

The Banking Law Journal

Established 1889

An A.S. Pratt™ PUBLICATION

FEBRUARY 2022

EDITOR'S NOTE: THE CFPB: 10 YEARS AFTER

Victoria Prussen Spears

**THE CONSUMER FINANCIAL PROTECTION BUREAU AND THE USE OF ABUSIVENESS:
10 YEARS IN**

Ori Lev, Brian J. Stief and Kerri E. Webb

MODERN-DAY REDLINING ENFORCEMENT: A NEW BASELINE

Nanci L. Weissgold, Brian Johnson and Melissa Sanchez Malpass

**THE PANDORA PAPERS AND THE HEIGHTENED IMPORTANCE OF
"KNOWING YOUR CUSTOMER"**

Andrew S. Boutros, David N. Kelley, Jeremy B. Zucker and Kaitlyn Walsh

THE INFRASTRUCTURE INVESTMENT AND JOBS ACT OF 2021 IS NOW LAW

Jordan L. Cooper, George B. Riccardo, Brody Garland, Jeff Denham, David L. Wochner
and Laurie B. Purpuro

**FEDERAL BANKING REGULATORS RELEASE GUIDE FOR COMMUNITY BANKS
CONDUCTING DUE DILIGENCE ON FINTECH COMPANIES**

Kenneth E. Kohler, Jeremy R. Mandell, Maria B. Earley and Henry M. Fields

**FTC RELEASES DETAILED INFORMATION SECURITY REQUIREMENTS AND PROPOSES
BREACH NOTIFICATION FOR FINANCIAL INSTITUTIONS**

Duane C. Pozza, Antonio J. Reynolds and Stephen J. Conley



LexisNexis

THE BANKING LAW JOURNAL

VOLUME 139

NUMBER 2

February 2022

Editor’s Note: The CFPB: 10 Years After Victoria Prussen Spears	59
The Consumer Financial Protection Bureau and the Use of Abusiveness: 10 Years In Ori Lev, Brian J. Stief and Kerri E. Webb	61
Modern-Day Redlining Enforcement: A New Baseline Nanci L. Weissgold, Brian Johnson and Melissa Sanchez Malpass	86
The Pandora Papers and the Heightened Importance of “Knowing Your Customer” Andrew S. Boutros, David N. Kelley, Jeremy B. Zucker and Kaitlyn Walsh	92
The Infrastructure Investment and Jobs Act of 2021 Is Now Law Jordan L. Cooper, George B. Riccardo, Brody Garland, Jeff Denham, David L. Wochner and Laurie B. Purpuro	99
Federal Banking Regulators Release Guide for Community Banks Conducting Due Diligence on Fintech Companies Kenneth E. Kohler, Jeremy R. Mandell, Maria B. Earley and Henry M. Fields	102
FTC Releases Detailed Information Security Requirements and Proposes Breach Notification for Financial Institutions Duane C. Pozza, Antonio J. Reynolds and Stephen J. Conley	105

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Matthew T. Burke at (800) 252-9257
Email: matthew.t.burke@lexisnexis.com
Outside the United States and Canada, please call (973) 820-2000

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
Customer Service Website <http://www.lexisnexis.com/custserv/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (937) 247-0293

ISBN: 978-0-7698-7878-2 (print)

ISSN: 0005-5506 (Print)

Cite this publication as:

The Banking Law Journal (LexisNexis A.S. Pratt)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2022 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

BARKLEY CLARK

Partner, Stinson Leonard Street LLP

CARLETON GOSS

Counsel, Hunton Andrews Kurth LLP

MICHAEL J. HELLER

Partner, Rivkin Radler LLP

SATISH M. KINI

Partner, Debevoise & Plimpton LLP

DOUGLAS LANDY

White & Case LLP

PAUL L. LEE

Of Counsel, Debevoise & Plimpton LLP

TIMOTHY D. NAEGELE

Partner, Timothy D. Naegele & Associates

STEPHEN J. NEWMAN

Partner, Stroock & Stroock & Lavan LLP

THE BANKING LAW JOURNAL (ISBN 978-0-76987-878-2) (USPS 003-160) is published ten times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. Copyright 2022 Reed Elsevier Properties SA., used under license by Matthew Bender & Company, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail Customer.Support@lexisnexis.com. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, LexisNexis Matthew Bender, 230 Park Ave, 7th Floor, New York, NY 10169.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207.

The Infrastructure Investment and Jobs Act of 2021 Is Now Law

*Jordan L. Cooper, George B. Riccardo, Brody Garland, Jeff Denham,
David L. Wochner and Laurie B. Purpuro**

The authors of this article provide an overview of the Infrastructure Investment and Jobs Act of 2021.

Last fall, the U.S. Congress reached the summit of a months-long journey securing passage of legacy legislation and a historic investment in our nation's infrastructure. By a final vote of 228–206, the House of Representatives adopted H.R.3684, the Infrastructure Investment and Jobs Act of 2021¹ (“IIJA”), sending the measure to President Biden's desk. The effort culminated an arduous three months of negotiations on the Senate-passed bipartisan package and fortified a significant legislative achievement for the Biden administration. With the country still reeling from the ongoing pandemic recovery, the economic burden of rising inflation, and the disruption of a global supply-chain crisis, passage of the IIJA provides not just a bipartisan political victory, but a valuable set of new policy tools for the administration to carry out its economic agenda.

THE ACT

Touted as a historic effort to rebuild America's roads, bridges and rails, expand access to clean drinking water, ensure every American has access to high-speed internet, tackle the climate crisis, advance environmental justice, and invest in communities that have too often been left behind, the IIJA provides \$550 billion in new spending over five years to:

- Rebuild roads and bridges (\$110 billion);
- Improve public transit systems (\$39.2 billion);
- Expand passenger rail and cover rail safety (\$66 billion);

* Jordan L. Cooper (jordan.cooper@klgates.com), George B. Riccardo (george.riccardo@klgates.com) and Brody Garland (brody.garland@klgates.com) are government affairs analysts at K&L Gates LLP. Jeff Denham (jeff.denham@klgates.com) is a government affairs counselor and Laurie B. Purpuro (laurie.purpuro@klgates.com) is a government affairs advisor at the firm. David L. Wochner (david.wochner@klgates.com) is practice area leader of the firm's Policy and Regulatory group advising clients on federal regulatory and policy issues that impact energy infrastructure and commodities.

¹ <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

- Upgrade ports and waterways (\$16.6 billion);
- Upgrade airports (\$25 billion);
- Invest in broadband infrastructure (\$65 billion);
- Fix water systems (\$55 billion);
- Modernize the power sector (\$65 billion); and
- Improve climate resilience (\$47.2 billion).

Coupled with President Biden's Build Back Better Act, these investments are intended to add, on average, around two million jobs per year over the course of the decade, while accelerating America's path to full employment and increasing labor force participation.

As the negotiations and legislative process drift into the rearview mirror, the question becomes, what comes next?

IMPLEMENTING IIJA

The hard work on IIJA now shifts to the federal agencies for implementation. Over the next five years, the progress of IIJA programs will develop at varying speeds. The administration will be under enormous pressure to stand up new programs and direct funds to the right places as quickly as possible, but larger programs at the Department of Transportation ("DOT"), Department of Energy ("DOE"), Environmental Protection Agency, Department of Interior, and others will likely take more time to develop.

The DOT is expected to rely as much as possible on readily available discretionary grant programs, namely the Port Infrastructure Development Program ("PIDP"), Rebuilding American Infrastructure with Sustainability and Equity ("RAISE"), and Infrastructure for Rebuilding America ("INFRA"). By infusing these previously existing accounts with generous funding, DOT is expected to provide financial stimulus to projects of national importance that can help bolster the U.S. transportation supply-chain and stimulate job growth.

With the White House eager to secure near-term progress on supply-chain deficiencies, the administration has indicated that funding will begin to flow to projects within the first few months of the bill's enactment. Although these discretionary programs will be somewhat restrained by the norms of the competitive grant process, formula funding to the states and direct stimulus into the Highway Trust Fund could begin almost immediately.

However, some IIJA programs may require additional implementation time. For example, energy provisions supporting the administration's long-term goals of emissions reduction, including electrification of the transportation sector and

deployment of significant hydrogen fueling and energy storage resources, are not expected to be ready for execution immediately.

These substantial investments in electric grid infrastructure, vehicle charging and hydrogen fueling stations, and battery recycling and manufacturing will require significant planning and coordination with states, local communities, and the private sector. Additionally, a portion of these newly authorized programs could take months to stand up, given the need to hire additional personnel and develop program parameters and guidelines.

Passage of the IIJA is not only the largest infrastructure investment in U.S. history, but it is also one of the largest shifts in discretionary authority to the federal agencies. The DOT, under the leadership of Secretary Pete Buttigieg, and the DOE, under Secretary Jennifer Granholm, will be the beneficiaries of billions of dollars in new spending authority and will have significant discretion to determine how those funds go out the door. The departments will welcome the opportunity to guide the direction of tens of billions of dollars to enact their priorities, but challenges with providing sufficient staffing to execute these programs might cause delay.

CONCLUSION

As lawmakers, industry stakeholders, and the public at-large take a moment to celebrate the hard-fought victories and legislative milestones of a historic investment in our nation's infrastructure, it will be critical that they do not lose sight of the next crucial step: implementation. The federal government will be managing the rollout of billions of federal dollars and standing up new programs that touch upon nearly every sector of the economy. The process will be fluid, input will be needed, and now, more than ever, staying engaged will be paramount.