FICC TELEBRIEFING

July 25 and 26, 2023

Escheat Rules to Ensure Compliance with State Law Regarding Property

PRESENTED BY

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ESCHEATS

This Escheat chapter sets forth the requirements of Michigan escheat laws as set forth under the Uniform Unclaimed Property Act of 1995 (the "Act").

I. STATUTORY BACKGROUND

The Act sets forth the custody of unclaimed property in the State of Michigan.[1] Subject to a few exceptions, all property, including any income or increment derived from the property, less any lawful charges, that is held, issued, or owing in the ordinary course of your business and remains unclaimed by the owner for more than three (3) years after it becomes payable or distributable is presumed abandoned.[2] That property is then subject to the custody of Michigan as unclaimed property if certain requirements are met.[3]

II. ESCHEATABLE PROPERTY[4]

a. **Bank Accounts**. Accounts are deemed abandoned unless the owner meets one or more of the following conditions within the abandonment periods:

- Increased or decreased its amount, or presented the passbook or other similar evidence of the deposit for crediting of interest.
- Communicated in writing with the institution concerning the account.
- Otherwise indicated an interest in the account, as evidenced by the institution's records.
- Owned another account to which the above applies, and the institution communicates in writing with the owner regarding the account at the address to which communications on the other account(s) are sent.
- Had another relationship with the institution, and has either communicated with the institution in writing, or has otherwise indicated an interest as evidenced by the institution's records, and the institution communicates in writing with the owner regarding the account at the address to which communications on the other relationship are sent.

b. **Certificate of Deposits**. Dormancy begins the day after the first maturity of the certificate. For auto-renewing CDs, the dormancy period begins at the first maturity in the absence of depositor contract. Do not report a CD until after the period during which the owner penalties for early withdrawal have expired. If you establish owner contact during a renewal term, the dormancy will run from the date of that contact.

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1 MCL 567.221 et seq.

2 MCL 567.223(1).

3 MCL 567.224.

4 This section discusses property that we believe would be applicable to financial institutions.

PRACTICAL NOTE: For auto renewing CD that auto-renews every two years (or in even years), you would have to wait until the renewal term to escheat.

c. **Checks**. Dormancy runs from issuance.

d. **Cashier's Checks**. Dormancy runs from issuance.

e. **Stock/Dividends**. Report if the shareholder, for more than three years, has not claimed a dividend, distribution, or other sum payable, or has not communicated in writing with you AND you do not know the location of the shareholder at the end of the three-year period. Look to returned mail for evidence that you do not know location of shareholder.[5]

f. **HSA**. The program should dictate when the account is considered abandoned.

g. **IRAs**. Dormancy begins at the point when an IRA, Keogh, or 401K account becomes mandatorily distributable under the terms of the account or plan.

h. **UTMA/UGMA**. Considered unclaimed after three years. The minor should be listed as the owner and the adult as the custodian. If the deposit owners have other accounts or you have documented contact with the deposit owners, do not report the inactive account.

i. **Wages.** Wages greater than $50.00 that remain unclaimed by the owner for more than 1 year after becoming payable.

j. **Safe Deposit Box**. Dormancy begins after the lease or rental period has expired.[6]

k. **Gift Certificates**. A gift certificate or gift card is presumed abandoned if it is not claimed or used for a period of five years after becoming payable or, if the card is used one or more times without using its full value, it is not claimed or used for an uninterrupted period of five years. A gift certificate is "claimed or used" if there is any transaction processing activity on the card, including redeeming, refunding or adding value to the card. However, assessing inactivity fees or similar service fees is not processing activity. The Act excludes a gift certificate, as defined in the Michigan Consumer Protection Act ("MCPA"), from the escheat process. If you offer a gift card that is within the MCPA's definition of "gift certificate" as set forth above, the escheat process will not apply to that card if you have an expiration period greater than 5 years and do not charge a dormancy fee, then it is not escheatable.

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5 Contact counsel if reporting this type of account. There are requirements based on how the stock is registered.

6 You must drill before preparing report. Do not report empty boxes.

III. CONDITIONS NEEDED TO MAKE PROPERTY SUBJECT TO THE ACT

For property to become subject to the escheatment process, one or more of the following requirements must be met, in addition to the escheat period being met as set forth on the last page of this Chapter:[7]

a. The last known address ("LKA") of the apparent owner is in Michigan;

b. Your records do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in Michigan;

c. Your records do not reflect the last known address of the apparent owner, and one (1) of the following is established:

- That the last known address of the person entitled to the property is in this state.

- That the holder is domiciled in this state or is a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property.

d. The last known address, as shown in your records, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is domiciled in Michigan or is a government or governmental subdivision or agency of Michigan.

e. The last known address, as shown in your records, of the apparent owner is in a foreign nation and the holder is domiciled in Michigan or is a government or governmental subdivision or agency of Michigan.

f. The transaction out of which the property arose occurred in Michigan, and both of the following are established:

- The last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

- You are domiciled in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

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7 *Id.*

PRACTICAL NOTE: For most of you, the first factor will be met by having your records indicate that they last lived in Michigan.

IV. EXCEPTIONS

Even if the requirements above are met, not all unclaimed property is subject to the Act. If the abandoned property has a value of $25.00 or less, it is not subject to the custody of the state. However, this exception does not apply to dividends or any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest.

PRACTICAL NOTE: When determining the value of the property to see if it meets the $25.00 value exception, it is determined prior to assessing any escheat fees. If the amount was in excess of $25.00 prior to the assessment of your fee, it is always escheatable even if the escheated value is $25.00 or less.

PRACTICAL NOTE 2: For bank accounts, if the amount is $25.00 or less and there is no escheat, continue charging your dormancy fee until the balance is absorbed

EXAMPLE: Dormant Bank has a savings account with $49.00 in it for Davey Jones that has been dormant for three years as of March 31, 2016. It charges a $25.00 escheat fee. Dormant Bank provides all proper notices to Davey Jones regarding the presumption of abandonment. Davey Jones does not reach out to Dormant Bank prior to July 1, 2016. Dormant Bank assesses its fee on June 30th. The balance in the account is $24.00 as of July 1, 2016, the day the property is set to escheat. Here, the balance was greater than $25.00 prior to the assessment of the fee, so it is escheatable.

V. REPORTING ABANDONED PROPERTY

When the Bank is holding onto property that is presumed abandoned and subject to the Act based on the requirements above, the Bank must take proper action to escheat the property. The Bank must report the property to the state treasurer (the "Administrator"). The formal report filed with the Administrator by the Bank must include the following information:[8]

a. Name, Social Security number, and last known address (of each person appearing to be owner of property, if known);

b. For unclaimed funds held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

8 All of the listed report requirements are for property of $25 or more.

c. A description of the property, if abandoned property are contents of a safety deposit box;

d. Nature and identifying number, if any, or description of the property, and amount appearing to be due (can be reported in aggregate if under $50);

e. The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

f. Other information the administrator requires by rule as necessary.

The full list of requirements for reporting (including coding) can be found in the Michigan *Manual for Reporting Unclaimed Property*.[9]

VI. DEADLINES FOR REPORTING PROPERTY

All property that has reached its dormancy period as of March 31 of that year must be reported by the first business day of July of that same year. The State of Michigan website provides a recommended timeline for reporting unclaimed property, which is set forth below.

On or before March 31, the Bank should identify properties that may be reportable as unclaimed property as of March 31. Thereafter, on or before April 15, the Bank should prepare and mail due diligence to those property owners identified as inactive to their last known address. On or before May 15, the Bank should have determined which property owners have not responded to due diligence. This includes returned mail or no response to the notice sent by the Bank previously. By June 1, the Bank should begin preparing the annual unclaimed property report using reporting software or upload the reports for free, using the State's unclaimed property website. Finally, on or before the first business day of July, the Bank must have submitted the report and remittance as outlined in the Manual for Reporting Unclaimed Property.[10]

Even if the Bank has no unclaimed property to report, it should file a Zero/Negative Report annually to maintain a filing history and ensure compliance with the Unclaimed Property Act.

9 https://unclaimedproperty.michigan.gov/docs/MI_2023_Manual_for_Reporting_Unclaimed_Property.pdf

10 Manual for Reporting Unclaimed Property (https://unclaimedproperty.michigan.gov/docs/MI_2023_Manual_for_Reporting_Unclaimed_Property.pdf).

VII. FINES AND PENALTIES FOR FAILING TO REPORT[11]

If the Bank fails to pay or deliver property as required, the Bank must pay to the Michigan Treasury interest at a monthly rate of one percent (1%) above the adjusted prime rate per annum on the property or value of the property from the date the property should have been paid or delivered.

If the Bank willfully fails to submit a report as required, it must pay a civil penalty of $100 for each day the report is withheld, but not to exceed $5,000. Further, if the Bank willfully fails to pay or deliver property to the Treasury as requested, it must pay a civil penalty equal to 25% of the value of the property.

Finally, a person who willfully refuses after written demand by the administrator to pay or deliver property to the Treasury is guilty of a misdemeanor, and if convicted, may be punished by a fine of not less than $500.00, nor more than $25,000.00, or imprisonment for not more than 6 months, or both.

VIII. SAFE DEPOSIT BOXES

There are special rules that apply to safe deposit boxes. First, you should drill before preparing your report as you do not report empty boxes. Only the following items are reportable:

- Papers of value;
- Securities;
- Cash;
- Jewelry; and
- Other miscellaneous items like baseball cards, tools, gold/silver ingots, stamp collections, nostalgic items, etc.

Do not report clothing, toiletries, food, alcoholic beverages, loose tools or keys, explosives, broken or unusable items (except jewelry or metals with value), weapons, purses or wallets, inconsequential papers, or cremated remains.

IX. NON-MICHIGAN PROPERTY

If the Bank is in possession of property that is not under Michigan jurisdiction, the Bank must look to the applicable state's escheat laws. To determine the applicable state, the Bank must look to the last known address of the unclaimed property. Not all states adhere to the three-year waiting period prior to reporting, as Michigan does. Below are each state's dormancy period requirement: [i]

11 MCL 567.255 *et seq.*

- Alabama: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Money Orders: five (5) years
    - Traveler's Checks: fifteen (15) years
- Alaska: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: one (1) year
    - Traveler's Checks: fifteen (15) years
- Arizona: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: three (3) years
    - Money Orders: three (3) years
- Arkansas: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: five (5) years
    - Money Orders: seven (7) years
- California: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Account: three (3) years
    - Money Orders (non-bank): seven (7) years
- Colorado: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Savings Account: five (5) years
    - Money Orders (non-bank): seven (7) years
- Connecticut: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Account: three (3) years
    - Money Orders (non-bank): seven (7) years
- Delaware: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: five (5) years
    - Checking Accounts: five (5) years
    - Traveler's Checks: fifteen (15) years
- Florida: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: three (3) years
    - Traveler's Checks: fifteen (15) years
- Georgia: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: two (2) years
    - Traveler's Checks: fifteen (15) years
- Hawaii: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safe Deposit Boxes: five (5) years
    - Traveler's Checks: fifteen (15) years

- Idaho: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Accounts: five (5) years
    - Traveler's Checks: fifteen (15) years
- Illinois: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Accounts Payable: three (3) years
    - Refunds Due: three (3) years
- Massachusetts: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: three (3) years
    - Safety Deposit Box: seven (7) years
    - Traveler's Checks: fifteen (15) years
- Minnesota: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: five (5) years
    - Traveler's Checks: fifteen (15) years
- Mississippi: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: five (5) years
    - Safety Deposit Box: five (5) years
    - Traveler's Checks: fifteen (15) years
- Missouri: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: three (3) years
    - Checking Accounts: five (5) years
    - Traveler's Checks: fifteen (15) years
- Montana: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Accounts Payable: five (5) years
    - Money Orders: seven (7) years
- Nebraska: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: three (3) years
    - Money Orders: seven (7) years
- Nevada: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Money Orders: seven (7) years
    - Checking and Savings Accounts: three (3) years
- New Hampshire: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Accounts: five (5) years
    - Money Orders: seven (7) years
- New Jersey: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Stored Value Cards/Unredeemed Gift Certificates: five (5) years
    - Vendor Checks: three (3) years

- New Mexico: there is no standard dormancy period, but the below items have defined dormancy periods:
    - Wages or payroll: one (1) year
    - Checking Accounts: five (5) years
    - Money Orders: seven (7) years
- New York: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: three (3) years
    - Savings Accounts: three (3) years
    - Unredeemed Gift Certificates: five (5) years
- North Carolina: : there is no standard dormancy period, but the below items have defined dormancy periods:
    - Wages/Payroll/Salary: one (1) year
    - Checking and Savings Accounts: five (5) years
    - Money Orders: seven (7) years
- North Dakota: generally two (2) or three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: two (2) years
    - Safety Deposit Box: three (3) years
    - Traveler's Checks: fifteen (15) years
- Ohio: there is no standard dormancy period, but the below items have defined dormancy periods:
    - Wages or payroll: one (1) year
    - Checking Accounts: five (5) years
    - Traveler's Checks: fifteen (15) years
- Oklahoma: there is no standard dormancy period, but the below items have defined dormancy periods:
    - Wages/Payroll/Salary: one (1) year
    - Unredeemed Gift Certificates: five (5) years
    - Money Orders (non-bank): seven (7) years
- Oregon: generally three (3) years, with exceptions for the below:
    - Refunds or Rebates: one (1) year
    - Safety Deposit Box: two (2) years
    - Money Orders (non-bank): seven (7) years
- Pennsylvania: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Commissions: two (2) years
    - Money Orders: seven (7) years
    - Traveler's Checks: fifteen (15) years
- Rhode Island: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Commissions: one (1) year
    - Money Orders: five (5) years
    - Traveler's Checks: fifteen (15) years
- South Carolina: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Dividends: three (3) years
    - Money Orders: seven (7) years

- South Dakota: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: three (3) years
    - Money Orders: three (3) years
- Tennessee: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Accounts: three (3) years
    - Money Orders: seven (7) years
- Texas: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: five (5) years
    - Traveler's Checks: fifteen (15) years
- Utah: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: five (5) years
    - Money Orders: seven (7) years
- Vermont: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Accounts: three (3) years
    - Money Orders (non-bank): seven (7) years
- Virginia: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Traveler's Checks: fifteen (15) years
    - Checking Accounts: five (5) years
- Washington: generally three (3) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Checking Accounts: three (3) years
    - Traveler's Checks: fifteen (15) years
- West Virginia: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: five (5) years
    - Traveler's Checks: fifteen (15) years
- Wisconsin: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Dividends: three (3) years
    - Traveler's Checks: fifteen (15) years
- Wyoming: generally five (5) years, with exceptions for the below:
    - Wages/Payroll/Salary: one (1) year
    - Safety Deposit Box: five (5) years
    - Money Orders: seven (7) years

Please refer to each state's escheatment statutes for more detailed information on the requirements and procedures of escheatment.

[i] Bodman is not licensed in these states. The details provided for information purposes only.

Dormancy Periods

PROPERTY TYPE	ESCHEAT PERIOD
Travelers checks	15
Money Orders or Similar (other than Third Party Bank Checks)	3
Check, Draft, or Other Similar Instrument	3
Demand, Savings, and Matured Time Deposits (including automatically renewable)	3
Uniform Transfer to Minor Accounts and "In Trust For" Accounts	3
Life or Endowment Insurance Policies or Annuity Contracts that have matured or terminated	3
Prepaid Funeral Escrow Accounts under MCL 328.211 et seq	3
Prearranged Funeral Plan Accounts under MCL 328.201 et seq	3
Stocks, shares, or other intangible ownership interests in business associations	3
Property Held in a Fiduciary Capacity	3
Gift Certificates, Gift Cards, or Credit Memos (you don't have to file if they do not expire in less than 5 years and do not charge inactivity fees)	3
Wages over $50	1
Safe Deposit Boxes or Repositories	3
Other Unclaimed Property Held in the Ordinary Course of Business	3

FICC TELEBRIEFING

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Recent Developments

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Recent Developments

AML/BSA

OFAC Sanctions. On July 11, 2023, OFAC added Aleksandar Vulin to the SDN list for his corrupt activities in Serbia that contribute to shipments of arms to Russia. On July 12, 2023, OFAC added 10 individuals and one entity to the SDN list for their involvement in the Sinola Cartel that is responsible for a significant portion of the illicit fentanyl and other deadly drugs trafficked into the United States. On July 12, 2023, OFAC removed about two dozen Columbian nationals from the SDN list. On July 19, 2023, OFAC added several Belgian nationals, two Mexican nationals, and one North Macedonia national, to the SDN list for trafficking drugs to the US and Europe, including cocaine and fentanyl.

OFAC published a reminder to file your 2023 Annual Report of Blocked Property by September 30, 2023, for property held as of June 30, 2023 (see the reminder for further information). On June 29, 2023, OFAC published a notice removing 15 Venezuela related (mostly Columbian) persons and entities from the SDN list, and amending three entries on the SDN list. On July 10, 2023, OFAC issued Venezuela-Related General License 40B, "Authorizing Certain Transactions Involving the Exportation or Reexportation of Liquefied Petroleum Gas to Venezuela." Additionally, OFAC added regulations to implement Executive Order (E.O.) 14078 of July 19, 2022, "Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home." On July 19, 2023, OFAC issued Venezuela-related General License 5L, "Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After October 20, 2023."

Russia Sanctions. On June 27, 2023, OFAC published an Africa Gold Advisory concerning reporting related to the role of illicit actors in the gold trade, including the Wagner Group, to (i) highlight the opportunities and specific risks raised by the gold trade across sub-Saharan Africa and (ii) encourage industry participants to adopt and apply strengthened due diligence practices to ensure that such malign actors are unable to exploit and benefit from the sector. OFAC also added several Russian, African, and UAE individuals and entities to the SDN list related to African mining. On June 23, 2023, OFAC added two FSB officers to the SDN list who were indicted by USDOJ for their efforts to influence US elections.
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Vadim Konoshchenok of Tallinn, Estonia, was arrested in Estonia on a provisional arrest warrant issued from the Eastern District of New York and extradited from Estonia to the United States on July 13, 2023. He is suspected of having ties to the FSB, and smuggled hundreds of thousands of sensitive, American-made electronics and ammunition in support of Moscow's war machine, using front companies to conceal his criminal enterprise."

On July 20, 2023, OFAC issued Russia-related General License 70, "Authorizing the Wind Down of Transactions Involving Joint Stock Company Ural Mining and Metallurgical Company" and Russia-related General License 71, "Authorizing the Wind Down and Rejection of Transactions Involving Certain Entities Blocked on July 20, 2023." On June 28, 2023, OFAC and OFSI (OFAC's British equivalent agency) published a joint Humanitarian Assistance and

Food Security Fact Sheet to provide additional clarity on U.S. and UK Russia-related sanctions, and relevant authorizations, exceptions, and public guidance.

FinCEN

FATF Report of Countries with AML Deficiencies. FinCEN announced that FATF added Cameroon, Croatia, and Vietnam to its list of Jurisdictions under Increased Monitoring, and that FATF did not remove any jurisdictions from the list. FATF's list of High-Risk Jurisdictions Subject to a Call for Action remains the same, with Iran and the Democratic People's Republic of Korea (North Korea) still subject to FATF's countermeasures. Burma remains on the list of High-Risk Jurisdictions Subject to a Call for Action, and is still subject to enhanced due diligence, not counter-measures. Financial institutions must comply with U.S. sanctions and FinCEN regulations against opening or maintaining any correspondent accounts, directly or indirectly, for North Korean or Iranian financial institutions. U.S. financial institutions should continue to consult existing FinCEN and OFAC guidance on engaging in financial transactions with Burma.

Covered financial institutions should ensure that their due diligence programs, which address correspondent accounts maintained for FFIs, include appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to detect and report known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed in the United States. Furthermore, money services businesses (MSBs) have parallel requirements with respect to foreign agents or foreign counterparties, as described in FinCEN Interpretive Release 2004-1. This Interpretive Release clarifies that AML program regulations require MSBs to establish adequate and appropriate policies, procedures, and controls commensurate with the risk of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties. Additional information on these parallel requirements (covering both domestic and foreign agents and foreign counterparts) may be found in FinCEN's Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring. Such reasonable steps should not, however, put into question a financial institution's ability to maintain or otherwise continue appropriate relationships with customers or other financial institutions, and should not be used as the basis to engage in wholesale or indiscriminate de-risking of any class of customers or financial institutions. Financial institutions should also refer to previous interagency guidance on providing services to foreign embassies, consulates, and missions.

Fines, Settlements, and Orders

Transgressor	Fine or Order, and Date	Wrongful Action
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$6 million SEC fine and $6 million FINRA fine; 7-11-2023	Merrill Lynch and its parent company BAC North America Holding Co. failed to file hundreds of SARs from 2009 to late 2019. BAC used a $25,000 reporting threshold rather than a $5000 reporting threshold for filing SARs.

CFPB

Small Business Lending Rule. The CFPB updated each of its Small Business Lending Rule FAQs on June 28, 2023. The updates clarify who is covered under the rule, which transactions count toward thresholds for rule applicability, etc. The CFPB also published its slides from the recent webcast discussing this rule.

Blogs. This month's blogs include:

- Twelve years of protecting consumers and honest businesses
- What's ahead for Bank of America and its customers
- Office of Research blog: Initial Fresh Start program changes followed by increased credit scores for affected student loan borrowers
- Ensuring consumers receive critical lending protections
- CFPB to distribute more than $3.5 million to consumers who were charged illegal fees to reduce or eliminate their federal student loans
- The CFPB's 2022 Fair Lending Annual Report to Congress
- Office of Research blog: How are mortgages with a COVID-related forbearance performing in 2023?
- Protecting consumers' right to challenge discrimination

FRB

FedNow is Live. The FRB announced on July 20, 2023, that its new system for instant payments, the FedNow® Service, is live. 35 financial institutions and 15 payment processors completed testing and certification to use FedNow. FedNow Services will facilitate nationwide reach of instant payment services by financial institutions — regardless of size or geographic location — around the clock, every day of the year. While this will allow business customers to send and receive, and have access to, payments immediately, it will also facilitate the instantaneous withdrawal of customer funds if customers perceive that a financial institution is weak.

Commercial Real Estate Loan Accommodations and Workouts. The FRB, FDIC, NCUA, and OCC jointly issued a final policy statement on commercial real estate loan accommodations and workouts (90 total pages, but the actual Policy Statement begins on page 16, and appendices begin on page 40). The statement is substantially similar to a proposal issued last year, and includes minor changes in response to comments. The Statement also includes a section on short-term loan accommodations that was not included in the previous guidance, and it addresses recent accounting changes for estimating loan losses. The Statement provides examples of how to classify and account for loans affected by workout activity. This Statement updates and supersedes the 2009 guidance on commercial real estate loan workouts.

The final Statement addresses supervisory expectations with respect to a financial institution's handling of loan accommodation and workout matters including (1) risk management, (2) loan classification, (3) regulatory reporting, and (4) accounting considerations (i.e., CECL).

Additionally, the Statement includes updated references to supervisory guidance and revised language to incorporate current industry terminology. Financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans with weaknesses that result in adverse classification. Modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding loan balance. The statement does not affect existing regulatory reporting requirements or supervisory guidance provided in relevant interagency statements issued by the agencies or accounting requirements under U.S. generally accepted accounting principles (GAAP).

The Statement provides separate guidance for short term workouts and long term workouts. The primary focus of an examiner's review of a CRE loan, including binding commitments, is an assessment of the borrower's ability to repay the loan. Examiners should consider the following factors: The borrower's character, overall financial condition, resources, and payment history; the nature and degree of protection provided by the cash flow from business operations or the underlying collateral on a global basis that considers the borrower's and guarantor's total debt obligations; relevant market conditions, particularly those on a state and local level, that may influence repayment prospects and the cash flow potential of the business operations or the underlying collateral; and the prospects for repayment support from guarantors. The Statement provides specific guidance for evaluating guarantors and collateral, and guidance for when loans should be put on a watch list or classified.

Five appendices are incorporated into this Statement. Appendix 1 contains examples of CRE loan workout arrangements illustrating the application of this Statement to classification of loans and determination of nonaccrual treatment. Appendix 2 lists selected relevant rules as well as supervisory and accounting guidance for real estate lending, appraisals, allowance methodologies, restructured loans, fair value measurement, and regulatory reporting matters such as nonaccrual status. Banking regulators intend this Statement to be used in conjunction with materials identified in Appendix 2 to reach appropriate conclusions regarding loan classification and regulatory reporting. Appendix 3 discusses valuation concepts for income-producing real property. Appendix 4 provides the special mention and adverse classification definitions used by the FRB, FDIC, and OCC. Appendix 5 addresses relevant accounting and supervisory guidance on estimating loan losses for financial institutions that use the current expected credit losses (CECL) methodology.

FDIC

Consumer News. The July 2023 edition of FDIC Consumer News discusses FDIC deposit insurance, and contains links to many resources for consumers regarding deposit account insurance and consumer banking scams.

Voluntary Self-Assessments. FIL 35-2023 encourages banks to voluntarily conduct and submit self-assessments of their diversity policies and practices to the FDIC by September 30, 2023. The diversity self-assessment form is fully automated and accessible online through the secure

FDIC*connect* portal. Multiple authorized users can complete the self-assessment electronically, view previous submissions, and easily import content from a previous submission for the current reporting period.

OCC

Climate Risks. Senior Deputy Comptroller for Large Bank Supervision Greg Coleman testified before a U.S. House of Representatives' Committee on July 18, 2023. In his oral remarks (read from a written statement), Mr. Coleman indicated that climate risk regulations or supervision would not focus on community banks:

> "Community banks are very familiar with the impacts of weather events upon their customers and businesses in the local communities they serve. These banks have long managed the risks that localized weather events present. As mentioned, the OCC is focused on climate related financial risk management at banks of $100 billion or more and does not intend for these same efforts to trickle down to community banks. However, Acting Comptroller Hsu has suggested that midsize and community bankers be mindful of these risks and develop thoughtful, tailored assessments of their climate-related financial risk profiles to ensure they manage them appropriately. The Acting Comptroller has made a concerted effort to meet with community bankers to discuss climate-related financial risks. He has traveled across the country, including visits to Topeka, Kansas and Midland, Texas, to listen to and hear from community bankers directly about their experiences with physical and transition climate-related financial risks. The OCC is committed to continued dialogue and constructive engagement with all stakeholders, including community bankers, as we build and apply our climate-related financial risk management expertise."

Cybersecurity Supervision Work Program. OCC Bulletin 2023-22 announces the new Cybersecurity Supervision Work Program (CSW) for use by examiners. The CSW does not establish new regulatory expectations, and banks are not required to use this work program to assess cybersecurity preparedness. The OCC continues to encourage but does not require use of standardized approaches to assess and improve cybersecurity preparedness, and banks may choose from a variety of available tools and frameworks. The CSW does not change the availability of banks' optional use of the FFIEC Cybersecurity Assessment Tool or other cybersecurity frameworks. The CSW:

- is designed to more effectively address evolving risks and support risk-based bank information technology examinations.
- is aligned with the National Institute of Standards and Technology Cybersecurity Framework.
- is informed by the *FFIEC Information Technology Examination Handbook* and common cybersecurity frameworks.
- is designed to focus on cybersecurity preparedness and supplements the OCC's bank information technology examination procedures contained in the "Community Bank Supervision," "Large Bank Supervision," and "Federal Branches and Agencies Supervision" booklets of the *Comptroller's Handbook*.

NCUA

Cybersecurity. NCUA released its Report to the Committee on Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate on Cybersecurity and Credit Union System Resilience. The Report provides an explanation of the measures taken to strengthen cybersecurity within the federally insured credit union system and within NCUA. For 2023, NCUA will continue to promote cybersecurity best practices in credit unions. Reviews of credit union information systems and assurance programs remain a supervisory priority for NCUA.

NCUA's Chief Financial Officer reported that NCUA will have an estimated $5.1 million surplus in the agency's Operating Fund at the end of the year. Approximately one-third of the surplus is attributable to slightly lower-than-projected pay and benefit costs for 2023. Non-payroll categories, including travel, make up the remaining surplus. The Chief Financial Officer recommended that NCUA approve the midsession reprogramming of $737,000 to fund four new cybersecurity support positions, and two positions to assist with the NCUA's field-of-membership and charter-expansion efforts.

Member Expulsion. NCUA approved a final rule that amends the standard federal credit union bylaws to adopt a policy by which a federal credit union member may be expelled for cause by a two-thirds vote of a quorum of the credit union's board of directors.

OTHER

Proposed Rule Banning Fake Reviews and Testimonials. The FTC published a proposed rule and request for comment (100 pages) on June 30, 2023, which is designed to stop marketers from using illicit review and endorsement practices, such as using fake reviews, suppressing honest negative reviews, and paying for positive reviews. Comments are due 60 days after publication of the proposed rule in the Federal Register.

Proposed § 465.2(a) would prohibit a business from writing, creating, or selling a consumer review, consumer testimonial, or celebrity testimonial that: (a) is by someone who does not exist; (b) is by someone who did not use or otherwise have experience with the product, service, or business that is the subject of the review or testimonial; or (c) materially misrepresents the reviewer's or testimonialist's experience with the product, service, or business. Proposed § 465.2(b) declares that it a deceptive act or practice for a business to purchase consumer reviews, or disseminate or cause the dissemination of consumer or celebrity testimonials, about the business or one of its products or services, if the business knew or should have known that the review or testimonial: (a) was by someone who does not exist, (b) is by someone who did not use or otherwise have experience with the product, service, or business, or (c) materially misrepresents the reviewer's or testimonialist's experience with the product, service, or business. In accordance with proposed § 465.1(h), "purchase a consumer review" means to provide something of value, such as money, goods, or another review, in exchange for a consumer review. Proposed § 465.2(c) would make it a deceptive act or practice for a business to procure consumer reviews about the business or one of its products or services for posting on a third party platform or website, if the business knew or should have known that the review: (a) was by

someone who does not exist, (b) is by someone who did not use or otherwise have experience with the product, service, or business, or (c) materially misrepresents the reviewer's experience with the product, service, or business. The rule would not apply to platforms that merely publish prohibited testimonials.

Proposed § 465.3 would prohibit a business from using or repurposing, or causing the use or repurposing of, a consumer review written or created for one product so that it appears to have been written or created for a substantially different product. This could consist of combining substantially different products so that they share consumer reviews or changing a product page so that it features a different product but retains the reviews of the prior product, or copying reviews of other products from other sites. Proposed § 465.4 would prohibit a business from offering compensation or other incentives in exchange for, or conditioned on, the writing or creation of consumer reviews expressing a particular sentiment, whether positive or negative, regarding the product, service, or business that is the subject of the review. Proposed § 465.5 would require a clear and conspicuous disclosure whenever a company officer or manager writes a review, or solicits a review from a relative or employee. Proposed § 465.6 prohibits a business from representing that a website, organization, or entity is providing its independent reviews or opinions about a category of businesses, products, or services that includes the business or its products or services, when the business controls, owns, or operates that website, organization, or entity. Proposed § 465.7(a), would prohibit anyone from using an unjustified legal or physical threat, intimidation, or false accusation to prevent the creation of a consumer review or cause the removal of all or part of a review.

Proposed § 465.7(b) would prohibit a business from misrepresenting that the consumer reviews of one or more of its products or services displayed on its website or platform represent most or all the reviews submitted to the website or platform if reviews are being suppressed based upon their ratings or their negativity. As proposed, this provision makes clear that the nonpublication of consumer reviews for certain enumerated reasons is not considered to be review suppression so long as the criteria for withholding reviews are applied to all reviews submitted without regard to the favorability of the review. The listed acceptable reasons for not publishing a review are: (a) that the review contains: (i) trade secrets or privileged or confidential commercial or financial information, (ii) libelous, harassing, abusive, obscene, vulgar, or sexually explicit content, (iii) the personal information or likeness of another person, (iv) content that is discriminatory with respect to race, gender, sexuality, ethnicity, or another protected class, or (v) content that is clearly false or misleading; (b) the seller reasonably believes it is fake; or (c) the review is wholly unrelated to the products or services offered by or available at the website or platform. These criteria are based upon those enumerated in the Consumer Review Fairness Act, 15 U.S.C. 45b(b)(2) and (3). Proposed § 465.8 prohibits the misuse of or sale of indicators of social media influence.

Finally, the FTC finalized an updated version of its Endorsement Guides (84 pages), which provide agency guidance to businesses and others to ensure that advertising using reviews or endorsements is truthful, and are not unfair or deception in violation of the FTC Act. These Guides include definitions of various types of endorsements, and examples of appropriate disclosures. These Guides are effective upon publication in the Federal Register.

FSB Recommendations for Regulation of Cryptoassets. The Financial Stability Board (FSB) issued two sets of recommendations for its member countries to promulgate regulations governing cryptoasset activities and markets. The first set of recommendations is for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets. FSB recommends that its member countries regulate both crypto asset issuers and service providers by: coordinating regulations; allowing communications between regulatory authorities in various countries; developing comprehensive governance frameworks; requiring crypto-asset issuers to address the financial stability risk that may be posed by the activity or market in which they are participating; requiring timely reporting of data and access to data; requiring issuers and service providers to have and disclose strong procedures and infrastructure for collecting, storing, safeguarding, and the timely and accurate reporting of data; and limiting conflicts of interest between interrelated entities through separation of functions.

The second set of recommendations is for the Regulation, Supervision and Oversight of Global Stablecoin Arrangements. These recommendations add to the recommendations for regulating cryptoassets in general. These recommendations call for stronger tools to regulate stablecoins and stronger oversight; require a comprehensive governance framework with clear and direct lines of responsibility and accountability for all functions and activities of issuers and service providers; require issuers and service providers to comprehensively address all material risks associated with their functions and activities, especially with regard to operational resilience, cyber security safeguards and AML/CFT measures, as well as "fit and proper" requirements, if applicable, and consistent with jurisdictions' laws and regulations; have appropriate recovery and resolution plans; broader disclosure with respect to the governance framework, any conflicts of interest and their management, redemption rights, stabilization mechanism, operations, risk management framework and financial condition; provide a robust legal claim to all users against the issuer and/or underlying reserve assets and guarantee timely redemption at par into fiat currency; and meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction.

To a limited extent, US courts are beginning to order cryptocurrency exchanges to comply with IRS summonses to identify buyers, sellers, and owners of cryptocurrencies, to allow IRS to collect delinquent taxes. In US v. Payward Ventures, Inc., the court ordered Kraken to turn over information for users involved in transactions between 2016 and 2020, that totaled more than $20,000 over the course of a calendar year, including the user's name (including full name, any pseudonym, or any user ID), birthdate, taxpayer identification number, address, phone number, email address, complete records of transactions involving these users, and certain Kraken ledgers.

FFIEC Mortgage Lending Data and FHFA UAD Aggregate Statistics. FFIEC announced the availability of 2022 HMDA data from 4,460 U.S. financial institutions. FHFA also announced that 2023 Q1 Uniform Appraisal Dataset (UAD) Aggregate Statistics are now available. UAD Aggregate Statistics have been updated with new property characteristics, including lot size categories, property condition ratings, presence of an accessory dwelling unit, and largest race/ethnicity group in a tract.

FHFA. FHFA proposed to amend the existing Suspended Counterparty Program regulation to expand the categories of covered misconduct on which a suspension could be based to include sanctions arising from certain forms of civil enforcement. The proposed rule would also eliminate the requirement that any final suspension order be preceded by a proposed suspension order, but only when the suspension is based on an administrative sanction.

FHA Loans. HUD issued a Request for Comment seeking comments from the public regarding the burden faced by consumers when applying or maintaining eligibility for HUD's housing programs. HUD recognizes that these administrative hurdles and paperwork burdens disproportionately fall on the most vulnerable populations and prevent individuals and entities from accessing benefits for which they are legally eligible. Public comments will assist HUD in better understanding, identifying, and reducing HUD's public program administrative burden. Comments are due by August 14, 2023.

FHA Mortgagee Letter 2023-15, revises FHA's investigation requirements regarding whether a Mortgagee is unable or unwilling to make a Borrower payment required under a HECM, and requires a Mortgagee who has failed to make a required payment to a Borrower to provide certain information to FHA. When FHA determines that a Mortgagee is unable or unwilling to make the Borrower payments required under the HECM, including late charges, FHA will make such payments to the Borrower once the disbursement is due but unpaid. Mortgagees must provide the Commissioner all information necessary to enable the Commissioner to make the late payments to the Borrower.

FHA Mortgagee Letter 2023-14 implements two policy revisions for FHA multifamily loans: (1) the threshold for Large Loans increased to $120 million, up from $75 million. HUD has not updated this threshold since 2014; and (2) the new policy provides a method to annually revise the Large Loan threshold based on inflation.

FHA Mortgagee Letter 2023-13 announces that FHA is adopting industry-standard requirements regarding the provision of the Fannie Mae/Freddie Mac Form 1103, Supplemental Consumer Information Form (SCIF), to Borrowers at the time of application for an FHA-insured Mortgage.

Ginnie Mae announced in APM 23-09 that Remote Online Notarization (RON) will be permitted for Powers of Attorneys (POA). If using RON for POA, Issuers are subject to the electronic signature and notarization requirements outlined in Chapter 24, Part 3, § A (2) (b) of the Mortgage-Backed Securities Guide 5500.3, Rev-1 ("MBS Guide"). Issuers must continue to follow all insuring or guarantying agency guidance regarding POA eligibility and requirements, including the circumstances under which a borrower is permitted to use an attorney-in-fact to obtain Single-Family government insured or guaranteed loans. These circumstances can apply to borrowers who are unable to execute loan documents in-person, such as service members on overseas duty or on an unaccompanied tour. For more information on the specific requirements, eligible documents, and conditions in which a POA can be used, please refer to the applicable insuring or guarantying agency's loan program guidelines.

Concurrently with this APM, Ginnie Mae is updating Appendix V-01, Chapter 3 of the MBS Guide to incorporate the electronic signature and notarization requirements for Loan

Modifications from APM 21-07, which were inadvertently omitted with the publication of APM 22-01. The requirements announced in this APM have also been included in Appendix V-01, Chapter 3. All MBS Guide updates are effective immediately.

GSE Loans. FNMA (SEL-2023-06) and FHLMC (Bulletin 2023-15) updated their project review requirements to assist lenders in identifying projects in need of critical repairs, and projects that have material deficiencies (such as significant deferred maintenance) or special assessments. These requirements apply to all loans secured by units in condo projects (condo loans) and all cooperative share loans secured by share ownership in a co-op project (co-op share loans) with five or more attached units, regardless of the project review type. These requirements also apply to loans eligible for delivery under the waiver of project review policy. Lenders must implement these new policies for all new loan applications dated on or after Sept. 18, 2023. If a lender has an unexpired project review completed prior to Sept. 18, 2023, the lender must still validate these new requirements have been met for loan applications dated on or after that date. This applies to all review types. These project review requirements:

- define critical repairs, material deficiencies, and significant deferred maintenance, including defining routine repairs that are not considered critical;
- prohibit sale of condo loans and co-op share loans in projects in need of critical repairs;
- prohibit sale of condo loans and co-op share loans in projects with current evacuation orders due to unsafe conditions;
- require a review of all structural or mechanical inspection reports that have been completed within 3 years of the project review date;
- provide new requirements for condo or co-op projects with special assessments;
- prohibit sale of condo loans and co-op share loans in projects with unfunded repairs totaling more than $10,000 per unit; and
- prohibit sale of condo loans and co-op share loans in projects that have an "Unavailable" status in Condo Project Manager™ (CPM™).

FNMA also revised its eligibility requirements for limited cash-out refinances to stipulate that at least one borrower on the new loan must be a current owner of the subject property (on title) at the time of the initial loan application. Exceptions to this policy are permitted if the borrower acquired the property through an inheritance or was legally awarded the property via a legal settlement or divorce decree, or the property was previously owned by an inter vivos revocable trust and the borrower is the primary beneficiary of the trust.

FNMA added a new loan eligibility requirement to require loans sold on a flow basis to be no more than six months old to be eligible for sale, measured from the first payment date to the Purchase Ready date (whole loans) or MBS pool issue date. An exception is permitted for HomeStyle® Renovation loans when the loan is not delivered until renovation is complete. These loans may be up to 15 months old, measured from the note date to the Purchase Ready date (whole loans) or MBS pool issue date.

FHLMC also updated appraiser requirements for measuring the area of a home to the American National Standards Institute (ANSI) Standard, Square Footage - Method for Calculating: ANSI® Z765. This change is effective November 2, 2023.

FNMA Announcement SVC 2023-04 updates requirements related to evaluating release, or partial release, requests to allow a post-release LTV ratio threshold of the higher of the LTV ratio immediately prior to release or 60% when the estimated property value after the release is greater than or equal to 60%, and to provide clarity as to when to submit a release, or partial release, request to FNMA for a non-delegated review. This change is effective August 31, 2023.

FNMA also updated forms and procedures due to updates in the Cash Remittance System (CRS) and Automated Clearing House (ACH) banking instructions for all remittance types.

Additional Rights of Families of Servicemembers. USDOJ announced that it sent a letter to state licensing authorities to remind states of "new employment-related federal protections for military families. The letter informs state licensing authorities about Congress's recent amendment to the Servicemembers Civil Relief Act (SCRA) that allows servicemembers and their spouses to use their professional licenses or certificates in new jurisdictions if they are relocating because of military orders and meet certain other requirements." USDOJ asserts that "the requirement that the license have been "actively used during the two years immediately preceding the relocation" to the new jurisdiction should be interpreted to require only that the license have been used at some point during the prior two years." To the extent that your institution reviews the state licenses of its customers, vendors, and their employees, please be aware of this exception for state licensing. See the USDOJ Fact sheet for further information regarding this issue.

Federal Student Loan Forgiveness. On June 30, 2023, the US Supreme Court decided that the HEROES Act does not authorize student loan forgiveness plans. At the same time, the Department of Education promulgated a new plan (the SAVE Repayment Plan) that offers a more affordable student loan payment schedule based on the student's income. The new plan lowers the maximum student loan payment to 5% of "discretionary income" from 10% of "discretionary income," eliminates interest accruing above the payment amount, eliminates spousal cosignatory requirements, and forgives the balance of the loan after 20 or 25 years of payments have been made. Other student loan forgiveness plans remain in place.

In addition, the Department of Education announced that it will begin notifying more than 804,000 borrowers that they have a total of $39 billion in Federal student loans that will be automatically discharged in the coming weeks. The forthcoming discharges are a result of fixes implemented to ensure all borrowers have an accurate count of the number of monthly payments that qualify toward forgiveness under income-driven repayment (IDR) plans. These fixes are part of the Department's commitment to address historical failures in the administration of the Federal student loan program in which qualifying payments made under IDR plans that should have moved borrowers closer to forgiveness were not accounted for.

Merger Guidelines. On July 19, 2023, the FTC and USDOJ released a draft update of Merger Guidelines, which describe and guide FTC and USDOJ reviews of mergers and acquisitions, to determine compliance with federal antitrust laws. The goal of this update is to better reflect how the agencies determine a merger's effect on competition in the modern economy and evaluate proposed mergers under the law. Both agencies encourage the public to review the draft and provide feedback through a public comment period that will last 60 days.

Thirteen guidelines describe in greater depth the frameworks and tools that may be used when analyzing a merger with respect to each guideline. The thirteen guidelines are:

- Mergers should not significantly increase concentration in highly concentrated markets.
- Mergers should not eliminate substantial competition between firms.
- Mergers should not increase the risk of coordination.
- Mergers should not eliminate a potential entrant in a concentrated market.
- Mergers should not substantially lessen competition by creating a firm that controls products or services that its rivals may use to compete.
- Vertical mergers should not create market structures that foreclose competition.
- Mergers should not entrench or extend a dominant position.
- Mergers should not further a trend toward concentration.
- When a merger is part of a series of multiple acquisitions, the agencies may examine the whole series.
- When a merger involves a multi-sided platform, the agencies examine competition between platforms, on a platform, or to displace a platform.
- When a merger involves competing buyers, the agencies examine whether it may substantially lessen competition for workers or other sellers.
- When an acquisition involves partial ownership or minority interests, the agencies examine its impact on competition.
- Mergers should not otherwise substantially lessen competition or tend to create a monopoly.

Scams, Scams, and More Scams. *IRS.* IRS issued a warning about thieves sending fake IRS mail to taxpayers asking for copies of drivers licenses and bank information in order to receive tax refunds.

Spyware. On July 18, 2023, the Commerce Department's Bureau of Industry and Security (BIS) announced that it added four entities, Intellexa S.A. in Greece, Cytrox Holdings Crt in Hungary, Intellexa Limited in Ireland, and Cytrox AD in North Macedonia to the Entity List for trafficking in cyber exploits (selling spyware) used to gain access to information systems, threatening the privacy and security of individuals and organizations worldwide.

Cryptocurrency. Cryptocurrency promoter woes continue. USDOJ announced that Alexander Mashinsky, founder and former chief executive officer of cryptocurrency platform Celsius, was charged with defrauding Celsius customers. Mashinsky and Roni Cohen-Pavon, the former Celsius chief revenue officer, were charged with manipulating the market for the Celsius crypto token (see the Statement of Facts accompanying the indictment). On June 12, 2022, Celsius announced it was halting all customer withdrawals from the Celsius platform, leaving hundreds of thousands of Celsius customers unable to access approximately $4.7 billion worth of crypto assets. The company used consumer deposits to fund its operations, pay rewards to other customers, borrow from other institutions, and make high-risk investments, which the company acknowledged often lost money.

The SEC announced that it charged Celsius Network Limited and Mashinsky with violating registration and anti-fraud provisions of the federal securities laws, including by failing to

register the offers and sales of Celsius's crypto lending product, the Earn Interest Program; making false and misleading statements to investors of the Earn Interest Program and Celsius's own crypto asset security, CEL; and engaging in market manipulation as it relates to CEL.

Celsius filed a petition for Chapter 11 bankruptcy protections in July 2022, and entered into a non-prosecution agreement with USDOJ on July 11, 2023. The USDOJ and SEC actions follow last month's FTC proposed settlement of $4.7 billion, which will be suspended to permit Celsius to return its remaining assets to consumers in bankruptcy proceedings. The former executives—Mashinsky, Shlomi Daniel Leon and Hanoch "Nuke" Goldstein, have not agreed to a settlement, and the FTC's case against them will proceed in federal court. The USDOJ non-prosecution agreement does not preempt the SEC or FTC actions.

The NY Times reported on the woes of celebrity promoters who endorsed cryptocurrency platforms. However, one court (out of several) decided that unregistered cryptocurrency may be bought and sold anonymously on various cryptocurrency platforms. In SEC v. Ripple Labs, Inc., a New York federal district court decided that Ripple's Institutional Sales of its XRP cryptocurrency constituted the unregistered offer and sale of investment contracts in violation of Section 5 of the Securities Act. XRP was marketed directly to hedge funds and brokers as an investment. Ripple promised to protect the value of its XRP cryptocurrency and that its value would increase. However, XRP sales on various cryptocurrency platforms were not sales of securities since these sales were entirely speculative, with no promise that the value of XRP would increase. These sales did not depend on Ripple's management of sales of XRP to generate a profit for an investor. Further, sellers did not know to whom they sold XRP, and the buyers did not know the identity of the seller. The court also held that paying employees and others with XRP instead of fiat currency was not a sale of securities. The SEC indicated that it would appeal this decision.

Illegal Telemarketing Calls. USDOJ, the FTC, and the FCC announced a "crackdown" on July 18, 2023, on foreign and US telemarketing operations placing billions of calls to consumers. USDOJ is particularly concerned about lottery fraud schemes, in which (elderly) consumers were falsely told they had won a large prize but must first pay money to receive that prize.

Cyberattacks. Reuters reported that North Korean cyber spies hacked IT management company JumpCloud in June 2023 in order to steal cryptocurrency from some of its customers. Chainanalysis reports that almost $4 billion in cryptocurrency was stolen in almost 300 hacks in 2022, of which $1.7 billion was stolen by North Korea. Cryptocurrency theft is a sizeable percentage of the North Korean economy.

Cybersecurity Dive reported that "UKG reached an agreement to settle a class-action lawsuit for up to $6 million for individuals impacted by a 2021 ransomware attack that disrupted the payroll services provider's Kronos Private Cloud service…. The settlement, which awaits final approval, underscores the extent to which third-party vendors can be held financially liable for cyberattacks that impact the employees of their customers' customers…. UKG also agreed to spend approximately $1.5 million to improve its cybersecurity defenses."

CNBC reports that Google launched a pilot program to limit workplace computer internet access to Gmail and Google owned websites. "In addition, some employees will have no root access, meaning they won't be able to run administrative commands or do things like install software." Google employees are frequent targets of hackers.

Microsoft announced that some of its cloud platform securities tools will be available without cost. "Over the coming months, we will include access to wider cloud security logs for our worldwide customers at no additional cost. As these changes take effect, customers can use Microsoft Purview Audit to centrally visualize more types of cloud log data generated across their enterprise, … thus helping them effectively respond to security events, forensic investigations, internal investigations and compliance obligations."

The Identity Theft Resource Center reported, "The number of data compromises reported in the U.S. in the first half (H1) of 2023 is higher than the total compromises reported every year between 2005 and 2020, except for 2017. For the H1 ending June 30, 2023, there were 1,393 data compromises reported, including 951 in the second quarter (Q2). Since 2005, only the full years of 2017, 2021 and 2022 have exceeded the number of compromises recorded in the first six months of 2023…. Every sector reported a higher number of data compromises in H1 2023 compared to the previous H1. Healthcare leads the sectors with the most compromises. However, Financial Services firms reported nearly double the number of compromises versus H1 2022." This report stated that 156 million individuals were victims of data compromises in the first half of 2023. 2018 set the record for the most victims (2.2 billion victims).

On July 13, 2023, the White House published the National Cybersecurity Strategy Implementation Plan, a roadmap, based on five pillars, for federal agencies and offices to mitigate cyber risks and threats. Each of the 65 initiatives in the Plan is assigned to one or more of 18 responsible agencies, and has a timeline for completion.

Large Position Reports. The U.S. Department of the Treasury announced that it is calling for Large Position Reports from those entities whose positions in the Treasury Bill of June 8, 2023 equaled or exceeded $10.2 billion as of Friday, April 28, 2023, or Friday, May 5, 2023.

Other Fines and Enforcement Actions:

- On June 27, 2023, California DFPI ordered CryptoFX to halt operations for violating California securities laws by offering and selling unqualified securities, and for making material misrepresentations and omissions to investors.
- On June 27, 2023, a court approved a class action settlement in which Empower Federal Credit Union agreed to pay $2 million, reduce overdraft fees for the credit union's members by $885,583, and charge off $2.3 million in uncollected overdraft fees. The class action lawsuit alleged that the credit union overcharged its members for overdrafts in violation of Regulation E.
- On June 30, 2023, the SEC fined Oregon residents Robert D. Christensen and Anthony M. Matic $200,000 each and ordered them and their companies Foresee Inc., The Commission PDX LLC, The Policy PDX LLC, and Innings 150 LLC, to pay $5,374,482 in disgorgement and prejudgment interest (and banned them from being officers or

directors of a company) for conducting a multi-year Ponzi-like scheme and misleading investors who purchased more than $10 million in unregistered promissory notes.

- On July 5, 2023, the SEC obtained a default judgment fining Coinseed, Inc. and its founder each $141,410 and ordering the parties to disgorge $141,410 plus interest for selling unregistered crypto tokens. Coinseed was shut down by the NY AG in September 2021.
- On July 7, 2023, the CFPB and three states obtained a summary judgment ordering Kaine Wen, the operator of Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center, to pay $95,057,757 (the amount of fees it collected) to the CFPB for collecting up front fees for debt relief services in violation of TSR, and for misrepresenting their services and the purpose of their fees.
- On July 11, 2023, the CFPB announced that it fined Bank of America $90 million for charging repeat non-sufficient funds fees (representment NSF fees), and $30 million for its improper credit card rewards practices and for opening unauthorized accounts. The CFPB also ordered the bank to pay not less than $80,400,000 in total consumer redress for charging representment NSF fees, and to pay sign-up bonuses, cash, and points to credit card customers who should have received these bonuses but did not. In addition, the OCC fined the bank $60 million on July 5, 2023, for its representment fee practices. The CFPB found that the bank violated TILA and FCRA, and the OCC found that the bank committed unfair practices in violation of Section 5 of the FTC Act. The bank must also abandon its employee incentive programs that drove bank employees to illegally pull credit reports and complete fake credit card applications, repair credit reports of individuals who had accounts fraudulently opened in their names, and refund fees charge by the bank for the fraudulent accounts.
- On July 13, 2023, the CFPB and several states sued Prehired LLC, alleging that Prehired misrepresented the nature of its income share loans. Prehired Recruiting and Prehired Accelerator tricked consumers in its debt collection practices, and Prehired Recruiting sued its students in faraway jurisdictions. The CFPB also alleges that Prehired failed to disclose key terms, including the amount financed, finance charges, and annual percentage rate for its income share loans. Prehired operated a 12-week online training program claiming to prepare consumers for entry-level positions as software sales development representatives with “six-figure salaries” and a “job guarantee.” Trainees were told that the income share loans would not be repayable until the trainee was employed, but the loan documents required repayment regardless of whether the trainee was employed.
- On July 19, 2023, the FRB fined Deutsche Bank and its US affiliates $140,192,000 in connection with violations of prior OFAC and AML Orders, and $46,200,000 in connection with unsafe and unsound practices arising from governance and BSA/AML control failures relating to Deutsche Bank’s its affiliates’ relationship with Danske Estonia. From 2007 until the end of the relationship in 2015, DBTCA cleared more than $267 billion in transactions for Danske Estonia, a significant portion of which involved high-risk non-resident customers of Danske Estonia. Deutsche Bank was fined and ordered to improve its AML programs. The bank’s efforts to improve its AML programs were insufficient to comply with prior orders. The bank’s response admitted to “historic tardiness in adhering to older enforcement actions and agreements…”

- On July 19, 2023, Amazon.com Inc. and Amazon.com Services LLC agreed to a permanent injunction and a $25 million civil penalty as part of a settlement to resolve alleged violations of the Children's Online Privacy Protection Act and implementing rules, and the FTC Act relating to Amazon's voice assistant service Alexa. Since May 2018, Amazon's Alexa-related offerings included voice-activated products and services directed toward children under 13 years of age. USDOJ and the FTC alleged that Amazon retained children's voice recordings indefinitely by default, in violation of COPPA's requirement that these recordings be retained only as long as reasonably necessary to fulfill the purposes for which they were collected. Other alleged violations include making deceptive representations that Alexa app users could delete their or their children's voice recordings, including audio files and transcripts and their geolocation information, when in fact Amazon on some occasions failed to delete all such information at users' request.
- On July 19, 2023, the CFPB sued lease-to-own finance company Snap Finance for deceiving consumers, obscuring the terms of its financing agreements, and making false threats. In a lawsuit filed in federal district court, the CFPB alleges that Snap Finance has offered and provided millions of "lease-purchase" and "rental-purchase" financing agreements in ways that have harmed consumers, including through misleading advertisements, insufficient disclosures, and interfering with consumers' ability to understand the terms and conditions of its financing agreements. The CFPB further alleges Snap Finance's illegal conduct continued in its servicing of those agreements, including misrepresenting consumers' payment obligations and making false threats in collections.