

FICC TELEBRIEFING

November 28 and 29, 2023

Changes to Beneficial Ownership Rule

PRESENTED BY

KATHERINE A. SMIGELSKI

KSMIGELSKI@BODMANLAW.COM

BODMAN PLC
6th FLOOR AT FORD FIELD
1901 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226
(313) 393-7591

bodman

www.bodmanlaw.com

BENEFICIAL OWNERSHIP

In 2021, Congress passed the Corporate Transparency Act (“CTA”). This law is meant to make it more difficult “for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.”¹ Beginning January 1, 2024, Reporting Companies (as defined below) will be required to submit beneficial ownership information (“BOI”) to the Financial Crimes Enforcement Network (“FinCEN”).² Government officials will have access to beneficial ownership information for authorized activities that relate to national security, intelligence, and law enforcement. Additionally, financial institutions will also have access to BOI, with the consent of the Reporting Company, in certain circumstances.³ Rules are being developed to govern the access to and handling of BOI. The information will be stored in a secure, non-public database protected by government security measures.⁴

What is a *Reporting Company*?

“Reporting Companies” include: a corporation, limited liability company, or similar entity that is (1) created by the filing of a document with a secretary of state or similar office, or (2) formed under the law of a foreign country and registered to do business in the United States.⁵ However, there are 23 entity forms that are exempt from the CTA: (1) securities reporting issuer, (2) governmental authority, (3) **bank**, (4) **credit union**, (5) depository institution holding company, (6) money services business, (7) broker or dealer in securities, (8) securities exchange or clearing agency, (9) other Exchange Act registered entity, (10) investment company or investment adviser, (11) venture capital fund adviser, (12) insurance company, (13) state-licensed insurance producer, (14) Commodity Exchange Act registered entity, (15) accounting firm, (16) public utility, (17) financial market utility, (18) pooled investment vehicle, (19) tax-exempt entity, (20) entity assisting a tax-exempt entity, (21) large operating company, (22) subsidiary of certain exempt entities, and (23) inactive entity.⁶

What is a Beneficial Owner?

“Beneficial owners” are individuals who either directly or indirectly (1) exercise substantial control over a Reporting Company, or (2) own or control at least 25% of the Reporting Company’s ownership interests. An individual has substantial control if he or she meets any of

¹ Beneficial Ownership Information Reporting, FAQs, FinCEN (2023) (<https://www.FinCEN.gov/boi-faqs>).

² Pub. L. No. 116-283 (Jan. 1, 2021), § 6403; 31 USC § 5336.

³ *Id.*

⁴ *Id.*

⁵ 31 USC § 5336(a)(11)(A).

⁶ Beneficial Ownership Information Reporting, FAQs, FinCEN (2023) (<https://www.FinCEN.gov/boi-faqs>).

the following: (1) is a senior officer, (2) has authority to appoint or remove officers or a majority of directors, (3) is an important decision-maker, or (4) has any other form of substantial control.⁷ Direct substantial control may include board representation or majority voting power, while indirect substantial control may include control of one or more intermediary entities that separately exercise substantial control over the Reporting Company.⁸ All individuals who exhibit substantial control must be reported. Additionally, all individuals with over 25% ownership interest must be reported. Ownership interest can be equity, stock, voting rights, capital or profit interest, or any other mechanism to establish ownership. A Reporting Company can have a multitude of ownership interests that must be reported.⁹ This can become complex where a trust is involved. If a trust owns 25% or more of a Reporting Company, multiple parties to the trust may be considered a beneficial owner:

- A trustee is the fiduciary for a trust and responsible for distributing assets as required, among other things. This will be considered substantial control enough to be a beneficial owner.
- A beneficiary may have substantial control because they are the people benefiting from the trust's assets.
- A grantor has substantial control because they created the trust itself and dictate the trustee and beneficiary of the trust.

There are exceptions to the definition of beneficial owner. If the individual qualifies for an exception, the Reporting Company does not have to report the individual as a beneficial owner. Minors are excluded, as well as an individual acting merely as an agent or custodian for the true beneficial owner. Additionally, if (i) an individual is an employee, (ii) the control they have derives from employment status, and (iii) the employee is not a senior officer, he or she is exempt. Further, an individual who only has a future interest through a right of inheritance is exempt. Finally, creditors of Reporting Companies are exempt as beneficial owners.¹⁰

What are Company Applicants?

“Company applicants” are individuals who are either the direct filer of the document creating the Reporting Company or the individual who directs or controls the filing action of the Reporting Company.¹¹ Only reporting companies who were established in the United States or authorized to do business in the United States **on or after** January 1, 2024 are required to report company

⁷ FinCEN, Small Entity Compliance Guide, p. 17 (Sept. 2023) (https://www.FinCEN.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf).

⁸ *Id.* at p. 19.

⁹ *Id.* at p. 18.

¹⁰ *Id.* at pp. 29-31.

¹¹ 31 CFR § 1010.380(e).

applicant information.¹² It is important to note that a company applicant cannot be an entity; it must be an individual. For example, a company applicant may be the secretary of the company, corporate counsel for the company, or the manager, any of whom could have filed articles of incorporation/organization for that entity. Further, no Reporting Company will have more than two applicants.¹³

What Information Does a Reporting Company Need to Report?

Each Reporting Company that was in existence on or before December 31, 2023, must submit a Beneficial Ownership Information Report to FinCEN in January 2024. The following information regarding the Reporting Company is required to be included on the report:¹⁴

- Full legal name;
- Any trade name or DBA name;
- Current address;
- Jurisdiction of formation;
- If foreign, jurisdiction of first registration; and
- IRS taxpayer identification number (or foreign tax ID number).

Separate information is required for each beneficial owner and company applicant:¹⁵

- Full legal name;
- Date of birth;
- Complete current address; and
- Unique identifying number and issuing jurisdiction from, and image of, one of the following: U.S. passport, state driver's license, government ID, or foreign passport.

Special Reporting Rules

There are four special reporting rules that may affect a company's beneficial owner reporting obligations. If ownership interests in a Reporting Company are held through an exempt entity, the Reporting Company is also exempt. If this is the case, then the exempt entity names must be

¹² FinCEN, Small Entity Compliance Guide, p. 33 (Sept. 2023) (https://www.FinCEN.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf).

¹³ *Id.* at p. 34.

¹⁴ *Id.* at p. 38.

¹⁵ *Id.*

reported, rather than information regarding the beneficial owner.¹⁶ Second, if a beneficial owner is a minor, only the required information of the minor’s parent or legal guardian is required. Third, BOI is not required to be reported if the company was formed under foreign laws and would be a Reporting Company if not for the pooled investment vehicle exemption. If this third exemption applies, only information of one individual who exercises substantial control over the company is required.¹⁷ If more than one person has substantial control, the one with the greatest amount of control is reported.¹⁸ Finally, if the Reporting Company was created prior to January 1, 2024, applicant information is not required.¹⁹

FinCEN Identifiers

FinCEN will issue a unique identifying number to each individual or Reporting Company.²⁰ These are not required, however, and will only be issued upon request after certain information is provided. Individuals merely need to submit the required information and submit their application. Reporting Companies must check a box on the submission form to receive an identifier.²¹

Beneficial Ownership Secure System

FinCEN will be creating a new, secure, nonpublic database to store and protect beneficial ownership information that is reported called the Beneficial Ownership Secure System (“BOSS”).²² BOSS will allow Reporting Companies to disclose information electronically, although the information is still highly protected. BOSS will be secured to a Federal Information Security Management Act “High” compliance level, which is the highest security level under the act.²³ Typically, this security level is used for non-classified, but highly sensitive, government information.²⁴ Reports will be confidential; however, access by governmental authority may be allowed when needed. Further, private entities, such as banks and credit unions, will be able to obtain beneficial ownership information for due diligence compliance, after receiving permission

¹⁶ *Id.* at p. 39.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 40.

²¹ *Id.*

²² 87 Fed. Reg. 59498.

²³ *Id.*

²⁴ FinCEN, Small Entity Compliance Guide, p. v (Sept. 2023) (https://www.FinCEN.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf)

from the Reporting Company.²⁵ It does not appear that financial institutions will need to verify the information obtained from BOSS, outside of its typical due diligence review.

Currently, financial institutions are bound to “Know Your Customer” (“KYC”) obligations. KYC contains three steps: customer identification program, customer due diligence and enhanced due diligence.²⁶ At a high level, KYC requires financial institutions to gather identifying information of customers, previous financial transactions, and review nature and beneficiaries of existing relationships to ensure activity is consistent with historical customer information.²⁷ Depending on the risk associated with the customer, the financial institution may consider third-party research and wealth verification.²⁸ There does not appear to be a correlation between KYC and BOI reporting at the moment.

The details about financial institutions responsibilities surrounding BOI reporting are still unclear.²⁹ Previously, financial institutions were able to confirm information that customers provide using beneficial ownership information. Under the new system, financial institutions must request permission for each customer’s BOI report. Further, they may be denied access to that information anyway. If they are granted permission, the information received will be limited and it may not even be reliable because FinCEN has stated that it will not verify the accuracy of BOI reported.³⁰

All Reporting Companies must submit their beneficial ownership information to BOSS to comply with the new requirements.

Notice

Companies created prior to January 1, 2024 do not need to submit its beneficial ownership report until January 1, 2025, at the latest. Companies created on or after January 1, 2024 have only thirty (30) days to after receiving actual or public notice that its creation or registration is effective. It should be noted that on September 28, 2023, FinCEN published a proposed rule extending the 30-day deadline to ninety (90) days.³¹

²⁵ FINCEN, *Beneficial Ownership Information Reporting Frequently Asked Questions* (Sept. 29, 2023) (https://www.FinCEN.gov/sites/default/files/shared/BOI_FAQs_Q&A_09.29.23_508C.pdf).

²⁶ DOW JONES, *Understanding the Steps of a “Know Your Customer” Process* (<https://www.dowjones.com/professional/risk/glossary/know-your-customer/#:~:text=KYC%20references%20a%20set%20of,terrorism%20before%20it%20ever%20materializes>)

²⁷ *Id.*

²⁸ *Id.*

²⁹ THOMSON REUTERS, *How will beneficial ownership information requirement impact financial institutions?* (May 2, 2023) (<https://legal.thomsonreuters.com/blog/how-will-beneficial-ownership-information-requirements-impact-financial-institutions/>).

³⁰ Peter D. Hardy, *Bank Industry Groups Heavily Criticize FinCEN’s Proposed Rule on Access to Beneficial Ownership Information*, BALLARD SPAHR LLP (Feb. 23, 2023) (<https://www.moneylaunderingnews.com/2023/02/bank-industry-groups-heavily-criticize-FinCENs-proposed-rule-on-access-to-beneficial-ownership-information/>).

³¹ 88 FR 66730 (Sept. 28, 2023).

Although financial institutions do have some oversight obligations to ensure third party vendors are complying with legal requirements, Reporting Companies are responsible for ensuring they are following beneficial ownership reporting requirements. However, financial institutions may be subject to sanctions, legal expenses, and possible lawsuits for a third-party vendor's failure to comply with reporting requirements.³²

FinCEN has been posting notices of the reporting requirements, and all updates, as they are finalized are posted to the FinCEN BOI website at <https://www.fincen.gov/boi> and to the BOI reference materials website at <https://www.fincen.gov/boi/Reference-materials>. All Reporting Companies should be aware of the requirements for BOI reporting, and regularly check these websites for guidance on how, when, and what to report to FinCEN.

Penalties

If a company fails to meet reporting requirements, or there is unauthorized disclosure of beneficial ownership information, there are potential penalties.³³ Willful failure to file a complete initial or updated report is subject to a potential \$500 per day fine, with a maximum fine of \$10,000 and/or imprisonment for up to two years.³⁴ If an individual knowingly discloses unauthorized beneficial ownership information, he or she is subject to a potential \$500 per day fine, with a maximum fine of \$250,000, as well as up to five years in prison.³⁵

Conclusion

Although FinCEN will not be accepting any reports prior to January 1, 2024, each company should evaluate its corporate structure to determine if it is a Reporting Company and begin to gather the information they will be required to report. Financial institutions may direct customers attention to the Small Business Resource Page (<https://www.fincen.gov/boi/small-business-resources>) if customers have questions regarding the BOI reporting requirements.

If you have any questions about this article, please contact Melissa Bridges at (231) 627-8001, mbridges@bodmanlaw.com or Katherine Smigelski at (313) 393-7591, ksmigelski@bodmanlaw.com.

³² Baldini Lang LLC, *Regulatory Requirements for Financial Institutions* (July 26, 2021) (<https://baldinilang.com/vendor-related-regulatory-requirements-for-financial-institutions/#:~:text=At%20a%20minimum%2C%20a%20financial,general%20operations%20and%20internal%20controls>).

³³ 31 U.S.C. § 5336(h).

³⁴ *Id.*

³⁵ *Id.*

FICC TELEBRIEFING

November 28 and 29, 2023

Recent Developments

PRESENTED BY

HOWARD A. LAX
HLAX@BODMANLAW.COM

BODMAN PLC
SUITE 500
201 W. BIG BEAVER ROAD
TROY, MICHIGAN 48084
248-743-6011

www.bodmanlaw.com

bodman

Recent Developments

AML/BSA

OFAC Sanctions. On September 27, 2023, OFAC added two individuals and five businesses (secondary sanctions) to the SDN list. On September 28, 2023, OFAC added one individual and two businesses to the SDN list (one of which is in Russia) in relation to Sudan sanctions. On October 3, 2023, OFAC added 14 individuals and 14 businesses to the SDN list in relation to illegal narcotics businesses in China. On October 20, 2023, OFAC added the Serb Republic's President Milorad Dodik's son and daughter, and four family businesses, to the SDN list for participating in Dodik's ongoing corruption and theft of public funds in Bosnia-Herzegovina. OFAC also added two Chinese businesses and one Hong Kong business to the SDN list, and removed Aleksandar Karadzic, son of former Bosnian Serb political leader Radovan Karadzic, from the SDN list. On October 31, 2023, OFAC added 5 individuals and 3 entities to the SDN list for their support of the Myanmar military regime. OFAC also issued [Directive 1 under Executive Order \(E.O.\) 14014](#) and two new Frequently Asked Questions ([FAQs 1138 and 1139](#)) to prohibit certain financial services by U.S. persons to or for the benefit of Myanma Oil and Gas Enterprise. Also on October 31, 2023, OFAC removed dozens of Columbian entities from the SDN list. On November 7, 2023, OFAC added 13 Sinaloa Cartel members and four Sonora, Mexico-based entities to the SDN list for their involvement in illegal drug trafficking. On November 15, 2023, OFAC added Costa Rican Gilbert Hernan de Los Angeles Bell Fernandez to the SDN list for illegal drug trafficking.

On November 16, 2023, OFAC published [Balkans-related General License 2](#), "Authorizing the Wind Down of Transactions Involving Orka Holding AD", and [Balkans-related General License 3](#), "Authorizing Certain Transactions Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, Software Updates, or Medical Prevention, Diagnosis, or Treatment, or Clinical Trials Involving Orka Holding AD." OFAC also published a related Frequently Asked Question ([FAQ 1140](#)). Also on November 16, 2023, OFAC added 10 individuals, 20 businesses, and one vessel to the SDN list for their involvement in sanctioned activities in Russia, North Macedonia, Liberia, and Bosnia and Herzegovina.

Venezuelan Sanctions Relief. On October 18, 2023, in response to the signing of an electoral roadmap agreement between Venezuela's Unitary Platform and representatives of dictator Maduro, and in support of the Venezuelan people, OFAC issued Venezuela-related [General License 3I](#), [General License 5M](#), [General License 9H](#), [General License 43](#), [General License 44](#) and [General License 45](#) to suspend select sanctions. OFAC also issued two new Venezuela-related Frequently Asked Questions ([FAQs 1136, 1137](#)), amended four related FAQs ([FAQs 595, 661, 662 and 629](#)), and published a related document "[Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023](#)." On November 16, 2023, OFAC published [Venezuela-related General License 8M](#), "Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Necessary for the Limited Maintenance of Essential Operations in Venezuela or the Wind Down of Operations in Venezuela for Certain Entities," and [Venezuela-related General License 45A](#), "Authorizing Certain Transactions Involving Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos, S.A." Additionally, OFAC published an updated, related document "[Frequently Asked](#)

[Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023.](#)

Middle East Terrorist Sanctions. On October 18, 2023, OFAC added 10 Iranian individuals, 8 individuals from other Middle Eastern countries, 8 Iranian businesses, and one Gaza money transfer business to the SDN list in relation to financing for the Hamas terrorist attacks on Israel, and in relation to Iran's ballistic missile program. OFAC also published an [Iran Ballistic Missile Procurement Advisory](#) (15 pages) to warn of Iran's efforts to procure foreign goods and technology to advance its illegal ballistic missile development. On November 14, 2023, OFAC added 8 individuals and several entities related to Hamas or Palestinian Islamic Jihad to the SDN list. On October 27, 2023, OFAC added 8 individuals and 4 entities involved in Hamas funding to the SDN list. On November 14, 2023, OFAC published [OFAC Compliance Communiqué: Guidance for the Provision of Humanitarian Assistance to the Palestinian People](#) in response to questions from the NGO community and the general public on how to provide humanitarian assistance while complying with OFAC sanctions. On November 17, 2023, OFAC added six individuals affiliated with the Iran-aligned militia group Kata'ib Hizballah based in Iraq to the SDN list for staging attacks on US troops and allies in Syria and Iraq.

Russia Sanctions. On October 12, 2023, OFAC published a [Maritime Oil Industry Advisory](#) to promote responsible practices in the industry to prevent and disrupt sanctioned trade, and enhance compliance with the price caps on Russian crude oil and petroleum products. Additionally, OFAC issued [Russia-related General License 73](#), "Authorizing Limited Safety and Environmental Transactions Involving Certain Persons or Vessels," and placed two businesses and two tankers on the SDN list. On November 16, 2023, OFAC added three entities and three vessels to the SDN list that used Price Cap Coalition service providers while carrying Russian crude oil above the Coalition-agreed price cap.

On October 25, 2023, OFAC issued [Russia-related General License 8H](#), "Authorizing Transactions Related to Energy." On November 2, 2023, OFAC issued Russia-related [General License 13G](#), "Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024"; Russia-related [General License 74](#), "Authorizing the Wind Down and Rejection of Transactions Involving East-West United Bank"; Russia-related [General License 75](#), "Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Certain Entities Blocked on November 2, 2023"; and Russia-related [General License 76](#), "Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on November 2, 2023." OFAC also added 37 individuals and over 100 entities in Turkey, UAE, China, and Russia to the SDN list for supplying goods to Russia to further its war on Ukraine. See the [State Department Fact Sheet](#) for further information.

On November 2, 2023, OFAC issued Russia-related [General License 13G](#), "Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024"; Russia-related [General License 74](#), "Authorizing the Wind Down and Rejection of Transactions Involving East-West United Bank"; Russia-related [General License 75](#), "Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Certain Entities Blocked on November 2, 2023"; and Russia-related [General License 76](#), "Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on November 2, 2023." OFAC also

added 130 individuals and entities to the SDN list who were supporting Russia in its war with Ukraine. On November 8, 2023, OFAC published [General License 76A](#), "Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on November 2, 2023."

On November 3, 2023, OFAC added Ekaterina Zhdanova, a Russian national, to the SDN list for her role in laundering money and moving funds using virtual currency on behalf of Russian elites. On November 16, 2023, OFAC published [Russia-related General License 77](#), "Authorizing Limited Safety and Environmental Transactions Involving Certain Persons or Vessels."

FinCEN co-hosted a virtual FinCEN Exchange to discuss attempts by Russia to evade export controls. FinCEN's announcement of the Exchange lists all FinCEN's prior publications on this topic, to provide red flags to assist financial institutions in identifying suspected illicit activity:

- [FinCEN Alert on Increased Vigilance for Potential Russian Sanctions Evasion Attempts](#) (March 7, 2022)
- [FinCEN Alert on Real Estate, Luxury Goods, and Other High Value Assets Involving Russian Elites, Oligarchs, and their Family Members](#) (March 16, 2022)
- [First FinCEN-BIS Joint Alert Urging Increased Vigilance for Potential Russian and Belarusian Export Control Evasion Attempts](#) (June 28, 2022)
- [Financial Trend Analysis on Financial Activity by Russian Oligarchs](#) (December 22, 2022)
- [FinCEN Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies](#) (January 25, 2023)
- [FinCEN-BIS Supplemental Joint Alert Urging Continued Vigilance for Potential Russian Export Control Evasion Attempts](#) (May 19, 2023)
- [Financial Trend Analysis on Suspected Evasion of Russian Export Controls](#) (September 8, 2023)
- [FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Notice Announcing New Reporting Key Term and Highlight Red Flags Relating to Global Evasion of U.S. Export Controls](#) (November 6, 2023)

FinCEN

Beneficial Ownership Information Reporting. FinCEN issued a [final rule](#) that specifies the circumstances in which a reporting company may report an entity's FinCEN identifier in lieu of information about an individual beneficial owner. A FinCEN identifier is a unique number that FinCEN will issue upon request after receiving required information. Although there is no requirement to obtain a FinCEN identifier, doing so can simplify the reporting process and allows entities or individuals to provide the required identifying information directly to FinCEN. This final rule amends FinCEN's final Beneficial Ownership Information (BOI) Reporting Rule, and responds to commenter concerns that the reporting of entity FinCEN identifiers could obscure the identities of beneficial owners in a manner that might result in greater secrecy or incomplete or misleading disclosures. The final rule provides clear criteria that must be met in order for a reporting company to report an intermediate entity's FinCEN identifier in lieu of information about the individual beneficial owner. The effective date of the BOI rule remains January 1, 2024.

Reporting Global Sanctions Evasion. FinCEN and BIS issued a [Joint Notice](#) on November 6, 2023, to announce a new SAR key term to support financial institutions in reporting potential efforts to evade U.S. export controls, beyond the Russia-related circumstances. SARs should include the key term “FIN2023-GLOBALEXPORT” in SAR field 2 (Filing Institution Note to FinCEN) and the narrative to indicate a connection between the suspicious activity being reported and the activities highlighted in this alert. Financial institutions may highlight additional advisory or alert keywords in the narrative, if applicable. FinCEN also requests that financial institutions check box 38(z) (Other Suspicious Activity) and note “Export Evasion.” If known, please also indicate in field 45(z) (Other Product Types) the appropriate North American Industry Code(s) (NAICs) for the involved product, and/or the appropriate financial instrument or payment mechanism in field 46. Financial institutions should continue to use the key term “FIN-2022-RUSSIABIS” when filing SARs related to potential Russian export control evasion, and should consider using both codes if they believe, but are unsure, of whether certain export control evasion activity is related to Russia.

This Joint Notice also includes a list of Red Flags indicating export control evasion, and points out that financial institutions may wish to consider reporting suspected export control evasion activity directly to BIS through its web-based confidential Enforcement Lead/Tip form, located at <https://bis.doc.gov/index.php/component/rsform/form/14-reporting-violations-form?task=forms.edit>. Alternatively, suspected violations may be reported via email to EELEAD@bis.doc.gov or to the BIS Enforcement Hotline: 800-424-2980.

COVID-19 Employee Retention Credit Fraud. FinCEN issued an [Alert](#) providing case studies and Red Flags to watch for discovering potential tax fraud by businesses claiming an employee retention credit (ERC) that they are not entitled to. IRS identified ongoing fraud and scams related to the ERC that, to date, have resulted in 323 investigations involving more than \$2.8 billion of potentially fraudulent ERC claims throughout tax years 2020, 2021, 2022, and 2023. Many of the frauds involve third parties encouraging businesses to file claims for an ERC credit that they are not entitled to, or the use of shell companies to file fraudulent claims. Further, these fraudulent claims disrupt the IRS’s ERC claim review process, which created a significant backlog and caused delays in the processing of legitimate ERC claims filed by eligible businesses.

FinCEN requests that financial institutions indicate a connection between the suspicious activity being reported and the activities highlighted in this Alert by including the key term “FIN-2023-ERC” in SAR field 2 (Filing Institution Note to FinCEN), as well as in the narrative. Financial institutions may highlight additional advisory or alert keywords in the narrative, if applicable. Financial institutions should select SAR Field 34(z) (FRAUD-Other) as the associated suspicious activity type and include the term “Employee Retention Credit” in the text box. Financial institutions also should select all other relevant suspicious activity fields, such as those in SAR Field 36 (Money Laundering) and Field 38 (Other Suspicious Activities), if applicable.

FinCEN Alert to Financial Institutions to Counter Financing to Hamas and its Terrorist Activities. [FIN-2023-Alert006](#) urges financial institutions to be vigilant in identifying suspicious activity relating to financing Hamas and reporting such activity to FinCEN. This alert includes

Red Flags indicating suspicious activities. FinCEN requests financial institutions reference this alert when filing a SAR concerning suspected Hamas funding by including the key term “FIN-2023TFHAMAS” in SAR field 2 (Filing Institution Note to FinCEN) and in the narrative to indicate a connection between the suspicious activity being reported and this alert.

Renewed and Expanded GTOs. FinCEN [announced](#) the renewal and expansion of its Geographic Targeting Orders (GTOs) that require U.S. title insurance companies to identify the natural persons behind entities used in non-financed purchases of residential real estate. FinCEN renewed the GTOs that cover certain counties within the following major U.S. metropolitan areas: Boston; Chicago; Dallas-Fort Worth; Houston; Laredo; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; Seattle; Denver; the District of Columbia, Maryland, and Northern Virginia (DMV) area; as well as the City and County of Baltimore, the Counties of Fairfield and Litchfield, Connecticut, and the Hawaiian Islands of Honolulu, Maui, Hawaii, and Kauai.

FinCEN also expanded the geographic coverage of the GTOs to the counties of Bristol, Essex, Norfolk, and Plymouth in Massachusetts; the counties of Hillsborough, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee, and Collier in Florida; and the county of Travis in Texas. The terms of the GTOs are effective beginning October 22, 2023 and ending on April 18, 2024. The effective period of the GTOs for purchases in these newly added areas begins on November 21, 2023. The purchase amount reporting threshold remains \$300,000 for each covered metropolitan area, with the exception of the City and County of Baltimore, where the purchase threshold is \$50,000.

Countries with AML/CFT Deficiencies. FinCEN [announced](#) that on October 27, 2023, the FATF added Bulgaria to its list of Jurisdictions Under Increased Monitoring and removed Albania, the Cayman Islands, Jordan, and Panama from that list. The 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 (DPRK) still subject to the 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.

The Treasury Department [announced](#) on October 28, 2023 that, at the latest FATF Plenary, members adopted revisions to FATF asset recovery standards to strengthen the tools available to law enforcement, asset recovery agencies, and criminal justice systems to target and recover criminal proceeds and improve mutual legal assistance. FATF members also adopted a report on how terrorist groups like Hamas use crowdfunding techniques to raise money for their attacks. FATF, in response to the commitment made by FATF Ministers in April 2022 to further efforts by the FATF to counter corruption, adopted a report on the misuse of citizenship and residency by investment (CBI/RBI) programs, highlighting how corrupt actors, tax evaders, and other criminals have exploited these programs to disguise their identity, open bank accounts to establish shell companies, or conceal where they may owe taxes or other liabilities from financial institutions by using new identification documents. The FATF also, as part of its ongoing efforts to address the misapplication of the FATF standards, revised Recommendation 8, the standard related to the protection of non-profit organizations (NPOs) from misuse by terrorist financiers and other illicit actors. FATF members also published draft guidance to implement the revised standards on beneficial ownership of trusts and similar legal arrangements.

Fines, Settlements, and Orders

| Transgressor | Fine or Order, and Date | Wrongful Action |
|---|--|--|
| Swift Prepaid Solutions, Inc. d/b/a daVinci Payments | \$206,213 OFAC fine; 11-6-2023 | Between November 15, 2017 and July 27, 2022, daVinci enabled reward cards to be redeemed from persons in sanctioned jurisdictions. |
| Binance CEO Changpeng Zhao; Chief Compliance Officer, Samuel Lim; Binance cryptocurrency exchange | Binance: \$3.4 Billion in FinCEN fine; \$968 million OFAC fine (criminal fines); Binance must disgorge \$1.35 billion of ill-gotten gains and pay a \$1.35 billion civil monetary penalty to the CFTC; Zhao: \$150 million CFTC fine; Lim: \$1.5 Billion CFTC Fine; 11-21-2023 | Zhao and Binance pled guilty to money laundering for terrorist organizations and sex abusers, unlicensed money transmitting between 2017 and 2022, and sanctions violations, and failing to maintain an AML program. Binance agreed to forfeit \$2,510,650,588 and to pay a criminal fine of \$1,805,475,575 for a total financial penalty of \$4,316,126,163. |

Binance willfully failed to report well over 100,000 suspicious transactions that it processed as a result of its deficient controls, including transactions involving terrorist organizations, ransomware, child sexual exploitation material, frauds, and scams. Binance, having never filed a single SAR with FinCEN, and will be required to retroactively report suspicious activity.

Binance supported:

- *Terrorist Financing.* Binance failed to report to FinCEN transactions associated with terrorist groups including Al Qaeda, the Islamic State of Iraq and Syria (ISIS), Hamas' Al-Qassam Brigades, and Palestinian Islamic Jihad (PIJ).
- *Ransomware.* Despite being one of the largest receivers of ransomware proceeds, and transacting in millions of dollars of ransomware proceeds from attacks involving at least 24 different strains of ransomware, Binance failed to report these transactions.
- *Child Sexual Abuse Materials.* Binance never reported transactions with websites devoted to selling child sexual abuse materials, including Dark Scandals.
- *Darknet Markets, Scams, and Other Illicit Activity.* Despite sending and receiving virtual assets proceeds from large-scale hacks, account takeovers, and darknet markets dealing in illegal narcotics, counterfeit and fraud-related goods and services, as well as other illegal contraband, Binance never reported any such transactions.

On November 21, 2023, Binance Holdings Limited, which runs the cryptocurrency exchange Binance, and its CEO Changpeng Zhao, pled guilty to federal charges that it knowingly and intentionally failed to register as a money services business, failed to implement an effective AML program, and conducted transactions with customers in sanctioned jurisdictions. Binance agreed to retain an independent compliance monitor for three years and remediate and enhance its anti-money laundering and sanctions compliance programs. Binance separately has also

reached agreements with the CFTC, FinCEN, and OFAC, and the Department will credit approximately \$1.8 billion toward those resolutions. Changpeng Zhao resigned as CEO.

CFPB

Regulating Large Consumer Payment Companies. On November 7, 2023, the CFPB [proposed a rule](#) to define a market for non-bank general-use digital consumer payment applications used to make payments to other persons for personal, family, or household purposes. The proposed market would cover providers of funds transfer, person to person payments, and wallet functionalities through digital applications for consumers' general use in making payments to other persons for personal, family, or household purposes. International money transfers, transfers such as transactions for foreign exchange, payments for the sale or lease of goods or services that a consumer selected from an online or physical store or marketplace operated prominently in the name of such person or its affiliated company, and extensions of consumer credit made using a digital application provided by the person who is extending the credit or that person's affiliated company would be excluded from the definition of "consumer payment transactions" subject to this rule. The proposed rule will establish CFPB supervisory authority over these non-bank consumer financial services companies, would subject these businesses to CFPB protections against unfair, deceptive or abusive acts or practices. However, the proposed rule does not impose any new substantive requirements on these businesses. Comments on the proposed rule are due the later of January 8, 2024, or 30 days after publication in the Federal Register.

Inflation Adjusted Regulatory Thresholds. The CFPB, FRB and OCC [announced](#) that the 2024 threshold for whether higher-priced mortgage loans are subject to special appraisal requirements will increase from \$31,000 to \$32,400. The threshold amount will be effective January 1, 2024.

The CFPB and FRB [announced](#) that Regulations M and Z generally will apply to consumer credit transactions and consumer leases of \$69,500 or less in 2024. However, private education loans and loans secured by real property, such as mortgages, are subject to Regulation Z regardless of the amount of the loan.

The CFPB [announced](#) that the ceiling on allowable charges under section 612(f) of the Fair Credit Reporting Act (FCRA) will increase to \$15.50, effective for 2024.

Language Action Plan for Consumers with Limited English Proficiency. The CFPB published a [Language Access Plan](#) that describes the CFPB's policy toward consumers with limited English proficiency (LEP) and how the CFPB's language access activities are implemented across operations, programs, and services, and how they apply to all staff, particularly those who have contact with the public. More than 67 million people, or about 22% of the U.S. population over the age of five, speak a language other than English at home. Of this, more than 26 million people in the United States have limited proficiency in English. Spanish is the most widely spoken non-English language with approximately 40 million speakers, and it constitutes the largest share of the LEP population, followed by Chinese, Vietnamese, Korean, and Tagalog speakers. The CFPB has a blanket purchase agreement to translate materials, an

interagency agreement with the Library of Congress to audit translated materials, and a style guide to ensure that translations reflect the CFPB's overall voice and style guidelines. The CFPB offers educational information directly through Arabic, Chinese, Haitian Creole, Korean, Russian, Spanish, Tagalog, and Vietnamese translated content on the CFPB website, and has also promoted its availability to consumers with LEP through community service channels. Prepaid card model forms, adverse action sample notices, home mortgage origination documents, early intervention clauses for mortgage servicers, credit reporting notices, and the debt collection model validation notice are available in Spanish translations.

Pilot Construction Loan Disclosure Program. The CFPB [announced that it approved](#) an application of the Independent Community Bankers of America (ICBA) to utilize alternate LE and CD disclosure templates for residential construction loans. The CFPB will accept applications from lenders for a Trial Disclosure Program (TDP) Waiver based on the ICBA TDP Waiver Template, under the CFPB's Policy to Encourage Trial Disclosure Programs. The CFPB is interested in receiving applications from a number of lenders, rather than a single market participant. See the approval announcement for further information regarding applications for a TDP Waiver to use the alternative construction loan disclosure forms, and see the [ICBA application for the waiver](#) for disclosure template information.

Proposed Personal Financial Data Rights Rule. The CFPB [proposed rule on personal financial data rights](#) that was announced and discussed in October 2023 Recent Developments, has been published in the Federal Register. Comments on this proposed rule are due by December 29, 2023. The CFPB also published [Fast Facts: Personal Financial Data Rights Proposed Rule](#), a nine page summary of this proposed rule.

Select State CRA Laws. The CFPB published a [report](#) analyzing CRA laws in Connecticut, Illinois, Massachusetts, New York, Rhode Island, Washington, West Virginia and the District of Columbia.

Consumer Credit Card Biennial Report. The CFPB released its [biennial report to Congress on the consumer credit card market](#). The report found that in 2022, credit card companies charged consumers more than \$105 billion in interest and more than \$25 billion in fees. Total outstanding credit card debt eclipsed \$1 trillion for the first time since the CFPB began collecting this data. Profits for general purpose cards reached 5.9% in 2022, as measured by annual return on assets, compared to 4.5% in 2019, after peaking at 9.6% in 2021. The average credit card APR rose to 15.4% over the prime rate. Consumers were charged \$14.5 billion in late fees, returning to pre-pandemic levels, and up from \$11.3 billion in 2021. The vast majority of credit card rewards were paid to people who paid off their credit card balance every month. The report highlights areas of concern, including more consumers carrying balances month to month, with many falling deeper into debt over time, while credit card company profits remained significantly above pre-pandemic levels.

Report to Congress. The CFPB published its [Annual Report to Congress](#) (80 pages) to summarize its publications and enforcement actions. You may want to see if you missed anything published by the CFPB between October 1, 2022 and March 31, 2023.

Small Business Loan Reporting. Wolters Kluwer and Bloomberg Law published articles stating that federal district courts in Kentucky and Texas issued nationwide injunctions against CFPB implementation of the Small Business Loan Reporting Rule (the so called Section 1071 Rule), at least until the authority of the CFPB to issue this rule is resolved through all appeals.

Blogs. This month's blogs include:

- [Piloting Disclosures for Construction Loans](#)
- [CFPB to distribute more than \\$240,000 to consumers harmed by student loan debt-relief scam](#)
- [Servicemembers continue to face major financial challenges](#)

FRB

Interchange Fees. The FRB published a [proposed rule](#) to amend Regulation II to lower the maximum interchange fee that a large debit card issuer can receive for a debit card transaction. Initially, under the proposal, the base component would be 14.4 cents, the ad valorem component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. For example, the cap on an average-sized \$50 debit card transaction would decline from 24.5 cents under the current rule to 17.7 cents under the proposal. This proposal would also establish a regular process for updating the maximum interchange fee every other year going forward, and make technical revisions to Regulation II. Comments on this proposal are due by February 12, 2024.

The FRB also released a [biennial report](#) detailing data collected from large debit card issuers on interchange fees, issuer costs, and fraud related to debit card transactions in 2021.

2024 FRB Payment Service Fees. The FRB [announced](#) its tiered pricing for payment services that the Federal Reserve Banks provide to banks and credit unions, such as the clearing of checks, automated clearing house (ACH) transactions, and wholesale payment and settlement services:

| Tier | Monthly fee |
|------|-------------|
| 1 | \$425 |
| 2 | \$260 |
| 3 | \$165 |
| 4 | \$80 |

The Federal Reserve Banks will increase Reject Repair fees for both basic and premium users by \$0.05. The Federal Reserve Banks will also eliminate forward check deposit deadlines – 5:00 a.m. ET and 9:30 a.m. ET – and implement a new deadline at 7:30 a.m. ET to further simplify the FRFS Check Deposit structure. Removing the 9:30 a.m. ET deposit deadline and instituting a 7:30 a.m. ET deadline will eliminate debit float and provide customers two-and-a-half additional hours to deposit. The Standard Daily Fee B Image Cash Letter (ICL) Option will consequently be eliminated as the deposit option only provides deposit deadlines at the 5:30 a.m. ET and 7:30 a.m. ET that the Federal Reserve Banks intend to terminate. The 7:30 a.m. ET per item cash

letter fees will be the same as previous 5:00 a.m. ET per item cash letter fees, and 7:30 a.m. ET per item daily fixed fees will be lower than prior 9:30 a.m. ET per item daily fixed fees. The new fee schedules become effective January 2, 2024.

Consumer Compliance Outlook. The FRB published the [Second/Third issue of Consumer Compliance Outlook for 2023](#). Articles in this issue include:

- [Top Federal Reserve Compliance Violations in 2022: Data Collection and Reporting Requirements of the Home Mortgage Disclosure Act](#)
- [Compliance Risk Assessments](#)
- [Compliance Spotlight: Supervisory Observations on Representation Fees](#)

This issue also includes a regulatory calendar, and a list of the most popular Consumer Compliance Outlook articles.

E-Manifest Service. The FRB [announced](#) that as of October 2023, the E-Manifest Services available to all financial institution customers of the Federal Reserve Banks and their servicing armored carriers, with no FRB fees to use this service. With the E-Manifest Service, armored carriers, on behalf of their financial institution customers, can share and receive electronic information in real-time. The FRB is dedicated to working with financial institutions to increase adoption of E-Manifest and bring greater transparency and efficiency to the US cash supply chain. The E-Manifest Service replaces the manual process of matching paper manifests for deposits and orders at Federal Reserve docks with a technology that enables scanning and an electronic exchange of data. See <https://www.frb services.org/financial-services/cash/cash-visibility/e-manifest> for further information regarding this service.

FDIC

CRA Regulations. The FDIC, FRB and OCC jointly issued a [final rule](#) (1466 pages) to amend and consolidate their CRA regulations. These agencies also issued a very short [fact sheet](#) stating the basic objectives of the final rule, and a [seven page document](#) stating the objectives and key elements of the final rule. The final rule encourages banks to expand access to credit, investment, and banking services in LMI communities; adapts to changes in the banking industry, including internet and mobile banking; provides greater clarity and consistency in the application of the CRA regulations; and tailors CRA evaluations and data collection to bank size and type.

This rule is effective on April 1, 2024, except for amendment nos. 26, 49 and 71, which are effective April 1, 2024, through January 1, 2031. The effective date for amendment nos. 7, 11, 14, 16, 20, 33, 35, 37, 39, 43, 55, 57, 59, 61, and 65 are delayed indefinitely. The agencies will publish a document in the Federal Register announcing an effective date for these delayed amendments.

Sections __.12 through __.15; __.17 through __.30; __.42(a); the data collection and maintenance requirements in § __.42(c), (d), (e), and (f); and appendices A through F of the common rule text as adopted by the OCC, Board, and FDIC are applicable on January 1, 2026. Sections __.42(b), (g), (h), and (i) and the reporting requirements in § __.42(c), (d), (e), and (f)

of the common rule text as adopted by the OCC, Board, and FDIC are applicable on January 1, 2027.

Climate-Related Financial Risk Management Guidance for Large Financial Institutions.

The FDIC, FRB and OCC issued a joint set of [Guidance](#) and [Principles](#) that provide a high-level framework for the safe and sound management of exposures to climate-related financial risks (principles). The principles are intended to support efforts by large financial institutions to focus on key aspects of climate-related financial risk management. Although all financial institutions, regardless of size, may have material exposures to climate-related financial risks, these principles are intended for financial institutions with over \$100 billion in total consolidated assets.

The final Guidance is substantively similar to the guidance previously proposed by the agencies, with targeted modifications in response to commenter feedback. These modifications include clarification on the applicability to large foreign banking organizations, clarification on the role of boards of directors and management, and removal of a reference in the FRB's proposal on compensation practices.

The U.S. Global Change Research Program released its [Fifth National Climate Assessment](#). Annual US greenhouse gas emissions fell 12% between 2005 and 2019. This trend was largely driven by changes in electricity generation. Coal use has declined, while the use of natural gas and renewable technologies has increased, leading to a 40% drop in emissions from the electricity sector. Since 2017, the transportation sector has overtaken electricity generation as the largest greenhouse gas emitter. As US emissions have declined from their peak in 2007, the country has also seen sustained reductions in the amount of energy required for a given quantity of economic activity and the emissions produced per unit of energy consumed. Meanwhile, both population and per capita GDP have continued to grow. Recent growth in the capacities of wind, solar, and battery storage technologies is supported by rapidly falling costs of zero- and low-carbon energy technologies, which can support even deeper emissions reductions. For example, wind and solar energy costs dropped 70% and 90%, respectively, over the last decade, while 80% of new generation capacity in 2020 came from renewable sources. Note also that the [cost of natural gas](#) peaked in 2005, and has been generally falling since, except for the period at the beginning of the war in the Ukraine. At the same time, annual temperatures, precipitation, and sea levels are rising across the country due to climate changes.

Fair Hiring in Banking Act. [FIL-57-2023](#) announces a [proposed amendment](#) to 12 C.F.R. part 303, subpart L, and part 308, subpart M, to update the FDIC's regulations concerning section 19 of the Federal Deposit Insurance Act, to conform these regulations with the Fair Hiring in Banking Act. The proposed rule would incorporate statutory changes to Section 19, including the following:

- **Certain older offenses.** The Act excludes certain offenses from the scope of Section 19 based on the amount of time that has passed since the offense occurred or since the individual was released from incarceration.
- **Designated lesser offenses.** Under the Act, Section 19 does not apply to the following offenses, if one year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.

- **Criminal offenses involving dishonesty.** The Act excludes certain offenses from the definition of “criminal offenses involving dishonesty,” including “an offense involving the possession of controlled substances.” Historically, the FDIC has required an application as to drug-related offenses—aside from simple-possession offenses. In light of the Act, however, the FDIC believes that Congress intended to exclude, at least, the offenses of simple possession and possession with intent to distribute from the “involving dishonesty” category because of the statute’s use of the phrase “involving the possession of controlled substances.” Additionally, the FDIC believes it should shift from the presumption that other drug-related offenses are subject to Section 19 as crimes involving dishonesty, breach of trust, or money laundering. This revised approach would treat drug offenses the same as all other types of crimes, which do not automatically trigger the need for an application, but which may require an application depending on the elements of the underlying criminal offense.
- **Expunged, sealed, and dismissed criminal records.** The Act excludes certain convictions from the scope of Section 19 that have been expunged, sealed, or dismissed. Existing FDIC regulations already exclude most of those offenses. The proposed rule would modestly broaden the statutory language concerning such offenses to harmonize the FDIC’s current regulations concerning expunged and sealed records with the statutory language.
- **Standards for FDIC review of Section 19 applications.** The Act prescribes standards for the FDIC’s review of applications submitted under Section 19.

The proposed rule also provides interpretive language that addresses, among other topics, when an offense “occurs” under the Act, whether otherwise-covered offenses that occurred in foreign jurisdictions are covered by Section 19, and offenses that involve controlled substances. Comments will be accepted for 60 days after publication of these proposals in the *Federal Register*.

Manual Update. The FDIC recently updated Section 14.1 “Civil Money Penalties,” Section 16.1 “Report of Examination Instructions,” and Section 21.1 “Examination Planning” in its [Risk Management Manual of Examination Policies Manual](#).

Reserve Ratio. The FDIC published a [notice](#) that the designated reserve ratio for depository institutions will remain at 2% for 2024.

Special Assessment. The FDIC issued a [final rule](#) to collect a special assessment at an annual rate of 13.4 basis points beginning with the first quarterly assessment period of 2024 (i.e., January 1 through March 31, 2024) with an invoice payment date of June 28, 2024. The FDIC will continue to collect these special assessments for an anticipated total of eight quarterly assessment periods, to cover losses of \$16.3 billion paid to uninsured depositors following the closures of Silicon Valley Bank and Signature Bank. The base for the special assessment is equal to an insured depository institution’s (IDI’s) estimated uninsured deposits for the December 31, 2022 reporting period, adjusted to exclude the first \$5 billion in estimated uninsured deposits from the IDI, or at the banking organization level for IDIs that are part of a holding company with one or more subsidiary IDIs. IDIs with less than \$1 Billion in total assets were not required to report uninsured deposits on their call reports and, therefore, will not be subject to this special

assessment. It is estimated that a total of 114 banking organizations will be subject to the special assessment, and no banking organizations with total assets under \$5 billion will pay the special assessment, based on data for the December 31, 2022 reporting period. See also the [Fact Sheet](#) regarding this special assessment.

OCC

Venture Loans. [OCC Bulletin 2023-34](#) discusses OCC policy guidance that applies to commercial venture loans to early-, expansion-, and late-stage companies:

“There is heightened uncertainty and higher probability of failure associated with new business ventures. The OCC expects banks engaging in venture lending to do so in a safe and sound manner, in compliance with applicable laws and regulations, and with support from sound risk management systems. Before making any loan, bank management should identify the purpose of the loan and the source of repayment. In addition, bank management should assess the ability of the borrower to repay the loan in a timely manner. Documentation maintained by the bank should support the decision to grant the credit and allow for follow-up monitoring, as the bank would perform with any loan. OCC examiners will scrutinize loan commitments that are underwritten without an adequate assessment of the borrower’s capacity to repay and will determine whether such loans should be subject to supervisory criticism. Examiners will ask banks to determine the impact that any weak venture loan underwriting standards may have on the assumptions used in calculating loan loss reserves.”

This bulletin further presents background information on venture lending, describes venture lending risks, discusses risk management practices for venture lending, and provides guidance for risk-rating venture loans and evaluating repayment capacity.

Revised TCPA Examination Procedures. The OCC published [revised interagency examination procedures to reflect 2021 amendments to TCPA](#). The revisions rescind the “Telephone Consumer Protection Act and Junk Fax Protection Act” section of the “Other Consumer Protection Laws and Regulations” booklet of the Comptroller’s Handbook. OCC examiners, as well as examiners from the FDIC and NCUA, will rely on the interagency procedures. The revised interagency examination procedures address:

- provisions governing how customers can revoke consent under the TCPA.
- special exemptions from the customer consent provisions of the TCPA for banks using automated communications to notify customers of potential account fraud.
- safe harbors for callers that check a reassigned number database maintained by the Federal Communications Commission.

OCC Symposium on the Tokenization of Real-World Assets and Liabilities. Registration is now open for the upcoming OCC symposium on the tokenization of real-world assets and liabilities to be held on February 8, 2024, at the OCC headquarters in Washington, D.C. The symposium agenda and information about how to register are accessible [here](#). The link to the livestream will be available [here](#) no later than February 8, 2024.

NCUA

Charitable Donations to Veterans Organizations. The NCUA approved a [final rule](#) that adds “war veterans’ organizations” to the definition of a “qualified charity” that a federal credit union may contribute to using a charitable donation account. Specifically, the final rule adds a post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization recognized as exempt from taxation under section 501(c)(19) of the Internal Revenue Code to the definition of a “qualified charity” that a federal credit union may contribute to using a charitable donation account. A “qualified charity” is a section 501(c)(3) entity defined by the Internal Revenue Code and must be both a non-profit and organized for a charitable purpose. This rule is effective 30 days after publication in the Federal Register.

OTHER

Payment of Checks Drawn on the US Treasury. The Treasury’s Bureau of the Fiscal Service issued a [final rule](#) amending regulations that govern the payment of checks drawn on the United States Treasury (Treasury checks). The amendments coincide with the development of Fiscal Service’s enhanced check post payment processing system, which will provide quicker Treasury check return information to financial institutions. Financial institutions will receive this information through their existing communication channels with the Federal Reserve Banks, generally prior to the expiration of the time periods in which financial institutions must make Treasury check deposits available for withdrawal as prescribed by Regulation CC. With certain exceptions, a financial institution will be liable if it pays a canceled Treasury check, also known as a payment over cancellation (POC), without waiting to receive the return information that would enable the financial institution to know the check has been canceled. This amended rule is effective on December 1, 2023.

HMDA Beta Filing Data Platform. A [prototype of the 2023 HMDA Filing Instructions Guide \(FIG\)](#) and a [beta Online Loan/Application Register \(LAR\) Formatting Tool](#) are now available on the FFIEC HMDA beta platform. FFIEC also posted its [beta HMDA Filing Platform](#) to allow financial institutions to upload, review, certify, and submit HMDA data collected in or after 2017. Other published resources to help guide financial institutions through the processes of submitting HMDA data include:

- [Filing Instructions Guides](#)
 - [For data collected in 2023 \(NEW\)](#)
 - [Supplemental Guide for Quarterly Filers for 2023 \(NEW\)](#)
 - [For data collected in or before 2016](#)
- [A Guide to HMDA Reporting: Getting It Right](#)
- [HMDA Loan Scenarios](#)
- [HMDA Reporting Requirements](#)

Safeguards Rule Amendment. The FTC published an [amendment to the Safeguards Rule](#), 16 CFR Part 314, to require non-bank financial institutions to report to the FTC any notification event where unencrypted customer information involving 500 or more consumers is acquired without authorization. A financial institution must send this notice to the FTC electronically as

soon as possible after discovery of a breach, but no more than 30 days after discovery of the breach. This amendment will be effective 180 days after publication in the Federal Register.

The notice to the FTC must include: (1) the name and contact information of the reporting financial institution; (2) a description of the types of information that were involved in the notification event; (3) if the information is possible to determine, the date or date range of the notification event; (4) the number of consumers affected; (5) a general description of the notification event; and, if applicable, whether any law enforcement official has provided the financial institution with a written determination that notifying the public of the breach would impede a criminal investigation or cause damage to national security, and a means for the Federal Trade Commission to contact the law enforcement official.

GSE and FHA News. *2024 GSE Multifamily Loan Caps.* FHFA announced that the 2024 multifamily loan purchase caps for Fannie Mae and Freddie Mac will be \$70 billion for each GSE. See the [2024 Multifamily Caps Fact Sheet](#) and [2024 Appendix A](#) for further information about GSE Multifamily Loans.

FHA Inspection Fees. [FHA Mortgage Letter 2023-20](#) increases the fees permitted for inspections of single-family homes with FHA mortgages.

FHA Sales Approach for Valuing Manufactured Housing. [Mortgage Letter 2023-18](#) updates the FHA Manufactured Housing comparable sales selection requirements for appraisals conducted in support of a mortgage submitted for FHA insurance, and aligns with the requirements of the Fannie Mae MH Advantage® and Freddie Mac CHOICEHome® programs. Site built comparable sales will be used when fewer than two comparable MH Advantage® or CHOICEHome® sales are available.

HECM Claims. HUD announced that it [posted](#) for industry feedback a proposed update to its Home Equity Conversion Mortgage (HECM) assignment claims eligibility policy. The proposal enables certain categories of due and payable HECMs that were previously ineligible for assignment to be assigned to HUD, enabling servicers to obtain earlier resolution of these loans through HUD's assignment claims process. Comments on this proposal are due by December 11, 2023. For further information regarding this proposed change, review the [Draft ML Payment Supplement](#), and [Payment Calculation Worksheet](#) regarding claim eligibility. Comments regarding this proposal should be made on a [Feedback Response Worksheet](#) and add your feedback to the worksheet. Email the completed worksheet to sfeedback@hud.gov.

FHA Inspection Fees. [Mortgage Letter 2023-20](#) announced that it increased the allowable property inspection fee limits for property inspections of single-family homes associated with defaulted FHA-insured forward mortgages.

FHA HECM Program Policies Incorporated into Handbook 4000.1. HUD [announced](#) the publication of consolidated and comprehensive policies for its [Home Equity Conversion Mortgage \(HECM\)](#) program, and the inclusion of these policies in the *Single-Family Housing Policy Handbook 4000.1*. The new sections of the Single-Family Handbook governing the HECM program include Section II.B, covering FHA policy for the origination through post-

closing and endorsement of HECMs; and Section III.B, covering FHA policy for the servicing of HECMs and loss mitigation options to assist HECM borrowers who are behind on their HECM mortgage obligations.

GSE Capital Requirements. FHFA issued a [final rule](#) to modify requirements for guarantees on commingled securities, multifamily mortgage exposures secured by government-subsidized properties, and derivatives and cleared transactions, and other items.

FNMA Selling Guide Announcement SEL-2023-10. [Selling Guide Announcement SEL-2023-10](#) announces that The Selling Guide has been updated to include changes to the following:

- *Employment offers or contracts:* prohibits an employment offer or contract for future employment from a family member or interested party to the transaction
- *Lender staffing, training, and policies and procedures:* updating general lender requirements regarding lender staffing, training, and policies and procedures to maintain seller/servicer eligibility
- *Shared appreciation:* clarifying the policy in regard to an unauthorized transfer of ownership or change in occupancy status
- *Special Lender Approval Form:* The Special Lender Approval Form (Form 1000A) was updated to make it easier for lenders to apply to sell or acquire servicing for HomeStyle® Renovation Mortgages

Freddie Mac Bulletin 2023-22. [Bulletin 2023-22](#) revises income calculation methodology, especially regarding fluctuating earnings. Also, timeshare loans are considered to be installment debts rather than mortgages, and maintenance fees are not required to be included in the Borrower's monthly debt payment-to-income ratio. This Bulletin warns appraisers not to use certain terms that indicate a disparate impact in valuations, and to avoid other practices that are considered discriminatory. This Bulletin also discusses change to Credit Fee policies, and the sale of super conforming Mortgages.

VA Circular 26-23-23. [Circular 26-23-23](#) announces that the Lender's Staff Appraisal Reviewer (SAR) Application, VA Form 26-0785; Servicer Staff Appraisal Reviewer (SAR) Application, VA Form 26-0829; and \$100 application fee should no longer be submitted to the Administrative and Loan Accounting Center (ALAC) physical address for fee payment processing. The application and fees will be submitted to VA electronically. This Circular also contains Fedwire instructions for submitting payments to VA.

MLA Website Malfunction. DOD [announced](#) that due to a server malfunction, some Multiple Record Request files that were uploaded to the MLA website between 1:00 P.M. PST on November 14, 2023 and 11:00 A.M. PST on November 15, 2023 did not get processed. If you uploaded a file during this timeframe, and it has not been processed, you will need to re-upload the file.

Financial Stability Risks and Guidance on Nonbank Financial Company Determinations. The Financial Stability Oversight Council (Council) [announced](#) that it issued final versions of a [new analytic framework](#) for financial stability risks and [updated guidance](#) on the Council's nonbank financial company determinations process. The guidance sets forth the Council's

procedures for considering whether to designate a nonbank financial company for Federal Reserve supervision and prudential standards under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

FHLBB Pilot Programs. FHFA published an [Advisory Bulletin](#) to encourage FHLB Banks to develop innovative pilot programs, and offer voluntary programs, to prudently increase their support for affordable housing, equity advancement, and community development for underserved and financially vulnerable populations in their districts and other initiatives, including through the FHLBanks' core business activities. Pilot programs or voluntary programs could be designed, for example, to support increases in the supply of affordable single-family and multifamily housing, help close racial homeownership gaps, address residential climate resiliency improvements, or address other needs. A pilot program or voluntary program must be permissible under applicable statutory, regulatory, or other legal authorities, and may not be used to circumvent existing statutory or regulatory requirements or FHFA guidance. Pilot programs generally would be new FHLBank business activities implemented with a small size and defined time frame and with the expectation that, after a given period, careful analysis of the benefits and drawbacks will be conducted and considered. One intent of a pilot program is to "test and learn," with some pilot programs being converted to more permanent and larger scale implementation, and others ending because they did not meet their objectives, or because the FHLBank identified alternative means of meeting the same objectives. Products, programs, and services implemented under established FHFA statutory and regulatory authorities would not be considered pilot programs. Voluntary programs generally serve to supplement the FHLBanks' statutory and regulatory programs, and have included grants, down payment assistance programs, and special purpose credit programs.

CSBS Advice for Renewing NMLS License Renewals. [CSBS provided 5 Tips for Licensees to Prepare for NMLS Renewal:](#)

- Update your NMLS record – log in and check to make sure your profile is accurate
- Reset your NMLS password – update your password now to ensure it is current when you are ready to access NMLS
- Provide a current email address – take this step to ensure you receive important updates from NMLS during renewals
- Review state-specific renewal requirements – state agencies begin publishing requirements, including deadlines and fees, in September
- Access free, on-demand renewal training – CSBS develops a variety of resources for licensees to become familiar with the renewal process

Information on NMLS renewal is available on the [Annual Renewal Page](#) of the NMLS Resource Center (www.nmls.org). The renewal period in most states runs from Nov. 1 to Dec. 31. State-licensed MLOs must also have completed annual continuing education requirements to renew their licenses.

Federally registered MLOs and institutions must also renew their registrations via NMLS by Dec. 31. More information for federal registrants is available on the [NMLS Federal Registry Resources](#) page.

ODDS AND ENDS

Hackers are Everywhere. Reuters published an [article](#) detailing the business methods of Appin, a company located in India, that offers its services as a hacker for hire to steal information. Its methods include enticing targets with bogus business proposals, fake interview requests, booby-trapped emails, and porn. Most of its clients are private investigators from the US and other countries. This is just one of several global hacking services for hire.

Hacks of major financial companies continue to plague the financial system:

- The NY Times [reported](#) that Mr. Cooper, one of the largest US mortgage loan servicers, was hacked. Forbes [reported](#) that some consumer financial data was exposed during the computer intrusion. The Real Deal, a real estate news publication, [reports](#) that three class action lawsuits have been filed in Texas against Mr. Cooper, claiming that Mr. Cooper was negligent in safeguarding the confidential personal financial information of its 4 million borrowers.
- Bloomberg [reports](#) and Inc. Magazine [reports](#) that ICBC Financial Services, a U.S. subsidiary of Industrial and Commercial Bank of China, was hit by a ransomware attack in early November 2023. This attack disrupted the U.S. Treasury market by preventing this bank from settling Treasury trades on behalf of other market participants. LockBit, a Russia-linked hacker group that allegedly hacked Boeing earlier this year, claimed responsibility for the attack. ICBC was forced to deliver USB sticks to other banks to complete trades, since it needed to disconnect its electronic systems from the Internet.

On October 30, 2023, the White House [reported](#) that the President sent letters to the Speaker of the House and President of the Senate regarding taking additional steps to deal with the national emergency related to significant malicious cyber-enabled activities. “Significant malicious cyber-enabled activities continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. To address this continuing national emergency and developments in associated technologies, subsections 4.2(c)-(d) of the Executive Order I have issued impose additional record-keeping and reporting requirements with respect to foreign persons who use United States Infrastructure as a Service Products and foreign resellers of those Products, including to train large Artificial Intelligence models with potential capabilities that could be used in malicious cyber-enabled activity.”

The White House [reported](#) on November 1, 2023, that the International Counter Ransomware Initiative 2022 (representatives of three dozen countries) issued a Joint Statement reaffirming the international community’s joint commitment to building collective resilience to ransomware, cooperating to disrupt ransomware and pursuing the actors responsible, countering illicit finance that underpins the ransomware ecosystem, working with the private sector to defend against ransomware attacks, and continuing to cooperate internationally across all elements of the ransomware threat.

Zelle Banks Refund Some Scam Losses. Reuters [reports](#) that banks on the payment app Zelle have begun refunding losses to victims of imposter scams, to address consumer protection

concerns raised by U.S. lawmakers and the CFPB. New Zelle procedures, such as flagging transfers with risky attributes, have resulted in a reduction of fraud and scam rates.

Clean Vehicle Tax Credits. IRS [announced](#) that it began allowing car dealers to [register for the IRS Energy Credits Online Portal](#). This is a key step in implementing a provision of the Inflation Reduction Act that will lower costs for consumers and help car dealers grow their businesses by increasing access to tax credits at point of sale for new and previously owned clean vehicles. The new Energy Credits Online Portal will allow registered dealers to submit clean vehicle sales information to the IRS beginning in January 2024, and promptly receive payment for transferred credits. Dealers will also use Energy Credits Online to submit “time of sale” reports, which will confirm vehicles’ eligibility for a credit, whether or not the buyer chooses to transfer the credit to the dealer. [Guidance released on October 6](#) proposed rules regarding who is eligible to elect to transfer the credit to the dealer, and under what circumstances these taxpayers may have to pay back some of the transferred credit. Advance payments received by the dealer would not be treated as a tax credit to the dealer and may exceed the dealer’s regular tax liability. Advance payments received by the dealer would not be includable in the gross income of the dealer. The payment made by the dealer to the consumer in exchange for the transferred credit would not be deductible by the dealer. The payment made by the dealer to the consumer (in the form of a cash payment, down payment, or partial down payment) would also not be includable in the gross income of the consumer.

Treasury will make fact sheets, FAQs, checklists and other materials for consumers and dealers available before the end of the year to help all parties take advantage of this important benefit. Treasury will also partner with external organizations on stakeholder outreach and webinars to raise awareness.

Proposed Fiduciary Standards. The U.S. Department of Labor (DOL) [announced](#) that its [Employee Benefits Security Administration](#) proposed a retirement security rule updating the definition of an investment advice fiduciary under the Employee Retirement Income Security Act. The proposal would require trusted investment advisers to adhere to high standards of care and loyalty when they make investment recommendations for a fee to retirement plan participants, individual retirement account owners and others, and avoid recommendations that favor their financial and other interests at the expense of retirement savers.

DOL is also proposing amendments to related existing administrative prohibited transaction exemptions that are available to investment advice fiduciaries. The proposed amendments seek to make the exemption conditions more uniform and protective. Under ERISA, investment advice fiduciaries must avoid conflicts of interest or comply with the conditions of a PTE. The proposed amendments to the exemptions would uniformly require investment advice fiduciaries to give advice that meets a professional standard of care or duty of prudence, puts the retirement investor first or duty of loyalty and would prohibit advisers from charging more than reasonable compensation or misleading investors.

The proposed rules are:

- [11-03-2023 - Proposed Rules - Proposed Amendment to Prohibited Transaction Exemption 2020-02](#)

- [11-03-2023 - Proposed Rules - Proposed Amendment to Prohibited Transaction Exemption 84-24](#)
- [11-03-2023 - Proposed Rules - Federal Independent Dispute Resolution Operations](#)
- [11-03-2023 - Proposed Rules - Proposed Amendment to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128](#)
- [11-03-2023 - Proposed Rules - Retirement Security Rule: Definition of an Investment Advice Fiduciary](#)

In addition, The Department of Labor’s Employee Benefits Security Administration (EBSA) [announced](#) that it will hold a virtual public hearing starting at 9 a.m. on December 12 through December 13, 2023, continuing (if necessary) on December 14, 2023, for the public to provide input on the Department’s proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary, proposed amendments to Prohibited Transaction Exemption (PTE) 2020–02, proposed amendments to PTE 84–24, and proposed amendments to several other existing administrative PTEs that are available to investment advice fiduciaries. EBSA welcomes requests from the general public to testify at the hearing.

Draft Artificial Intelligence Protections. The White House published an [Executive Order](#) and a [Fact Sheet](#) on the safe, secure, and trustworthy development and use of artificial intelligence. Major concerns include threats to national security and critical infrastructure; the engineering of biological materials; deception of consumers and businesses; cybersecurity and protection of critical computer hardware and software; protection of privacy; advancing equity, civil rights, healthcare and education; enhancing worker safety and security; promoting innovation and competition; promoting proper use of A.I. at home abroad; and reducing the cost of A.I. The White House also published a [draft blueprint for an A.I. Bill of Rights](#).

An example of the items that we must protect against is discussed in a recent PC Magazine [article](#) – hackers are suspected of using artificial intelligence to listen for and decode keystrokes on conference calls, or by hacking a computer microphone, to determine what you are typing, even though the screen and keyboard are not displayed, in order to steal IDs and passwords to financial accounts.

Is Conversion of Excess Commercial Real Estate an Answer to the Detroit Affordable Housing Shortage? The White House is [promoting](#) the conversion of empty office space to affordable housing. “A new federal guidebook shows how federal tools have already been used to make conversions possible for the development of affordable housing.” A recent [report](#) states that total office vacancy in the Detroit market is 20.1%, up from 14.5% prior to the pandemic, as tenants consolidate and right-size their office footprints. 16% of all space added in Detroit since the start of the year was sublease space as tenants downsized.

Other Fines and Enforcement Actions:

- On October 24, 2023, the FTC and the State of Wisconsin [took action](#) against Wisconsin auto dealer group Rhinelander Auto Center, its current and former owners, and general manager Daniel Towne, for deceiving consumers by tacking hundreds or even thousands of dollars in illegal junk fees onto car prices and for discriminating against American Indian customers by charging them higher financing costs and fees. The defendants have

agreed to proposed court orders that will require Rhinelander's current owners and Towne to stop their unlawful practices and provide \$1.1 million to be used for refunds to consumers.

- The FTC announced on October 30, 2023, that it obtained a summary judgment permanently banning Jonathan Braun, who controlled small-business funding company RCG Advances, from the merchant cash advance and debt collection industries. Braun and his company used deceptive and illegal tactics to collect debts, including unauthorized withdrawals from accounts, threats, and predatory contract terms.
- On November 1, 2023, the SEC sued Safemoon, LLC, its affiliates and officers, for perpetrating a massive fraudulent scheme that generated millions of dollars through the unregistered offer and sale of a crypto asset security called the SafeMoon Token. Defendants profited by misappropriating crypto assets worth tens of millions of dollars.
- On November 2, 2023, the SEC fined Royal Bank of Canada \$6 million for violating the books and records and internal accounting controls provisions of the securities laws relating to its accounting for its costs of internally developed software.
- On November 2, 2023, Bridge It, Inc. agreed to settle the FTC's charges that it deceptively marketed its small loan program, resulting in a proposed court order that would require the company to pay \$18 million in consumer refunds, stop its deceptive marketing promises, and end tactics that prevented customers from cancelling its services.
- On November 3, 2023, the CFPB fined Citibank, N.A. \$24.5 million and ordered consumer redress in the amount of \$1.4 million for applying extra scrutiny to, negatively assessing, and often denying certain credit card applications based on Armenian national origin between 2015 and 2019. Citibank based some negative credit decisions on surname and geographic location.
- On November 7, 2023, the FTC and the State of Florida fined Global E-Trading LLC, Gary Cardone, and Monica Eaton \$100,000 and ordered the company to pay \$50,000 in attorney fees to the State of Florida. The company submitted misleading documentation in connection with disputing consumer Chargeback requests on behalf of their clients; ignored red flags indicating that the documentation was misleading; and effected, or causing to be effected, Microtransactions that artificially lowered a merchant's overall Chargeback Rate by inflating the total number of transactions run through the merchant's account.
- On November 15, 2023, the CFPB fined lender Enova International Inc. \$15 million for widespread illegal conduct, including withdrawing funds from customers' bank accounts without their permission, making deceptive statements about loans, and cancelling loan extensions. Enova paid a \$3.2 million fine to the CFPB in 2019, and was ordered to cease its illegal conduct. For violating that order and continuing to break the law, Enova is now banned from offering certain consumer loans, must provide redress to the consumers it harmed, and is required to tie executive compensation to the company's compliance with federal consumer financial protection laws.
- USDOJ announced on November 19, 2023, that it seized almost \$9 million worth of Tether, a cryptocurrency pegged to the U.S. dollar. These seized funds were traced to cryptocurrency addresses allegedly associated with an organization that exploited over 70 victims through romance scams and cryptocurrency confidence scams, which are widely known as "pig butchering." Tether further announced on November 20, 2023, that it

assisted USDOJ in an investigation that led to Tether proactively and voluntarily freezing approximately 225 million in USDT tokens (worth \$225 million) in external self-custodied wallets linked to an international human trafficking syndicate in Southeast Asia that is responsible for a global “pig butchering” romance scam. Reuters [published](#) a lengthy investigatory report detailing a major pig butchering operation.

- On November 20, 2023, the CFPB and 11 states fined Prehired LLC \$1, ordered the company to cancel \$27 million in contracts with consumers, obtained a judgment of \$4,248,249.30 for consumer relief, and ordered the company to be closed. The company sold vocational education services through deception, misrepresented amounts owed and settlement agreements, and used other unfair collection practices. Prehired filed for relief in bankruptcy prior to the CFPB suing the company.
- On November 20, 2023, the SEC charged Payward Inc. and Payward Ventures Inc., together known as Kraken, with operating Kraken’s crypto trading platform as an unregistered securities exchange, broker, dealer, and clearing agency. The SEC’s complaint also alleges that Kraken’s business practices, deficient internal controls, and poor recordkeeping practices present a range of risks for its customers. As alleged in the complaint, Kraken commingles its customers’ money with its own, including paying operational expenses directly from accounts that hold customer cash. Kraken also allegedly commingles its customers’ crypto assets with its own, creating what its own auditor had identified as “a significant risk of loss” to its customers.
- On November 20, 2023, the CFPB fined Toyota Motor Credit Corporation \$12 million for abusive practices, and ordered the company to pay \$48 million in consumer redress. Toyota used procedures that made it unreasonably difficult for consumers to cancel Toyota Guaranteed Auto Protection (GAP) and Credit Life and Accident Health (CLAH) policies, or Toyota refused to cancel these Add-On Products, including products that were imposed on consumers without their full knowledge or consent. In addition, refunds were credited to the consumer’s last loan or lease payments rather than being made in cash, or were never refunded when a loan or lease was paid off early. Toyota Motor Credit also violated the Fair Credit Reporting Act by falsely reporting customer accounts as delinquent even though customers had already returned their vehicles, and Toyota failed to promptly correct the negative information it had sent to consumer reporting agencies. Toyota failed to maintain reasonable policies and procedures to ensure payment information it sent to consumer reporting agencies was accurate.