

[Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, \(May 10, 2024\)](#)

Banking and Finance Law Daily Wrap Up

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By WK Editorial Staff

A weekly roundup of other items of interest to the banking and finance law community.

BANKING OPERATIONS—Representative Alex Mooney (R-WV), along with fellow Financial Service Committee Republicans Reps. Byron Donalds (R-Fla) and Andy Ogles (R-Tenn) have [introduced](#) a bill, The Bank Risk Reduction Act, which seeks to eliminate mandatory margin requirements for interest rate swaps. Mooney argues that the Dodd-Frank Act requirements hinder banks' ability to hedge against the interest rate risk behind last year's bank failures.

BANKING OPERATIONS—The Federal Deposit Insurance Corporation has [requested comment](#) on a Recordkeeping, Disclosure and Reporting Requirement information collection covering Consumer Financial Protection Bureau Regulation Z; as well as CFPB Regulations E & DD, and Federal Reserve Regulation CC. The FDIC has enforcement authority on the requirements of the CFPB's Regulation over the financial institutions it supervises. Reg Z—12 CFR 1026—implements the Truth in Lending Act and certain provisions of the Real Estate Settlement Procedures Act and prescribes uniform methods for computing the cost of credit, the disclosure of credit terms and costs, the resolution of errors and imposes various other recordkeeping, reporting and disclosure requirements. Regs E & DD, and Reg CC ensure adequate disclosures regarding accounts, including electronic fund transfer services, availability of funds, and fees and annual percentage yield for deposit accounts. Generally, the Reg E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer services provided to them so that they can make informed decisions. Reg CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds.

COMMUNITY DEVELOPMENT—A series of bills announced in the [House](#) and [Senate](#) on May 8 seeks to address language barriers in consumer and financial services. The bicameral [Improving Language Access in Mortgage Servicing Act](#)—introduced by Rep. Sylvia Garcia (D-Texas) in the House and Sen. Laphonza Butler (D-Calif) in the Senate—would require the CFPB to translate mortgage documents from English into the eight most used languages according to Census data, as well as four additional languages. Butler also announced the [Multilingual Financial Literacy Act](#), which would direct the Financial Literacy Education Commission to study the impact of language barriers on financial health; and the [Community Finance Language Inclusion Act](#), which would expand the definition of "technical assistance" for Community Development Financial Institutions to include outreach to those with limited English proficiency.

FINANCIAL TECHNOLOGY—Representative Sean Casten (D-Ill), along with co-sponsors co-sponsored Reps. Bill Foster D-Ill), Brad Sherman (D-Calif), and Emanuel Cleaver (D-Mo) have [introduced](#) the [Blockchain Integrity Act](#) to temporarily prohibit financial institutions from transacting with funds that have gone through digital asset mixers while the Treasury Department, Securities and Exchange Commission, Commodity Futures Trade Commission, and Department of Justice conduct a study on their illicit uses. The Blockchain Integrity Act would place a two-year moratorium to prohibit financial institutions, including cryptocurrency exchanges, virtual asset service providers (VASPs), and other registered money service businesses (MSBs), from accepting incoming

funds that have been routed through a mixer, as well as prevent outgoing funds from being withdrawn directly to a known mixer address.

LAW FIRM NEWS—Troutman Pepper has [announced](#) that Alexandra Steinberg Barrage, a former FDIC executive with over a decade of bank regulatory experience, has joined their Washington D.C. office. Mason Bayler, Chair of Troutman Pepper's Transactional Department said that Barrage "brings significant federal government experience in regulatory strategy and policy, further strengthening our capabilities to serve our financial services clients." Barrage advises clients on a wide range of complex regulatory and supervisory matters, including enforcement actions, transactional disputes, regulatory due diligence, bank/fintech partnerships, and resolution planning. Barrage's arrival marks the fourth bank regulatory lawyer to join Troutman Pepper this year, following Kevin Petrasic, Matthew Bornfreund, and Helen Lee.

MORTGAGES—7th Cir.: The U.S. Court of Appeals for the Seventh Circuit reviewed the Illinois Mortgage Act's release-of-lien provision (765 ILCS 905/2) in a case involving "the collapse of a real estate Ponzi scheme." A group of individual investors and a private lender (BC57, LLC) both claimed a priority interest in proceeds from the liquidation of five properties. In keeping with a court-appointed receiver's recommendation, the federal district court awarded priority to the individual investors, stating that their security interests were "first in time and were never extinguished." On appeal, the lender challenged the district court's determination that the pertinent real estate company's receipt of payment in the scheme did not extinguish prior mortgage liens on the properties and that the releases of those mortgage liens were facially defective and invalid. In upholding the decision of the lower court, the Seventh Circuit held that full payment alone in satisfaction of a debt underlying a lien "cannot extinguish a preexisting security interest without a valid release under the Illinois Mortgage Act." In reaching its holding, the court recognized that the Illinois Mortgage Act "obligates a mortgagee to issue a release of the mortgage upon full satisfaction of the debt underlying the lien" and that the Act did not expressly abrogate the common-law rule that "payment automatically extinguishes the lien." At the same time, the Seventh Circuit underscored that the finding by the lower court—that "the releases were facially invalid"—was not against the manifest weight of the evidence ([SEC v. BC57, LLC](#), No. 23-1870 (7th Cir. May 6, 2024)).

OVERSIGHT AND INVESTIGATION—Despite proper implementation, the FHFA's new fair lending examination program lacked documentation for two processes, according to a May 8 [report](#) from its Office of the Inspector General (OIG). The OIG audit of the Enterprise fair lending examination program specifically found FHFA has yet to document its process for referral of potential Fair Housing Act violations to the Department of Housing and Urban Development or Department of Justice, nor had it documented a process for quality control of adverse examination findings. Despite this, the OIG determined that the examination procedures developed in July 2022 had been properly implemented. The OIG made two recommendations to which the FHFA agreed.

OVERSIGHT AND INVESTIGATION—Senator Sherrod Brown (D-Ohio) [announced](#) he has written to the CEOs of [Amazon](#) and [Walmart](#) raising concerns about unfair price increases through the exploitation of customer data and the use of pricing algorithms. Brown emphasized in the letters that "dynamic pricing" often leads to higher prices for consumers." The letters follow a hearing chaired by Brown last week "on how corporations are using dynamic pricing and other price-gouging tactics to raise prices on consumers – driving inflation and making markets less competitive."

Attorneys: Morgan Bradylyons for the Securities and Exchange Commission. Andrew Richard Devooght (Loeb & Loeb LLP) for BC57, LLC. Jonathan Gardner (Labaton Keller Sucharow LLP) for Equitybuild, Inc. Michael Rachlis (Rachlis, Duff, Adler & Peel LLC) for Kevin B. Duff. Jerome F. Crotty (Rieck & Crotty) for Kirk Road Investments, LLC. Robert J. Augenlicht (Law Office of Robert J. Augenlicht LLC) for 1839 Fund LLC. Mason Bayler; Matthew Bornfreund; Alexandra Steinberg Barrage; Helen Lee; Kevin Petrasic (Troutman Pepper).

Companies: Amazon; BC57, LLC; Equitybuild, Inc.; Kirk Road Investments, LLC; 1839 Fund LLC; Walmart

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