

The Bankers' Bulletin

*Regulatory & Enforcement Insights
on Recent Bank Industry Developments*

This Month's Big Number:

363

The number of pages in the CFPB's Compendium of recent agency guidance. The Compendium, a collection of envelope-pushing agency interpretations of numerous federal financial services laws released Jan. 15, complements the Bureau's efforts prior to its leadership turnover to support state regulators who it expects to fill an anticipated void at the federal level in consumer protection.

In This Issue

1. **New Acting FDIC Chair Hill Outlines Areas of Immediate Agency Focus**

- Reversal of Gruenberg-era initiatives will be swift, with a planned "wholesale review" of the agency's recent initiatives, starting from individual exam manuals and including proposed rules that were never finalized.
- Internal procedural changes should quickly clear the logjam of pending M&A applications. Emphasis on improvement of the supervisory relationship should also reduce the waiting time for other routine regulatory applications, and reduce findings generated by a check-box approach used by examiners.

2. **OCC Finalizes Former Wells Fargo Officers' Enforcement Actions**

- The case is a rare example of an action that successfully wound through the years-long administrative process without the parties reaching a settlement. With an appeal already filed, a number of key constitutional issues could end up in front of federal courts for decision.
- The outsized civil money penalties, which infrequently top \$1MM in individual enforcement actions, reflect the agency's unique determination to hold the Bank's former executives accountable.

3. **Legislators Introduce Bill to Ease De Novo Bank Formation**

- Introduction of the new legislation—which is not tied to other policy initiatives important to the GOP leadership in both houses—suggests that improving the de novo bank process is a key goal.
- In addition to spurring eased capital rules for new institutions, the bill would force the banking agencies to act on proposed changes to new bank business plans within 30 days, and default to approval if no action is taken during this window.

4. **NYDFS Proposes Regulations Prohibiting Specified Overdraft Fees**

- State-chartered banks would be subject to the proposed prohibitions and limitations on overdraft and other fees NYDFS looks to fill the enforcement gap expected to be left by the CFPB around fee practices.
- The proposed framework outlaws assessment of specific fees, drawing clear boundaries, in contrast to the agency's 2022 guidance labeling specified fees as unfair or deceptive. With the former approach, NYDFS would have had to prove the fees met those standards.

5. **CFPB Withdraws Fee-Related Proposal, Faces Bank Trades in Overdraft Suit**

- Although nominally a pull back, the CFPB said it is considering whether a broader rulemaking to capture other NSF fees not specifically covered by its proposal should be deemed abusive.
- Meanwhile, in federal court in Mississippi, trade groups representing both the largest banks and community banks nationwide added to the chorus of industry pushback against the CFPB's recently-enacted overdraft rule, reflecting industry consolidation against the fee cap.



New Acting FDIC Chair Hill Outlines Areas of Immediate Agency Focus

Summary *On Jan. 20, President Trump appointed Travis Hill the FDIC's Acting Chairman, and he quickly issued a list of matters he "expect[s]" to be a focus of the agency in coming weeks.*

- Key Insights**
- 1) The FDIC's recently-issued merger policy will be replaced. Hill's consistent focus on timeliness of application reviews should meaningfully reduce the processing time for M&A transactions.
 - 2) Recent proposed rules from the FDIC, including the 2023 corporate governance rule and 2024 brokered deposit re-write, will be withdrawn. Replacement of the proposals appears unlikely.
 - 3) Hill wants to change the nature of the supervisory relationship, shifting examiner focus to what he describes as "core financial risks," with less focus on process and checklists.

Takeaway **The priorities are consistent with the themes of a speech Hill made on Jan. 9. Expect the agency to show more openness to innovation, reduce fintech partner bank enforcement actions, and improve internal procedures as part of a planned "wholesale review" of the agency's approach.**



OCC Finalizes Former Wells Fargo Officers' Enforcement Actions

Summary *On Jan. 14, the Comptroller issued final decisions for enforcement actions against Wells Fargo's former senior risk officer, chief auditor, and audit director related to the Bank's sales practices.*

- Key Insights**
- 1) The case demonstrates how long the administrative process takes to play out: OCC staff filed its case in Jan. 2020, after an extensive agency investigation. At least one defendant has appealed to federal court, signaling the fight could continue for years more.
 - 2) The Comptroller upheld the significant civil money penalty amounts—\$10, \$7, and \$1.5MM—after enforcement staff sought far stiffer penalties during litigation than in their original complaint.
 - 3) The extensive decisions are a good resource for the OCC's official interpretation and position on many banking, administrative, and constitutional law issues relevant to its enforcement processes.

Takeaway **While the penalties are enormous, and reflect the OCC's determined efforts to punish the Wells executives that touched the sales practice issue, the case and the pursuit of widespread individual liability within a bank is still a relative outlier for the agency in its recent enforcement matters.**



Legislators Introduce Bill to Ease De Novo Bank Formation

Summary *On Jan. 16, Rep. Andy Barr (R-KY) and Sen. Cindy Hyde-Smith (R-MS) introduced the Promoting New Bank Formation Act designed to ease restrictions on de novo bank formation.*

- Key Insights**
- 1) The bill would require the banking agencies to issue rules providing for a 3-year phase-in period to meet federal capital requirements, beginning on the date the bank's deposit insurance becomes effective.
 - 2) The agencies would also be required to approve or deny requests to deviate from the initial business plan within a 30-day period. Denials would need to include the rationale and suggested changes to allow for approval. Failures to act would be deemed approvals.
 - 3) In part designed to spur new bank formation in rural areas, the bill would allow rural community banks to utilize an 8% community bank leverage ratio during the initial three-year period.

Takeaway **Momentum to ease restrictions on new bank formation—many of which are inherent in the agencies' application review procedures—is building. Congress and Acting Chair Hill have honed in on reducing review times in various contexts, opting to convert unexplained delays into approvals.**

They Said It:

"I see a growing risk that under the veil of supervision, there has been an erosion of a risk-based approach, and effectively a 'push-down' of regulatory requirements designed and calibrated for larger firms to apply to smaller firms. I continue to believe that tailoring should be a central tenet of our regulatory and supervisory approach and framework."

Michelle Bowman, Member, Board of Governors of the Federal Reserve System
at the California Bankers Association 2025 Bank Presidents Seminar (Jan. 9).



NYDFS Proposes Regulations Prohibiting Specified Overdraft Fees

Summary On Jan. 22, the New York Department of Financial Services (NYDFS) proposed regulations to prohibit NY-chartered banks from charging certain overdraft fees and limiting the amount of other fee types.

Key Insights

- 1) The proposal was announced as part of NY Governor Hochul’s State of the State address, reflecting a coordinated effort between NYDFS and the Governor to prioritize consumer protection.
- 2) The list of prohibited overdraft-related fees is lengthy, and includes fees charged when: the overdraft is less than \$20; the fee exceeds the overdrawn amount; or the account shows sufficient available funds.
- 3) The proposal also caps overdraft and NSF fees charged at 3 per consumer per day, and at 1 fee per transaction. Daily fees for existing overdraft balances would also be prohibited.

Takeaway The proposed regulations are a concrete example of Superintendent Harris making good on her pledge to succeed federal regulators in the consumer protection space during the Trump Administration, elevating NYDFS’s prior guidance in this area from supervisory expectations into a formal regulatory framework.



CFPB Withdraws Fee-Related Proposal, Faces Bank Trades in OD Suit

Summary On Jan. 14, the CFPB withdrew its proposed rule that would have prohibited certain NSF fees for instantaneously-declined transactions. Earlier, on Jan. 9, several bank industry trade groups filed amici briefs in a suit challenging the Bureau’s overdraft fee rule.

Key Insights

- 1) A rare move under Director Chopra, the accompanying explanation suggests that commenters prompted the Bureau to reassess through a "broader" rulemaking whether other NSF fees should be prohibited.
- 2) Despite this potential foreshadowing of a new rule, the formal withdrawal is more likely a preemptive move to ensure such a rule would one day be viable under a future Administration.
- 3) Meanwhile, the CFPB’s overdraft rule came under additional fire from bank trade groups and the Chamber of Commerce, whose amici briefs focused on the negative impact to consumers from the rule. The briefs contend banks will likely end overdraft programs, leaving only more expensive options.

Takeaway These moves reflect the realities of a new Administration likely hostile to unfinished, over-expansive efforts of the prior Director, and ready to side with trade groups dismantling rules through litigation.

Other Developments You May Have Missed . . .

Federal Judge Dismisses Puerto Rican Bank’s Bid for Master Account. On Jan. 8, a judge in the Southern District of New York granted the New York Fed’s motion to dismiss a suit brought by a Puerto Rico International Banking Entity to prevent closure of its master account.

Bottom Line: The decision is another in a line concluding the Reserve Banks do not have to grant master accounts. The matter highlights the difficulty for institutions without a federal regulator to prove, under strict review, they have sufficient risk management and controls to address AML and other risks.

CFPB Proposes Rule to Prohibit Contractual Provisions in Consumer Products. On Jan. 13, the CFPB proposed a rule to prohibit consumer product contracts from including provisions that waive substantive rights and protections granted by law, allow only the provider to amend a material term, or restrict a consumer’s ability to make negative comments about the bank.

Bottom Line: The proposal may fit within the ‘populist’ element of the new Administration, and its passage will depend on who is selected to replace Director Chopra. If the rule is finalized, banks would need to scrub numerous product and service contracts to eliminate potentially problematic provisions.

Federal Bank Agencies Delay Oral Argument in CRA Appeal. On Jan. 24, the Fifth Circuit Court of Appeals granted the combined request from the FDIC, OCC, and FRB to delay for up to three months their oral argument in the appeal of a preliminary injunction blocking the revised CRA regulations.

Bottom Line: Styled as giving the new Administration time to review the planned revisions to the CRA framework, this initial delay could foreshadow the eventual withdrawal of the suit, letting the injunction stand, and/or agency revisions to the rule, which came under heavy industry criticism for being expansionary.

7th Circuit Grants Emergency Stay of FDIC Enforcement Action. On Jan. 10, the Seventh Circuit Court of Appeals granted an emergency motion from a former community bank director to stay the effect of an FDIC order that would bar him from the banking industry.

Bottom Line: Federal court intervention to stay the effects of a bank agency enforcement action against an individual are rare, and suggest the court may be willing to consider a number of constitutional arguments raised by the defendant. Defendants are increasingly going to federal court to seek injunctions of agency proceedings as those proceedings play out.

About Us

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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