NDBA Live
October 7, 2026

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Special Guest: Congresswoman Julie Fedorchak

Please welcome our guest, Congresswoman Julie Fedorchak! We appreciate her support and co-sponsorship of the GUARD Act. Congresswoman Fedorchak will provide an update on her work in Washington and discuss issues of importance to North Dakota's banking industry. Topics will include federal efforts to help states combat fraud, regulatory relief, rural lending tax relief, affordable housing, and other matters affecting banks and the communities they serve.

Member Questions

Question 1: I have a question on allowing guarantors access via online/digital banking to view the loan account(s) they guarantee. We are reviewing whether we should allow all guarantors access, if requested, to loans they guarantee via online banking. Access would be View Only unless they possess other business access/powers per a resolution or other entity documents.

Most of our guarantees are unlimited and not limited or fractional. Our thought process is we would like transparency for our guarantors into the loan account(s) they are guaranteeing. Standard credit procedure is to re-do our guarantees every 5 years. Also, loan officers should be gathering financial statements on guarantors

at least annually. We also provide a past due notice to guarantors on any loan debt outstanding.

Are there any concerns with providing guarantors this loan account access via online banking? We were not sure if any privacy or other concerns.

Response: **My initial reaction is that you should NOT allow the Guarantor online access, without the written consent of the Borrower. Please read the terms and conditions of your Guaranty. Almost all of them state that the Guarantor will get its information regarding the loan from the Borrower.**

Question 2: We had a customer that passed away on 8/21/24 who had a single owner checking account and a CD with 1 POD on it. The POD has multiple siblings and she specially asked if any other siblings came in and asked if we would give that information out and we told her we would not. She closed out the CD on 11/4/24 as the POD. Another brother was appointed PR and came in with that paperwork and opened an estate account to take care of the estate. He requested statements for taxes, etc and while he was going through them, he saw a withdrawal slip for the funding of the CD. He is asking what happened to the CD and where the funds went. Are we obligated to give him all that information since this was closed before he was appointed PR? If we tell him the CD was closed by a POD listed, do we have to tell him who the POD was? She was unaware that she was even listed as POD until after he passed away and she is concerned what will happen if the family finds out.

Response: **I can't give you specific legal direction as to what you can say to the PR but I can direct you to the part of the North Dakota Century Code that identifies rights of beneficiaries on Transfers on Death.**

Below is the link to what appears to be the correct applicable Chapter of the North Dakota Century Code dealing with Non-probate Transfers on Death:

North Dakota Century Code t30.1c31

Section 30.1-31-09 Outlines Rights at Death and its subsection 2(b) states the ownership in the account upon the death of the account holder, generally go directly to the beneficiary.

Sections 30.1-31-14 gives a financial institution the authority to offer POD accounts.

Section 30.1-31-16 allows for Payment on POD accounts when the beneficiary provides proof of death and requests payments OR to a Personal Representative only if the deceased party was a party was the last survivor of the account and/or a representative.

It appears that Subsection 2 is most applicable in your current situation.

Read Section 30.1-31-19 carefully to see if your bank has complied with the previous sections of this Chapter in light of the facts that you have for this particular situation.

Questions:

1. **Did the Beneficiary reach out to the Bank and provide proof of death?**
2. **Did the PR reach out to the Bank prior to payment to the Beneficiary?**

More than likely the Beneficiary owned the account at the time of the account holder's death and payout was correct if made before the PR reached out.

If however the PR is requesting information about the account, you might want to just state that it was a POD account and if further information is requested you likely should as the new account holder/beneficiary for permission to share that information.

Please note that these accounts are intended as the Chapter states to be transferred outside of the decedent's estate and the PR is appointed to administer the decedent's estate.

Question 3: Our Board of Directors has recently had some discussions about recording Board meetings, excluding any Executive Sessions, via Teams. The discussion was that it would be nice to do so a Director could go back and review the meeting if they happen to miss it, or the Secretary could go back and review if they have any questions as they're preparing the meeting minutes. However, there is also some concern related to the risk of having the meetings recorded, as the recording could be discoverable in the event of a legal matter, assuming regulators/examiners could request them, and likely other things we haven't thought of. The Board had asked me to reach out to you to see if you have any guidance on the topic. If we did record them, we were thinking maybe we'd just have them available until the next Board meeting and then delete them, although the deletion would be a manual process. The recording would have served its purpose by that point and really shouldn't be needed after that. Any thoughts or guidance on the topic?

Response: **Recording board meetings via platforms like Microsoft Teams raises several legal considerations:**

<u>Discoverability in Litigation</u>

Recorded board meetings are generally discoverable under North Dakota law. Under Rule 26(b)(1) of the North Dakota Rules of Civil Procedure, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense…" Rule 34(a) expressly permits a party to request the production of "documents or electronically stored

information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained…" N.D. R. Civ. P. 34(a). Accordingly, recordings of board meetings may be subject to discovery if they are relevant to a claim or defense and are not protected by a recognized privilege or other applicable protection.

Regulatory Access

Under Chapter 6-01 of the North Dakota Century Code, the Commissioner of the North Dakota Department of Financial Institutions (DFI) has broad authority to supervise and examine North Dakota banks:

> **The commissioner shall exercise a constant supervision over the business affairs of all financial corporations, financial institutions, and credit unions, including all out-of-state branches of financial corporations, financial institutions, and credit unions. Either the commissioner or one or more examiners shall examine each financial institution to assess the affairs of the institution and ascertain the institution's financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank or credit union service organization of a credit union under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner may also examine, or cause to be examined, or review the books and records of any technology service provider that provides services to financial corporations, credit unions, and financial institutions under the commissioner's supervision, to evaluate that entity's risk management systems and controls and compliance with applicable laws that affect such services provided to financial corporations, credit unions, and financial institutions. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or**

suggestions in connection therewith, to the state banking board, state credit union board, or both, and the boards may take such action as the exigencies may demand.

Chapter 6-01 also specifically addresses the confidentiality of information obtained by the DFI in the course of its examinations:

1. **All facts and information obtained or created by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 8:**
    a. **In the course of examining financial institutions, credit unions, and other licensed entities under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution's or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.**
    b. **From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.**
    c. **In the course of investigating an institution under the supervision of, or licensed by, the commissioner, until such investigation is complete.**
    d. **In the course of a special investigation being carried out at the request of the governor or any court.**
    e. **(1) In the form or nature of an application for a charter, license, or permission which meets any of the following criteria:**
        (a) Trade secrets and commercial or financial information.
        (b) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
        (c) Information contained in the application form which is in the nature of examination report information.

        (2) Determination of what required application information falls within each category must be made by the body before which the application is brought.
    f. **In the form of a complaint or comment from the public regarding a financial institution, credit union, or other licensed entity under the supervision of the commissioner, unless the**

commissioner is providing aggregate, nonspecific information.

2. **When the commissioner is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under the commissioner's supervision, the commissioner shall divulge only such information specified in subsection 1 as is necessary and sufficient for the action taken or to be taken.**
3. **The commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2, if the commissioner determines necessary or proper to the enforcement of federal laws or the laws of this state or in the best interest of the public. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.**
4. **The commissioner may furnish information and enter sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, any other federal government agency, insurance commissioner, regulatory trade associations, any state bank or credit union supervisors or supervisors of other licensed entities of other states, or a nationwide multistate licensing system.**
5. **Information regarding complaints or comments from the public may be provided to other regulatory agencies, to the individual in response to the complaint or comment, or to the subject financial institution, credit union, or other licensed entity under the supervision of the commissioner.**
6. **The commissioner shall not be required to disclose the name of any debtor of any financial institution, credit union, or licensed entity reporting to or under the supervision of the commissioner or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided. All disclosures must be limited to only those documents directly relevant to the inquiry at issue.**
7. **This section does not limit the right of access of stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.**
8. **The standards for confidentiality and disclosure by the commissioner**

set forth in this section, except the standard of the exercise of discretion, which shall only be exercised by the commissioner, apply equally to the state banking board, the state credit union board, and all department employees.

***See* N.D.C.C. § 6-01-07.1.**

The chapter broadly defines "record" and "electronic record":

> **"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.**
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> **"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.**

***See* N.D.C.C. § 6-01-02.**

In accordance with the foregoing, a recording of a board meeting could fall within the information available to the DFI in conducting an examination. Information obtained by the DFI through the examination would generally be subject to confidentiality requirements, though such records may be subject to further disclosure by DFI in certain circumstances.

Retention Requirements

Record retention requirements would likely be dependent on what was discussed during the meeting. For example, if anything discussed relates to anticipated or ongoing litigation, the bank would be obliged to hold the recording until the legal matter has been fully resolved. Given the broad number of topics that could be discussed at each meeting, various record retention requirements could be implicated in each recording.

Information Security

Banks are also subject to both state and federal laws which require them to develop, implement and maintain a comprehensive information security program. *See* N.D.C.C. Ch. 13-01.2; 12 C.F.R. Appendix B to Part 364. Accordingly, the use of Microsoft Teams to record board meetings should be considered as part of the bank's information-security program and risk assessment.

OCC and FDIC Propose Changes to CRA

The Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) have proposed targeted changes to the Community Reinvestment Act (CRA) regulations intended to reduce regulatory burden and simply CRA examinations while maintaining the focus on banks meeting the credit needs of their communities. Among the proposed changes:

- The small-bank threshold would increase from $412 million to $1 billion.

- The intermediate-bank threshold would increase from $1.65 billion to $10 billion.
- Newly classified intermediate banks generally would avoid CRA data collection and reporting requirements and receive more flexible supervision.
- CRA consideration would focus more heavily on lending and credit services rather than deposit services.
- The rule would clarify treatment of certain community-development activities.

The Board of Governors of the Federal Reserve System (the "Federal Reserve Board") did not join the proposal, so the final CRA framework could differ depending on which federal banking agency supervises the institution.

Link: https://occ.gov/news-issuances/news-releases/2026/nr-ia-2026-64a.pdf

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Expanded Examination Cycle for Certain Banks

The OCC, the Federal Reserve Board, and the FDIC have published an interagency interim final rule – Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks – which makes qualifying 1- and 2-rated national banks, federal savings associations, and federal branches and agencies with less than $6 billion in total assets eligible for an 18-month (rather than 12-month) examination cycle.

Link: https://occ.gov/news-issuances/bulletins/2026/bulletin-2026-45.html

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New Proposed Third-Party Risk Management Guidance and Statement on Community Bank Engagement with Core Service Providers

The FDIC, Federal Reserve Board, National Credit Union (NCUA), and OCC have requested comment on proposed guidance to assist financial institutions with managing risks associated with third-party relationships. The proposed guidance would replace existing guidance. The agencies have also issued a statement on community banks' engagement with core service providers. Link: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20260911a.htm.

Federal Reserve Board Issues Two Proposed Rules Implementing the GENIUS Act

The Federal Reserve Board has issued the following notices of proposed rulemaking (proposed rules) to implement the GENIUS Act:

1. Application Procedures for Board-Supervised Insured Depository Institutions Seeking Approval for a Subsidiary To Issue Payment Stablecoins

Under the proposed rule, insured State member banks seeking to have a subsidiary become a Board-supervised permitted payment stablecoin issuer ("PPSI") would submit a letter application to the appropriate Federal Reserve Bank which addresses the proposed issuer's business plan, financial condition, reserve assets, governance, risk management, compliance programs, ownership, and key personnel. The Board would generally have 30 days to determine whether an application is substantially complete and, once complete, 120 days to act, subject to provisions

allowing the review period to restart if material circumstances change. The Board would evaluate the application based on the GENIUS Act's statutory factors, including financial and operational capacity, reserve and liquidity management, BSA/AML compliance, and the qualifications of management and significant shareholders, and could impose conditions on approval. The proposal also provides an appeal process for denials and a limited transition/safe-harbor process for certain pending applications.

2. Implementing the Federal Reserve Board's Responsibilities Under the GENIUS Act

This proposed rule would implement the GENIUS Act requirements applicable to Board-supervised payment stablecoin issuers and certain other entities. It establishes requirements governing permissible activities, reserve assets, redemption and fees, risk management, audits and reporting, capital, and custody of stablecoin reserves and private keys. It also implements the Act's prohibition on tying arrangements for all permitted payment stablecoin issuers, provides the Board with certain backup enforcement authority over state-qualified issuers, and establishes transition and waiver procedures for certain uninsured state-chartered institutions. The proposal also clarifies the Board's supervisory framework and definitions, including "control," "affiliate," and "Board-supervised PPSI," and addresses how the GENIUS Act interacts with existing Federal Reserve regulations. The Board notes that many aspects of the proposed rule are similar to those issued by the OCC, FDIC, and NCUA.

Comments on the rules are due November 30, 2026.

Link: Federal Reserve - September 24 GENIUS Act proposals.

The GUARD Act Could Give Law Enforcement More Tools to Fight Financial Fraud

The House passed the bipartisan Guarding Unprotected Aging Retirees from Deception Act of 2026 (the "GUARD Act") on September 15. It was received in the Senate, read twice and placed on the Senate calendar on September 16.

The legislation would permit State, local, and Tribal law enforcement agencies that receive eligible Federal grant funds to use such funds for investigating elder financial fraud, pig butchering, and general financial fraud, and clarify that Federal law enforcement agencies may assist State, local, and Tribal law enforcement agencies in the use of tracing tools for blockchain and related technology.

Link: https://www.congress.gov/bill/119th-congress/house-bill/2978/text

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Current Status of Beneficial-Ownership Requirements

Under the August 2026 final rule issued by the Financial Crimes Enforcement Network (FinCEN):

- U.S. companies are exempt from beneficial ownership information (BOI) reporting requirements and are therefore no longer required to file BOI reports.
- Reporting companies do not need to report BOI for U.S. person beneficial owners or U.S. person company applicants.

- U.S. persons do not need to provide BOI to reporting companies.
- U.S. persons with a FinCEN ID are not required to update or correct the information they previously submitted to FinCEN.

This does not eliminate banks' separate beneficial-ownership and customer-due-diligence obligations under the Bank Secrecy Act. In February 2026, FinCEN separately provided exceptive relief allowing covered financial institutions to avoid automatically identifying and verifying beneficial owners each time an existing legal-entity customer opens another account. Banks may instead limit that process to specified circumstances, including when the customer first opens an account, when previously obtained information becomes questionable, or when required under the institution's risk-based CDD procedures.

OCC Approves Digital-Asset and Stablecoin Activities for National Trust Banks

Entities planning to offer digital asset products or services, including crypto-assets, continue to submit licensing applications to the OCC. On September 18, 2026, the OCC issued decisions involving 3 digital-asset-focused national trust banks: Bastion Platforms National Trust Company (CD 1391), Catena Trust Bank (CD 1392), and Agora National Trust Bank (CD 1393). These decisions confirm that such entities may engage in:

- Digital-asset custody and safekeeping;
- Payment stablecoin issuance and related reserve activities;
- Conversion, clearing, settlement, and other transaction services that are closely connected to custody or trust activities; and
- Fiduciary, trust, and investment-management services involving digital assets.

These institutions are uninsured national trust banks subject to OCC supervision and applicable federal banking laws and regulations, but they are exempt from certain requirements applicable to insured depository institutions, including the CRA.

AI is Becoming a Bank Examination Issue

On September 16, 2026, the Conference of State Bank Supervisors (CSBS) released an Artificial Intelligence Supervisory Framework, a discretionary tool for state examiners to identify and understand AI at financial institutions, assess associated risks, and determine when a deeper review may be appropriate. Financial institutions are able to use the framework for self-assessment and risk management.

Link: https://www.csbs.org/csbs-artificial-intelligence-supervisory-framework

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Upcoming Events

NDBA has many exciting and informational events planned. Below are some special dates to mark on your calendars!

- **2026 NDBA Peer Group Consortium |** October 13-14, 2026 | Bismarck | Link
- **2026 NDBA Fall IRA Seminars |** Link
  - **IRA Fundamentals |** October 26, 2026 | Holiday Inn, Bismarck
  - **IRA Advanced |** October 27, 2026 | Holiday Inn, Bismarck
  - **IRA Fundamentals |** October 28, 2026 | Holiday Inn, Fargo
  - **IRA Advanced |** October 29, 2026 | Holiday Inn, Fargo
- **Health Savings Account Seminar** | October 30, 2026 | Holiday Inn of Fargo
- **Bank Management Conference & Legislative Reception |** January 2027 | Bismarck
- **2027 Tri-State Trust Conference |** April 2027 | Fargo
- **2027 SDBA/NDBA Annual Convention |** June 6-8, 2027 | Sioux Falls, SD