

The Bankers' Bulletin

*Regulatory & Enforcement Insights
on Recent Bank Industry Developments*

This Month's Big Number:

408-0

The bipartisan House vote supporting a bill to extend the Corporate Transparency Act's beneficial ownership reporting deadline by one year to January 1, 2026. The current deadline has been paused, unpaused, and extended by a series of federal court cases. FinCEN may beat Congress to it, publicly pledging to reshape the BOI rule.

In This Issue

- CFPB Leadership Enforces Pause to Re-Evaluate Supervision, Enforcement & Litigation**
 - Behind Acting Director Russell Vought, the CFPB implemented a stay of all examinations and enforcement activities, giving temporary reprieve to \$10B+ banks facing investigations or compliance deadlines.
 - Stays in ongoing litigation, especially regarding the series of rules proposed near the end of Director Chopra's tenure, suggest that the Bureau will drop its defense of the most burdensome regulations challenged by industry.
- Administration Selects Acting Comptroller and Nominee for Permanent Role**
 - The selections for both the Acting and full-time Comptroller should lead to immediate, industry-friendly guidance, as well as changes to streamline application review processes and adjust approval standards.
 - Acting Comptroller Hood's background with the NCUA will lead to more comprehensive consideration of credit unions in market share calculations in connection with the competitor factors assessment in merger transactions, consideration of which banking applicants have been advocating for a long time.
- FDIC Board Composition is Recalibrated as the Agency Downsizes**
 - Despite the departure of Republican appointee McKernan from the FDIC Board, the replacements of Acting Comptroller Hsu with Hood and CFPB Director Chopra with Vought have resulted in a GOP-held Board capable of pushing Acting Chair Hill's agenda forward.
 - Even with changes in staff resulting from terminations and voluntary buyouts, Hill's pledge to prioritize a top-down review of the agency has borne early fruit, exemplified by his decision to release documents related to supervision of banks seeking to engage in crypto activities.
- Debanking Scrutiny Takes Center Stage as Fair Access Legislation is Introduced**
 - Legislation introduced at the federal and state level take varied approaches to address the perception that banks have been denying services to disfavored industries. Continued momentum could create a patchwork of requirements for banks and test the contours of preemption.
 - In Congress, both parties leaned into the issue, though GOP members focused on regulator conduct, alleging a concerted effort to debank companies in industries like crypto, which federal officials denied.
- Executive Orders Assert Control Over Independent Agencies, Require Reg Reviews**
 - A new E.O. requires White House review of draft regulations proposed by independent agencies, including the FRB, FDIC, and SEC. Administration allies seeking to right-size the regulatory framework applicable to banks will have a better opportunity to influence new rules.
 - A separate E.O. kicked off a 60-day sprint for all agencies to identify rules the Administration seeks to retract. The E.O. also directed termination of enforcement actions that do not meet certain standards, which should result in dismissal of "regulation by enforcement" examples.



CFPB Leadership Enforces Pause to Re-Evaluate Supervision, Enforcement & Litigation

Summary *Over an 11-day span, the CFPB had a quick succession of Acting Directors—first Treasury Secretary Scott Bessent, then Vought—and former FDIC Board member Jonathan McKernan was nominated for the position.*

- Key Insights**
- 1) Bessent and Vought effectively shut down the agency in their first two weeks on the job, suspending all supervision and examination activities, and staying investigations, enforcement actions, and litigation.
 - 2) The Bureau’s attorneys were permitted to request and defend stays for a slew of ongoing federal court cases. As the new leadership reviews the agency’s positions, it is likely many cases—including defenses of Biden-era rules—will be dropped. The Bureau has already dropped litigation that was initiated during Chopra’s final weeks.
 - 3) Although investigations or supervisory actions that may have been developing will be dropped, banks subject to CFPB oversight should continue to focus on compliance until clear direction emerges under McKernan.

Takeaway **While individual banks that have been wrestling with CFPB findings or investigations will benefit from the leadership change, the largest industry-wide impacts will be felt as the Bureau inevitably withdraws from its defense of regulations issued under Chopra, such as the credit card late fee rule.**



Administration Selects Acting Comptroller and Nominee for Permanent Role

Summary *On Feb. 7, the Trump Administration named former NCUA board chair Rodney Hood to be Acting Comptroller, and on Feb. 11, selected former OCC chief counsel Jonathan Gould for the permanent role.*

- Key Insights**
- 1) In a mid-February speech, Hood made clear he would not be inactive during his limited tenure, suggesting he would get a head start on a number of priorities before Gould is confirmed.
 - 2) In an early signal that merger standards will be relaxed, Hood said he aims to sign a memorandum of understanding with DoJ Antitrust to include credit union data in market share calculations.
 - 3) Hood also pledged to provide more regulatory clarity and guidance around bank-fintech partnerships—an area prone to regulation by enforcement—and to revisit SAR reporting thresholds.

Takeaway **Gould’s nomination is unlikely to face strong pushback and should result in industry-friendly tilts in guidance, review standards, and approvals. Until confirmed, Hood will begin re-evaluating specific asset thresholds to relieve community banks of additional burdens and address one-size-fits-all approaches.**



FDIC Board Composition is Recalibrated as the Agency Downsizes

Summary *On Feb. 10, Republican Jonathan McKernan vacated his seat on the FDIC’s Board. Despite this departure, there is now a full GOP FDIC Board: Acting Chair Hill, Rodney Hood and Russell Vought.*

- Key Insights**
- 1) While the Acting Comptroller and CFPB Director will be replaced once the full-time nominees are Senate confirmed, the 3-0 composition could persist indefinitely in the current political climate.
 - 2) Although notable that the Administration has not nominated a permanent chair alongside other financial agency selections, expect Acting Chair Hill to continue to push ahead with his top-down re-examination of the FDIC’s practices.
 - 3) On Feb. 5, Hill released nearly 200 documents related to the FDIC’s supervision of banks seeking to engage in crypto activities, an early sign he intends to follow through on his pledge to increase transparency.

Takeaway **Although changes in the workforce will force internal reorganization, expect Hill to push the staff to deliver on his priorities once the dust has settled. Hill has already made small moves through guidance, litigation, and interagency collaboration that both benefit the agency’s regulated institutions and evidence the new agency’s direction.**

They Said It:

“Many [credit unions] have been abusing their nonprofit and tax-exempt status to expand beyond their mandate of serving low- and moderate-income communities with common bonds. . . . As the Trump administration searches for cost savings to address out-of-control budget deficits, it is time to reexamine credit union tax subsidies that cost taxpayers billions each year.”

Sheila Bair, Former Chair of the Federal Deposit Insurance Corporation
in an op-ed published in the Washington Post (Feb. 3, 2025)



Debanking Scrutiny Takes Center Stage as Fair Access Legislation is Introduced

Summary

While Congress and regulators debated the extent of a coordinated debanking effort, proposed federal and state bills take various approaches to require banks to extend services or face restrictions or litigation.

Key Insights

- 1) On Feb. 5, the Senate Banking Committee held a hearing on debanking. Both parties criticized the denial of services to crypto and cannabis companies, among others, and brought debanking concerns a mainstream audience.
- 2) GOP Senators introduced the Fair Access to Banking Act, which would require \$10B+ banks to provide a written justification to customers for denial of services, and allows treble damages in private suits for failure to comply.
- 3) In GA, a state senator introduced a bill applicable to \$1B+ banks barring discrimination based on evaluation of a customer's "social credit score" and setting up enforcement under the state Fair Business Practices Act.

Takeaway

Even as officials like FRB Vice Chair Barr denied debanking was occurring, bipartisan momentum on this issue will likely spur final legislation, and could filter down to alter examiner behavior. A developing patchwork of federal and state standards could cause compliance headaches and test preemption limits.



Executive Orders Assert Control Over Independent Agencies, Require Reg Reviews

Summary

On Feb. 18 and 19, the White House issued a pair of Executive Orders (E.O.) to more directly bring federal agencies under Presidential control and align them with the Administration's policy objectives.

Key Insights

- 1) The Feb. 18 E.O. asserts White House control over the direction of independent agencies by installing OMB as a gatekeeper to set management objectives, adjust apportionments, and approve strategic plans.
- 2) Most consequentially, all draft rules must be submitted for White House review, and legal interpretations of regulations, guidance, litigation positions must also get White House or AG approval in writing.
- 3) The Feb. 19 E.O. requires a 60-day review to identify regulations that do not align with Administration priorities, and orders the de-prioritization of future, or termination of active, enforcement proceedings that do not comply with Administration policy.

Takeaway

The regulatory review should lead to the identification of areas that should be repealed, modernized, or tailored to better fit the current banking industry, and regulation by enforcement may finally be put to bed. The actions identified for dismissal at the end of the 60-day review period will provide a good window into the Administration's priorities.

Other Developments You May Have Missed . . .

FDIC Acting Chair Supports Revised CIP Requirements. On Feb. 7, Hill sent a letter to FinCEN's Director supporting a revision to the BSA's customer identification program (CIP) requirements to allow banks to collect only the last 4 digits of a TIN or SSN at onboarding and get the rest from a third party.

Bottom Line: An early step to foster innovation, modernize the BSA, provide regulatory relief, and satisfy a longstanding industry request, exempting banks from compliance with the strict language of the CIP rule would align banks' account opening processes with fintechs and facilitate those partnerships.

Bill Introduced to Repeal Overdraft Fee Rule. On Feb. 13, Sen. Scott (R-S.C.) and Rep. Hill (R-Ark.) introduced a Congressional Review Act (CRA) resolution to overturn the CFPB's overdraft fee rule, finalized last December. The ABA and 52 state banking associations supported the bill in a Feb. 14 letter.

Bottom Line: The rule will be nullified in short order either through ongoing litigation, a reversal by the Bureau, or passage of the CRA resolution. But the method utilized is key: if the resolution passes, the CFPB will be barred from issuing a rule that is "substantially the same" unless allowed by a new law.

Federal Court Extends Injunction of Fee Law to Additional Banks. On Feb. 6, a federal district court in Illinois expanded the scope of its preliminary injunction of a state interchange fee law to out-of-state state banks, finding the result required by federal law intended to ensure competition with national banks.

Bottom Line: The decision is a significant preemption victory likely to influence courts considering challenges to similar laws emerging in other states this year. Judicial limitations on state efforts to rein in national banks and out-of-state banks will hinder states' ability to fill perceived federal regulatory gaps.

DoJ Abandons Defense of ALJ Removal Restrictions. On Feb. 11, the DoJ filed notice in a federal Third Circuit case involving the FAA, stating that the DoJ has decided the multiple layers of removal restrictions for ALJs are unconstitutional and the government will no longer defend them in litigation.

Bottom Line: The DoJ's has now adopted a position in multiple actions, including bank agency actions, that ALJs should be removable by the President. This reversal in position will likely invite defendants to reopen decided bank agency cases, provide a stronger constitutional argument for defendants challenging agency actions, and give increased leverage to investigation targets to settle favorably.

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Luse Gorman, PC is a Washington DC-based law firm that specializes in representing regional and community banks across the country. Our attorneys have served with the major federal banking and securities agencies and regularly engage with these agencies on a broad range of complex and novel compliance, regulatory, enforcement, and application issues. Our firm also specializes in mergers, acquisitions, and capital raising transactions, as well as general corporate and securities issues, tax law, executive compensation and employee benefits.

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If you have any questions about the topics covered in this volume of the Bankers' Bulletin, please reach out to any of the authors above or to your primary Luse Gorman contact.

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