerations that FinCEN's Director may deem appropriate.

Other Changes to AML/CFT Programs

The proposed rule would make technical and clarifying revisions to FinCEN's AML/CFT program regulations to improve consistency across financial institution types. The changes include renumbering provisions, updating cross-references and statutory citations to reflect the AML Act and Corporate Transparency Act, revising definitions (such as "Bank Secrecy Act" and "Federal functional regulator"), adding a definition of "AML/CFT Priorities," and replacing references to AML programs with "AML/CFT programs" where appropriate.

The proposed rule would consolidate separate bank program rules into a single standard applicable to all banks, harmonize and modernize requirements for casinos and money services businesses (MSBs) while retaining certain MSB-specific provisions, and remove outdated compliance dates and unnecessary cross-references to other regulations. The rule would also provide greater flexibility regarding AML/CFT program approval for most financial institutions, streamline provisions requiring compliance with other applicable rules, and maintain certain self-regulatory organization requirements for broker-dealers and futures commission merchants. Overall, the changes are intended to enhance clarity, consistency, and efficiency without altering substantive compliance obligations.

The Role of the Federal Banking Supervisors

FinCEN's proposed rule was prepared in consultation with the Federal banking agencies, comprised of the Board of Governors of the Federal Reserve System (FRB), FDIC, OCC, and National Credit Union Administration (NCUA). The Federal banking supervisors will also issue their own proposed AML/CFT program rules, in substantive alignment with FinCEN's proposed rule. At the time of this article, FRB had not yet published its proposal.

Proposed Effective Date and Comment Period

The agencies proposed an effective date of twelve months from the date of issuance of the final rule to allow sufficient

time for banks to review and implement the requirements of the proposed rule. The agencies solicit comment regarding the proposed effective date. In addition, the agencies seek comment on all aspects of the proposed amendments but specifically seek comment on the questions listed in the proposed rules. Comments on both proposals are due **June 9, 2026**.

WBA will be filing comments regarding the proposed rules. If you have any questions regarding the proposals or wish to share your comments with WBA, please contact WBA Legal at wbalegal@wisbank.com.

FinCEN's proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-04-10/pdf/2026-07033.pdf

The FDIC/OCC proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-04-10/pdf/2026-06948.pdf

FDIC Rescinds Supervisory Guidance on Multiple Re-Presentment NSF Fees

On **April 10, 2026**, the Federal Deposit Insurance Corporation (FDIC) rescinded its supervisory guidance addressing multiple non-sufficient funds (NSF) fees arising from the re-presentment of the same transaction. The rescission removes the agency's 2022 and 2023 Financial Institution Letters (FILs) that had significantly shaped examination scrutiny and enforcement in this area. It was effective immediately upon publication.

Background on FDIC Guidance

In August 2022, FDIC issued FIL-40-2022, Supervisory Guidance on Multiple Re-Presentment NSF Fees (for more information see the August 2022 *WBA Compliance Journal*). The guidance related to situations where a check or ACH item was returned for insufficient funds and later re-presented by a merchant, resulting in multiple NSF fees associated with the same underlying transaction.

FDIC stated that charging multiple NSF fees in these circumstances could present heightened risks of violations of Section 5 of the Federal Trade Commission (FTC) Act, particularly where disclosures did not clearly inform depositors that re-presentment could result in additional NSF fees. The guidance also described circumstances under which the practice could be considered unfair, even when outlined in disclosures, such as when multiple fees were assessed in a short period of time without a meaningful opportunity for consumers to avoid them.

In June 2023, FDIC rescinded and replaced that original 2022 guidance with FIL-32-2023, Clarifying Supervisory Approach Regarding Supervisory Guidance on Multiple Re-Presentment NSF Fees. The revised FIL reaffirmed FDIC's position that multiple re-presentment NSF fees could raise both deceptive and unfairness concerns and continued to set forth expectations regarding self-identification, corrective action, restitution lookbacks, and examiner treatment during compliance examinations.

Supervisory and Industry Response

Following issuance of the above FILs, FDIC examiners began closely scrutinizing deposit account disclosures and overdraft practices to determine whether they adequately addressed re-presentment concerns. Banks were criticized or cited when disclosures did not clearly state that multiple NSF fees could be charged on the same transaction. In some cases, banks were required to conduct lookback reviews and provide customer restitution.

WBA and other trades expressed grave concern over the approach taken through supervisory guidance. The topic was featured during WBA's annual Washington, D.C. trip, as well as industry trade letters. Advocacy efforts pointed out how the guidance imposed new substantive requirements without statutory authority or notice-and-comment rulemaking under the Administrative Procedure Act.

In 2023, a Minnesota-based bank and the Minnesota Bankers Association (MBA) filed suit challenging the guidance as arbitrary, capricious, and beyond FDIC's authority. At the appellant level, WBA signed on to a joint amicus brief filing in support of MBA challenging a District Court decision by pointing out the impacts of the FIL, how the letter very much

acted as a final rule, that the FILs should be deemed reviewable final agency action, and that the District Court decision should be reversed. Unfortunately, the industry lost on appeal. However, in court proceedings to make the argument to the courts that FILs are not binding rules, FDIC had to ensure there were no consequences attached to the FILs. FDIC ensured there were no consequences by no longer examining banks for the issue and citing banks for UDAP violation described in the FILs.

FDIC's Rescission

As stated above, FDIC rescinded FIL-32-2023. FDIC explained its rationale as being that after review and assessment, the guidance was overly broad in scope and raised uncertainty regarding when disclosures about re-presentments might result in unfairness concerns under the FTC Act.

The rescission does not replace the prior guidance with a new supervisory framework. Instead, FDIC removed the FIL entirely.

While the previous guidance has been fully rescinded, banks should remain mindful to still comply with existing laws and regulations. FDIC specifically noted that supervised institutions should continue to ensure that disclosures accurately reflect actual practices and are provided in accordance with applicable legal requirements.

Practical Considerations

While the rescission means compliance on this matter will no longer be driven by previous guidance documents, it does not eliminate all risk associated with multiple re-presentment NSF fees or need to be mindful of overdraft disclosures and practices.

Unfair and deceptive standards under the FTC Act remain applicable. Examiners may still evaluate whether disclosures are clear and accurate and whether practices cause substantial consumer injury that is not reasonably avoidable. The rescission means that such evaluations will no longer be tied to the specific interpretations outlined in FIL-32-2023.

Additionally, litigation risk persists. Some banks may have encountered demand letters from customers or their attorneys. Plaintiffs may continue to assert breach of contract and consumer protection claims based on account agreements and marketing materials.

Banks may have previously decided to revise disclosures or fee practices in response to the FILs. Despite rescission of the FILs there remains reason for the disclosure or fee practice changes to remain going forward. Each bank should consider what is appropriate based upon operational practice, existing regulatory requirements, expectations, and risk. What is clear, however, is that disclosures should remain clear and understandable by customers.

Lastly, a note on the other supervisory agencies. While FDIC's guidance was the focus of the 2022-2023 re-presentment matters, both the Office of the Comptroller of the Currency (OCC) and Board of Governors of the Federal Reserve (FRB) issued their own interpretations. OCC discussed re-presentment fees in Bulletin 2023-12, Overdraft Protection Programs: Risk Management Practices. The bulletin covered the issue from a broader risk management context rather than establishing a presumption of unfairness or imposing prescriptive disclosure or restitution expectations. Similarly, FRB addressed re-presentment NSF fees in its *Consumer Compliance Outlook: Second Issue 2023*. These supervisory observations described instances where charging NSF fees on re-presented transactions was cited as an unfair practice under Section 5 of the FTC Act based on institution-specific findings.

As of writing this article, neither OCC nor FRB have rescinded or otherwise issued further guidance regarding re-presentment.

Conclusion

FDIC's rescission of its FILs on multiple re-presentment NSF fees marks a significant shift from its previous stance. While the action removes a source of past examination pressure, banks must maintain accurate disclosures and fair NSF fee practices.

The rescission of FDIC's supervisory guidance on multiple re-presentment NSF fees may be viewed at: https://www.fdic.gov/news/financial-institution-letters/2026/fdic-rescinds-supervisory-guidance-multiple-re-presentment?source=govdelivery&utm_medium=email&utm_source=govdelivery



Agencies Codify Elimination of Reputation Risk from Supervisory Programs.

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) issued a final rule to codify the elimination of reputation risk from their supervisory programs. Among other things, the rule prohibits the agencies from criticizing or taking adverse action against an institution on the basis of reputation risk. The final rule also prohibits the agencies 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 solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk. The final rule further forbids the agencies from taking any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful political, social, cultural, or religious activities, constitutionally protected speech, or, for political reasons, lawful business activities that the agencies or its personnel disagree with or disfavor. The final rule is

effective **06/09/2026**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-04-10/pdf/2026-06947.pdf. *Federal Register*, Vol. 91, No. 69, 04/10/2026, 18279-18294.

Agencies Propose Revisions to Regulatory Capital Rules.

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 proposed rule to modernize the capital requirements applicable to Category I and II depository institution holding companies and depository institutions, as well as to revise the market risk capital framework for banking organizations with significant trading activity. The proposal would enhance risk sensitivity and consistency by simplifying core components. The agencies expect the proposal would support the safety and soundness of covered banking organizations and U.S. financial stability while promoting lending and other financial intermediation activities in the banking system over a range of economic conditions. Comments are due **06/18/2026**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05959.pdf. *Federal Register*, Vol. 91, No. 59, 03/27/2026, 14952-15329.

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 proposed rule to modify the regulatory capital rule. In particular, the proposal would revise the risk-based capital treatment of certain exposure categories under the standardized approach, focusing on improving the calibration and risk sensitivity of risk weights that are particularly material to covered banking organizations' lending activities. The proposed rule would also modify the definition of regulatory capital by removing the threshold-based deduction for mortgage servicing assets for all banking organizations subject to the regulatory capital rule, including banking organizations subject to the community bank leverage ratio framework. In addition, the proposed would require Category III and IV banking organizations to recognize most elements of accumulated other comprehensive income in their regulatory capital. Comments are due **06/18/2026**. The proposed rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05960.pdf. *Federal Register*, Vol. 91, No. 59, 03/27/2026, 15332-15452.

CFPB Seeks Comment on Information Collections.

The Bureau of Consumer Financial Protection (CFPB) seeks comment regarding an information collection titled, Interstate Land Sales Full Disclosure Act (ILSA), Regulations J, K, and L. Information is submitted to CFPB to assure compliance with ILSA and the implementing regulations. CFPB also investigates developers who are not in compliance with the regulations. Comments are due **04/20/2026**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-03-20/pdf/2026-05516.pdf. *Federal Register*, Vol. 91, No. 54, 03/20/2026, 13594-13595.

CFPB seeks comment regarding an information collection titled, Mortgage Acts and Practices, Advertising, Regulation N. Regulation N prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four months from last dissemination. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area. Comments are due **04/20/2026**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-03-20/pdf/2026-05515.pdf. *Federal Register*, Vol. 91, No. 54, 03/20/2026, 13595.

CFPB seeks comment regarding an information collection titled, Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking, Regulation V. The consumer disclosures included in Regulation V are designed to alert consumers of information shared with a consumer reporting agency (CRA) and their rights related to prohibiting CRAs from furnishing a consumer report containing certain adverse item(s) of information. Comments are due **04/29/2026**. The notice may be viewed at: https://www.govinfo.gov/content/pkg/FR-2026-03-30/pdf/2026-06100.pdf. *Federal Register*, Vol. 91, No. 60, 03/30/2026, 15604-15605.

FRB Announces Final Approval of Information Collection.

The Board of Governors of the Federal Reserve System (FRB) announced final approval of an information collection titled, Notice of Branch Closure. The reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution (IDI) are contained in section 42 of the Federal Deposit Insurance Act, as supplemented by an interagency policy statement on branch closings. FRB uses the information collected to fulfill its statutory obligation to supervise state member banks. Each IDI must adopt a policy regarding the closing of its branches. When a branch is scheduled for closing, the IDI must notify both its appropriate regulator and customers of the proposed

Wisconsin Bankers ASSOCIATION

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Special Focus

2025-2026 State Legislative Update

The most active portion of Wisconsin's 2025-2026 legislative session is coming to a close. While the biennial legislative term does not formally end until January 4, 2027, the last general-business floorperiod is scheduled for March 17 to 19. That leaves only a limited-business floorperiod and veto review to follow. WBA has been active on a variety of issues, and the following article is presented as a review of what has occurred so far this session.

A law was passed this session which increased the threshold of transactions subject to the Wisconsin Consumer Act (WCA). Previously, covered consumer credit transactions were those for which the amount financed was $25,000 and below. As of January 1, 2027, that amount will increase to $50,000. This change is discussed in more detail below.

Additional issues for the banking industry this session centered around fraud and digital assets. As a continuation of previous sessions, WBA advocated for legislation that would allow financial institutions to pause transactions in cases of suspected elder financial abuse. While a bill was introduced and passed the Assembly, it has yet to make it out of the Senate. As such, no law has been passed this session. However, lawmakers are well-aware that fraud remains a serious issue not just for the banking industry, but across the state. Fraud will remain a top priority in the coming years.

Issues surrounding digital assets and cryptocurrency have surged in recent years. This session saw a variety of bills introduced on those topics. Most notably, three bills were introduced this session which were at the forefront. One regulating virtual currency kiosks, another limiting regulation on digital assets, and the third defining staking of cryptocurrencies as not a securities activity.

Virtual currency kiosks have been appearing at more and more locations and have been increasingly utilized for fraudulent transactions. WBA supported legislation designed to reduce fraud in this area through daily transaction limits and refunds.

Additionally, separate bills were introduced which would limit the ability to regulate digital assets. WBA opposed two bills which were introduced to deregulate certain digital asset related activities. One which would limit the state's ability to regulate cryptocurrency and another which would classify cryptocurrency staking as not a security.

As of writing this article, none of these bills were signed into law this session.

Lastly, while the topic of interchange fees is still a top issue for the industry, it did not arise this session. Previously introduced bills would have prohibited financial institutions from charging interchange fees on the sales tax portion of credit card transactions. While a draft was circulated over a year ago, no bill was ever formally introduced. A coalition of retailers put forth an effort to introduce legislation, but their efforts were defeated this session.

The rest of this article presents new laws enacted this session. While the change to the WCA is significant to the industry (discussed more below), the remaining laws passed this session are largely only indirectly significant to the banking industry. They may be relevant to bank customers or indirectly influence bank processes and procedures. To that extent, this article presents those selected new areas of law below, along with a short summary, primarily for purposes of awareness.

New Laws Passed This Session

The first item covered in this article relates to a change to the WCA. The remaining new laws covered in this section cover a wide range of topics. Topics include tax incremental financing (TIF), environmental programs, business development credits, vehicle regulation, agricultural compliance, and land development procedures. They may potentially indirectly influence lending policy, collateral evaluation, customer advisory practices, and financial product opportunities across the state.

Act 105 expands the dollar thresholds that govern both consumer credit coverage and access to small claims court. The Act amends Wis. Stat. section 421.202(6), which increases the dollar limit threshold used to determine whether certain consumer credit transactions are covered by the WCA from $25,000 to $50,000. Meaning, consumer credit transactions with an amount financed over $50,000, motor vehicle consumer leases with total lease obligations exceeding $50,000, and other consumer transactions with a cash price above $50,000 are excluded. This will result in more transactions being subject to the WCA based upon the amount of the transaction. Banks will need to review and update lending policy and procedures to ensure proper compliance.

Act 105 also expands the jurisdictional limits of Wisconsin small claims court. The general small claims monetary cap increases from $10,000 to $15,000. Additionally, the maximum value of property eligible for replevin actions in small claims court increases from $10,000 to $15,000. This threshold increases the range of actions which may be pursued through small claims procedures and recovery of personal property collateral for higher-value replevin actions.

Act 105 was enacted on March 20, 2026, and takes effect on January 1, 2027.

The state's biennial budget, Act 15, became effective July 4, 2025, authorizing major investments in statewide capital projects, transportation, education, and economic development programs. For a more detailed look at the State of Wisconsin budget, see the July, 2025 *WBA Compliance Journal*.

Act 78 expands the Business Development Tax Credit by clarifying and broadening what qualifies as eligible investment in workforce housing and employee child care programs. For taxable years beginning January 1, 2026, businesses may claim a credit of up to 15 percent of investments made in workforce housing and up to 15 percent for employee child care programs. Qualifying investments now expressly include capital expenditures and contributions to third parties, including local revolving loan fund programs. This may create increased financing activity for housing, child care facilities, and related community development programs.

Act 46, effective November 2, 2025, allows municipalities to authorize the impoundment of vehicles involved in reckless driving when the owner has outstanding forfeitures. In rare circumstances, this may potentially impact lenders when financed vehicles become subject to impoundment. However, even then, any impact would be operational and would not affect a bank's security interests to the vehicle.

A few new laws were passed which relate to vehicles:

- Act 64, effective December 11, 2025, updates definitions and regulatory treatment for ATVs and UTVs, including rules for out-of-state vehicles.
- Act 83, effective March 1, 2026, increases the maximum allowable weight for UTVs from 3,000 pounds to 3,500 pounds.
- Act 53, effective October 1, 2026, expands Wisconsin's fleet registration program to include larger classes of vehicles and trailers.

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While none of these three new laws directly impact lending operations, banks that finance recreational vehicles or UTVs may want to be aware of the changes. Banks with business customers who maintain or seek large fleets of vehicles may want to be aware of the law change expanding the state's fleet registration program.

Act 66, effective December 11, 2025, establishes new requirements for planting certified seed potatoes on five or more acres, along with significant penalties for noncompliance. Agricultural lenders with customers involved in this industry may want to be aware.

Act 67, effective December 11, 2025, updates leasing requirements and tenant protections in mobile and manufactured home communities, including written lease mandates and minimum terms. The new law is designed to protect residents of mobile and manufactured home communities from unfair leasing practices by requiring written leases of reasonable duration, prohibiting discrimination based on a home's age, establishing clear and limited grounds for termination, and ensuring adequate advance notice when a community or site is being permanently closed. While it should not impact bank lending operations, it is worth being aware of for those lenders with mobile and manufactured home borrowers who have leases.

Act 69, effective January 1, 2027, makes changes to residential real estate practice, including marketing requirements, compensation rules, disclosures relating to artificial intelligence-altered images, and the treatment of off-market listings. The revisions are designed to promote transparency in real estate practices, particularly in property marketing.

Act 68, effective July 1, 2026, is designed to promote fair and timely subdivision plat approvals. It modernizes Wisconsin's approval process by establishing clearer timelines, limiting required upfront financial security, and promoting efficient land development practices. This restructuring may reduce delays in development financing and improve predictability for construction lenders.

Lastly, Wisconsin regularly updates its Tax Incremental Financing (TIF) laws and administrative rules, refining how Tax Incremental Districts operate and how municipalities create, amend, and manage them. A TIF district uses future growth in property tax revenue to help pay for development within that area. Two recent laws create narrow exceptions: Act 6 lets Middleton's TID #6 exceed normal size and value limits, and Act 16 grants similar flexibility for data-center-focused TIF districts in Port Washington and Beaver Dam, though spending must be limited to data-center project costs. Banks generally are not affected, but those located in these communities may see development or lending activity tied to these expanded districts.

Conclusion

The Wisconsin Legislature's most active period is coming to a close. Wisconsin banks should prepare for the WCA changes taking effect January 1, 2027, and review the other laws discussed in this article. While most Acts covered by this article may not directly impact banks, several touch on areas which may carry indirect or situational relevance. Additionally, this session delivered meaningful progress advancing the industry's priorities surrounding virtual currencies and fraud. WBA will continue advocating for the industry the remainder of the session while monitoring and reporting any meaningful legislative or regulatory developments affecting Wisconsin banks.

The Acts listing within the article may be viewed at the Wisconsin State Legislature website: https://docs.legis.wisconsin.gov/2025/related/acts

New Executive Orders Intended to Help with Homeownership and Affordability

President Trump has recently signed two executive orders intended to help with homeownership and affordability through removing regulatory burden in the home building and home loan purchasing processes, in mortgage loan servicing, and to streamline permit requirements and other building-related components for developments. The following is a summary of the two orders.

Providing Access to Mortgage Credit Executive Order

In the executive order titled, "Providing Access to Mortgage Credit," the administration intends for the order to help improve the availability and affordability of mortgage credit; tailor rules for community banks and "smaller banks;" reduce

the regulatory burden on community banks and otherwise facilitate community bank engagement in mortgage activity; foster innovation, growth, and consumer choice in the mortgage market; modernize origination and closing standards to reduce lending costs; remove regulatory distortions to the structure of the mortgage market; ensure capital and liquidity frameworks subject similar credit and liquidity risks to similar regulation across the system; promote competition among mortgage lenders of all charter types to drive down mortgage rates; and strengthen housing-finance liquidity. "Smaller banks" are banks with assets fewer than $100 billion.

As recognized in the order, the mortgage lending process has become increasingly complicated over the years due to rules such as the Dodd-Frank Act, and subsequent rulemakings, which have increased the compliance costs of mortgage origination and servicing. These burdens have contributed to a reduction in banks participating in mortgage lending. The order recognizes that, "Community banks, generally institutions with fewer than $30 billion in assets, have been especially affected. The regulatory and rule changes have undermined community banks' businesses, concentrated credit and liquidity risk outside the banking system, and resulted in reduced access to credit for some creditworthy borrowers, including rural households and low- and moderate-income households."

As appropriate and consist with applicable law, including appropriate risk-management requirements, the agencies are to consider the following:

Origination and Ability-to-Repay/Qualified Mortgage Reform: The Bureau of Consumer Financial Protection (CFPB) must consider:

- Proposing amendments to Regulation Z that tailor the following requirements for smaller banks:
    - Ability to repay (ATR) and qualified mortgage (QM) requirements (including potentially a broader QM safe harbor for portfolio loans) and the requirements of the Truth in Lending Act (TILA), Real Estate Settlement Procedure Act (RESPA), and TILA-RESPA Integrated Disclosure (TRID) rules;
- Replacing TRID timing rules with a materiality-based standard that preserves consumer clarity and reduces closing delays;
- Exempting small-mortgage loans from caps on QM points and fees or, as appropriate, modifying such caps to support affordability;
- Updating regulations regarding banks' reasonable compliance with ATR and QM underwriting requirements by removing unnecessarily burdensome elements;
- Modernizing the right to rescission for mortgage lending, for example, by enabling increased secure electronic and digital forms and processes;
- Streamlining the requirements applicable to rate-and-term refinancing under Regulation X mortgage servicing rules; and
- Exempting rate-and-term refinancing (including cash-out refinancing) from rescission rights.

The CFPB, Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the agencies) must consider revising supervisory guidance to ensure that:

- Examiners evaluate mortgage lending based on the effectiveness of the lender's policies regarding a consumer's ability to repay and prudent underwriting, rather than the existing focus on process and technical compliance; and
- Good-faith, technical compliance errors are subject to correction-first supervisory treatment, with enforcement reserved for borrower harm or repeated misconduct.

Modernization of Home Mortgage Disclosure Act Data Collection and Disclosure: The CFPB is also required to consider proposing amendments to Regulation C to raise the asset threshold for exemption from the Home Mortgage Disclosure Act (HMDA) data collection and reporting requirements for smaller banks, to exclude inquiries from the scope of HMDA, and to ensure that disclosures protect privacy and reduce burdens, including insufficiently tailored, expensive, and complex software and training needed for reporting financial institutions.

Capital and Liquidity Alignment: Further, the agencies and the Federal Housing Finance Agency (FHFA) are required to consider:

- Revising capital regulations to tailor risk weights for all banks, including community banks and other smaller banks, for portfolio mortgages, servicing rights, and warehouse lines of credit to the material credit risk of the exposure;
- Modernizing collateral valuation and transfer systems between FRB and Federal Home Loan Banks (FHLBs);
- Expanding access to longer-dated FHLB advances tied to residential mortgage assets;
- Creating targeted FHLB liquidity programs for entry-level housing, owner-occupied purchase loans, and small residential builders;
- Accelerating collateral boarding and valuation processes through standardized data and digital documentation; and
- Refocusing FHLBs' Affordable Housing Program on faster-cycle execution and greater financial leverage for small-scale and owner-occupied housing projects.

The executive order also sets forth that FRB and FHFA must consider authorizing FHLBs' intermediate access to FRB's discount window for FHLBs' member depository institutions under standardized collateral, operational, and risk-management protocols.

Within 120 days of the date of the order, FHFA, in consultation with the heads of other relevant executive departments and agencies, is required to submit a report to the Assistant to the President for Economic Policy and the Office of Management and Budget on the efficiency of national housing finance market. The report is to identify recommendations for regulatory or legislative changes necessary to address any regulatory or oversight gaps.

Construction and Housing Supply: The executive order requires the agencies to consider revising supervisory guidance both to exclude one-to-four-family residential development and construction lending from commercial real estate concentration guidance and to ensure supervisory expectations support responsible construction lending by community banks.

Appraisal Modernization: To further the purpose of the executive order, the agencies and FHFA are to consider:

- Modernizing appraisal regulations and guidance to expand the use of alternative valuation models, desktop and hybrid appraisals, and artificial intelligence valuation tools;
- Simplifying appraiser qualification requirements; and
- Reducing appraisal requirements for low-risk transactions, including low loan-to-value refinancing and small-balance loans; and setting clear appraisal timelines.

The Department of Housing and Urban Development (HUD) and Veterans Affairs (VA) are to consider:

- Aligning appraisal standards between the Federal Housing Administration and VA Home Loan Program where risk is comparable;
- Clarifying the distinction in an appraisal inspection between safety and habitability concerns that necessitate pre-closing repairs versus cosmetic concerns; and
- Expanding post-closing repair flexibility.

Digital Mortgage Modernization: In this area, the Department of the Agriculture (USDA), HUD, VA, and FHFA are to consider:

- Eliminating unnecessary wet-signature requirements for disclosures, applications, closing documents, and similar documents;
- Standardizing acceptance of electronic signatures, e-notes, and remote online notarization; and
- Promoting digital mortgage standards.

Servicing and Supervisory Certainty: The executive order also requires the agencies and HUD to consider:

- Aligning supervisory expectations to support portfolio mortgage servicing as a core community banking function; extending cure-first standards to good-faith servicing errors; simplifying loss mitigation requirements; and issuing a proposed rule to provide exemptions from complex mortgage services for smaller banks; and
- Ensuring that supervisory evaluations of performing, prudently underwritten portfolio loans do not focus on technical defects or rely on evolving supervisory interpretations.

Enforcement: The agencies are to consider promulgating a policy against enforcement actions for violations of consumer financial laws that:

- Discourages imposing civil monetary penalties, except where the underlying violations are willful, knowing, or reckless;
- Considers good corporate conduct, including a bank's correction of good-faith, technical compliance errors; and
- Allows institutions a reasonable opportunity for self-identification and remediation of appropriate compliance matters.

Duplicative or Unnecessary Licensing Requirements: Lastly, the executive order requires the agencies to consider eliminating duplicative or unnecessary requirements regarding licensing or registration for mortgage loan officers of any smaller bank.

Removing Regulatory Barriers to Affordable Home Construction Executive Order

A second executive order (Removing Regulatory Barriers to Affordable Home Construction) is focused on removing constraints within the mortgage markets which make housing less affordable and include layers of unnecessary regulatory barriers. These areas include the permit process and mandates which result in delayed construction, restricted development, and have driven up the costs of new housing. The costs and practices identified under the order generally impact banks' customers tied to home construction and development. The executive order will not impact bank lending operations but an awareness of the directives within the order may be helpful when working with business customers engaged in building and development and for community needs overall.

To reduce regulatory barriers to building homes and to steward taxpayer dollars in a manner that promotes housing affordability, the executive order requires the agencies to consider the following:

Targeting Federal Regulatory Barriers to Residential Development: The Army and the Environmental Protection Agency (EPA) must review and revise requirements related to stormwater, wetlands, lakes, rivers, and other bodies of water to reduce housing construction and ownership costs, streamline regulatory and agency decision-making processes, reduce property tax burdens, and increase insurability, as appropriate and consistent with applicable law. Such requirements are to include:

- The Construction General Permit for stormwater discharges from construction activity;
- Federally-issued Total Maximum Daily Loads;
- Construction site and post-construction requirements for Municipal Separate Stormwater System permits;
- Federal standards for permits under section 404 of the Clean Water Act (CWA) for the discharge of dredged and fill material into waters of the United States; and
- Federal standards for assumption of dredge and fill permitting by States and tribes under section 404(g) of CWA.

The Department of Commerce, HUD, Department of Transportation (DOT), and FHFA are to consider eliminating unduly burdensome rules and reforming programs that constrain residential development and impede housing affordability, especially the construction of affordable single-family homes and suburban and exurban neighborhoods, including, as needed:

- Economic Development Administration's guidelines and investment priorities concerning development density;
- DOT's Reconnecting Communities Pilot Program;
- HUD's Pathways to Removing Obstacles to Housing Program; and
- FHFA's guidelines and regulations regarding chattel lending for manufactured housing and incentivizing low-balance home mortgages.

The executive order also requires USDA, HUD, the Energy Department, and FHFA to take appropriate action to reform and, where appropriate, eliminate unduly burdensome or costly energy-efficiency, water-use, or alternative-energy requirements regarding housing, including manufactured housing, to the maximum extent practicable and consistent with applicable law. Such action shall include reviewing and revising, as needed:

- Energy Conservation Program's Energy Conservation Standards for Manufactured Housing;
- The Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing;
- Residential building energy codes subject to review by the Energy Department; and
- Water and energy efficiency improvement standards for FHFA's duty to serve underserved market properties.

Streamlining Federal Permitting Requirements for Residential Development: The Chairman of the Council on Environmental Quality is to provide guidance to executive departments and agencies on implementing the National Environmental Policy Act, including through the establishment, adoption, or application of categorical exclusions, in a manner that maximally exempts or reduces burdens on housing construction, preservation, adaptive re-use, and infrastructure that facilitates housing construction, such as roads, water, sewer, and other projects.

The Chairman of the Advisory Council on Historic Preservation is to develop guidance on maximally exempting, or reducing burdens on, housing construction and infrastructure that facilitates housing construction, such as roads, water, sewer, and other projects under section 106 of the National Historic Preservation Act so that reporting requirements are no more burdensome than necessary.

Boosting Housing Affordability Through State and Local Regulatory Best Practices: Within 60 days of the executive order, HUD, in coordination with the Assistant to the President for Domestic Policy, is to develop and promulgate a series of regulatory best practices for State and local governments to promote housing construction and affordability, including:

- Streamlining permitting processes for housing developments by, for example, capping permitting timelines and fees; allowing by-right development for single-family homes; limiting retroactive application of new or changed building codes; allowing third-party inspections and appropriate builder choice on certified entities for inspections and studies; and ensuring swift dispute resolution with government agencies and private parties regarding construction matters;
- Curtailing mandates that increase housing construction costs, such as green-energy building requirements or other energy-choice restrictions, non-evidence-based building codes, and unreasonable building-code-adoption timelines;
- Re-examining restrictions on the use of manufactured or modular housing on the basis of the construction method rather than objective standards for building and safety, aesthetic requirements, or prohibitions on construction when comparable site-built housing is permitted; and
- Removing arbitrary limitations on residential housing development beyond urban centers, such as urban growth boundaries, growth moratoria, and commuting penalties.

The USDA, HUD, DOT, and EPA are also required to take steps to revise regulations, guidance, grant applications and requirements, technical assistance, and other relevant agency documents or practices to advance the best practices issued pursuant to the executive order.

Facilitating New Residential Construction in Opportunity Zones: The Treasury Department and HUD are required to jointly evaluate Administration actions to better align programs and incentives with the Opportunity Zone tax incentives to expand investment in single-family home construction, including considering lawful mechanisms to link grants, financing tools, or other incentives with new or increased investment in Qualified Opportunity Funds engaged in the development and sale of single-family homes. Treasury and HUD are also to assess opportunities to coordinate the Opportunity Zone incentives to promote single-family home construction in census tracts that qualify both as Qualified Opportunity Zones and as low-income communities for the purposes of the New Markets Tax Credit.

Conclusion

President Trump issued two executive orders intended to help with homeownership and affordability through removing regulatory burden in the home building and home loan purchasing processes, in mortgage loan servicing, and to streamline permit requirements and other building-related components for developments. The agencies will need to review existing laws, guidance, and supervisory materials to further determine how best to implement the directives set forth in the orders.

Resources

Promoting Access to Mortgage Credit Executive Order and Fact Sheet:

https://www.whitehouse.gov/presidential-actions/2026/03/promoting-access-to-mortgage-credit/

https://www.whitehouse.gov/fact-sheets/2026/03/fact-sheet-president-donald-j-trump-promotes-access-to-mortgage-credit/

Removing Regulatory Barriers to Affordable Home Construction Executive Order and Fact Sheet:

https://www.whitehouse.gov/presidential-actions/2026/03/removing-regulatory-barriers-to-affordable-home-construction/

https://www.whitehouse.gov/fact-sheets/2026/03/fact-sheet-president-donald-j-trump-removes-regulatory-barriers-to-affordable-home-construction/



Wisconsin Bankers ASSOCIATION

Compliance Journal

February 2026

Special Focus

FinCEN Issues Order Granting Relief to Banks From Certain CDD Requirements

In an order dated **February 13, 2026**, the Financial Crimes Enforcement Network (FinCEN) granted exemptive relief to banks from the requirement to identify and verify beneficial owners of legal entity customers at each account opening.

2016 Customer Due Diligence Rule

FinCEN issued its customer due diligence rule in 2016 requiring covered financial institutions (banks) to identify the beneficial owner(s) of each legal entity customer by obtaining from each such customer specified information about its beneficial owner(s), either via a certification form, or by some other means, provided the individual performing the information certifies the information is accurate. Identification need occur "at the time a new account is opened." FinCEN's regulations define the phrase "new account" to mean "each account opened at a covered financial institution by a legal entity customer on or after the applicability date."

In addition to requiring identification of beneficial owner(s) of legal entity customers, the 2016 rule further required banks to verify the identity of each beneficial owner identified to the bank, according to risk-based procedures to the extent reasonable and practicable within a reasonable time after an account is opened.

Under the 2016 rule, banks are required to identify and verify a legal entity customer's beneficial owners(s) each time that customer opens an account with the bank, regardless of how little time passes between account openings or whether the bank has knowledge of facts that would reasonably call into question the reliability of beneficial ownership information last obtained about the customer.

Exemptive Relief

FinCEN has granted exemptive relief to banks from the requirements to identify and verify the identities of beneficial owner(s) of legal entity customers at each new account opening. A bank may instead limit its identification and verification of the identities of beneficial owner(s) to the following scenarios:

1. When a legal entity customer first opens an account with the bank;
2. Any time thereafter when the bank has knowledge of facts that would reasonably call into question the reliability of beneficial ownership information previously obtained about the legal entity customer; and
3. As needed, based on the bank's risk-based procedures for conducting ongoing customer due diligence.

When the bank determines, based on its risk-based procedures for conducting ongoing customer due diligence, that it needs to identify and verify the identity of the beneficial owner(s) of a legal entity customer, the bank may rely on beneficial ownership information previously obtained provided the customer certifies or confirms (verbally or in writing) that such information is up-to-date and accurate.

The bank must maintain a record of such certification or confirmation, including for both verbal and written confirmations by the customer. If a customer is unable to certify or confirm that previously obtained beneficial ownership information is up-to-date and accurate, or if the bank has knowledge of facts that would reasonably call into question the reliability of beneficial ownership information previously obtained about the legal entity customer, the bank must identify and verify the identities of the beneficial owner(s) of the legal entity customer in accordance with the customer due diligence rule, 31 C.F.R. § 1010.230.

The exceptive relief is intended to assist banks, specifically to limit their identification and verification of the identities of beneficial owner(s). As such, it creates no new requirements. Banks are still required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers. The extent to which a bank utilizes the exceptive relief discussed above and incorporates it into existing policies is at the discretion of the bank. As a result, banks may still collect beneficial ownership information at each account opening if they choose.

Conclusion

FinCEN has granted exemptive relief to banks from the requirement to identify and verify beneficial owner(s) of legal entity customers at each account opening. Notwithstanding the relief, a bank must comply with all other applicable anti-money laundering/counter the financing of terrorism (AML/CFT) requirements under the Bank Secrecy Act, including the obligation to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The order may be viewed at: https://www.fincen.gov/system/files/2026-02/FinCEN-Order-CCDExceptiveRelief.pdf

WBA Seeks Feedback on Recent SBA Loan Program Changes

The Small Business Administration (SBA) released significant updates to its citizenship and residency requirements for participation in the 7(a) and 504 loan programs. The changes revise eligibility standards for business owners and guarantors. A summary of the changes is provided below. WBA is currently evaluating the extent of the impact on the Wisconsin banking industry. If your bank is impacted by the changes, please contact WBA legal by the end of February at: wbalegal@wisbank.com

Background and Change to Prior Guidance

In December of 2025, SBA issued Procedural Notice 5000872050. The notice created an exception to SBA's general citizenship and residency requirements, permitting borrowers to have up to 5% ownership by certain foreign nationals or U.S. persons residing outside the United States. Subsequently, on **February 2, 2026**, SBA issued Policy Notice 5000876441 rescinding the December 2025 procedural notice, replacing it with stricter requirements.

Under the new policy, 100% of all direct or indirect owners of a small-business loan applicant must be either U.S. citizens or U.S. nationals with their principal residence inside the United States, its territories, or possessions. The changes are effective **March 1, 2026**. As a result, the 5% foreign-ownership exception is fully eliminated. Legal Permanent Residents are no longer eligible to own any percentage of an SBA loan applicant or related entities. Likewise, any SBA-required guarantors must be U.S. citizens or nationals with a U.S.-based principal residence.

Because of the potentially significant impact this immediately has upon the operation of 7(a) lenders, WBA is requesting impacted banks reach out. If you are impacted, or anticipate impact, please contact WBA legal by the end of February at: wbalegal@wisbank.com

The December 2025 SBA Procedural Notice 5000872050 may be viewed at: https://www.sba.gov/document/procedural-notice-5000-872050-procedural-notice-5000-872050-update-sop-50-10-8-citizenship-residency-requirements

The February 2026 SBA Policy Notice 5000876441 may be viewed at: https://www.sba.gov/document/policy-notice-5000-876441-update-sop-50-10-8-citizenship-residency-requirements-recission-procedural-notice-5000-872050

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Questions Resulting from DOR Transfer Return System Upgrade

The Wisconsin Department of Revenue (DOR) recently launched its Real Estate Transfer Return (RETR) system. The updated system is intended to enhance the overall reliability and strengthen security protections for the general public, county officials, and third-party vendors.

As a result of the system update, information that was previously 'voluntarily' collected by DOR has been made 'mandatory' within the system. Information now required includes certain nonpublic information such as taxpayer identification numbers and buyers' financing terms and rate.

Several banks have received notification from their local title company instructing the bank of additional information requirements and in some cases asking for nonpublic information from banks.

This article is to alert banks that there is no new area of law regarding information reported related to a transfer return under subchapter II of Wisconsin Statute chapter 77. In conversations with DOR regarding the new system, DOR leadership has confirmed that the change in system has inadvertently resulted in all information fields being treated as mandatory. The DOR is aware of the system error and is working to correct the problem. A frequently asked questions (FAQ) resource regarding the matter is to be posted by DOR to its transfer return website.

In the interim, banks should consider how to respond if a title company asks for additional nonpublic information in a transaction for which a transfer return is to be filed. A title company can certainly collect the necessary information directly from the parties to the transaction in its loan closing process. However, if a bank were to be asked to share nonpublic information with a title company in connection with one of the bank's loan closings, the sharing of nonpublic information likely falls under Regulation P exceptions to notice and opt-out requirements for the processing and servicing of transactions.

Resources from DOR regarding their RETR system may be viewed at:

https://www.revenue.wi.gov/Pages/RETr/Home.aspx

https://www.ranww.org/documents/resources/transfer-return-overview.pdf

Wisconsin Bankers ASSOCIATION

Compliance Journal

January 2026

Special Focus

Happy New Year - 2026 Brings Adjusted Regulatory Thresholds

Happy New Year! As we step into 2026, there are many thresholds which have been adjusted by both state and federal regulators which go into effect now that the new year has arrived. Below is a collection of thresholds effective **January 1, 2026**. A link has been provided for each as reference.

Regulation Z, TILA

- The exemption threshold for Regulation Z (Truth in Lending Act) will increase to **$73,400**, up from $71,900. https://www.govinfo.gov/content/pkg/FR-2025-12-15/pdf/2025-22814.pdf
- The exemption threshold under Regulation Z for HPML appraisals will increase to **$34,200**, up from $33,500. https://www.govinfo.gov/content/pkg/FR-2025-12-16/pdf/2025-22875.pdf
- The asset-size threshold under Regulation Z which exempts creditors from the requirement to establish an escrow account for HPMLs will be:
    - For creditors and their affiliates that regularly extended covered transactions secured by first liens, the asset-size threshold is adjusted to **$2.785 billion**, up from $2.717 billion; and
    - The exemption threshold for certain insured depository institutions with assets of $10 billion or less is adjusted to **$12.485 billion**, up from $12.179 billion. https://www.govinfo.gov/content/pkg/FR-2026-01-07/pdf/2026-00085.pdf
- The dollar amount thresholds under Regulation Z for HOEPA and QM-related loans have been adjusted as follows:
    - For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages will be **$27,592**.
    - The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,380**.
    - 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 **$137,958**;
        - 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$82,775** but less than **$137,958**;
        - 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than **$82,775**;
        - 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than **$13,958**;
        - 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to **$82,775**; or
        - 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than **$82,775**.

  - 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 **$137,958**;
    - **$4,139** for a loan amount greater than or equal to **$82,775** but less than **$137,958**;
    - 5 percent of the total loan amount for a loan greater than or equal to **$27,592** but less than **$82,775**;
    - **$1,380** for a loan amount greater than or equal to **$17,245** but less than **$27,592**; and
    - 8 percent of the total loan amount for a loan amount less than **$17,245**.

- 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 2026. https://www.govinfo.gov/content/pkg/FR-2025-12-15/pdf/2025-22773.pdf

Regulation C, HMDA

- The asset-size threshold to be exempt from collecting HMDA data in 2026 is adjusted to **$59 million**, up from $58 million. https://www.govinfo.gov/content/pkg/FR-2026-01-07/pdf/2026-00087.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 **$1.649 billion**; and
  - Intermediate small bank means a small bank with assets of at least **$412 million** as of December 31 of both of the prior two calendar years and less than **$1.649 billion** as of December 31 of either of the prior two calendar years. https://www.govinfo.gov/content/pkg/FR-2026-01-07/pdf/2026-00042.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://occ.gov/news-issuances/bulletins/2025/bulletin-2025-48.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 **0.17%**. 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 2026 calendar year increases to **$16.00**, up from $15.50. https://www.govinfo.gov/content/pkg/FR-2025-12-15/pdf/2025-22772.pdf

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Special Focus

- The exemption threshold for Regulation M (Consumer Leasing Act) will increase to **$73,400**, up from $71,900. https://www.govinfo.gov/content/pkg/FR-2025-12-15/pdf/2025-22813.pdf
- The FDIC Designated Reserve Ratio remains **2 percent** for 2026. https://www.govinfo.gov/content/pkg/FR-2025-11-28/pdf/2025-21460.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 **$24,500**, up from $23,500. The limit on annual contributions to an IRA is increased to **$7,500**, up from $7,000. https://www.irs.gov/newsroom/401k-limit-increases-to-24500-for-2026-ira-limit-increases-to-7500
- Multifamily loan purchase caps for Fannie Mae and Freddie Mac will be **$88 billion** for each enterprise, for a combined total of $176 billion. 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/document/2026-multifamily-cap-and-definitions.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 **$832,750**, an increase of $26,250 from 2025. https://www.fhfa.gov/news/news-release/fhfa-announces-conforming-loan-limit-values-for-2026
- FHA's nationwide forward mortgage limit "floor" and "ceiling" for a one-unit property in 2026 are **$541,287** and **$1,249,125**, respectively. For 2026, the nationwide Home Equity Conversion Mortgage (HECM) limit will be **$1,249,125** for all areas. https://www.hud.gov/hud-partners/single-family-lender
- 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.
    - **72.5 cents** per mile driven for business use, up 2.5 cents from 2025;
    - **20.5 cents** per mile driven for medical or moving purposes for qualified active-duty members of the Armed Forces, reduced by a half cent from 2025; and
    - **14 cents** per mile driven in service of charitable organizations; the same as in 2025. https://www.irs.gov/newsroom/irs-sets-2026-business-standard-mileage-rate-at-725-cents-per-mile-up-25-cents



Flood Insurance Rules – Remember to Consider Contents Coverage

While there are no new requirements regarding flood insurance, examiners continue to closely scrutinize loan portfolios for compliance with flood insurance rules. Contents coverage has occasionally been an overlooked aspect of flood insurance and carries certain nuances worth noting. This article discusses what the flood insurance rules require for purposes of contents coverage with detailed examples and important concepts to be aware of when determining the correct amount of flood insurance.

Background

The National Flood Insurance Program (NFIP) is administered primarily under the National Flood Insurance Act (NFIA) and the Flood Disaster Protection Act (FDPA). The NFIP is administered by the Federal Emergency Management Agency (FEMA) which makes flood insurance available to property owners within participating communities. The NFIP aims to reduce the impact of flooding by providing affordable insurance to property owners and by encouraging communities to adopt and enforce floodplain management regulations. The FDPA requires the federal financial supervisory agencies to adopt regulations prohibiting banks from making certain loans secured by property in a special flood hazard area (SFHA). For purposes of this article, such loans will be referred to as a "designated loan." While there are important components to discuss regarding what makes a designated loan, they are outside the scope of this article. For more information on what makes a designated loan, consult the resource provided at the end of the article.

The conversation regarding "contents coverage" begins with the general premise that the flood insurance rules prohibit banks from making, increasing, extending, or renewing any designated loan unless the building or mobile home and any contents securing the loan is covered by flood insurance for the term of the loan (MIRE event). Meaning, a MIRE event requires a bank to ensure that any contents securing that loan is covered by flood insurance. As mentioned above, this step is sometimes forgotten. Furthermore, this leaves some unanswered questions such as "how much contents coverage is needed?" among others. Fortunately, the agencies have provided clarification in the form of questions and answers.

Contents Coverage Concepts

In 2022 the federal financial supervisory agencies (agencies) issued revised Interagency Questions and Answers Regarding Flood Insurance (Q&As). The Q&As clarify that when a building and its contents both secure a loan, and the building is located in a SFHA in which flood insurance is available, flood insurance is required for the building and any contents securing the loan. The agencies also clarify that if contents securing the loan is stored in a building which does not secure the loan, then flood insurance is not required on those contents, regardless of whether the building is in a SFHA. The agencies further clarify that both contents and the building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes so long as some reasonable amount of insurance is allocated to each category.

For purposes of the following discussion and examples, "Act" refers to the NFIA and FDPA, as revised by the National Flood Insurance Reform Act, Biggert-Waters Flood Insurance Reform Act, and Homeowner Flood Insurance Affordability Act. ''Regulation'' refers to each agency's current final flood insurance rule.

Once a bank determines that a designated loan will require contents coverage, the next steps is to determine how much flood insurance coverage must be assigned to the contents. The flood insurance rules require that the amount of flood insurance "must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act." The maximum limit of coverage available for the particular type of property under the Act depends on the value of the secured collateral. Under the NFIP, there are maximum caps on the amount of flood insurance available for buildings located in a participating community. These amounts are currently as follows:

- $250,000 for single-family, two-to-four family dwellings, and individually owned condominium units (a/k/a residential property structures) and $100,000 for contents insured under the Dwelling Form Policy or Residential Condominium Building Association Policy (RCBAP).
- $250,000 multiplied by the number of units for a residential condominium and $100,000 for contents insured under the RCBAP Form. ($100,000 total, not per unit).

- $500,000 for other buildings (a/k/a non-residential structures) and $500,000 for contents insured under the General Property Form. This includes all non-residential buildings, mixed-use condominium buildings not eligible for coverage under the RCBAP, and other residential buildings of five or more families, such as cooperatives or apartment buildings in the non-condominium form of ownership.

In addition to these maximum caps under the NFIP, the flood insurance rules also provide that "flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself," which is commonly referred to as the "insurable value" of a structure. An NFIP policy will not cover an amount exceeding the insurable value of the structure, so the maximum amount of flood insurance coverage is the applicable limit available under the NFIP or the insurable value, whichever is less. Meaning, the amount of flood insurance required by the Act and Regulation is the lesser of:

The outstanding principal balance of the loan, or

- The maximum amount of insurance available under the NFIP, which is the lesser of:
    - The maximum limit available for the type of structure, or
    - The "insurable value" of the structure.

When this calculation includes contents, this same theory applies. Meaning, the bank must consider the maximums above as well as the insurable value of the contents.

In totality, these concepts can be summarized into the following steps:

1. Is the designated loan secured by a building in a flood zone and contents which are inside that building?
    a. If yes, then the bank must take the following steps to ensure that an adequate amount of flood insurance is assigned to both the building and its contents.
2. What is the minimum amount of flood insurance required for the loan?
    a. This step is calculated based upon the "lesser of" test described above.
3. Bank is obligated to make sure that both the building and its contents are insured up to a reasonable amount that equals that minimum amount.
    a. As a reminder, how much is assigned to the building and the contents is up to the bank so long as it is reasonable.

It is also worth noting that for purposes of this article, the scope is focused on what the flood insurance rules require. The bank can always require more than what the flood insurance rules require. That would be a matter of policy.

Examples

The following examples are provided to help illustrate the concepts discussed above. Examples 1-2 focus on the details of calculating flood insurance coverage. Examples 3-5 illustrate in detail how to calculate flood insurance coverage. Three examples illustrate how to allocate coverage.

Example 1

This example involves a non-residential building. Loan security includes only one equipment shed located in an SFHA in a participating community.

- Outstanding loan principal balance is $300,000.
- Maximum amount of insurance available under the NFIP:
    - Maximum limit available for type of structure is $500,000 per building (non-residential building).
    - Insurable value of the equipment shed is $30,000 and $10,000 for contents.

Because the minimum amount of flood insurance required is the insurable value of the equipment shed, the insurance required by the flood rules for the equipment shed is $30,000. Contents is not factored into the calculation because contents is not collateral for the loan.

Example 2

This example involves a non-residential building. Loan security includes one equipment shed and equipment located within that same equipment shed located in an SFHA in a participating community.

- Outstanding loan principal balance is $300,000.
- Maximum amount of insurance available under the NFIP:
    - Maximum limit available for type of structure is $500,000 per building (non-residential building) and $500,000 for contents.
    - Insurable value of the equipment shed is $30,000 and the insurable value of the equipment located within the shed is $10,000.

Because the minimum amount of flood insurance required is the insurable value of the equipment shed combined with the insurable value of the equipment, the insurance required by the flood rules for the equipment shed and the equipment is $40,000. Thus, the bank could satisfy the flood rules by ensuring that both the equipment shed and equipment are assigned an amount of insurance, in a reasonable amount, which totals $40,000. The reasonable amount must be calculated based upon the facts and circumstances of the loan. In this example given that the equipment shed has an insurable value of $30,000 and the equipment an insurable value of $10,000, we will assume it is reasonable to assign the equipment shed $30,000 and the equipment $10,000 flood insurance coverage.

Example 3

This example involves a non-residential building. Loan security includes a warehouse and the inventory located within that same warehouse located in an SFHA in a participating community.

- Outstanding loan principal balance is $200,000.
- Maximum amount of insurance available under the NFIP:
    - Maximum limit available for type of structure is $500,000 per building (non-residential building) and $500,000 for contents.
    - Insurable value of the warehouse is $150,000 and insurable value of the inventory located within the warehouse is $100,000.

Because the minimum amount of flood insurance required is the principal balance of the loan, the insurance required by the flood rules for the warehouse and the inventory is $200,000. Thus, the bank could satisfy the flood rules by ensuring that both the warehouse and the inventory are assigned an amount of insurance, in a reasonable amount, which totals $200,000. The reasonable amount must be calculated based upon the facts and circumstances of the loan. In this example, given that the warehouse has an insurable value of $150,000 and the inventory an insurable value of $50,000, we will assume assigning the warehouse $150,000 and the inventory $50,000 flood insurance coverage is a reasonable amount. Note that this holds true even though the inventory is worth $100,000.

Example 4

This example involves a slight twist on Example 3. Notice that the insurable value of the warehouse has changed. This example involves a non-residential building. Loan security includes a warehouse and the inventory located within that same warehouse located in an SFHA in a participating community.

- Outstanding loan principal balance is $200,000.
- Maximum amount of insurance available under the NFIP:

- Maximum limit available for type of structure is $500,000 per building (non-residential building) and $500,000 for contents.
- Insurable value of the warehouse is $200,000 and insurable value of the inventory located within the warehouse is $100,000.

Because the minimum amount of flood insurance required is the principal balance of the loan, the insurance required by the flood rules for the warehouse and the inventory is $200,000. Thus, the bank could satisfy the flood rules by ensuring that both the warehouse and the inventory are assigned an amount of insurance, in a reasonable amount, which totals $200,000. Just as in Example 3, the reasonable amount must be calculated based upon the facts and circumstances of the loan. It is important to emphasize that when contents coverage is required, the bank must always assign a "reasonable amount" to the contents. This is true even if the building's value meets or exceeds the minimum flood insurance required, as in this example. Meaning the bank could not insure the warehouse up to its insurable value of $200,000 and leave the contents uninsured. This would be a violation of the flood insurance rules. In this example, we will assume that if the warehouse is insured for $150,000 and the inventory for $50,000 that it is a reasonable amount.

Example 5

This example involves a non-residential building. Loan security includes a building used as a restaurant and the commercial equipment located within that same building located in an SFHA in a participating community.

- Outstanding loan principal balance is $650,000.
- Maximum amount of insurance available under the NFIP:
  - Maximum limit available for type of structure is $500,000 per building (non-residential building) and $500,000 for contents.
  - Insurable value of the restaurant building is $700,000 and insurable value of the commercial equipment located within the restaurant building is $50,000.

The maximum amount of flood insurance available under the NFIP requires a slightly more complex calculation in this scenario. The maximum amount of flood insurance available under the NFIP is $500,000 for the structure (because this is less than the insurable value of the restaurant building, which is $700,000) and $50,000 for the commercial equipment (because this is less than the maximum limit for contents which is $500,000). Meaning the maximum amount of flood insurance available under the NFIP is $550,000. Because this amount is less than the outstanding principal balance of the loan, $550,000 is the minimum amount of flood insurance required for the transaction. Thus, the bank could satisfy the flood rules by ensuring that both the restaurant building and the commercial equipment are assigned an amount of flood insurance, in a reasonable amount, which totals $550,000.

Conclusion

Contents coverage has occasionally been an overlooked aspect of flood insurance; however, when a building and its contents both secure a loan, and the building is located in a SFHA in which flood insurance is available, flood insurance is required for the building and any contents securing the loan.

In the commercial and agricultural loan setting, it is common within the industry for banks to take security interest in property which includes contents. Because of this, it is important to be aware of the language within the bank's security agreements, and what it covers, so that the bank is able to meet flood insurance requirements. If the bank does not wish to take contents as collateral to avoid flood insurance implications, it could consider disclaiming the collateral. In this case, the bank should also consider the implications of disclaiming collateral from a loan policy standpoint, understanding that such decisions have broader implications on the security of the loan beyond just flood insurance rules.

The Flood Q&As can be found here: https://www.govinfo.gov/content/pkg/FR-2022-05-31/pdf/2022-10414.pdf