

The Bankers' Bulletin

*Regulatory & Enforcement Insights
on Recent Bank Industry Developments*

This Month's Big Number:

<1.5%

The percentage of the initial civil money penalty amount assessed against a former Wells Fargo audit director that the OCC eventually settled for.

The reduction from \$7MM to \$100K in the Apr. 24 settlement came after the defendant appealed the agency's action to the D.C. Circuit.

In This Issue

- Federal Reserve Completes Federal Agency Withdrawal of Crypto Guidance**
 - The FRB joins the FDIC and OCC in removing supervisory notification and non-objection processes for crypto activities, and withdraws from related interagency statements on crypto risk.
 - With the agencies returning to their pre-Biden Administration stances, it is an open question whether bank crypto activity guardrails will be driven by Congress or by joint agency action.
- Bank Agencies Move to Stay CRA Litigation and Reinstate Prior Framework**
 - As the agencies sought to stay their appeal of an injunction blocking the 2023 CRA rule, they publicly announced a plan to reinstate the prior regime that predated the now-abandoned revamp.
 - With the 2023 rule off the table, the agencies may take the opportunity to better align their supervisory approaches to CRA, especially in the evaluation of proposed mergers.
- CFPB Moves to Rescind Prior Guidance and Shift Enforcement Priorities**
 - New agency leadership issued a memo directing staff to scour all manner of guidance documents and communications—notably relied upon by Director Chopra to drive industry behavior—for rescission.
 - While the Bureau continues its court battle to reduce headcount, remaining personnel have been directed to elevate servicemember and veteran protection and prioritize a prescribed set of topical areas.
- FDIC's Hill Previews Agency Plans to Catalyze De Novo Bank Formation**
 - Consistent with the priorities he outlined when he assumed the position, Acting Chairman Hill presented three avenues for increasing new bank formation: loosening standards for new community banks in underserved areas, bringing fintechs within the fold, and chartering ILCs.
 - The FDIC continues to evaluate alternative regulatory approaches to increase new bank applications.
- Presidential Directives Push Regulatory Repeal, Abandoning of Disparate Impact Theories**
 - The President continues to outline channels for the bank regulators to retract old regulations, issuing a memo to prompt repeal of rules that do not comply with Supreme Court precedent.
 - An EO directing agencies with ECOA and UDAAP oversight authority to evaluate matters relying on disparate impact will likely curtail active cases premised on statistical differences.



Federal Reserve Completes Federal Agency Withdrawal of Crypto Guidance

Summary On Apr. 24, the FRB rescinded two supervisory letters issued during the Biden Administration establishing advance notification or non-objection processes for state member banks regarding crypto activities.

- Key Insights**
- 1) Concurrently, the FRB joined with the OCC and FDIC in withdrawing two earlier jointly-issued interagency statements on the risks posed by engaging in crypto activities.
 - 2) The FRB’s retraction of mandatory supervisory involvement completes the trifecta of the agencies’ abandonment of their roles as crypto gatekeepers assumed during the last Administration.
 - 3) The FRB’s announcement confirmed that crypto activities will still be monitored through the normal supervisory process, and previewed that the agencies may issue new joint guidance soon.

Takeaway Although slower to move than its sister agencies, this may only reflect the FRB’s desire for a Vice Chair for Supervision nominee. The new approach should carry across FRB supervision, including for BHCs.



Bank Agencies Move to Stay CRA Litigation and Reinstate Prior Framework

Summary On Mar. 28, the FRB, OCC, and FDIC moved to stay their appeal of a preliminary injunction blocking the 2023 joint final rule implementing the CRA, previewing that the rule will soon be rescinded.

- Key Insights**
- 1) The agencies plan to propose a rule to formally reinstate the CRA framework in place prior to the 2023 final rule, which would moot the now-paused litigation with trade groups.
 - 2) The agencies also publicly announced that they would work together to promote a “consistent regulatory approach” to CRA implementation, signaling that future efforts will be coordinated.
 - 3) The limited statements did not address if the agencies would try to better align their interpretive approaches to CRA compliance on the ground, including in the context of merger reviews.

Takeaway Despite sunk costs of preparing for the now-abandoned rule, a return to the prior regime will bring more certainty. The agencies do not yet appear interested in tweaking the old framework via a forthcoming rule.



CFPB Moves to Rescind Prior Guidance and Shift Enforcement Priorities

Summary On Apr. 11, the CFPB issued a memo directing staff to review and withdraw previous policy statements, interpretive rules, blog posts, and other guidance if the documents seek to regulate industry behavior.

- Key Insights**
- 1) The memo targets documents that function as regulation but were issued through informal channels, and establishes requirements for future Bureau guidance such as avoiding language mandating action.
 - 2) A second memo dated Apr. 16 announces new supervision and enforcement priorities for the agency, reduces exams by 50%, and directs the Bureau's staff to focus on actual fraud against consumers.
 - 3) Servicemember/veteran protection has been elevated to the top of the priority list, with mortgages, data furnishing, debt collection, overcharges, and data protection the other designated exam priorities.

Takeaway The Bureau also announced a retreat from penalties, duplicative oversight, and novel legal theories. Together, the memos should bring an end to regulation by enforcement and industry pressure campaigns.

They Said It:

“I’m a strong supporter of regulatory tailoring. . . . Moving these [statutory asset] thresholds up dramatically is a goal that I have.”

Rep. French Hill (R.-Ark), House Financial Services Committee Chairman,
commenting on plans to increase asset thresholds for community banks' regulatory requirements
at the American Bankers Association’s Washington Summit (Apr. 8, 2025)



FDIC's Hill Previews Agency Plans to Catalyze De Novo Bank Formation

Summary

On Apr. 8, FDIC Acting Chairman Hill gave a speech at the American Bankers Association's Washington Summit outlining several proposals to establish a "meaningful pipeline" of de novo banks.

Key Insights

- 1) Hill floated that some applicants could be subjected to adjusted upfront and ongoing capital expectations, especially for noncomplex banks in parts of the country without local banks.
- 2) He also expressed an openness to innovative business models, suggesting that some fintechs built around deposit account growth may be better supervised as banks than as a third-party partners.
- 3) Without issuing a blanket commitment to increasing ILC applications, Hill previewed a forthcoming request for information that could guide a new process for such proposals and signal an openness to such proposals.

Takeaway

Recognizing the dearth of new banks and its negative effects is a critical first step to spur new bank applications. Implementing relaxed review standards at the licensing level, especially as to start-up capital, will be needed to actually drive application volume.



Presidential Directives Push Regulatory Repeal, Abandoning of Disparate Impact

Summary

On Apr. 9, the White House issued a memo to agency heads directing them to repeal regulations that do not comply with recent Supreme Court precedent and that exceed agencies' statutory authority. On Apr. 23, the President issued an Executive Order (EO) eliminating the use of disparate impact liability theories.

Key Insights

- 1) The memo permits repeal of regulations without formal notice and comment procedures, which will facilitate agency efforts to pull back regulations even with reduced staff due to the reduced burden.
- 2) The EO directs the CFPB and agencies responsible for ECOA or UDAAP enforcement, including the federal bank regulators, to evaluate pending proceedings and take "appropriate action," signaling those may be ended.
- 3) The EO permits the AG to conclude that state laws on disparate impact liability should be preempted.

Takeaway

The actions should grant the bank regulators additional cover to unwind regulations that relied on agency deference, now overturned by the Court, and terminate statistics-based fair lending and UDAAP cases.

Other Developments You May Have Missed . . .

FinCEN Issues Advisory on Financing of ISIS. On Apr. 1, FinCEN issued an Advisory listing red flags the agency associates with the financing of ISIS. The red flags primarily focus on discrepancies between the locations of deposits and withdrawals and on payment activities in areas where ISIS operates.

Bottom Line: FinCEN's recent advisories provide revealing insights into the early national security priorities for the Administration across the government. Banks should expect FinCEN and even prudential regulator scrutiny of efforts to incorporate these red flags into their AML/CFT compliance programs.

Treasury Secretary Previews Bigger Role in Bank Oversight. On Apr. 8, Treasury Secretary Bessent announced the Department would play a "greater role" both in revising the regulatory framework and changing supervisory culture, previewing plans for regulatory tailoring and returning exam focus to core financial risks.

Bottom Line: An assertive role in proposing new regulations, revising examination procedures, and overhauling supervisory policies would be a notable shift in the traditional role of the Department in the bank regulation space. Bessent's stated objectives align with new agency heads and Congress, and could be a needed catalyst.

Federal Court Vacates Credit Card Late Fee Rule. On Apr. 14, the CFPB moved jointly with its trade group litigation opponents to vacate its own credit card late fee rule from March 2024, acknowledging in a filing that the rule had violated the federal CARD Act. The district court granted the parties' request to vacate the rule.

Bottom Line: The Bureau's reversal is a significant industry victory, as even banks not covered by the rule had been preparing for increased exam scrutiny of their fee practices, and vindicates the trade groups' strategy of challenging agency overreach in court. The prospect of resurrecting the rule in a future administration is unlikely.

OCC Combines Supervisory Divisions Into Single Unit. On Apr. 16, the OCC announced that it is combining its Midsize and Community Bank Supervision and its Large Bank Supervision functions into a single Bank Supervision and Examination line of business in an effort to share expertise and resources.

Bottom Line: The merger of the longstanding separate divisions will likely shake up supervisory reporting lines, forcing banks to establish a rapport with new senior personnel. The blending of the divisions' supervisory approaches and intertwined staffs could cause tension with the Comptroller's push for regulatory tailoring.

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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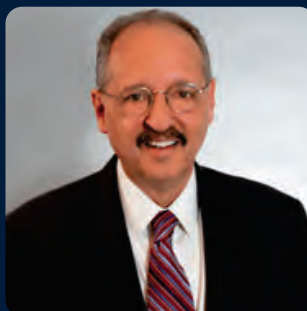
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