

2023 Fall Economic Statement: key developments for financial services providers

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The [2023 Fall Economic Statement](#), tabled on November 21, 2023, provided much-anticipated updates on many of the federal government's proposals presented in [Budget 2023](#) [PDF]. The government has subsequently followed up with certain key initiatives by introducing the [final regulations](#) to the *Retail Payment Activities Act* (RPAA) on November 22, 2023, and through the introduction of [Bill C-59](#) on November 30, 2023.

This Update provides a summary of the key progress and incoming measures that are expected to affect financial service providers operating in Canada.

Open banking developments

Although it had appeared that the federal government's interest in open banking had waned, in a surprise move, the federal government announced its intention to introduce legislation through Budget 2024 to establish a consumer-driven (i.e., open banking) framework. This framework would regulate access to financial data, enabling consumers to access their banking information securely and share that information with financial institutions and third-party service providers.

The announcement follows extensive consultations and the publication by the Advisory Committee on Open Banking of a [Final Report](#) in 2021. As discussed in our [earlier blog post](#) and our [2022 Legal Year in Review](#) article, the Advisory Committee recommended the creation of a new governance entity to oversee open banking in Canada, urged that participation by provincially regulated entities be on a strictly voluntary basis and proposed a go-live date of January 2023.

The Department of Finance has published a [Policy Statement on Consumer-Driven Banking](#) alongside the Fall Economic Statement to explain the federal government's position on key policy objectives and framework elements, including governance, scope, accreditation, common rules and technical standards. The statement announces the government's aim to adopt legislation and fully implement a governance framework by 2025.

Highlights from the policy statement include the following:

- the framework legislation will aim to mandate responsibility to a government-led entity to supervise and enforce the system and to address liability among industry participants
- mandatory participation during an initial phase for federally regulated financial institutions (FRFIs) that meet a specified threshold for retail volume

- confirmation of an “opt-in” approach for other FRFIs, credit unions and accredited third parties, and that all entities will be equally subject to consumer-permissioned data sharing requests
- a formal accreditation framework and public registry to ensure only trusted entities can access financial data; national security safeguards that align with existing financial sector frameworks (for example, as set out under the RPAA) would be included in the accreditation process.
- exemptions from the accreditation requirement for federally regulated banks and both federally and provincially regulated credit unions
- the adherence to common rules addressing privacy, security and liability obligations as a condition of access to consumer data; the policy statement anticipates that additional privacy rules will be enacted that are unique to financial data sharing
- the use of a single technical standard to share financial data securely

Retail Payment Activities Act

On November 22, 2023, the federal government released [final regulations](#) (the final regulations) under the RPAA. While the final regulations introduce some ease at the margins for certain compliance obligations, overall, the changes are minimal and the obligations we wrote about in [our Update](#) largely remain intact. Please refer to our recent Update, “[The future of payments regulation has arrived: final regulations to the Retail Payment Activities Act released](#),” for more information on the final regulations and the implications for payment service providers. For an overview of the RPAA, please see our [prior Update](#) from May 2021, when the RPAA was introduced.

The 2023 Fall Economic Statement specifically includes a statement that the Department of Finance is working to implement the national security review of payment service providers planned for 2024 under the RPAA, underscoring that the national security review process is a key governmental priority.

Payments modernization

As previewed in the 2023 Fall Economic Statement, the government introduced legislation through [Bill C-59](#) on November 30, 2023, to amend the *Canadian Payments Act* to, among other things, expand membership in the Canadian Payments Association to payment service providers supervised by the Bank of Canada under the RPAA, credit union locals that are members of a credit union central and operators of designated clearing houses. Bill C-59 also sets out the composition of the Association’s Stakeholder Advisory Council. The expansion of membership is part of a broader push to modernize Canada’s payments system, as discussed in our [2022 Legal Year in Review article](#).

Payments Canada has [expressed its support](#) for these changes, including the expansion of membership eligibility to additional entities.

New measures to combat financial crime

The 2023 Fall Economic Statement announced the federal government's intention to introduce legislative measures to further bolster Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime (the AML/ATF regime). This has been an area of continuing focus and builds on the series of legislative amendments during the past few years to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and the *Criminal Code*. See our [earlier Update](#) for a discussion of the initiatives introduced in Budget 2023.

[Bill C-59](#) amends the PCMLTFA to, among other things

- require reporting entities that have reasonable grounds to suspect possible sanctions evasion to report relevant information to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
- expand the AML/ATF framework to capture intermediary companies (known as "acquirers") who provide private (i.e., white-labelled) automatic banking machine services
- require certain declarations to be made in relation to the importation/exportation of goods

To support the operational effectiveness of the AML/ATF regime, Bill C-59 introduces changes to the *Criminal Code* to

- amend the money laundering offence to support the prosecution of third-party money launderers by allowing the court to infer the knowledge or belief or recklessness required in relation to the offence and by making it unnecessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the offence
- adapt the production order for financial data to apply more effectively to accounts associated with digital assets

Proposed changes to the AML/ATF regime announced in the 2023 Fall Economic Statement but not yet introduced would

- allow FINTRAC to develop intelligence products and, where appropriate, share its findings with law enforcement partners to combat sanctions evasion
- combat fraud and money laundering risks in the real estate sector by extending requirements under the PCMLTFA to title insurers and imposing additional know-your-client obligations on real estate representatives with regard to unrepresented parties and third parties (this follows the announcement earlier this year that mortgage administrators, brokers and lenders will be scoped into the regime as of October 11, 2024)

Combatting risks to the financial sector

Financial sector integrity and security risk, including threats from foreign interference, is a continuing area of focus.

On October 13, 2023, the Office of the Superintendent of Financial Institutions (OSFI) released a [draft Integrity and Security guideline](#). The guideline sets out OSFI's expectations for FRFIs in relation to integrity (as it relates to character, culture, governance and compliance) and security (as it relates to operations, premises, people, technology assets, data and information and third-party arrangements). The consultation period closed on November 24, 2023, and the final guideline will be issued in January 2024.

On October 5, 2023, the Department of Finance launched a [consultation](#) on the FRFI statutes (the *Bank Act*, *Insurance Companies Act* and *Trust and Loan Companies Act*), which contain sunset dates set at June 30, 2025. The government is particularly interested in views on how new trends in the financial sector will impact elements such as national security and the safety and integrity of the financial system. The consultation period closed on December 4, 2023.

These developments, including the upcoming national security review of payment services providers (discussed above), follow the introduction through Bill C-47, *The Budget Implementation Act* (Bill C-47), of several new measures to combat foreign interference and national security, as discussed in our [Update on the implementation of Budget 2023](#).

Single complaints body for Canada's banking sector

In October of this year, the federal government designated the Ombudsman for Banking Services and Investments (OBSI) as the sole external complaints body for the Canadian banking sector. Currently, both OBSI and the ADR Chambers Banking Ombuds Office are responsible for handling banking complaints. A bank can choose which body it would like to use to adjudicate the bank's complaints. However, beginning in November 2024, OBSI will have exclusive jurisdiction to resolve all complaints at Canadian banks. [Commentary](#) from the Department of Finance suggests the rationale behind this decision is to ensure Canadians have an impartial advocate that will work on their behalf.

The decision to move to a single external complaints body was announced in Budget 2023 and introduced through amendments to the *Bank Act* in Bill C-47, which received royal assent on June 22, 2023. The decision follows a multi-year review of complaints handling by banks, a subject which the Financial Consumer Agency of Canada considered in its [2020 Industry Review of the Operations of External Complaints Bodies](#). In its review, the Financial Consumer Agency of Canada considered the complexity and inefficiencies introduced by the multiple-external complaints bodies model and expressed concerns about the impact of competition on consumers.

New Canadian Mortgage Charter

The federal government has announced the new Canadian Mortgage Charter, which builds on existing expectations for how financial institutions are to assist mortgagors experiencing financial difficulty. Under the new charter, FRFIs are expected to reach out proactively to vulnerable mortgagors and use all available tools to support borrowers.

This announcement follows the Financial Consumer Agency of Canada's release of a [Guideline on Existing Consumer Mortgage Loans in Exceptional Circumstances](#) earlier this year. As discussed in [our Update](#), this Guideline directs financial institutions to identify and assist mortgagors at risk of delinquency due to exceptional circumstances by providing them with fair and equitable access to relief measures.

Reducing NSF fees and other ‘junk fees’

The federal government is taking steps to reduce ‘junk fees’ across multiple industries, spanning from air transport to telecommunications and banking. It has committed to providing an update by Budget 2024 on the measures it is taking to reduce the non-sufficient funds (NSF) fees charged by banks.

This follows an [announcement](#) from the Department of Finance earlier this fall of its intention to work with the Financial Consumer Agency of Canada to set new caps for NSF fees, which the government states can currently be as high as \$50. The federal government may work with banks and the Canadian Bankers Association to negotiate the implementation of reforms impacting NSF fee caps and low- and no-cost accounts (which are discussed below).

Low- and no-cost bank accounts

The federal government has charged the Financial Consumer Agency of Canada with engaging banks to enhance the features of low- and no-cost bank accounts (for example, by providing additional debit transactions, online bill payments and e-transfers without extra fees) and to expand the eligibility for such accounts. A further update on these efforts is expected in the coming months.

Protecting Canadians from crypto asset risks

The federal government is working to advance measures announced in Budget 2023 to require federally regulated pension plans to disclose their crypto asset exposures. It is also engaging the provinces to encourage similar protections for members of provincially regulated pension plans.

Budget 2023 contemplates similar disclosure requirements for FRFIs. OSFI launched a [consultation](#) on the public disclosure of FRFIs’ crypto asset exposures on November 20, 2023, and is seeking feedback from FRFIs on this matter until January 31, 2024.

Conclusion

The 2023 Fall Economic Statement highlights the federal government’s progress on many of the proposals presented in Budget 2023 and sheds light on the new obligations that will soon be imposed on payment service providers and financial institutions, among others. Open banking developments and the expansion of Payments Canada membership to additional entities represent the trend towards modernization and technological advancement in the Canadian financial services industry. We will continue to monitor these developments into the new year.