ASK KENNEDY
April 2, 2025

Topics Covered:

Member Questions

Question 1: Are there any prohibitions on co-branding?

Response: **There are no state statutes explicitly prohibiting co-branding. However, banks must remain mindful of their duty to maintain customer confidentiality. Federal and state marketing regulations apply, and banks should ensure that any co-branding campaign does not create a partnership or endorsement that could violate other regulatory requirements, such as the AMA or BSA.**

Question 2: We had a business loan guaranteed by the owner, but he recently passed away. His estate is still being probated, and we're unsure what that means for our ability to enforce the guarantee. Can we make a claim against his estate, and how does this impact our ability to collect if the business defaults? Are there any deadlines we should be aware of?

Response: **Yes, your bank can make a claim against the guarantor's estate, as the estate is responsible for the decedent's financial obligations. Since this claim arises at the time of death, it must be filed within three months of the date of death under N.D.C.C. § 30.1-19-03(2)(b). The guarantor's death does not affect your ability to collect from the business itself. Your loan documents likely include language stating that the death or insolvency of a guarantor constitutes an event of default, allowing the bank to take appropriate action against the borrower.**

Question 3: What happens when the only member of a limited liability company dies?

Response: **In the event of the death of the only member of a limited liability company ("LLC"), the question arises for financial institutions as to who has the authority to complete transactions on behalf of the entity. In a single member LLC ("SMLLC") in which the single member is a natural person, the deceased is dissociated from the entity upon death. Without an operating agreement or a Transfer on Death Designation specifically indicating the succession of the membership interest, when a sole member dies, the economic and management rights pass to the decedent's estate. If the interest is passing through the probate process, the North Dakota Century Code ("NDCC") allows the personal representative of the deceased member or other legal representative to exercise the rights of a transferee and for the purposes of settling the estate the rights of a current member under the uniform limited liability company act.**

WARNING: the decedent's membership interest must be transferred to a new member no later than 90 days after the death of the single member, failing to do so will result in the mandatory dissolution and winding up of the SMLLC. The decedent's membership interest can be transferred under the operating agreement. If there is no operating agreement, the deceased member's legal representative may designate a new member, as long as, the new member consents.

In most instances in a SMLLC, no one has been designated to manage the company or the financial institution has not been provided adequate information, leaving financial institutions in the dark as to who has the authority to complete transactions on the LLCs behalf. Banks, credit unions, and financial institutions holding accounts for single member LLCs have three options:

1) They can require a SMLLC to have a statutorily binding operating agreement to open an account in which there is specific language indicating the process to occur upon the member's death;

2) the financial institution can ask for the contact information of individuals who would know who the authorized personal representative is upon the death of the member or

3) if no one approaches the financial institution claim the funds, the account could sit dormant and eventually be submitted as unclaimed property.

Financial institutions should not provide a member of a single person LLC with forms indicating who should receive the member's interest because this could potentially create a fiduciary obligation to by the financial institution to the single member of the LLC. Transfer on Death Designations of membership interests should be drafted by the member's estate planning attorney to be consistent with that member's estate planning goals. However, it would be prudent to ask for the additional information described above, so upon learning of the death of a member of a single member LLC the financial institution has an idea of who to contact to determine authority to complete transactions.

Washington Summit

Hosted by the American Bankers Association, the 2025 Washington Summit in Washington D.C. will be held April 7-9 and give our members the opportunity to meet with members of Congress and regulators. North Dakota congressional leaders, Senator John Hoeven, Senator Kevin Cramer, and Representative Julie Fedorchak, will be available to meet and answer questions our members have.

At this year's summit, we will discuss the following critical items with our representatives:

Access to Credit for our Rural Economy (ACRE) Act: The ACRE Act is bipartisan, bicameral legislation designed to reduce interest rates for farmers, ranchers, and rural homeowners. It applies to loans secured by farm real estate, aquaculture facilities, and home mortgages under $750,000 in communities with populations of 2,500 or fewer. The ABA estimates that in North Dakota, this legislation could benefit 25,068 farms and 160,133 residents, leading to an estimated $26.2 million in savings for rural communities and farmers.

CFPB Small Business Loan Application Data Collection Rule (Section 1071): The CFPB's final rule would require lenders to collect and report 81 new data fields on lending to women-owned, minority-owned, and small businesses. This mandate would increase the cost of small-business lending and could reduce access to credit.

Cannabis Banking: Thirty-nine states have legalized cannabis for medical or recreational use, yet federal law continues to put banks at risk of civil and criminal penalties, as well as regulatory sanctions, for providing financial services to cannabis businesses. The SAFER/SAFE Banking Act is a bipartisan, commonsense solution that would allow banks to serve state-licensed cannabis businesses, their employees, and service providers in states where cannabis is legal.

Federal Regulation of Stablecoin Issuers: Stablecoins are digital assets designed to maintain a stable value relative to a reference asset. By mimicking commercial bank money, they have the potential to function as a payment method and a substitute for deposits, which could impact credit availability.

To address these concerns, NDBA will encourage our representatives to:

- **Ensure payment stablecoins do not disintermediate the banking industry** by prohibiting interest on payment stablecoins, restricting master account access for nonbank issuers, ensuring bank deposits remain a viable reserve option, and maintaining the separation between commerce and payment stablecoin issuance.

- **Establish a strong regulatory framework** that applies consistent rules, supervision, and enforcement to all payment stablecoin issuers. This will help prevent charter arbitrage, maintain financial stability, and protect consumers.

U.S. Central Bank Digital Currency: Central bank digital currencies are a form of digital currency issued by a country's central bank. They are like cryptocurrencies, except that their value is fixed by the

central bank and equivalent to the country's fiat currency. A CBDC would pose significant risks to U.S. financial system that would outweigh any potential benefits, including undermining the critical role that banks play in extending credit.

Overdraft Protection: Preserving overdraft protection – a form of short-term liquidity – is paramount for banks of all sizes. The CFBP final rule would create a $5 price cap for overdraft fees and thereby restrict, if not eliminate, millions of consumers' access to this valuable service.

Deposit Insurance Reform: FDIC insurance protects customers' deposits across America's safe and sound banking system, which is well capitalized and highly liquid. While the FDIC has evaluated options to reform the deposit insurance system, any major changes will require congressional approval.

Trigger Leads: State and Federal law prohibits North Dakota Banks from sharing customer information; however credit bureaus can sell the personal contact information of consumers who apply for a home loan, which can generate hundreds of unwanted text message solicitations from other lenders, including out of state lenders and non-bank lenders. This gives North Dakota citizens the false impression that their bank has sold their personal information.

Protect American Payment Cards: The Credit Card Competition Act would impose government mandates on the credit card market, reducing the security of credit card transactions, limiting community bank card offerings, and eliminating important consumer benefits like credit card rewards programs.

2025 Legislative Session

The 2025 North Dakota Legislative Session is in full swing, you can track legislative updates by clicking on the following link: 2025 legislative updates.

GENIUS Act/STABLE Act

Congress is once again considering stablecoin regulation, with growing bipartisan support. The Senate Banking and House Financial Services Committees are working together on legislation.

In the Senate, the **GENIUS Act**, sponsored by Senators Hagerty, Scott, Lummis, and Gillibrand, defines payment stablecoins as digital assets pegged to a fixed monetary value. It allows both banks and certain nonbanks to issue stablecoins, with regulation based on issuance volume at either the federal or state level.

The bill clarifies that payment stablecoins are not securities and instead fall under banking-style supervision.

In the House, Representatives Hill and Steil have introduced a draft of the **STABLE Act**, which similarly provides a regulatory framework for payment stablecoins at the federal or state level. A key distinction is its two-year moratorium on algorithmic stablecoins, whereas the GENIUS Act only requires a Treasury study on them.

The ABA has released a statement in support of the GENIUS Act but stresses the need for a regulator framework that balance innovation with risk mitigation. The ABA has highlighted several key points of consideration:

1. **Avoiding Negative Economic Impact**: The ABA warns against payment stablecoins potentially disintermediating the banking sector by drawing deposits away from banks, which could undermine credit creation and economic stability. They suggest prohibiting nonbank issuers from accessing Federal Reserve master accounts to prevent this risk.

2. **Ensuring Robust Regulation**: The ABA calls for a strong, consistent regulatory framework for stablecoin issuers, including strict requirements for reserves, redemption, and liquidity. They also advocate for applying Bank Secrecy Act (BSA) regulations to all entities involved in stablecoin transactions, especially those involved in exchanges.

3. **Guarding Against Financial Stability Risks**: The ABA stresses the importance of maintaining public trust in stablecoins. They recommend clear rules on reserve management, transparency, and operational risk management to ensure that issuers can meet their obligations and avoid destabilizing the market.

4. **Preparing for Unknown Risks**: The ABA emphasizes that the stablecoin market is still in its early stages, and the regulatory framework should allow flexibility for regulators to respond to emerging risks and market developments as the sector grows.

The entire ABA statement can be found at found following link: ABA Statement

Regulators to Roll Back 2023 Community Reinvestment Act Rule

The Federal Reserve, FDIC, and Office of the Comptroller of the Currency have announced plans to rescind the 2023 Community Reinvestment Act (CRA) final rule due to ongoing litigation. Instead, they will reinstate the prior CRA framework.

The 2023 rule was introduced as part of a broader effort to modernize CRA regulations but faced legal challenges from the American Bankers Association, the U.S. Chamber of Commerce, and other trade associations. Plaintiffs argued that regulators exceeded their statutory authority, leading to a federal judge issuing a preliminary injunction against the rule's enforcement.

In response to the agencies' decision, the plaintiffs welcomed the rollback, stating that the 2023 rule would have created disincentives for banks to invest in their communities. They reaffirmed their commitment to the CRA's objectives and will monitor the regulators' next steps. The agencies have not provided a timeline for the formal rescission but emphasized their commitment to a consistent regulatory approach for CRA implementation.

FDIC Clarification Regarding Banks Engagement in Crypto-Related Activities

The FDIC has issued new guidance (FIL-7-2025) for FDIC-supervised institutions engaging in crypto-related activities, rescinding previous guidance (FIL-16-2022). The updated policy clarifies that banks may engage in permissible crypto activities without prior FDIC approval, provided they manage associated risks. Acting Chairman Travis Hill stated that this marks a shift from past approaches and is part of broader efforts to establish a clearer framework for banks' involvement in crypto and blockchain activities. The FDIC will continue working with federal agencies to refine regulations and expects to issue further guidance.

The new guidance can be found at the following link: Guidance.

Update: Continued Injunction on Corporate Transparency Act

On March 21, 2025, the FinCEN released the following statement:

WASHINGTON—Consistent with the U.S. Department of the Treasury's March 2, 2025 announcement, the Financial Crimes Enforcement Network (FinCEN) is issuing an interim final rule that removes the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act.

In that interim final rule, FinCEN revises the definition of "reporting company" in its implementing regulations to mean only those entities that are formed under the law of a foreign country and that have registered to do business in any U.S. State or Tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as "foreign reporting companies"). FinCEN also exempts entities previously known as "domestic reporting companies" from BOI reporting requirements.

Thus, through this interim final rule, all entities created in the United States — including those previously known as "domestic reporting companies" — and their beneficial owners will be exempt from the requirement to report BOI to FinCEN. Foreign entities that meet the new definition of a "reporting company" and do not qualify for an exemption from the reporting requirements must report their BOI to FinCEN under new deadlines, detailed below. These foreign entities, however, will not be required to report any U.S. persons as beneficial owners, and U.S. persons will not be required to report BOI with respect to any such entity for which they are a beneficial owner.

Upon the publication of the interim final rule, the following deadlines apply for foreign entities that are reporting companies:

- Reporting companies registered to do business in the United States before the date of publication of the IFR must file BOI reports no later than 30 days from that date.
- Reporting companies registered to do business in the United States on or after the date of publication of the IFR have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.

FinCEN is accepting comments on this interim final rule and intends to finalize the rule this year.

For more information, see Interim Final Rule: Questions and Answers.

You can find the statement at the following link: statement

Upcoming Events

NDBA has many exciting and informational events planned for 2025. Below are some special dates to mark on your calendars!

- **2025 Tri-State Trust Conference |** April 22-24, 2025 | Online Registration
- **Opening New Accounts Seminar |** April 23, 2025 | Fargo, ND | Registration Form
- **Opening New Accounts Seminar |** April 24, 2025 | Bismarck, ND | Registration Form
- **Loan Documentation, Liens and Collection: What Bankers Need to Know |** May 20, 2025 | Holiday Inn | Fargo, ND | Online Registration
- **Loan Documentation, Liens and Collection: What Bankers Need to Know |** May 21, 2025 | Bismarck, ND | Online Registration
- **2025 Dakota School of Banking |** June 1-6, 2025 | Jamestown, ND
- **2025 Quad States Annual Convention |** June 8-10, 2025 | Rapid City, SD | Event Information
- **2025 Regional Member Meetings |** September 8-11, 2025 | Grand Forks, Fargo, Bismarck and Minot
- **2025 Ag Credit Conference |** October 2-3, 2025 | Bismarck, ND