Parsing Gov't Scrutiny Of Lending To Unauthorized Workers

By **David Beam, Kris Kully, and Eric Mitzenmacher** (August 21, 2026)

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On July 13, three federal banking agencies — the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp. and the National Credit Union Administration — jointly issued guidance addressing credit risks associated with lending to individuals who are not legally authorized to work in the U.S.[1]

The guidance was issued in response to a directive in an executive order that President Donald Trump issued in May.

Banks and other financial institutions supervised by these agencies that extend credit to "non-work authorized" borrowers should review the guidance to ensure that their practices adhere to it.

The guidance may also be important for fintech companies that offer credit products to these borrowers through partnerships with banks. Depending on how a fintech-bank partnership is structured, the guidance may apply to credit that the bank partner extends through the partnership.

In this article, we provide background on the executive order and related regulatory developments, summarize the key provisions of the guidance, and offer our analysis of the practical implications — including a discussion of what the guidance could mean for fintech companies that offer credit to workers without authorization.

Background

On May 19, President Donald Trump issued Executive Order No. 14406 on the financial system. The order was designed to address what it described as "risks to our financial system posed by the extension of credit or financial services to the inadmissible and removable alien population."

The executive order defined the term "federal functional financial regulator" to include the Board of Governors of the Federal Reserve System, the OCC, the FDIC and the NCUA.

Section 3 of the order directed the secretary of the Treasury to issue a formal advisory to financial institutions regarding the risks associated with the exploitation of the U.S. financial system by non-work authorized populations and their employers.

Section 4(b) of the order directed each federal functional financial regulator to "issue guidance regarding the management of the potential credit risks posed by the non-work authorized population" within 60 days.

Separately, Section 4(a) directed the Consumer Financial Protection Bureau to "consider clarifying that potential deportation and loss of wages are factors that could adversely affect a non-work authorized borrower's ability to repay an extension of credit" under the Truth in Lending Act's and Regulation Z's ability-to-repay standards.

On June 5, the U.S. Department of the Treasury's Financial Crimes Enforcement Network, or FinCEN, jointly with the FDIC, OCC and the NCUA, and in coordination with the Internal Revenue Service, issued an advisory addressing the unlawful employment of individuals without a valid work authorization and the associated risks to the U.S. financial system.

On June 8, the CFPB published a statement on the ability to repay and immigration status. This statement addressed how a borrower's unauthorized immigrant status should factor in to an ability-to-repay analysis.

Under the Truth in Lending Act and Regulation Z, creditors must assess a consumer's ability to repay before extending certain types of credit. For mortgage loans secured by a dwelling, creditors must make "a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms."

For certain consumer credit cards, issuers must "consider the consumer's ability to make the required minimum periodic payments." Regulation Z requires creditors to consider factors such as "the consumer's current or reasonably expected income or assets" and, for those relying on current income, the consumer's current employment status.

The CFPB's statement addressed how these standards intersect with a borrower's immigration status. Importantly, Regulation Z requires creditors to consider repayment ability based on what is known when the decision to extend credit is made.

As the CFPB explained, if "the consumer's application or other records" indicate that the consumer's repayment ability will change on account of immigration status, then "a creditor must consider that information, just as they must consider anything else in the application or records at or before consummation indicating that there will be a change in a consumer's repayment ability after consummation."

The CFPB warned that failure to do so would "overlook key information regarding the consumer's income, and may risk the creditor failing to reasonably assess the consumer's ability to repay the credit sought."

In particular, the CFPB observed that "a creditor's awareness of a consumer's immigration status may implicate a creditor's reasonable expectations about whether a consumer's income from U.S.-based employment will remain available for repayment."

For example, a creditor might regard a borrower who is neither lawfully present nor permitted to work in the U.S. as "being subject to removal," which could render the borrower "unable to earn income derived from employment that requires physical presence in the United States."

The bottom line of the CFPB's statement was that creditors relying on an individual's income derived from U.S.-based employment "are permitted — and may, under certain facts and circumstances, be obligated — to consider information that bears on the consumer's underlying and continuing ability to earn income — when residency in the United States is a necessary component of such employment."

The CFPB also observed that the Equal Credit Opportunity Act and Regulation B expressly allow creditors to take an applicant's immigration status into account when evaluating creditworthiness.

Summary of the Guidance

The agencies stated that the guidance is intended "to remind supervised financial institutions of their existing obligations with respect to credit risk management," particularly relating to non-work authorized borrowers.

At the outset, the guidance makes clear that "lending to individuals who are not legally authorized to work in the U.S. may present elevated credit risk because a borrower's ability to generate income, maintain employment, and remain financially stable may be subject to greater uncertainty."

The guidance then addresses several specific areas of risk.

Source of Repayment

The agencies note that underwriting standards typically consider the "stability and sustainability" of a borrower's income and the likelihood that income will continue throughout the term of the credit obligation.

When that income derives from unauthorized employment, the guidance identifies several reasons repayment may be less reliable. In essence, non-work authorized borrowers face heightened risks of employment termination — whether because an employer discovers they lack work authorization or because expired authorization comes to light.

Beyond termination, these borrowers may be unable to find new lawful employment, and they face the risk of removal from the U.S. altogether.

The guidance directs financial institutions to "consider whether projected repayment capacity remains adequate under various scenarios including potential interruptions in employment or income resulting from the borrower's inability to maintain lawful employment."

Collateral Considerations

The guidance observes that financial institutions "may face additional challenges enforcing security interests in collateralized loans, as it may be more difficult to contact non-work authorized borrowers or locate and repossess unaffixed collateral."

It's important to note that the agencies specifically identify automobiles, recreational vehicles and boats as examples of collateral that may be harder to recover.

Documentation and Verification

The agencies suggest that financial institutions "might consider whether employment income is current, verifiable, stable and likely to continue."

They identify specific documentation that institutions might require and review, including "paystubs, W-2s, tax returns, employer verifications, bank statements or evidence of continuing work authorization."

The guidance also makes a broader point. It states that financial institutions should "consider whether loans to non-work authorized borrowers, individually or segments, exhibit signs of credit weakness regardless of delinquency status for classification purposes and treatment in the allowance for credit losses."

In other words, the guidance suggests that non-work authorized status itself may be a basis for heightened scrutiny of loan classification — even when borrowers are current on payments.

Portfolio and Concentration

The guidance addresses risks beyond the individual borrower level. It notes that institutions "with significant lending exposure to borrowers concentrated in specific geographic markets, employers or industries that may be disproportionately affected by changes in immigration enforcement" may face "elevated concentration risk."

These changes, according to the agencies, "could adversely affect the repayment capacity of multiple borrowers simultaneously." As a result, institutions "may experience correlated credit deterioration within affected segments of the portfolio rather than isolated borrower-level stress."

The key insight here is that changes in immigration enforcement policy could affect portfolio performance in ways that historical loan performance data might not predict.

Consumer Compliance

The guidance also directs financial institutions to the CFPB's statement on ability-to-repay requirements. As discussed above, the CFPB stated that creditors relying on income from U.S.-based employment are "permitted — and may, under certain facts and circumstances, be obligated — to consider information that bears on the consumer's underlying and continuing ability to earn income" when U.S. residency is necessary for that employment.

The guidance concludes by stating that, consistent "with applicable laws and regulations, financial institutions should consider the risks associated with non-work authorized borrowers in underwriting and account management policies and processes."

Analysis and Key Takeaways

The guidance does not prohibit financial institutions from making loans to non-work authorized borrowers. Nor does it interpret the CFPB's earlier statement as prohibiting such lending. The guidance simply identifies additional considerations that institutions should take into account when extending credit to this population.

That said, the guidance makes clear that the agencies believe lending to non-work authorized borrowers presents certain elevated risks, and that financial institutions should account for those risks in their underwriting standards.

One particularly notable aspect of the guidance is the discussion of how changes in immigration enforcement policy could affect portfolio performance. The agencies identify several mechanisms through which a more aggressive enforcement posture could increase credit risk: employers may be more likely to terminate workers without authorization; those workers may find it more difficult to obtain new employment; and deportation rates may increase.

Importantly, the guidance emphasizes that these dynamics represent not just borrower-level risk, but portfolio-level risk — potentially affecting entire segments of an institution's loan book simultaneously.

Many of the risks identified in the guidance are ones that institutions active in this lending space have likely considered to some degree. Nevertheless, the guidance underscores the agencies' attention to these issues and may warrant a review of existing underwriting practices and risk frameworks to ensure they address all of the factors the regulators have identified.

Implications for Fintech Companies

Many fintech companies provide credit to non-work authorized borrowers. Indeed, one hallmark of the fintech industry is its focus on providing financial services and credit to populations that historically were unbanked or had limited access to traditional banking. This includes workers without authorization, who historically have faced barriers to accessing financial services.

Over time, fintech companies have developed innovative underwriting practices that allow them to effectively manage risk and extend credit to non-work authorized borrowers who previously had limited access.

Many of these fintechs operate through partnerships with banks. Under a typical structure, the bank is the actual lender that extends credit through the fintech's platform, with the fintech frequently acquiring the resulting loans or receivables from the bank after origination.

Fintechs operating in this space should review the guidance carefully. Because the guidance and the FinCEN advisory apply to their bank partners, it effectively applies to them as well. They should consider whether their programs meet the expectations of regulators as reflected in the guidance and the FinCEN advisory.

One question that arises is whether banks that sells the loans or receivables they originate to their fintech partners should take additional steps to mitigate the risks identified in the guidance about portfolio and concentration risk. If the fintech partner ultimately takes on the longer-term and portfolio-level risks, there may be an argument that the bank's own exposure is more limited — although in many contexts regulators have questioned whether selling the loan or receivable is a panacea for underwriting risks.

It is also notable that the guidance specifically identifies traditional income verification methods: pay stubs, W-2s, tax returns, employer verification, bank statements and evidence of continuing work authorization.

Historically, the requirement to provide these traditional forms of documentation is precisely what prevented many non-work authorized borrowers from accessing credit. Many fintech platforms have addressed this gap by using alternative methods of income verification.

The guidance does not expressly require institutions to demand these specific forms of documentation — it says they "might consider" them. But calling them out specifically does suggest that the agencies view these methods favorably, which may put pressure on fintech platforms that rely on alternative verification methods through their bank partners.

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[1] The Federal Reserve Board did not join the interagency guidance.