



GIBSON DUNN

Monthly Bank Regulatory Report

September 5, 2024

We are pleased to provide you with the August edition of Gibson Dunn's monthly U.S. bank regulatory update. Please feel free to reach out to us to discuss any of the below topics further.

KEY TAKEAWAYS

- The Board of Governors of the Federal Reserve System (Federal Reserve) and Federal Deposit Insurance Corporation (FDIC) [issued final joint guidance](#) on resolution plans for Category II and Category III institutions.
- Staff of the Federal Reserve [published an FAQ](#) clarifying that institutions subject to Regulation YY (12 C.F.R. Part 252) enhanced prudential standards can incorporate—although they should not rely exclusively on—certain non-private market sources in demonstrating plans to monetize highly liquid assets under various internal liquidity stress test scenarios.
- The FDIC's recent Notice of Proposed Rulemaking proposing significant changes to its brokered deposits rules was published in the [Federal Register](#) on August 23, 2024. **Comments are due on the proposed rule by October 22, 2024.**
- On August 21, 2024, a group of eleven financial services trade associations [requested](#) that the FDIC withdraw its proposed rule or, alternatively, that the FDIC publish its brokered deposits data and extend the comment period by an additional 60 days. The coalition of trade associations also [requested an extension](#) to respond to the FDIC's [request for information on deposits](#), noting that the FDIC's request for information requires a significant amount of research and consideration that would be difficult to

sufficiently complete within the 60-day comment period. For more information on the proposed rule, please see our [Client Alert](#).

DEEPER DIVES

Federal Reserve and FDIC Issue Joint Final Guidance on Resolution Plans for Category II and Category III Institutions. On August 5, 2024, the Federal Reserve and FDIC issued final joint guidance to help Category II and Category III institutions (*i.e.*, banks with assets exceeding \$250 billion but not GSIBs) develop their resolution plans. The joint guidance addresses specific characteristics of Category II and III institutions and is organized around key areas of vulnerability—such as capital, liquidity, and operations.

- *Insights.* Although the joint guidance provides color to Category II and III institutions on key risk areas to be considered in connection with the development of resolution plans, uncertainties remain. Notably, Federal Reserve Governor Michelle Bowman's [statement on the final guidance](#) flagged several lingering reservations regarding the guidance, including (i) the lack of justification for requiring holding company-level plans for large banks that predominantly hold assets in a bank subsidiary, (ii) a potentially disjointed rulemaking approach in light of the agencies' separately proposed long-term debt requirement that could materially impact firms' resolution strategies, and (iii) the ability of the in-scope institutions to produce useful and reliable "least-cost resolution" analyses based on the revised guidance.

Federal Reserve Clarifies that Firms Can Incorporate Non-Private Market Sources in Regulation YY Liquidity Stress Tests. On August 13, 2024, staff of the Federal Reserve published a new Q&A on its [Regulation YY Frequently Asked Questions page](#). The FAQ confirms that firms subject to Regulation YY enhanced prudential standards can use non-private market sources, such as the Federal Reserve's discount window, the Standing Repurchase Facility, or Federal Home Loan Bank advances, in addition to private market channels, in demonstrating that the firm can monetize highly liquid assets in response to various internal liquidity stress test (ILST) scenarios. However, the guidance also emphasizes that firms should not rely exclusively on these non-private sources and clarifies that it does not expand the types of assets that qualify for inclusion in a firm's liquidity buffer.

- *Insights.* The guidance issued in the FAQ is significant because it broadens the options that banks have for demonstrating liquidity management under stress, potentially making it easier for them to satisfy their ILST requirements, which, for many banks, can be their most binding liquidity requirements. By clarifying that banks can plan to meet a substantial portion of their projected short-term liquidity needs under stress by borrowing from the Federal Reserve and other non-private market sources, the guidance should also increase banks' incentives to be prepared to use those facilities when needed.

OTHER NOTABLE ITEMS

Federal Reserve Announces Final Individual Capital Requirements for All Large Banks. On August 28, 2024, the Federal Reserve [announced](#) final individual capital requirements for all

large banks, effective on October 1. This [table](#) shows each large bank's CET1 capital ratio requirement.

Ninth Circuit Reaffirms Decision Finding National Bank Act Does Not Preempt California's Interest on Mortgage Escrow Statute. Following the Supreme Court's recent decision in *Cantero v. Bank of America* (discussed in our previous [Client Alert](#)), a Ninth Circuit Court of Appeals panel reaffirmed the District Court's opinion in *Kivett v. Flagstar Bank* that the National Bank Act does not preempt California law requiring banks to pay interest on deposits held in escrow accounts. The Ninth Circuit's unpublished memorandum disposition is available [here](#). Previously, on June 10, 2024, the Supreme Court [vacated the decision](#) in *Kivett* and remanded to the Ninth Circuit for further consideration in light of *Cantero*.

FDIC Publishes Questions and Answers Regarding FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC Name or Logo. On August 16, 2024, the FDIC [issued FAQs](#) relating to its December 2023 final rule amending Part 328 of its regulations concerning the use of official FDIC signage, advertising statements and representations regarding FDIC insurance coverage. Among the key implementation topics covered, the FAQ spends considerable time addressing digital marketing. The FDIC's final rule and FAQs reflect a continued focus on representations made by fintech or other non-depository institutions regarding the insured status of customer funds. The final rule follows a wave of FDIC enforcement activity against non-banks making false statements regarding the insured status of customer funds. Financial institutions considering partnering with third parties to offer deposit products should diligence such fintech's marketing and implement appropriate controls.

CFPB Issues Advisory Opinion and Research Report on Contract for Deed Lending. On August 13, 2024, the Consumer Financial Protection Bureau (CFPB) released an [advisory opinion](#) and [research report](#) on a form of home seller financing often referred to as contract for deed. The advisory opinion affirms that federal home lending rules and laws, such as the Truth in Lending Act, cover contracts for deed and provide key consumer protections. The advisory opinion clarifies that larger sellers, such as investment groups, are subject to the provisions of the Truth in Lending Act. Accordingly, covered sellers must (i) assess the borrowers' ability to repay loans; (ii) provide the required disclosures, including the annual percentage rate and payment schedules; and (iii) limit balloon payments on all loans with an interest rate higher than certain published benchmarks.

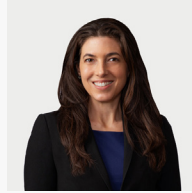
CFPB Comments on Department of the Treasury's Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector. On August 12, 2024, the CFPB [published](#) its comments to the Department of the Treasury's June 6, 2024 [Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector](#).

The following Gibson Dunn lawyers contributed to this issue: Jason Cabral, Ro Spaziani, Zach Silvers, Karin Thrasher, and Nathan Marak.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work or any of the member of the [Financial Institutions](#) practice group:



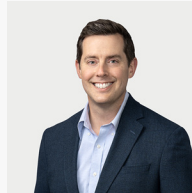
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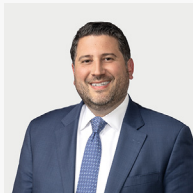
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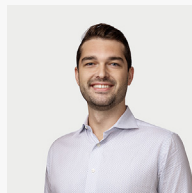
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