JULY 2024

COMPASS

With a track record of serving over 600 firms, including Fortune 10 companies and the largest Fintech unicorns, we provide impactful solutions to address complex regulatory, licensing, and compliance challenges faced by Fintech and financial services companies globally.

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By Petra Hrachova, CRCM, CAMS

Turning Compliance Dreams into: AI Reality with Ankura

Ever woken up from a dream so vivid you spent the morning wondering if you actually had a conversation with a talking dog? It's that fuzzy line between dream and reality that gets us every time. Well, if you've been keeping an eye on the developments in artificial intelligence (AI), you might be experiencing a similar kind of wonder. All those sci-fi novels and movies promised us a future where AI would be as common as smartphones. And guess what? That future is not knocking on the door; it has politely let itself in and is making coffee in your kitchen.

> "Change is a doble-edged sword but necessary."

Now, let's talk about AI in the context of compliance within financial institutions. For us compliance folks, the idea of change is about as welcoming as a mosquito at a barbecue. We see change as a double-edged sword; it's necessary but fraught with risk and exposure. And let's not even start on the costs associated with it. Selling the idea of any new implementation and increased compliance costs to management is akin to convincing a cat to take a bath – possible, but it requires strategy and, perhaps, protective gear.

However, the real beauty of AI in compliance is not just in its ability to streamline processes but in its potential to significantly reduce dependency on human resources. This isn't just about reducing labor cost but about enhancing efficiency and accuracy, allowing human expertise to focus on more complex decision-making tasks. The initial investment in AI technology might look daunting, but it's like planting an apple tree; the upfront effort is worth the fruit it bears.

Actual facts? The global AI in the Fintech market was valued at around $6.67 billion in 2019 and is expected to reach $22.6 billion by 2025. That's not just growth; that's a sprint. With AI's ability to analyze vast amounts of data for fraud detection, risk management, and customer service, it's no wonder that financial institutions are jumping on the bandwagon.

Let's think of AI in the compliance world as a behind-the-scenes wizard, working its magic to make everything smoother and smarter. It's like having a super-efficient assistant who never sleeps, tirelessly sifting through mountains of regulations, making sure risk assessments are sharp, and polishing up policies and procedures until they're squeaky clean.

With its toolkits of machine learning, deep learning, and large language models, AI is the secret sauce that takes care of the monotonous tasks, freeing up the human crew to tackle the bigger puzzles. When it comes to the nitty-gritty of audits and transaction monitoring, AI steps in as the detective with the ability for spotting the needle in the haystack.

A report from Deloitte stated that a massive 98% of financial institutions are counting on AI to help them fight the good fight against financial crimes in the coming years.

The Bank of England and the Financial Conduct Authority found that two-thirds of their anti-money laundering and fraud-busting tools are already powered by machine learning.

AI has the potential to cut down on the false alarms in transaction monitoring by up to 60%, making everyone's life a bit easier.

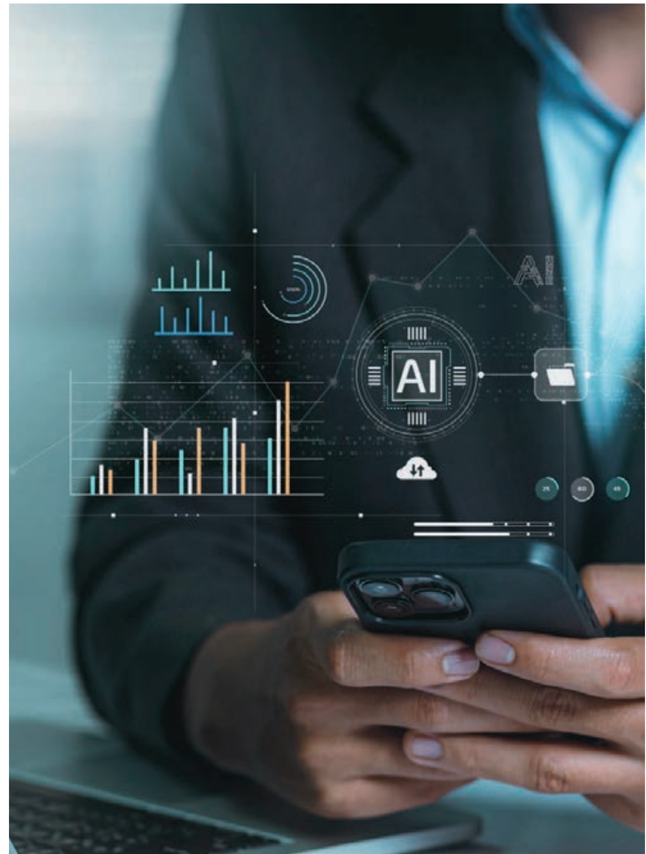
There are always two sides to the coin, and AI implementation is no exception, presenting a plethora of challenges, including the need for high-quality data. Siloed, unstructured, or low-quality data pose significant challenges for AI systems. Integrating AI with existing systems, particularly legacy systems not originally designed to support AI, adds another layer of complexity. The regulatory landscape for AI is evolving gradually, raising concerns about privacy, data protection, and ethics. AI systems can inadvertently adopt existing flaws and exhibit bias. Costs, return on investment (ROI), scalability, and maintenance, along with the pervasive issues of trust and understanding, are substantial obstacles to overcome. Moreover, the current workforce faces skill gaps in AI and machine learning expertise.

We can help you address these challenges. Enter Ankura, your AI implementation champion. Think of Ankura as the cool, nerdy friend who knows everything about AI and how to make it work for you. In the maze of compliance and transaction monitoring, Ankura is the guiding light, helping financial institutions navigate the complexities of AI integration. We understand that the thought of implementing AI can be daunting. However, with our specialized expertise, we simplify this process, ensuring a seamless and effective integration.

Ankura isn't just about throwing technology at problems. We're about crafting solutions that fit your unique needs, ensuring that your transition to AI-enhanced compliance is smooth and worry-free. From identifying the right AI tools to tailoring them to enhance your existing processes, Ankura is by your side, making sure that your institution not only meets compliance requirements but excels at them.

At the core of our approach is AI-driven process re-engineering. This means we don't just add AI to your existing systems; we transform the way you operate, making your processes smarter, more efficient, and highly adaptable. Our method ensures that AI isn't just an add-on, but a fundamental shift in how your institution manages compliance and transaction monitoring. We reimagine your workflows, integrating AI to create streamlined, intelligent processes that anticipate challenges and optimize outcomes.

So, if you're ready to transform your compliance and transaction monitoring processes with AI, Ankura is your go-to partner. Let's make compliance a breeze, turning what was once a cumbersome necessity into a strategic asset. Because with Ankura, the future of compliance isn't just bright; it's brilliantly re-engineered.



Stay tuned for our upcoming AI update in the next edition of *Compass*.

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Petra brings over 20 years of experience in compliance, CRA, and BSA officer at community banks, a regulator, and as a consultant.

Prior to joining Ankura, Petra worked as a Senior Assistant Bank Examiner at the Federal Reserve Bank routinely helping with supervisory activities for community and regional state member banks. Petra's experience includes starting a de novo bank, where she successfully created and managed compliance, BSA and credit administration programs and where she became knowledgeable of all functional areas of banking.

At Ankura, Petra works with large and small money service businesses including Fintechs and provides expertise in consulting, AML Risk Assessments and Compliance Programs development. She also leads BSA/AML/OFAC independent reviews and performs validation of transaction monitoring systems. Petra also worked on developing and updating the online compliance training modules for a large online training provider.

Petra's current focus is on providing regulatory consulting to banking clients, specifically guidance related to Fintech business lines, remediation plans and establishing Fintech regulatory compliant programs..

By Kay Toscano, CRCM, CAFP

Banking on Buds: The Complex Interplay Between Cannabis and Commerce

In the ever-evolving landscape of American policy, the story of cannabis legalization unfolds as a testament to societal change and the complexities of governance. This narrative, however, is not without its dissonances, particularly in the realm of financial services.

Introduction

In a nation marked by its pioneering spirit and the relentless pursuit of progress, the cannabis industry emerges as a vibrant tableau of innovation, marred by the shadows of regulatory uncertainty. As states across the Union chart their own courses, legalizing cannabis for medical and recreational use, they weave a patchwork of policies that stand in stark contrast to the federal government's steadfast classification of the plant. This discord at the heart of cannabis commerce sets the stage for a deeper exploration into an issue that transcends mere legality, touching upon the very fabric of economic integration and societal values.

The Current Legal and Regulatory Landscape

At the federal level, cannabis remains ensnared in the Schedule I category of the Controlled Substances Act, a classification that denotes a high potential for abuse and no accepted medical use. This designation, rooted in the drug policy of yesteryears, casts a long shadow over the burgeoning cannabis industry, constraining its access to essential financial services and stifling its growth potential. Banks and financial institutions, wary of the legal ramifications of servicing cannabis-related businesses (CRBs), find themselves at a crossroads, caught between the promise of a new market and the peril of federal reprisal.

> **Banks and financial institutions, be wary of the legal ramifications of servicing CRBs!**

Cannabis Banking and Legislation Timeline

The following timeline weaves together the historical context, pivotal moments, and potential future developments in cannabis banking and legislation, including the critical role of the SAFE Banking Act and the impact of reclassifying marijuana. It serves as a guide through the evolving relationship between the cannabis industry and the financial sector, highlighting the journey towards regulatory clarity and economic integration.

- **1970 -** Controlled Substances Act (CSA) Enacted: Marijuana was classified as a Schedule I drug, indicating a high potential for abuse and no accepted medical use, severely limiting research, and banking capabilities.

- **1996 -** California Legalizes Medical Marijuana: Marks the beginning of state-led initiatives diverging from federal law, creating a patchwork of regulations, and increasing the need for banking solutions for cannabis businesses.

- **2013 -** Cole Memorandum Issued: Although not law, it provides some protection against federal enforcement in states that have legalized marijuana, signaling a slight shift in federal attitude but leaving financial institutions wary of engaging with cannabis businesses.

- **2014 - 2019 -** Incremental Banking Guidance: The Financial Crimes Enforcement Network (FinCEN) issues guidance for banks on serving cannabis businesses in compliance with the Bank Secrecy Act, but the banking challenges persist due to the overarching federal prohibition.

- **2019 & 2021 -** SAFE Banking Act Proposals: The Secure and Fair Enforcement (SAFE) Banking Act was introduced in Congress, aiming to protect financial institutions that service cannabis-related businesses in states where it has been legalized. Despite passing in the House, it stalls in the Senate.

- **2020 - Present -** Growing Bipartisan Support for Cannabis Banking Reform: As more states legalize cannabis for medical or recreational use, there is increased bipartisan support for federal banking reforms, including the SAFE Banking Act, to provide a safe harbor for banks.

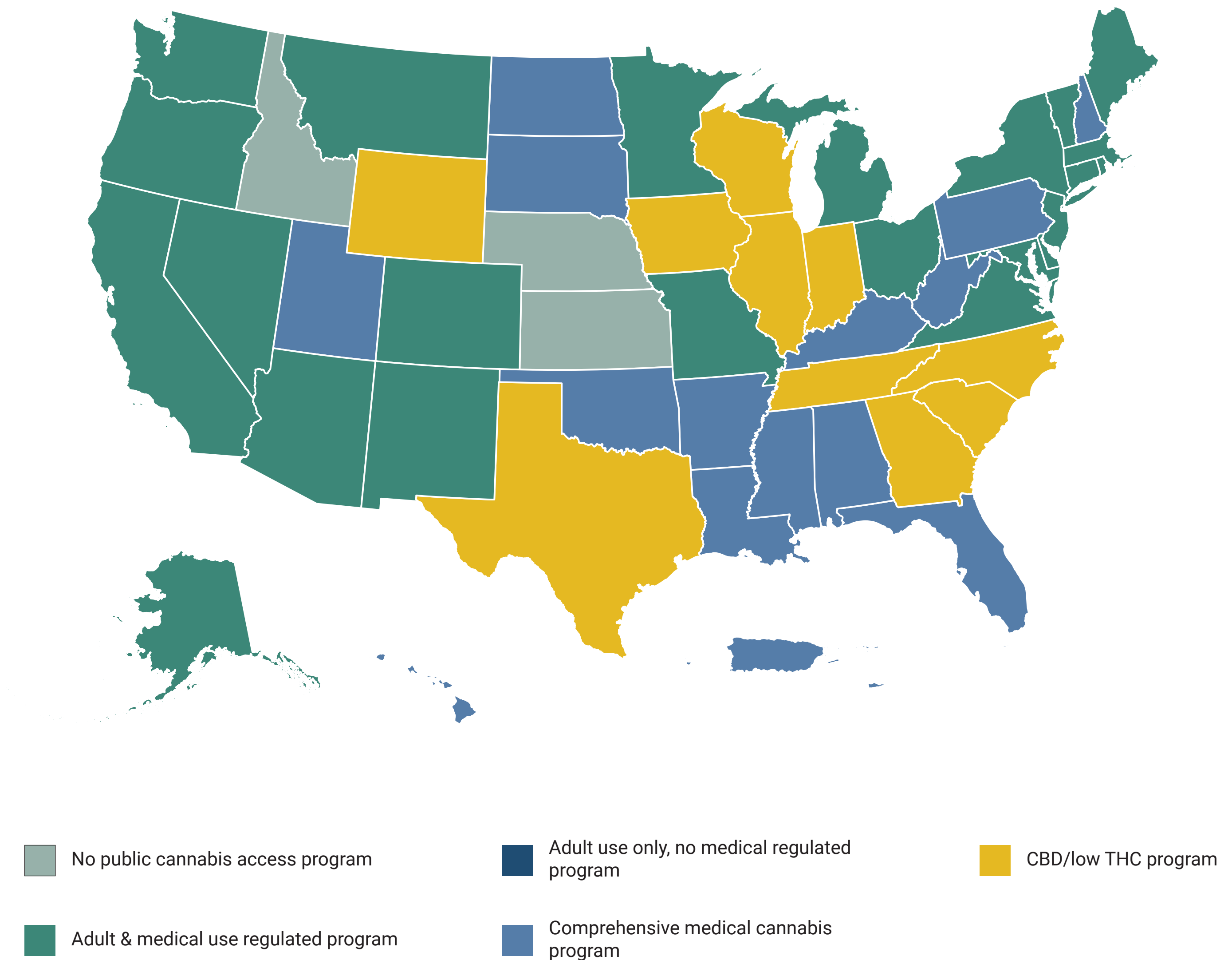
- **2024 (Not So Hypothetical Future) -** Marijuana Rescheduled to Schedule III: In a landmark move, marijuana is reclassified as a Schedule III controlled substance, acknowledging its medical use and lowering barriers for banking and research. This hypothetical future event would significantly alter the cannabis industry landscape. This is happening now.

- **2024 - 2025 (Future Outlook) -** Implementation of the SAFE Banking Act: Following the reclassification of marijuana, Congress passes the SAFE Banking Act, easing many of the remaining financial and banking challenges for cannabis businesses. Financial institutions begin openly serving the cannabis industry, supported by clear federal guidelines.

- **2025 and Beyond -** Normalization and Expansion: With the barriers to banking and finance removed, the cannabis industry sees a period of significant growth and normalization. Financial products and services tailored to the cannabis industry become widespread, and cannabis businesses are integrated into the broader economy.

Navigating the Dissonance: The Case for Reform

Amid the thicket of regulatory challenges and banking quandaries, a beacon of consensus emerges from the legislative realms. On May 2, 2024, the National Conference of State Legislatures (NCSL) issued a compelling appeal to the Department of Justice, urging the reconsideration of cannabis's Schedule I status. "Currently, a total of 47 inclusive of states, the District of Columbia, and all U.S. territories except American Samoa have legalized cannabis for medical and/or adult recreational use," the NCSL articulated, highlighting the stark contrast between state-led initiatives and federal policy inertia. This plea for reclassification is not merely administrative; it is a clarion call for alignment, seeking to reconcile the federal stance with the lived realities of millions and the operational exigencies of a burgeoning industry.



Discussion Points

This moment of potential transformation invites a broader reflection on the implications of such a shift. The reclassification of cannabis and the enactment of measures like the SAFE Banking Act could herald a new era for not just the cannabis industry but for American society at large. It prompts us to question the role of federalism in drug policy, the dynamics of change in a conservative sector like banking, and the societal values that underpin our approach to regulation and commerce.

Furthermore, the push for reform illuminates the intricate dance between innovation and regulation. As we stand on the precipice of change, it is imperative to consider how financial institutions can navigate this evolving landscape. The integration of cannabis into mainstream commerce offers a unique opportunity to redefine the relationship between the state, the market, and the individual, challenging us to reimagine the boundaries of entrepreneurship, responsibility, and community in the 21st century.

So…Now What?

The conversation surrounding cannabis banking and federal reform is more than a policy debate; it is a reflection of our collective journey toward a more nuanced understanding of progress, governance, and the human experience. As we ponder the path forward, it is clear that the resolution of this dissonance will require not just legislative change but a reevaluation of societal norms and values. In this endeavor, entities like Ankura play a pivotal role, not as advocates for a particular outcome, but as navigators helping to chart a course through uncharted waters, ensuring that regardless of the direction we take, we move forward with insight, integrity, and an unwavering commitment to the common good.

Solutions: A Blueprint for Navigating the Green Wave Together

In the evolving narrative of cannabis legalization and its implications for the financial sector, the role of consultancy firms becomes not just relevant but indispensable. Amidst this backdrop, Ankura emerges not as a mere participant but as a guiding force, navigating the intricate interplay between regulation, commerce, and innovation. This section, far from a sales pitch, is a contemplation on the utility and insight that Ankura brings to a landscape at the cusp of transformation.

The Art of Navigation in Uncharted Waters

In the realm of cannabis banking, where the regulatory environment remains as fluid as the sea, Ankura stands as the seasoned navigator, charting a course through tumultuous waters. The firm's approach, deeply rooted in expertise and foresight, transcends the conventional consultancy model. Ankura's role is akin to that of a cartographer mapping the unknown, transforming the complexities of legislation and market dynamics into a navigable blueprint for its clients.

Crafting Compliance Amid Complexity

The crux of Ankura's value lies in its nuanced understanding of compliance within the cannabis sector—a field where the ground beneath one's feet shifts with regulatory whims. The firm's expertise illuminates the path forward for financial institutions entangled in the Gordian knot of federal and state regulations. Through a bespoke blend of strategic advisory, Ankura empowers these institutions to not only meet the current compliance benchmarks but to anticipate and adapt to the regulatory evolutions on the horizon.

Fostering Growth Through Insight

Beyond the minutiae of compliance, the Ankura vision extends to the broader horizons of growth and sustainability for both financial institutions and cannabis-related businesses. The consultancy's insights into market trends, consumer behavior, and legislative forecasts act as a beacon for clients navigating the competitive landscape of the cannabis industry. In this capacity, Ankura is more than a guide; it is a partner in cultivation, helping to sow the seeds of long-term success in the fertile ground of opportunity.

A Convergence of Expertise and Innovation

At the heart of the Ankura methodology is a commitment to innovation, a principle that resonates deeply within the cannabis sector. The firm leverages cutting-edge technologies and data analytics to provide solutions that are not only effective but forward-thinking. This approach reflects a broader philosophy: that the challenges of today's cannabis industry are not roadblocks but catalysts for innovation, driving the development of more sophisticated, transparent, and efficient financial services.

And Finally: A Partnership for Progress

Ankura's role exemplifies the partnership between expertise and ambition. This narrative is an acknowledgment of the critical role that insight, foresight, and strategic guidance play in navigating the complexities of cannabis banking. As cannabis legislation evolves, Ankura's contributions are a testament to the power of collaboration and knowledge in shaping the future of industries and economies alike.

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Kay brings more than 30 years of audit, risk, and compliance, including BSA, AML, and Fraud experience to the team. Kay is a compliance, risk management, and audit professional with extensive experience in the financial services sector. She has a significant understanding of key banking processes, associated risks, and remediation procedures and sound ability in audit and internal control management. Kay is a change agent and collaborative team leader recognized as a self-starter with the ability to solve problems and communicate with stakeholders at all levels. She has solid diplomatic skills with the ability to resolve conflict in a professional manner. Her strong interpersonal and communication skills including experience as a change advocate, leader, and sponsor make her a key member of any team. She is flexible and able to execute in a fast-paced, high-demand, complex environment while balancing multiple priorities.

Prior to joining Ankura, Kay was most recently performing risk based regulatory compliance consulting projects on a contract basis for various firms and financial institutions. Her work includes outsourced CMS Program administration, BSA/AML/OFAC independent audits, Model Validation, CRA Assessments, Fair Lending reviews, and a variety of regulatory and consumer compliance audit and monitoring functions.

Kay is a Certified Regulatory Compliance Manager (CRCM) and Certified AML and Fraud Professional (CAFP).

Ankura is proud to be a Gold Sponsor of the PBC Conference 2024 dedicated to Payments, Banking & Compliance in the Cannabis Industry.

Don't miss Kay Toscano, a financial compliance expert at Ankura, as she speaks on the Inter-agency Guidance on Third-Party Relationships: Risk Management Panel.

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PBC conference 2024

By Austin Briggs

Navigating the **Financial Future**

As we embark on 2024, the financial sector braces for a year steeped in complexity and challenge. The persistence of high inflation, rising borrowing costs, narrowing profit margins, an uptick in regulatory demands, and the ever-present specter of cybersecurity threats delineate the treacherous terrain ahead. The banking crises of 2023, including the collapses of Silicon Valley Bank, Silvergate, and First Republic, have not only spotlighted the vulnerability of financial institutions but also heightened scrutiny from regulators, investors, and customers alike.

Cybersecurity

In an era where cybersecurity emerges as a top concern, the advent of AI has armed criminals with sophisticated methodologies, compelling banks to invest heavily in technology. According to Torpago's survey, a staggering 89% of community banks are keen on modernizing their infrastructure to bolster data security and enhance digital interfaces. However, financial and resource constraints underscore the critical need for Fintech partnerships, a recurring theme for community banks in 2024.

Interest Rates and Credit Risks

The advent of 2024 heralds the challenge of elevated interest rates and burgeoning credit risks. Banks face the dual threats of increased borrowing costs and a cautious lending atmosphere, squeezing margins tighter. With interest rates' volatility spotlighting asset-liability management risks, the banking sector is on high alert.

The ABA Economic Advisory Committee notes a subtle rise in loan delinquencies, with commercial real estate sectors such as malls and office spaces undergoing significant transformations. Community banks find themselves at a crossroads, evaluating the viability of refinancing amidst shifting market dynamics.

Regulatory Pressures Mount

The ABA Banking Journal underscores regulatory scrutiny as the paramount concern for 2024. Amidst an avalanche of regulations, financial entities are gearing up for a comprehensive overhaul.

> "Entities are gearing up for a comprehensive overhaul of financial regulations."

Key regulatory updates poised to reshape the banking landscape include the Community Reinvestment Act's final rules and the Dodd-Frank Act Section 1071, each introducing rigorous compliance demands, particularly on community banks.

A Torpago survey of 100 U.S. community bank leaders reveals a strategic pivot towards Fintech collaborations to navigate these regulatory hurdles. These partnerships not only aim to address regulatory compliances but also seek to enhance payment processing and lending services, enabling smaller banks to remain competitive in a fierce landscape.

Ankura Can Help

The financial landscape of 2024 is fraught with risks and challenges, necessitating a proactive and informed approach from institutions. By understanding and anticipating the myriad hurdles, banks can strategize effectively to navigate the uncertain terrain ahead. For institutions seeking guidance, engaging with seasoned experts can pave the way toward resilience and stability in a rapidly evolving financial world.

Together, we can chart a course through the complexities of the financial landscape, ensuring your institution remains robust and responsive in the face of adversity.

SOURCES

[1] https://go.torpago.com/lp-2024-community-banking-outlook

[2] https://bankingjournal.aba.com/

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Austin received a Bachelor of Science in Sociology from Arizona State University.

By Jake Hines

CFPB Funding Stands After Recent Supreme Court Ruling

In its final decision of Consumer Financial Protection Bureau v. Community Financial Services Association of America, LTD. ("the Case"), the Supreme Court ruled that Congressional funding of the CFPB did not violate the appropriations clause.[1] The 7-2 decision ends seven months of waiting after oral arguments were heard in October 2023.

The case, initially a challenge to the CFPB's payday lending rule by the Community Financial Services Association of America (CFSA), reached the Supreme Court following a U.S. Court of Appeals for the Fifth Circuit decision which ruled that the CFPB's funding mechanism violated the appropriations clause. The appropriations clause (Article I, section 9 of the Constitution of the United States), establishes that money drawn from the Treasury must be appropriated by Congress[2], but the CFPB's budget is set independent of congressional appropriations processes by the Fed.

The Supreme Court, however, largely disagreed. The funding is, in its essence, appropriated by Congress via legislation, which the Court explains aligns with historical precedent and intent. "Congress took even more flexible approaches to appropriations for several early executive agencies, allowing them to indefinitely fund themselves from revenue collected. For example, Congress adopted open-ended fee- and commission-based funding schemes for Customs Service and the Post Office."[3] CFSA, Justice Thomas writes in the majority opinion, had offered "...no defensible argument that the Appropriations Clause requires more than a law that authorizes the disbursement of specified funds for identified purposes...".

> **"Congress adopted open-ended fee- and commission-based funding schemes for Customs Service and the Post Office."**

Joining Thomas were Justices Sotomayor, Kagan, Kavanaugh, Barrett, Jackson, and Chief Justice Roberts. Both Justice Kagan (joined by Justices Sotomayor, Kavanaugh, and Barrett) and Justice Jackson filed concurrent opinions, and Justice Alito filed a dissent joined by Justice Gorsuch.

The Court's decision is not a total surprise, though, with the seven months of wait paired with the Court's previous decision in 2020's Seila Law LLC v. Consumer Financial Protection Bureau[4], which ruled that the for-cause removal restrictions placed on the Director were a violation of the separation of powers, no one would have blamed the CFPB for being nervous. The CFPB has touted this as a "resounding victory for American families and honest businesses alike, ensuring that consumers are protected from predatory corporations and that markets are fair, transparent, and competitive."[5] There are, however, some who are concerned that this removes necessary checks on funding provided by the Appropriations Clause.

For the time being, the CFPB is expected to move forward with renewed confidence in its legitimacy as a congressionally funded agency.

SOURCES

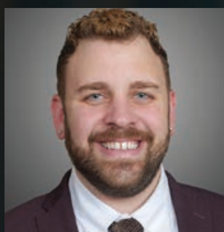
1 https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf

2 https://constitution.congress.gov/browse/essay/artI-S9-C7-1/ALDE_00001095/#:~:text=Article%20I%2C%20Section%209%2C%20Clause,published%20from%20time%20to%20time.

3 https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf

4 https://www.supremecourt.gov/opinions/19pdf/19-7_n6io.pdf

5 https://consumerfinance.gov/about-us/newsroom/statement-on-supreme-court-decision-in-cfpb-v-cfsa/



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Jake Hines, Director at Ankura, brings years of experience in state money transmitter acquisition, statutory license maintenance, and regulatory as well as consumer compliance.

Prior to joining Ankura, Jake worked at a rapidly growing cryptocurrency firm, Voyager Digital, where he assisted in licensing acquisition, refining policies and procedures for compliance with applicable regulations, as well as with aiding in various other regulatory compliance functions.

By Austin Briggs

Navigating the Future: **The Evolution of NMLS**

In the dynamic landscape of financial services, the Nationwide Multistate Licensing System (NMLS) has emerged as a cornerstone for regulation and compliance. Serving as an online platform, NMLS facilitates the state license application, and annual renewal for companies and individuals in the mortgage, debt, consumer finance, and money services business industries, along with registration and renewal for federally regulated banks, credit unions, and mortgage loan originators (MLOs). As of the end of 2023, NMLS has become an indispensable tool for approximately 600,000 industry users, underscoring its pivotal role in maintaining regulatory standards and promoting transparency.

The Launch of NMLS

The inception of NMLS in 2008 by state regulators was driven by a pressing need to combat fraud and predatory lending within the mortgage market. Prior to its establishment, the absence of a unified regulatory framework allowed malpractices to permeate across state lines, significantly harming consumers and tarnishing the industry's reputation. The financial turmoil of 2008 catalyzed the federal adoption of NMLS under the Secure and Fair Enforcement for Mortgage Licensing Act ("SAFE Act"), laying down stringent requirements for mortgage companies and MLOs to obtain and maintain state licenses, along with registration mandates for federally regulated financial institutions.

> **"A pressing need to combat fraud was a key driver for the inception of NMLS."**

Expanding the Regulatory Umbrella

NMLS's regulatory purview expanded in 2012 to encompass licensing for the debt, consumer finance, and money services business sectors, further solidifying its role in safeguarding consumer interests.

The Path Toward Modernization

Under the guidance of the Conference of State Bank Supervisors (CSBS), NMLS is embarking on a significant modernization journey to enhance system functionalities and user experience. This multi-phase initiative aims to introduce a series of improvements, including a revamped user login experience, a unified login system, a reduction in record duplications, and the integration of user feedback mechanisms through surveys. These enhancements are designed to streamline processes, facilitate ease of use, and ultimately, improve satisfaction among all NMLS stakeholders.

A Collective Effort

The success of NMLS's enhancements relies heavily on continued engagement and feedback from regulators and industry participants.

Through regular updates, stakeholder meetings, and a continuous discovery process, CSBS aims to gather invaluable insights that will inform the direction of future enhancements. Industry users are encouraged to actively participate in this process by subscribing to updates and contributing their experiences and suggestions.

As NMLS strides forward with its modernization efforts, it reaffirms its foundational commitment to promoting a transparent, accountable, and consumer-friendly regulatory environment across the financial services sector. The journey towards modernization not only reflects an adaptation to technological advancements but also a deeper dedication to upholding the integrity and trustworthiness of the industry it serves.

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Austin brings over eight years of professional experience in the financial services industry with a core focus on managing, completing, and maintaining state licensing applications.

Prior to joining Ankura, Austin served as a Licensing Supervisor for Evergreen Home Loans, where he managed the company's state licenses. His responsibilities included managing and maintaining over 600 individual mortgage loan originator licenses, 200 branch licenses, and 15 company licenses. In addition to supervising the Licensing Specialists, Austin assigned ongoing and daily tasks, provided guidance, and facilitated relevant training.

Austin received a Bachelor of Science in Sociology from Arizona State University.

By Jesus Torres and Trish Lagodzinski, CAMS

Navigating the New Digital Currency Guidelines in Hawaii: Opportunities for Fintech Innovation

The recent issuance of guidance regarding digital currency activities in Hawaii marks a significant milestone for Fintech companies and startups operating in or considering expansion into the Aloha State. Effective July 1, 2024, a money transmitter license is not required to conduct digital currency/asset activity in Hawaii. If a company conducts activity involving both digital currency/assets and U.S. dollars, a money transmitter license is required for the U.S. dollars money transmission activity as defined in Chapter 4849D, Hawaii Revised Statutes. The new guidance will supplant the Digital Currency Innovation Lab (DCIL), also referred to as the "sandbox" concluded on June 30, 2024. Digital currency companies will no longer require a Hawaii-issued money transmitter license to conduct business within the state. The companies will be able to continue transaction activity as an unregulated business. This development is part of Hawaii's ongoing efforts to position itself as a hub for technological innovation and financial inclusivity, while also ensuring consumer protection and regulatory compliance. In this article, we will delve into the specifics of the new guidance, its implications for digital currency services, and the opportunities it presents for Fintech innovation.

Understanding the New Guidance

Hawaii's approach to digital currency regulation has been cautious yet forward-thinking. The state's regulatory bodies have recognized the potential of blockchain and digital currencies to transform the financial landscape. The latest guidance outlines the types of digital currency activities and services that companies

> "Removing layers of uncertainty promotes growth of digital currency in Hawaii!"

can legally conduct within the state. This clarity is a welcome development for Fintech firms, as it removes a layer of uncertainty that has previously hindered the growth of digital currency initiatives in Hawaii.

Permissible Digital Currency Activities

Companies that provide digital currency services to the public may provide the following services without a money transmitter license:

1. **Trading of digital currency or assets**
   NOTE: exchanges/platforms that provide U.S. dollars denominated stored value accounts that are used exclusively for facilitating the purchase or sale of digital currency on the platform do not require a money transmitter license. This activity includes importing U.S. dollars into the platform from the customer's external bank account and returning U.S. dollars to the customer's external bank account. **Any other use of the U.S. dollars stored value accounts (such as enabling U.S. dollars payments between platform participants or parties external to the platform), may require a money transmitter license for that activity.**
2. **Providing hosted digital currency wallets or digital currency custodial services.**
3. **Any digital currency activities that represent investments (such as lending, staking, etc.).**

   However, such activities may be subject to other licensing or registration requirements.
4. **Issuing or redeeming stablecoins.**
5. **Issuing or redeeming proprietary tokens.**
6. **Facilitating the use of proprietary tokens within a proprietary platform.**
7. **Processing/facilitating digital currency payments within the blockchain environment.**
8. **Payment processing involving digital currency.**
9. **Transferring digital assets from one person to another.**

Companies that conduct activity in U.S. dollars or other fiat currencies that meet the definition of money transmission (§489D-4, HRS (Definitions)) will likely require a money transmitter license for that fiat-denominated activity if an exclusion (§489D-5, HRS) does not apply. The money transmitter licensing requirements will apply only to the activity that does not involve digital currency. For example, the permissible investment requirement will apply to the amount of U.S. dollars outstanding money transmission obligations, but not to obligations denominated in digital currency. However, the evaluation of a company's financial soundness will consider the company's entire financial situation. The Hawaii Division of Financial Institutions (DFI) provides guidance to the industry on the Department of Commerce and Consumer Affairs website. For specific questions regarding money transmitter licensing, please contact DFI at dfi@dcca.hawaii.gov.

Regulatory Compliance and Consumer Protection

While the new guidance offers a broad range of opportunities for Fintech innovation, it also emphasizes the importance of regulatory compliance and consumer protection. Companies engaging in digital currency activities must adhere to anti-money laundering (AML) and know your customer (KYC) requirements, among other regulatory obligations. Additionally, they are expected to implement robust security measures to protect consumers' digital assets and personal information.

Opportunities for Fintech Innovation

The clarification of permissible digital currency activities in Hawaii opens up numerous opportunities for Fintech companies to innovate and grow. By providing a clear regulatory framework, Hawaii is encouraging Fintech firms to explore new business models, develop cutting-edge technologies, and offer novel financial services that can benefit consumers and businesses alike. This is particularly significant in a state that is keen to enhance financial inclusivity and access to digital financial services for its residents.

Conclusion

Hawaii's new digital currency guidance is a landmark development for the Fintech industry. It not only clarifies the legal landscape for digital currency activities but also signals the state's commitment to supporting innovation and financial inclusivity. For Fintech companies, this is an invitation to leverage the potential of digital currencies to create transformative financial solutions. As Hawaii continues to refine its regulatory approach, the Fintech community has a unique opportunity to contribute to the state's vision of a more inclusive and innovative financial future.

Consulting with legal and compliance experts is advisable to determine whether your company meets the definition of money transmission based on the new Hawaii digital currency guidance. Ankura has many experts who can help guide you navigate the new digital currency guidelines in Hawaii and assist with any license applications needed.

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Jesus serves as a subject matter expert on all affairs related to state regulatory licensing and compliance. Jesus' deep knowledge and expertise will assist in providing guidance and oversight in the acquisition and maintenance of money transmission and consumer lending licenses.

Prior to joining Ankura, Jesus worked for 19 years with Intermex Wire Transfer, LLC, a multi-national money transmitter, directing the company's regulatory compliance and licensing affairs, coordinating and implementing Anti-money Laundering (AML) systems and controls (BSA, USA Patriot Act, OFAC and Dodd-Frank EFTA Regulation E), acquiring, maintaining and renewing state licenses in multiple jurisdictions, as well as ensuring ongoing compliance with the respective regulatory and reporting requirements of each jurisdiction.

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Prior to joining Ankura, Trish assisted with regulatory matters at Microfinance International Corporation (MFIC), an international payments and micro-financing business and served as a liaison to federal agencies, a project manager, and a business development specialist at Aspen Systems and then at Lockheed Martin.

Trish has an MBA from the Robert H. Smith School of Business at the University of Maryland, a BA in international relations from American University, and a Project Management Certificate from Penn State University. She has been a speaker and presenter at the Money Transmitter Regulators Association (MTRA) and the Nationwide Multistate Licensing System (NMLS) conferences.

By Jake Hines

The CFPB Sets its Sights on Buy Now, Pay Later Lenders in New Interpretive Rule

On May 22, 2024, the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule identifying Buy Now, Pay Later Lenders (BNPL Lenders or Lenders) as "card issuers" or "creditors" for the purposes of Regulation Z, Subsection B, thus making them required to comply with various consumer protection provisions ranging from charge disputes to refunds. The interpretive rule is currently open for public comment and the comment period will remain open until August 1, 2024.

In 2021, the CFPB shifted its attention to monitoring (BNPL) Lenders due to the skyrocketing usage of their products. These lenders offer consumers the option to split their purchases into multiple payments, presenting an appealing alternative to high-interest credit cards, especially for those with limited or no credit history. Typically, the payment plans involve as few as four installments, often requiring only a 25% down payment, leading many to liken it to a contemporary layaway program. Given the increasing trend of online shopping and the expanding "in-store" accessibility of BNPL services, it was inevitable that the CFPB would take action.

> **"Is this a "modern layaway" program?."**

Well-known Lenders in this space were issued orders requesting information that would allow the CFPB to assess the risks and benefits to consumers presented by such credit products. The goal was to satisfy the CFPB's growing concerns surrounding "accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology."[1] The findings of this initial inquiry were significant, thus prompting action.

In the resulting market report, over $24 billion was distributed via 180 million loans in 2021, which tripled 2020's numbers and was 12 times the amount originated in 2019. Findings in this study most relevantly included inconsistent in the providing of disclosures and failure to provide dispute protections.

In 2021 alone, the CFPB found that among these five surveyed Lenders, $1.8 billion in transactions (or around 13.4% of loans issued) were involved with a dispute or return, and often the consumers were left without much assistance or understanding of how to navigate the process when a return or billing dispute was involved.[2]

Using the findings of its own inquiries in conjunction with information garnered from other market monitoring or investigation, the CFPB published the Rule for comment. Herein, it asserts

> "that lenders that issue digital user accounts that consumers use from time to time to access credit products to purchase goods and services are "card issuers" under Regulation Z, including when those products are marketed as Buy Now, Pay Later (BNPL). Such lenders are "card issuers" because such digital user accounts are "credit cards" under Regulation Z."[3]

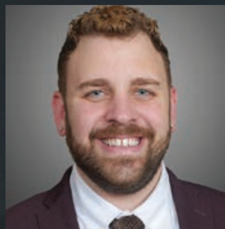
The Rule also delves into the legal reasoning the CFPB applied to reach its conclusion. The stance is influenced heavily by the Truth in Lending Act (TILA), which reinforces Congress' intent that the regulation be applied to a broad definition of "credit device" and "credit card", not just traditional credit cards. This intent is also reflected in the decisions of cases such as Begala v. PNC Bank, Ohio, Nat'l Ass'n, and Rossman v. Fleet Bank (R.I.) Nat. Ass'n, wherein courts applied a broad interpretation of TILA, favoring the consumer.

In the same vein, the CFPB has concluded that BNPL Lenders' products "are, effectively, digital replacements for conventional credit cards, and consumers use them in the same way as conventional credit cards. The statutory and regulatory definitions of 'credit card' are broad enough to capture new, technologically advanced 'devices' designed to mimic the core features of conventional credit cards." This mimicry of traditional credit cards places BNPL Lenders who offer such products in line with a broad interpretation of definitions under the regulations, both as a "credit issuer" under Regulation Z[4] and as a "creditor" under subpart B, thus requiring such lenders to comply with the requirements therein focused on disclosures and billing dispute resolution.[5]

Although not required to do so, the CFPB has published the interpretive rule for public comment, which ends on August 1, 2024. Following the closure of the comment period, the CFPB will finalize the interpretive rule, and the rule will be applicable 60 days following its publication in the Federal Register. Until then, BNPL Lenders can begin to prepare for the rule by carefully reviewing the applicable regulations and working to preemptively ensure they will be able to meet the requirements therein.

SOURCES

1. https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/
2. https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf
3. https://files.consumerfinance.gov/f/documents/cfpb_bnpl-interpretive-rule_2024-05.pdf
4. https://www.consumerfinance.gov/rules-policy/regulations/1026/2/#c255a7e51dba77c1dd175dc1f0b06049555691d556f880dde30ccf8c
5. https://www.consumerfinance.gov/rules-policy/regulations/1026/5/



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By Lauren Ceniviva, CRCM

The Way Out is Through: A Guide for Navigating U.S. Consumer Privacy Laws

It can be daunting for Fintechs, money services businesses (MSBs), and other non-bank entities operating in the consumer financial products and services space to navigate privacy legislation and determine which provisions of the various federal and state laws apply (and how). Federal law has taken a relatively narrow approach to privacy legislation, limiting coverage of consumer protections primarily to financial products and services. Moreover, such laws were written with traditional banks, credit unions, and other financial institutions (FIs) in mind and have not been significantly amended to account for the growing digital and decentralized online financial services sector dominated by Fintechs. Subsequently, there has been a rise in state privacy laws that aim to provide consumers with more comprehensive privacy rights and protections.

> "A guide to assist non-bank financial service providers.

To make things a little easier to navigate, here is a guide to assist non-bank financial service providers in establishing if and how each major U.S. privacy law may apply, including an overview of the Consumer Financial Protection Bureau's Proposed Personal Financial Data Rights Rule, as well as a summary of what to consider regarding state privacy laws.

Gramm-Leach-Bliley Act and the Disclosure of Consumer Information to Nonaffiliated Third Parties

The consumer privacy provisions of the Gramm-Leach-Bliley Act (GLBA) as implemented by Regulation P set specific requirements for FIs regarding how they share consumer and customer information to nonaffiliated third parties. The Regulation requires covered institutions to provide disclosures to consumers explaining how their information will be used and shared with nonaffiliated third parties and provides consumers with the right to opt out of certain information sharing practices.

Often entities in the financial services space assume that serving consumer customers immediately requires full GLBA compliance, but there are additional criteria that should be considered and determined as relevant prior to taking on such obligations.

FIs that serve consumers or establish customer relationships with consumers may be required to disclose their information sharing practices. The Regulation's definition of FIs is broader than most consumer protection regulations and can include but is not limited to banks, savings associations, credit unions, certain MSBs, businesses that extend credit or service loans, non-bank mortgage lenders, and insurance underwriters and agents.

What to Consider: Regulation P applies specifically to covered institutions in relation to how they share consumer and customer data with nonaffiliated third parties in the performance of offering consumer purpose financial products and services. There are key terms defined within the Regulation that can aid an entity in determining the level and extent to which the GLBA may apply:

- **Consumer –** This refers to any natural person who obtains a financial product or service for personal, family, or household purposes from a covered institution. An example of this would be when a person cashes a check drawn on a bank where they do not have an account. A covered institution is required to provide a GLBA-compliant privacy notice only if that entity intends to share the consumer's data with a nonaffiliated third party so that they, the third party, can market their products and services to the consumer.
- **Customer –** This refers to a consumer who establishes a continuing relationship with a covered institution.[2] Examples of a customer relationship include but are not limited to those where a consumer holds a deposit or other transaction account, line of credit, or installment loan with an FI. A Regulation P-compliant privacy notice must be provided at the time the customer relationship is established (i.e., when the consumer opens their account), on an annual basis thereafter, or anytime the covered FI's information sharing practices change.
- **Affiliate –** This refers to a company that controls, is controlled by, or is under common control with another company.[3] This can include an entity's parent company or any subsidiaries. Information sharing between affiliates does not fall within the scope of Regulation P, but instead the Fair Credit Reporting Act (keep reading to learn more about why that is).
- **Nonaffiliated Third Party –** A person or entity that is not a company's affiliate.[4] Examples include but are not limited to vendors and other third-party service providers, banking partners and sponsor banks, and third-party marketing firms. Under the GLBA, such

information sharing is prohibited unless mandatory privacy notices are provided in accordance with the Regulation's timing and content requirements.

When assessing the impact of Regulation P impact, an entity can look at its products and services to first determine if it is a FI under the Regulation, if it serves consumers, and/or establishes customer relationships with consumers. The entity can then inventory what types of consumer and customer information will be collected, what types of nonaffiliated third parties will receive such information, and for what purpose. It should be noted that the Regulation has defined certain exceptions that permit entities to disclose consumer information to nonaffiliated third parties where consumers cannot limit that activity. These exceptions include joint marketing agreements with other FIs,[5] facilitating a consumer-requested transaction/providing a consumer-requested service[6], and for risk management purposes (i.e., to protect against fraud/identity theft, to respond to a subpoena or law enforcement request, etc.[7]).

Irrespective of whether information is shared within the constraints of the exceptions or outside of them, the entity will be required to provide a privacy notice to customers at the start of their relationship with the FI, and to certain non-customer consumers[8]. However, identifying the purpose of the information sharing is especially important in that it will enable the entity to determine the applicable content, timing, and frequency of its required privacy notices, as well as whether opt-out notices that inform consumers of their right to restrict the FI from engaging in certain information sharing practices (i.e., sharing consumer data with nonaffiliated third parties for their marketing purposes) are needed.

Regarding the actual privacy notice, it is also important to note that in general, the requirement to furnish a Regulation P-compliant privacy notice is not satisfied by most online privacy notices that address usage of cookies and online data analytics as the scope of such notices includes any person who visits the Company's website or other online properties, rather than consumers or customer who actually use the entity's financial products and services. Entities with GLBA impact should make sure to embed the mandatory regulatory notice within their existing online privacy notice under a separate heading indicating the company's practices related to Regulation P compliance. Also, and when applicable, GLBA notices can be combined with certain notices required by the Fair Credit Reporting Act.

Fair Credit Reporting Act and the Disclosure of Consumer Information to Affiliates

While the Fair Credit Reporting Act (FCRA) is most commonly associated with regulating the usage of consumer credit reports and furnishing consumer information to the credit bureaus (which will not be covered in this article), the FCRA's main aim is to ensure that consumer information is used in an appropriate manner and kept confidential. As such, the FCRA also governs activity related to sharing consumer data between affiliates and requires certain notices to be provided to the consumer.

Any person or entity that shares consumer information with and/or receives such information from their affiliates. It is important to note that these requirements pertain to the sharing of any consumer information, not just credit reports. Therefore, any transaction or other account data collected about a consumer that is shared with an affiliate is covered activity. Similar to the GLBA, the FCRA defines an affiliate as any company that is related by common ownership or common corporate control with another company.[9]

What to Consider: When a covered institution shares consumer information with or receives consumer information from its affiliates for everyday business purposes or for marketing or solicitation purposes, this fact should be disclosed in the company's GLBA privacy notice as part of its information sharing activity. It is because of this that many wonder why sharing data with affiliates is governed by the FCRA and not the GLBA – but remember, the FCRA is primarily concerned with regulating consumer credit reports and entities involved in obtaining them.

In cases where a covered institution receives consumer data from an affiliate, the entity sharing the information is behaving like a consumer reporting agency and the receiving entity is behaving like a user of consumer reports under the FCRA. Therefore, the sharing institution must inform the consumer of this practice, and when applicable, notify them of their right to limit this type of information sharing via an opt-out notice (which again can be combined with a GLBA notice). In cases where the consumer has the right to limit sharing, the entity receiving the information cannot use the data until the consumer has had a reasonable amount of time to opt-out and has not done so.

CFPB Proposed Personal Financial Data Rights Rule

In October 2023, the Consumer Financial Protection Bureau (CFPB or Bureau) released a notice of proposed rulemaking to implement section 1033 of the Consumer Financial Protection Act of 2010 (CFPA). The proposed rule intends to address the rising consumer data privacy risks associated with open banking – the practice of allowing third-party service providers to leverage application programming interfaces (APIs) to access banking, transaction, and other financial information about consumers from banks and non-bank FIs. In particular, the proposed rule seeks to ensure that third-party service providers do not use consumer data for unauthorized purposes and instead act in the interest of the consumers whose data they obtain.

If implemented as proposed, the rule will establish basic standards for access to consumer data, require impacted entities to make certain consumer data available to consumers and third parties, create standards and obligations (including privacy protections) for third parties who access such consumer data and foster fair, open, and inclusive industry standards and practices. Barring certain exceptions defined within, the rule would apply to account and transaction activity related to covered asset accounts subject to Regulation E and credit cards subject to Regulation Z as well as payment transactions facilitated from such asset accounts and credit cards (including mortgage, automobile, and student loan payments). All consumer-facing entities involved in such activities would be subject to the requirements of the proposed rule.[10]

What to Consider: While the rule has not been finalized yet (the comment period ended on December 29, 2023), consumer-facing entities involved in open banking should begin to prepare for the publication of a final rule by considering how their existing business activities may be affected and developing a regulatory change management action plan. In particular, potentially impacted entities should familiarize themselves with the core objectives of the rule and start to develop strategies for how to implement its requirements, especially any provisions that will require the development of new or enhanced systems.

State Privacy Laws

From a consumer protection standpoint, many consumer advocates do not believe that the privacy provisions of existing federal privacy laws are enough. As a result, many states have enacted their own consumer privacy laws that extend beyond the scope and coverage of federal legislation. The start of this regulatory trend was the passing of the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA), which provide much more comprehensive privacy rights and protections to consumers irrespective of the product or service they are obtaining. So, while the GLBA and FCRA govern specific activities related to consumer reporting and financial products and services, any business collecting and using the data of California-based consumers is required to comply with the CCPA and CPRA.

Many states have followed in California's footsteps including Colorado, Connecticut, Utah, and Virginia – all of which have enacted privacy laws that are currently in effect. Delaware, Indiana, Iowa, Kentucky, Maryland, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Tennessee, and Texas have all also enacted privacy laws that go into effect in late 2024, 2025, or 2026, while many other states have active bills that may be passed in the near future. [11]

Although the nuts and bolts of these privacy laws will vary from jurisdiction to jurisdiction, many state privacy laws extend additional rights to consumers including but not limited to the right to access, correct, or delete their information. Impacted businesses are generally held to higher standards of transparency than what federal law requires and are expressly prohibited from discriminating against consumers who elect to exercise their rights.

What to Consider: State privacy laws are much more complicated than the federal requirements and often require the involvement of legal counsel to fully determine impact. For example, many state privacy laws have carved out exceptions to coverage for GLBA and FCRA-impacted institutions. However, some states (like California), only allow an exemption for GLBA- and FCRA-impacted activity. Therefore, entities operating in states with privacy laws in effect should seek a legal analysis of their products, services, and business activities as well as their consumer data collection sharing practices to ensure full compliance with applicable requirements.

Conclusion

While U.S. consumer privacy legislation can be complicated, this guide should enable entities to better understand the scope and coverage of these rules and how they may apply. However, it is best practice and highly recommended that any entity concerned about their consumer privacy impact engage an attorney who specializes in privacy legislation to fully determine their obligations at both the federal and state levels.

SOURCES

1 https://www.consumerfinance.gov/rules-policy/regulations/1016/3/#e
2 https://www.consumerfinance.gov/rules-policy/regulations/1016/3/#i
3 https://www.consumerfinance.gov/rules-policy/regulations/1016/3/#a
4 https://www.consumerfinance.gov/rules-policy/regulations/1016/3/#o
5 https://www.consumerfinance.gov/rules-policy/regulations/1016/13/
6 https://www.consumerfinance.gov/rules-policy/regulations/1016/14/
7 https://www.consumerfinance.gov/rules-policy/regulations/1016/15/
8 https://www.consumerfinance.gov/rules-policy/regulations/1016/4/
9 https://www.consumerfinance.gov/rules-policy/regulations/1022/3/
10 https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf
11 https://iapp.org/resources/article/us-state-privacy-legislation-tracker/#enacted-laws

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Prior to Cenlar, Lauren worked as an Analyst in the Compliance Department at Meridian Bank, where she was responsible for performing regular periodic loan reviews, transaction testing, and HMDA LAR reporting for the Mortgage division.

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By Martin Patterson, CAMS

Balancing Agility and Speed with Preparation and Stability: **Importance of Governance in a Fintech Startup**

In all our work with clients, my evaluation and expectations around compliance readiness come down to one point: Governance. This can mean a variety of things when it comes to a compliance program, but overall, we boil it down to the level of planning and organization built into the design of a client's business, platform, and services.

In many other professions and service offerings, the product and environment truly lend themselves to agility, speed to market, priority of marketing strategy, and the "fail fast" mentality; do and then learn. However, the financial products and services sector is a different world. Many clients and their founders – brilliant, talented leaders with great ideas, but who have spent little to no time in financial services and entered the space for the first time – find very quickly that moving, directing the movement, or sometimes even the mere visibility to end-user funds passing through their platforms has thrust them into the world of significant regulatory, legal, and industry standard bank partner and other third-party expectations. Those expectations are most often centered on Anti-Money Laundering (AML), fraud, information security, and consumer protection (when dealing with individual end users). New entrants to the space are sometimes surprised as they begin to understand the significant lift involved in the up-front obligations, and the reasons these are so difficult for startup Fintech's, in particular, are worth exploring. Many of these elements will likely be familiar to those already on their journey to navigating these waters for the first time.

The Challenges

Implementing governance and compliance policies can be particularly challenging for startup companies due to several factors:

LIMITED RESOURCES

- **Financial Limitations:** Startups often operate with limited budgets and may struggle to allocate sufficient

funds to develop and maintain comprehensive compliance programs.

- **Human Capital:** There may be a shortage of experienced personnel dedicated to compliance. Startups often have small teams where employees wear multiple hats, making it difficult to prioritize compliance tasks.

RAPID GROWTH

- **Scaling Challenges:** As startups grow quickly, their operations, customer base, and geographic reach expand. Ensuring that compliance policies keep pace with this growth can be challenging.
- **Process Integration:** Rapid scaling can make it difficult to integrate compliance processes seamlessly into everyday business operations, especially when trying to maintain agility and flexibility.

LACK OF EXPERTISE

- **Regulatory Familiarity:** Startups may lack in-depth knowledge of the complex and ever-changing regulatory landscape. Understanding and keeping up with regulations requires specialized legal and compliance expertise, which may not be readily available.
- **Experience:** Many startup founders and employees may be more focused on innovation and growth rather than regulatory compliance, which can lead to gaps in knowledge and execution.

COMPLEXITY OF REGULATIONS

- **Diverse Requirements:** Fintech startups often face regulations that vary widely by region and type of service offered. Navigating these diverse and sometimes conflicting requirements can be overwhelming.
- **Frequent Changes:** Regulatory environments are dynamic, with frequent updates and changes. Keeping up to date with these changes and adjusting compliance policies accordingly requires ongoing effort and vigilance.

PRIORITIZATION ISSUES

- **Focus on Growth:** Startups are typically focused on rapid growth and market penetration. Compliance may be seen as a secondary priority compared to developing products, acquiring customers, and securing funding.
- **Short-term vs. Long-term:** The pressure to achieve short-term milestones can lead to a de-prioritization of compliance, which is often seen as a long-term investment.

COST OF IMPLEMENTATION

- **Initial Costs:** Developing and implementing compliance policies can be expensive, involving costs for legal advice, compliance software, training, and ongoing monitoring.
- **Ongoing Maintenance:** Maintaining compliance requires continuous investment in monitoring, auditing, and updating policies, which can strain the financial resources of a startup.

CULTURAL RESISTANCE

- **Startup Culture:** Startups often thrive in a culture of innovation, speed, and flexibility, which can be at odds with the structured and sometimes rigid nature of compliance processes.
- **Employee Buy-in:** Getting buy-in from employees who are used to a less structured environment can be difficult. Employees may view compliance as a hindrance rather than a necessity.

Despite these challenges, founders and businesses inevitably find that implementing effective governance and compliance policies as a first priority is essential for the long-term success and sustainability of Fintech startups. Overcoming these hurdles often involves leveraging external expertise, prioritizing compliance early in the business lifecycle, and fostering a culture that values regulatory adherence.

The Opportunity for Governance

Compliance governance is critically important for a Fintech startup and provides a stronger foundation on which to build. The strength of that foundation will be built on a number of core principles.

REGULATORY ADHERENCE

- **Avoiding Legal Issues:** Fintech startups operate in highly regulated environments. Compliance governance ensures that the company adheres to relevant laws and regulations, avoiding legal penalties, fines, and sanctions that could severely impact the business.
- **Navigating Complex Regulations:** The financial industry is subject to complex regulations that vary by region and the types of services offered. Effective compliance governance helps navigate these complexities, ensuring the startup prepares and meets all necessary requirements.

BUILDING TRUST AND CREDIBILITY

- **Customer Confidence:** Compliance with regulations instills confidence in customers and partners that the startup operates ethically and transparently. This is especially critical in financial services where trust is paramount. Clients who implement a legitimate governance strategy often find it to be one of the most significant marketing points and a source of strength in their discussions with partners and investors.
- **Investor Confidence:** Investors are more likely to fund startups that demonstrate robust compliance practices, as it indicates a lower risk of regulatory issues and potential financial penalties.

RISK MANAGEMENT

- **Operational Risks:** Effective compliance governance helps identify and mitigate operational risks associated with financial transactions, data security, and customer interactions.
- **Financial Risks:** It reduces the risk of financial losses due to non-compliance penalties and potential lawsuits.

DATA SECURITY AND PRIVACY

- **Protecting Customer Data:** Fintech startups handle sensitive financial and personal information. Compliance with data protection regulations (like GDPR or CCPA) is essential to safeguard this data and avoid breaches.
- **Reputation Management:** Data breaches or misuse of personal information can severely damage a Fintech startup's reputation. Compliance governance ensures proper data handling and protection mechanisms are in place.

MARKET ACCESS AND EXPANSION

- **Entering New Markets:** Compliance with international regulations is often required to enter new markets. A strong governance framework makes it easier to comply with diverse regulatory requirements across different regions.
- **Competitive Advantage:** Demonstrating strong compliance can be a competitive differentiator, positioning the startup as a trustworthy and reliable entity in the eyes of customers and partners.

LONG-TERM SUSTAINABILITY

- **Ethical Operations:** Compliance governance promotes ethical business practices, which are essential for long-term sustainability and success.
- **Adaptability:** A robust compliance framework helps a Fintech startup adapt to changing regulatory landscapes quickly, ensuring ongoing compliance and reducing the risk of disruption.

Compliance governance is crucial for a Fintech startup to ensure legal adherence, build trust, manage risks, protect data, enable market expansion, and sustain long-term success.

Ankura understands that prioritizing these principles can often mean trying to strike what feels like a very delicate balance. However, the good news is that we are here with the background and expertise to help our clients walk the tightrope. Our Outsourced Compliance and Advisory Service was born from the experience of building the documentation to support compliance programs and then filling the needs to enable a business in implementing and running those programs on a day-to-day basis. Committing to policy obligations on paper is just the first step in a long journey, assuming our clients' goals are the same as ours, tremendous success and growth for their business.

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Martin brings almost two decades of experience in U.S. financial services compliance and operations oversight, corporate client due diligence, risk assessments as well as transaction monitoring, with a strong focus on implementing new processes and platforms. Prior to joining Ankura, Martin spent the last 15 years with Travelex Currency Services and Sum Up. For the last five years, he was the Director of Risk and Compliance as well as the Chief Compliance Officer responsible for Travelex's AML/CTF, Risk Assurance, and Licensing Programs in the U.S., Canada, and Panama.

Martin is a member of ACAMS and is CAMS-certified, and he has a BA in Psychology from the University of Kentucky.

By Susan Phetmisy-Liwag & Patricia Lewis

Identity Theft and **How to Prevent It**

Imagine sitting in your living room, enjoying a cup of your favorite morning coffee, and you open your mail to discover that you recently opened a new bank account at XYZ Bank, unbeknownst to you. Or maybe you receive an email notification alerting you that there has been an attempt to update your home address on your credit card account, and you are certain you have not moved. These are two major red flags that you could be the victim of identity theft, and this can escalate quickly if not addressed.

Hello, is it me you're looking for?

The prevention of identity theft is not just the responsibility of the consumer. Financial Institutions (FIs) are also tasked with ensuring the accounts they open are done so legitimately. FIs are currently faced with spikes in identity fraud cases, ongoing challenges of identity verification, and having to protect consumers from criminal activity.

These scenarios are becoming more prevalent as the technology industry is increasingly more sophisticated with artificial intelligence (AI) innovations and the public is being overwhelmed with information, junk mail, and distractions by social media.

What is Identity Theft?

Identity theft is the use of a person's identifying personal and/or financial information to commit fraud or theft without that person's consent for the perpetrator's benefit, financial gains, to break the law, or to avoid the police. This information includes but is not limited to, names, addresses, credit cards, social security numbers, bank account numbers, or medical insurance account numbers. The victims may not know immediately that they are the victim of identity theft until they receive warning signs such as a notification from a company that the thief has used their personal information, past due bills from creditors they do not recognize, calls from debt collectors, denial of credit due to delinquent account statuses, or missing mail or no longer receiving mail that is normally delivered to their address.[1]

Each year, the Federal Trade Commission (FTC) receives reports from consumers regarding problems they experience in the marketplace. The reports are stored on a secure online database, called the Consumer Sentinel Network (Sentinel), which are compiled and released in a data book annually. According to the most recent Sentinel Data Book 2023, consumer losses to fraud have reached their highest level at more than $10 billion. This is an increase of over $1 billion in reported losses in 2022. In 2023, approximately 5.4 million reports were received by the FTC.[2] The FTC sorted the reports and categorized them into 29 categories in respect to fraud, identity theft, and other consumer protection topics.

The highest level of consumer losses due to fraud have reached its highest level at more than $10 billion!

Of the 5.4 million reports, 2.6 million were fraud reports, of which 27% reported a loss totaling $10 billion, with the median loss being $500. Younger people (44% age 20-29) reported losing money to fraud more often than older people (25% age 70-79). However, when people over the age of 70 incur loss, the median loss is much higher. Additionally, it was reported that about one in five people lost money due to imposter scams equating to approximately $2.668 billion with $800 being the median loss. A snapshot of the 2023 data showed that of the 5.4 million reports, the top three categories are Identity Theft (1,036,903 reports), Imposter Scams (853,935 reports), and Credit Bureaus, Info Furnishers and Report Users (711,802 reports).[3]

Of the 29 categories, identity theft tops the list with over one million reports. The most common types of identity theft reported included credit card, loan or lease, bank account, government documents or benefits, employment or tax-related, and phone or utilities.[4] The most common subtype of identity theft is associated with new accounts such as establishing new bank accounts, takeover of existing bank accounts, establishing a credit account, or making changes to a person's existing credit account.

What Does This Mean for FIs?

Loss of Profit

Identity theft leads to FIs suffering financial losses due to criminals that gain access to the institutions' networks by using other people's information to open or take over accounts. These losses can include time spent investigating cases and legal fees, as well as reimbursement payments to the victims. This turns would-be profits into operating expenses and loss of revenue.

Reputational Risk

Identity theft linked to an FI can cause irreparable damage to an institution's reputation. A high reputational risk can lead to customers (individuals and businesses) questioning the institution's credibility and deciding to terminate their relationship with the FI, ultimately losing customer trust and reducing overall profitability and future earnings. Institutions may also face challenges when attempting to collaborate with new businesses and bank partners. Furthermore, employees may decide to leave the company as they may be concerned regarding the company's stability and reputation.

Legal Enforcement

As mentioned in the Sentinel, consumer fraud, specifically identity theft, is on the rise and consumers are filing more reports with the FTC, causing regulatory enforcement agencies to investigate more FIs. This could lead to severe fines, penalties, and legal consequences.

How Can FIs Prevent Identity Theft?

FIs can leverage Sentinel's data book to help defend against emerging fraud trends by using the data to educate their staff and customers, in addition to understanding and knowing which consumer groups are being targeted based on the current fraud trends. Additionally, FI's can use the data to protect themselves from customers that attempt to mask their illegal activities by hiding behind legitimate businesses.[5] as well as from conducting business with companies that are not engaging in proper fraud prevention tactics in their own systems. FIs should invest in anti-fraud and fraud detection software to reduce the likelihood of fraud occurring on their platform and require that specific high-risk companies they conduct business with do the same.

In today's digital revolution, most consumers are monitoring their money and conducting transactions via multiple banking and finance related applications (apps) and platforms. This lack of face-to-face communication is a driving force behind the increase in identity theft. Criminals are using legitimate personal information (albeit not their own) to open accounts electronically across platforms to facilitate fraud. Therefore, it is imperative that FIs take the proper steps to monitor and verify the accounts they open.

The basis for recognizing and deterring identity theft starts with the FI implementing and maintaining an effective compliance program covering the five pillars of an Anti-Money Laundering (AML) Compliance Program.[6] One of the five pillars is to develop a robust Know Your Customer (KYC) program to include a Customer Due Diligence (CDD) process. This process requires FIs to establish and maintain written policies and procedures that are reasonably designed to:

- Identify and verify the identity of the customers;
- Identify and verify the identity of the beneficial owners (individuals who own 25% or more of a legal entity, and an individual who controls the legal entity) of companies opening accounts;
- Understand the nature and purpose of the customer's relationship to develop customer risk profiles; and
- Conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.[7]

Crucial to an effective KYC program is the development of a detailed procedure document to guide employees within the CDD process. Employees will need to be thoroughly trained in how to carefully conduct CDD and follow through on all the required steps when collecting customer information and identifying and verifying customers' true identities. Additionally, FIs can partner with various third-party AML screening and instant identity verification providers that have features such as liveness detection and biometric authentication and provide initial risk assessments and/or fraud scores for each customer. FIs can invest in software that will detect the customer's Internet Protocol (IP) address and/or detect the geolocation of where the customer is conducting their transactions. This information should then be compared to the customer's profile such as home address and determine if it makes sense for the customer. Besides identifying the customer, an effective KYC program consists of multiple components including ongoing monitoring, suspicious activity reporting, and periodic account reviews. In order to fully understand the customer's relationship, FIs need to have in place proper controls for transaction monitoring procedures and established rules and perimeters for transaction thresholds, typically this can be set up with a transaction monitoring platform. This review allows FIs to identify outliers in activity and report any concerning activity that is found to the U.S. Treasury, as required. It is important that accounts are periodically reviewed for changes in the customer identification information, as well as the transactional history, to ensure that those who may pose a bigger risk to the FI are known and appropriately monitored.

Of all the mentioned steps to aide in the prevention of identity theft, as part of the FI's KYC program, the FI should implement an Enhanced Due Diligence (EDD) process to include contacting the customer via phone for verification purposes. By calling the customer,

FIs can validate the customer's true identity and detect any fraudulent activity. These steps can be the difference between maintaining a healthy customer identification program and an individual and/or the FI becoming involved in an identity theft scheme and suffering significant financial and reputational losses. The success of an effective KYC program requires constant improvements, updates, and buy-ins from all employees and company leaders. Having a deficient or mismanaged KYC program can lead to loss of potential earnings and overall profit, reputational damage, legal implications, and regulatory authorities imposing fines.

Building and maintaining an effective BSA/AML compliance program to help prevent identity theft can be challenging, time-consuming, and full of questions. At Ankura, we have dedicated teams to help with all aspects of building an effective AML Compliance Program and vendor referrals, as well as providing training and guidance on identity theft trends and prevention techniques. Our experts will be able to assist in establishing/implementing policies and procedures, training staff, and providing guidance on any other compliance-related tasks. In addition, Ankura can provide global outsourcing services for transaction and compliance monitoring and consultation. Please reach out to an Ankura professional with any questions you may have regarding this.

SOURCES

1 https://www.usa.gov/identity-theft

2 https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023pdf

3 https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf

4 https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf

5 https://www.ftc.gov/business-guidance/blog/2024/02/facts-about-fraud-ftc-what-it-means-your-business

6 https://angle.ankura.com/post/102iqpb/the-five-pillars-of-an-anti-money-laundering-aml-compliance-program

7 https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule

FOR MORE INFORMATION CONTACT

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Associate at Ankura

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Susan, brings over 20 years of experience in providing operational support to business banking, credit underwriting, risk management, and regulatory compliance divisions within the finance and energy sectors.

Prior to joining Ankura, Susan worked for financial institutions of all sizes, including Wells Fargo Bank, JP Morgan Chase, and East West Bank where she gained extensive experience in conducting financial crime investigations with in-depth knowledge of Know Your Customer, Counterparty Due Diligence, Anti-Money Laundering, Bank Secrecy Act, Anti-Bribery & Corruption, quantitative and qualitative financial analysis, and providing audit support. She is adept at identifying deficiencies and creating courses of action, performing specialized complex due diligence reviews, as well as developing and managing projects.

Susan has also worked for multi-national BP Energy Company as a contractor, where she conducted due diligence on energy trading and shipping counterparties as well as collaborated with various international compliance teams. She acted as the subject matter expert for internal stakeholders and served as the North American region's designee for urgent vessel sanctions clearance.

Susan holds a BS in Political Science from the University of Houston.

FOR MORE INFORMATION CONTACT

Patricia Lewis

Senior Associate at Ankura

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Patricia has over 10 years of investigative and data analysis experience related to financial crimes.

Prior to joining Ankura, Patricia spent eight years working in the gaming industry in BSA/AML and auditing roles, as well as four years working with consultants AML RightSource LLC, where she focused on data analysis for cryptocurrency platforms, money service businesses, Fintech companies, and financial institutions. In addition, she also performed due diligence on high-risk client customers in these industries.

By Rick Sommerset-Williams

Financial Crime Risk Assessment: The Foundations for an **Effective Financial Crime Program**

In the ever-evolving landscape of global finance, the spectre of financial crime looms large, presenting a multifaceted challenge to institutions, governments, and businesses alike. Financial crime encompasses a broad spectrum of illegal activities, including money laundering, terrorist financing, fraud, and cybercrime, all of which can undermine the stability and integrity of financial systems, erode public trust, and inflict significant economic damage. Against this backdrop, financial crime risk assessments emerge as a critical tool in the arsenal of organisations seeking to combat these illicit activities, ensure regulatory compliance, and safeguard their businesses.

> **"Vulnerabilities within organizations could be exploited for financial crime."**

The Importance of Financial Crime Risk Assessments

Financial crime risk assessments are vital for several reasons. Firstly, they enable organisations to identify and assess the specific vulnerabilities within their operations that could be exploited for financial crime. By evaluating factors such as the nature of their business, customer base, transaction volumes, and geographical presence, organisations can identify high-risk areas that require enhanced controls and oversight.

Secondly, these assessments are a cornerstone of regulatory compliance efforts. Regulatory bodies around the world and standard setters including FATF, mandate that financial institutions undertake regular and comprehensive assessments of their exposure to financial crime risks. Compliance with these regulations not only helps in preventing financial crime but also protects organisations from potentially severe penalties, including fines, sanctions, and reputational damage.

Typical Approaches to Completing the Assessment

Conducting a financial crime risk assessment typically involves several key steps:

1. Identifying and Categorising Risks: This involves outlining the types of financial crimes that could impact the organization, considering factors like industry sector, customer profiles, and transaction types.
2. Inherent Risk Evaluation and Scoring: Organisations assess the likelihood and potential impact of identified risks, often using scoring systems to prioritise areas of concern.
3. Control Measures Review: Assessing the effectiveness of existing controls and procedures in mitigating identified risks.
4. Residual Risk and Gap Analysis: Assessing the residual risk against the desired level of risk mitigation.
5. Action Plan Development: Creating strategies to address identified gaps, which may include implementing new controls, enhancing existing procedures and systems, or conducting further training.
6. Regulatory Expectations

Regulators expect financial institutions to adopt a comprehensive, risk-based approach to combating financial crime. This includes conducting risk assessments that are thorough, up-to-date, and reflective of the organisation's current risk exposure. Regulatory bodies also expect organisations to demonstrate a clear understanding of their risk profile and to allocate resources proportionately to higher-risk areas.

Common Challenges and Pitfalls

Traditional Risk Assessments can become overly complex, are often highly manual and can take many months to complete. The result is they can become outdated before they are even finished.

The Common pitfalls in financial crime risk assessments include:

1. Adoption of generalised risk assessments that do not adequately reflect the organisation, its products, customers and the geographies within which it operates.
2. Lack of specificity in the inherent risks included within the assessment.
3. Lack of defined methodology explaining how risks are calculated, monitored, reported, and updated. Over-relying on outdated assessment models that incorrectly assess the inherent and residual risks.
4. Incomplete or poor-quality data required to validate and quantify the level of exposure.
5. Underestimating the sophistication of financial criminals.
6. Failing to account for emerging risks such as those associated with new technologies, products and market developments.
7. Neglecting the importance of continuous monitoring.

Transitioning to Dynamic, Data-Driven Assessments

Recognising the limitations of traditional, annual risk assessments, organisations are now moving towards more dynamic, data-driven approaches. This shift is facilitated by advancements in technology, including artificial intelligence (AI) and machine learning (ML), which enable real-time analysis of transactions and behaviours to identify potential risks as they emerge. By leveraging big data analytics, organizations can continuously monitor risk indicators, adapt to new threats more swiftly, and make informed decisions about where to focus their compliance efforts.

This transition not only enhances the effectiveness of financial crime risk management strategies but also allows organisations to be more agile and responsive in an increasingly complex and fast-paced financial environment.

Conclusion

Financial crime risk assessments are an essential component of modern financial crime prevention strategies. By understanding the importance of these assessments, adopting a systematic approach to conducting them, meeting regulatory expectations, and embracing the potential of data-driven technologies, organisations can strengthen their defences against financial crime, protect their assets, and contribute to the integrity and security of the global financial system.

About us

Ankura is a global firm of trusted advisors for companies, governments, law firms and institutions around the world. We leverage our deep industry expertise to solve complex and critical challenges for clients without the siloes and boundaries normally found in consulting firms.

We have significant industry expertise combatting Financial Crime within global Banks and Fintech's. Our services extend to obliged entities including insurance, gambling, real estate, and football clubs.

Our expertise is a result of significant time spent within the industry and in senior roles across all three lines of defence coupled with consultancy advisory services provided to our international clients. Our expertise across all aspects of financial crime risk and controls which makes us your ideal partner.

We can support you at every stage in the development, implementation and execution of your Risk Assessment including recommendations on mitigating controls. We can help you transition from complex traditional assessments to a data driven, dynamic approach that will facilitate real-time prioritisation of resources and mitigation of risks.

FOR MORE INFORMATION CONTACT

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Managing Director at Ankura

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Rick has over 20 years of financial services experience gained at top tier global banks and organizations within the Fintech industry. He has developed significant industry expertise enabling him to support clients on all aspects of financial crime. He has held several senior leadership roles with a demonstrable track record of delivery within complex financial institutions. Rick has significant operational leadership experience with accountability for global KYC remediation programs, S.166's, scale operations process execution, risk management, operating model design, and technology driven transformation programs.

Nationwide Multistate Licensing System

State News from The Nationwide Multistate Licensing System (NMLS):

Navigating the New Digital Currency Guidelines in Hawaii: Opportunities for Fintech Innovation

The recent issuance of guidance by the Hawaii Division of Financial Institutions (DFI) regarding digital currency activities in Hawaii marks a significant milestone for Fintech companies and startups operating in or considering expansion into the Aloha State. Read the full article **here**.

Regulatory Compliance and Consumer Protection

While the DFI's new guidance offers a broad range of opportunities for Fintech innovation, it also emphasizes the importance of regulatory compliance and consumer protection. Companies engaging in digital currency activities must adhere to anti-money laundering (AML) and know your customer (KYC) requirements, among other regulatory obligations. Ultimately, they are expected to implement robust security measures to protect consumers' digital assets and personal information.

Opportunities for Fintech Innovation

The clarification of permissible digital currency activities in Hawaii opens up numerous opportunities for Fintech companies to innovate and grow. By clarifying the regulatory framework, the DFI is encouraging Fintech firms to explore new business models, develop cutting-edge technologies, and offer novel financial services that can benefit consumers and businesses alike. This is particularly significant in a state that is keen to enhance financial inclusivity and access to digital financial services for its residents. As Hawaii continues to refine its regulatory approach, the Fintech community has a unique opportunity to contribute to the state's vision of a more inclusive and innovative financial future.

Consulting with legal and compliance experts is advisable to determine whether your company meets the definition of money transmission based on the new Hawaii digital currency guidance. Ankura has many experts who can help you navigate the new digital currency guidelines in Hawaii and assist with any license applications needed.

New Indiana Money Transmission License Requirements Scope Changes: Business Purpose Activities

Indiana enacted the Money Transmission Modernization Act (MTMA) in May 2023, which replaced their existing money transmitter statute (Indiana Code 28-8-4.1) governing the licensing and regulation of money transmitters by the Department of Financial Institutions. The Act's provisions took effect January 1, 2024, and are detailed in the IN-DFI's Guidance on Licensure.

Business-purpose money transmission is subject to Indiana's licensing requirements under (Indiana Code 28-8-4.1). The statute was previously limited in scope to only consumer-purpose money transmission. Indiana-licensed entities that received license exemptions for business-to-business transmission models will need to apply for an Indiana license.

Do I Need an Indiana Money Transmission License?

The MTMA, pursuant to IC 28-8-4.1-201(19), defines Money Transmission as any of the following:

(A) Selling or issuing payment instruments to a person located in Indiana.

(B) Selling or issuing stored value to a person located in Indiana.

(C) Receiving money for transmission from a person located in Indiana.

Nationwide Multistate Licensing System

Licensure and compliance applications were due by **June 30, 2024**.

If you already have an Indiana Money Transmission License, you do not need to reapply for a new license under the new law; however, the requirements of IC 28-8-4.1 will apply to all money transmission licensees. Further, current licensees are still required to submit their annual renewal as previously required; the license renewal timeline and process have not changed. Current licensees should review the new requirements for compliance and make any necessary adjustments to ensure compliance.

Notable Items in the new regulation:

Payroll Processing. If your business engages in "payroll processing," be advised that the Indiana General Assembly removed specific language relating to the licensure of payroll processors from Indiana's MTMA. At this time, typical payroll processing activity will not be considered licensable activity.

Bill Pay Services. If your business engages in activity that is considered "bill pay services," review the definition of money transmission under IC 28-8-4.1-201(19) and assess whether your entity requires a license under the MTMA. Note that the MTMA includes an agent of the payee exception in IC 28-8-4.1-301(14) and entities should review that exception in reviewing their business model. The Department had previously provided licensing opinions to some entities that engaged in activity considered to be "bill pay services," indicating that licensure was not necessary. If you were previously advised that your bill pay service business did not require a license, that opinion is not applicable under the MTMA, and you should complete a review of your business plan to determine whether your entity required a license on January 1, 2024.

Jail or Prison Commissary Account Providers. If your business engages in money transmission for jail or prison commissaries, review the definition of money transmission under IC 28-8-4.1-201(19) and assess whether your entity requires a license under the MTMA. The Department had previously not licensed jail or prison commissary account money transmitters. However, that exemption is no longer applicable under the MTMA, and those entities should complete a review of their business plan and flow of funds to determine whether it requires a license.

Virtual Currency. Indiana did not adopt the virtual currency portion of the MTMA and did not include the transmission of virtual currency in its regulation. However, if the entity's business model includes the transmission of fiat currency, the entity may be engaged in licensable money transmission activity and may need a license. Please review your business model, and if you have any questions, please contact the Department's licensing staff.

In addition to the above changes in regulations, there are several statutory exceptions to licensure listed at IC 28-8-4.1-301 that are similar to Indiana's current exemptions. Prospective licensees can reach out to the Licensing Staff, DFILicensing@dfi.in.gov, or Legal Staff, Legal@dfi.in.gov for additional guidance.

West Virginia Senate Bill 613 Effective June 3, 2024

During the 2024 West Virginia legislative session, changes were amended into both the West Virginia Residential Mortgage Lender, Broker and Servicer Act and the West Virginia Safe Mortgage Licensing Act. Amendments become effective on June 3, 2024. Click here for more information.

Nationwide Multistate Licensing System

CT Added New Private Education Loan Creditor Registration to NMLS

Starting on March 1, 2024, NMLS now accepts new application filings for the Connecticut Department of Banking's Private Education Loan Creditor Registration. Click here for more information.

Other News from NMLS:

CSBS Seeks Comments on Proposed 2025 NMLS Fee Changes

The Conference of State Bank Supervisors (CSBS) invites comments and feedback on the Proposed 2025 NMLS Fee Changes. Click here to review the proposal. Comments are due by Monday, July 22, 2024, at 5 p.m. EDT. Comments and questions should be submitted to comments@csbs.org

CSBS Blog Post – Enhancing NMLS: Gathering User Feedback on Organizing Menus and Pages to Achieve Better Design

Forty NMLS users participated in a card sorting exercise recently to help the NMLS team better understand menu and page organization to enhance the user experience. Read the blog to find out more about the value of cart sorting and what we learned from NMLS users.

The blog is also available on the NMLS Modernization page of CSBS.org. Visit the page and sign up to receive email notifications when new blogs are posted.

Also, sign up here to join the NMLS User Experience Group. You will be among the first to experience new features and designs.

Money Service Business (MSB) Call Report Response to Public Comments Now Available

On behalf of the NMLS Policy Committee, CSBS invited public comments and feedback on the NMLS Money Services Businesses Call Report Proposal.

The NMLS Policy Committee and CSBS reviewed the responses to the request for comments. Click here to review the comments received. Click here to view the Response to Public Comments which provides responses to the comments and details on further changes to be made to the MSBCR. The response is posted on the NMLS Resource Center Proposals for Comment page.

2023 CSBS Annual Report Now Available

The 2023 CSBS Annual Report is now available online. Check it out to read about NMLS and the state examination system (SES) accomplishments last year and highlights of other key initiatives.

CSBS Blog Post – Measuring NMLS User Satisfaction to Inform System Enhancements

NMLS users participated in a two-part survey recently that will inform upcoming system enhancements. Check out the blog to find out more about the survey and how users responded.

The blog is also available on the NMLS Modernization page of CSBS.org. Visit the page and sign up to receive email notifications when new blogs are posted.

NMLS Policy Guidebook Updates Available

An updated version of the NMLS Policy Guidebook has been posted to the NMLS Resource Center and the Regulator Resource Center. Click here to view a summary of the updates.

Nationwide Multistate Licensing System

CSBS Blog Post – NMLS Users Engage in Research and Relationship Building at the 2024 NMLS Annual Conference & Training

The 2024 NMLS Annual Conference & Training featured an NMLS user experience station where system users participated in research activities and engaged with the NMLS team about the future of the system. Read the blog to find out more about the experience station, input gathered from NMLS users, and how to get involved.

Mortgage Business-Specific Requirements Response to Public Comments Now Available

On behalf of the NMLS Policy Committee, CSBS invited public comments and feedback on the Mortgage Business-Specific Requirements Proposal.

The NMLS Policy Committee and CSBS reviewed the 61 responses to the request for comments. Click here to view the Response to Public Comments which provides responses to the comments and details on changes made to the Mortgage Business-Specific Requirements where appropriate. The response and other related documents are posted on the NMLS Resource Center Proposals for Comment page.

Highlights from the NMLS Ombudsman Meeting at the 2024 NMLS Annual Conference & Training

Click here to access the meeting summary and video. Thanks to the state regulators and industry representatives that participated in the ongoing dialogue to improve the state system.

CSBS Blog Post-NMLS and SES: Technology Innovations Driving State Licensing and Examinations

CSBS Products and Solutions Executive Vice President Vickie Peck recaps the 2024 NMLS Annual Conference & Training with a focus on key NMLS and SES enhancements being implemented this year. SES is the supervisory component of NMLS. Read the blog.

Licensing Port of Call

Resources for the Regulatory Voyage

To learn more, or if you want to see how Ankura can help you navigate the regulatory waters and add value to your team, contact Eric Gagnon at eric.gagnon@ankura.com

LEGISLATIVE UPDATES

- Maine adopted Money Transmission Modernization Act (MTMA) – Effective August 9, 2024
- Kansas adopted MTMA – Effective January 1, 2025
- South Dakota adopted MTMA – Effective June 1, 2024
- Pennsylvania has updated their definition of money to include Virtual Currency – Effective October 15, 2024
- Wisconsin has revised the stature, regarding sellers of checks, and many companies without a physical location in Wisconsin may require licensing.

ADVANCED CHANGE NOTICES "CHANGES IN THE REGULATORY TIDE"

The purpose of an advance change notice (ACN) is to allow state regulators a realistic time period to respond to a licensee's submission of changes to their official business/license records in both the Nationwide Multistate Licensing System (NMLS) and non-NMLS jurisdictions. By electronically processing these changes through the NMLS Record amendment process, it reduces the forms and filings required outside of the System. Non-NMLS jurisdictions require additional steps.

Depending on the state in which you are licensed, the license type (Money Transmitter, Lender, Collection Agency), and the actual change, the company may or may not need to file an ACN. The most common ACNs are filled for a change of main address, company name change, branch address changes, direct owner/officer changes, and qualified individual changes. When in doubt always check state statute or with your compliance consultant.

NMLS provides an ACN chart in the Resource Center that is periodically updated throughout the year and prescribes the designated timeline requested by the respective regulatory agency based on different material changes. Even though the chart is periodically updated, it is always wise to double check with the state statute or call your compliance consultant. *Wisconsin has revised the stature, regarding sellers of checks, and many companies without a physical location in Wisconsin may require licensing.* Notification timelines for NMLS states generally range from 15 to 60 days. Some states that previously had elongated ACN periods (>90 days) have subsequently reduced the timelines in recent legislative sessions.

In states not utilizing NMLS, for example, in Florida ACNs should be filed in the REAL system, while other non-NMLS jurisdictions require that documents be filed directly with the agency. If your company has an existing Conditions of Approval (COA) from a regulator, always double-check the COA for a requisite timeline. Depending on the change, your company will also be required to supply supporting documentation. These documents usually include items like a recent board resolution, updated organization/management charts, revised business plans, state-specific officer background check forms, and/or legal documents. While not required, it is always best practice to provide a letter along with your ACN filing that clearly and completely describes the change and who a regulator should reach out to with any questions.

Failing to provide ample notice to regulators when organizational changes occur could result in fines and penalties being imposed by state agencies.

We Can Show You The Way

We deliver powerful solutions to complex regulatory, licensing, and compliance challenges experienced by Fintech and financial services companies. We have served nearly 600 firms ranging from Fortune 50 to Fintech's biggest unicorns throughout the world. The acquisition of Chartwell by Ankura in 2023 further enhances the entire organization's global anti-financial crime offering to help banking and Fintech clients navigate the full spectrum of BSA/AML challenges, licensing acquisition, maintenance, and administration as well as outsourcing services.

VALUE PROPOSITION

ONE-STOP SOLUTION

Complete outsourcing of worldwide license acquisition and maintenance and many day-to-day compliance and AML staff functions. Flex talent and variable fee structure that are superior to direct hiring or other service provider options.

SATISFIED CLIENTS

Over 600 satisfied clients, including some of the most prominent multinationals in their respective industries and many firms within the Fortune 1000.

STABLE, HIGHLY QUALIFIED WORKFORCE

Our team is staffed by employees, the majority of whom have over 20 years of experience as practitioners or regulators. We are proud of its low turnover rate and the many awards it has received for a unique and revolutionary corporate culture and approach to staff development.

EXCEPTIONAL PROJECT MANAGEMENT

Our staff members practice a Kaizen methodology and use proprietary project management techniques that sustain a high level of quality.

SERVICES

FINTECH LICENSING

With its large team of long-time licensing officers and former regulators, We have centuries of collective experience obtaining and maintaining thousands of regulatory licenses for Fintech companies in areas like money transmission, cryptocurrency, prepaid access, currency exchange, lending, and gaming. The firm provides a fully outsourced solution in all key component parts of getting and staying licensed. Our emphasis on excellent project management and Kaizen methodology helps ensure timely results. Our staff have serviced, worked at, or supervised a statistically significant portion of all licensed U.S. money transmitters.

BANKING COMPLIANCE

Our team has well-credentialed former bank compliance officers and regulators who serve all types of banks as well as challenger/neo/digital banks in most areas of bank regulatory compliance. Numerous clients come from the Fintech industry and several of the Fintech banking market leaders have worked with us. Our team brings a unique, first-hand experience to its work.

FEDERAL COMPLIANCE

Our team is one of the world's preeminent providers of AML/CFT, fraud prevention, and regulatory compliance services to the Fintech industry. Comprised of an incredibly deep bench of long-time practitioners from all corners of the Fintech industry, the firm builds, localizes, enhances, and audits compliance programs. It has served many of the industry's leading Fintechs, hundreds of companies overall throughout the world.

GLOBAL OUTSOURCED COMPLIANCE

Our team of veteran compliance officers, regulators and analysts are positioned as an outsourced resource for compliance program execution with many financial services businesses. The firm handles many of the day-to-day functions required to maintain an effective compliance program, including transaction monitoring and reporting; sanctions screening; KYC and customer due diligence; onboarding and enhanced due diligence; fraud prevention; consumer compliance; and taking overall leadership of the program. Providing flex talent at variable cost, with excellent bench depth and quality assurance, we are a strong alternative to hiring directly in many cases.

Risk, Forensics & Compliance – Anti-Financial Crime Team

Our team members are cross-certified in regulatory compliance, anti-money laundering, testing, information technology and security, and fraud. The diversified experience of our consultants provides our clients with access to seasoned examiners, operators, and regulatory policy makers in the banking, non-banking, and emerging payments compliance segments of the financial services industry.

CONSULTANTS AVERAGE 22 YEARS OF EXPERIENCE

We use this vast experience to design and implement executive compliance and risk management programs properly calibrated to address both the current and prospective regulatory environment.

EXTENSIVE EXPERIENCE AT THE INDUSTRY'S BEST ORGANIZATIONS

Staff members have served in:

- The Regulatory Divisions of CA DPFI, CO DOB, FL OFR, TX DOB, & VT
- The Regulatory Divisions of the California Department of Business Oversight and the Florida Office of Financial Regulations
- MSBs such as Western Union, First Data, and Sigue
- State and nationally chartered banks
- The Federal Bureau of Investigation's Financial Crimes and Terrorist Financing Section
- Assistant Director of the Enforcement and Compliance Division at the Office of the Comptroller of the Currency (OCC)

CROSS-CERTIFIED STAFF MEMBERS

- Certified AML (CAMS)
- Regulatory manager certifications CAFP, CCI, CRCM, PMI-RMP, and PMP

Strategic Alliances

Hawk AI helps banks, payment companies and fintechs fight financial crime with AML and fraud surveillance. Powered by explainable AI and Cloud technology with a focus on information sharing, our technology improves the efficiency and effectiveness of anti-financial crime teams.

Thomson Reuters is a leading provider of business information services. Our products include highly specialized information-enabled software and tools for legal, tax, accounting and compliance professionals combined with the world's most global news service – Reuters.

Fiserv, a global leader in payments and financial technology, helps clients achieve best-in-class results in account processing and digital banking solutions; card-issuer processing and network services; payments; e-commerce; merchant acquiring and processing; and the Clover® cloud-based point-of-sale solution.

Through its subsidiary, MVB Bank, Inc., and the Bank's subsidiaries, MVB provides financial services to individuals and corporate clients in the Mid-Atlantic region and beyond.

Acuant Compliance's Trusted Identity Platform provides identity verification, regulatory compliance (AML/KYC) and digital identity solutions leveraging AI and human-assisted machine learning to deliver unparalleled accuracy and efficiency.

NICE Actimize uses innovative technology to protect institutions and safeguard consumers and investors by identifying financial crimes, preventing fraud and providing regulatory compliance.

Middesk's Identity product provides accurate, complete information that financial services companies need to make efficient onboarding decisions. Our Agent product makes it easy for employers to file with the state and federal agencies needed to establish their business across the country. Our customers include Affirm, Brex, Plaid, Mercury, Divvy, Rippling, Gusto, and others.

Coinfirm is a global leader in AML & RegTech for blockchain & cryptocurrencies. Offering the industry's largest blockchain coverage - over 98% of cryptocurrencies supported - Coinfirm's solutions are used by market leaders, ranging from VASPs such as Binance, and protocols like WAVES, to major financial institutions and governments.

Accuity offers a suite of innovative solutions for payments and compliance professionals, from comprehensive data and software that manage risk and compliance, to flexible tools that optimize payments pathways.

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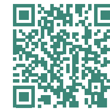

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With a track record of serving over 600 firms, including Fortune 10 companies and the largest Fintech unicorns, we provide impactful solutions to address complex regulatory, licensing, and compliance challenges faced by Fintech and financial services companies globally.

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