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Monthly Bank Regulatory Report (March 2025)

Client Alert | March 31, 2025

We are pleased to provide you with the March edition of Gibson Dunn's monthly U.S. bank regulatory update. Please feel free to reach out to us to discuss any of the below topics further.

Related People

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KEY TAKEAWAYS

- Federal Reserve Board Governor Michelle Bowman was nominated as the next Vice Chair for Supervision.
- Debanking and reputational risk remain a focus:
    - The Office of the Comptroller of the Currency (OCC) announced that it "will no longer examine its regulated institutions for reputation risk" and is "removing references to reputation risk from its Comptroller's Handbook booklets and guidance issuances."
    - Federal Deposit Insurance Corporation (FDIC) Acting Chairman Travis Hill stated in a letter to House Financial Services Committee member Rep. Dan Meuser (R-PA) that the FDIC plans to "eradicate" reputational risk (or similar terms) from its regulations, guidance, examination manuals and other policy documents.
    - The OCC's and FDIC's announcements follow Chair Powell's commitment to the Senate Banking Committee during his February testimony to "revise the Federal Reserve's supervision manuals to remove reputational risk."
    - The Senate Banking Committee voted to advance out of committee by a 13-11 vote the Financial Integrity and Regulation Management (FIRM) Act, which would eliminate reputational risk as a bank supervisory component.
- The federal banking agencies and Congress began taking steps to revisit their approach to digital asset- and blockchain-related activities:
    - The OCC announced that a range of crypto-related activities are permissible for national banks and federal savings associations and rescinded the requirement that OCC-supervised institutions receive supervisory nonobjection and demonstrate that they have adequate controls in place before they can engage in such crypto-related activities.
    - The FDIC rescinded Financial Institution Letter (FIL) 16-2022 and clarified that FDIC-supervised institutions may engage in permissible crypto-related activities without prior FDIC approval.
    - The Senate Banking Committee voted to advance out of committee by an 18-6 vote the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act of 2025.
- The FDIC Board commenced acting on priorities outlined by Acting Chairman Travis Hill in his January 2025 statement.
    - The FDIC Board approved a proposal to rescind the FDIC's 2024 Statement of Policy on Bank Merger Transactions and reinstate the prior

Statement of Policy on Bank Merger Transactions on an interim basis while the FDIC reevaluates its bank merger review process.

- The FDIC Board also withdrew three proposed rulemakings relating to brokered deposits, corporate governance, and the Change in Bank Control Act and withdrew authority for staff to publish in the *Federal Register* a proposed rule related to incentive-based compensation arrangements.

- The federal banking agencies announced their intent to both rescind the 2023 Community Reinvestment Act (CRA) final rule and reinstate the CRA framework that existed prior to the October 2023 final rule.

DEEPER DIVES

Federal Reserve Board Governor Michelle Bowman Nominated as Next Vice Chair for Supervision. On March 17, 2025, the White House announced the nomination of Federal Reserve Board Governor Michelle Bowman as the next Vice Chair for Supervision following Governor Barr's resignation from the same position effective February 28, 2025. Bowman has served on the Board of Governors since November 26, 2018, and her current term ends January 31, 2034. She was the first person to fill the community bank seat on the Board of Governors required by the Terrorism Risk Insurance Program Reauthorization Act of 2015, which amended Section 241 of the Federal Reserve Act. Bowman would serve in her role as Vice Chair for Supervision for a term of four years. Bowman's nomination generally was met with support from industry trade groups and Republican leadership.

- *Insights*. Since joining the Board of Governors, Governor Bowman has been consistent in her messaging for the need for appropriately tailored regulation; more transparency in bank supervision and bank application processes; increased focus on safety and soundness, as opposed to operational risk; and a comprehensive review and modernization of banking laws (*see, e.g.*, ABA's Conference for Community Bankers (Feb. 17, 2025); "Bank Regulation in 2025 and Beyond" (Feb. 5, 2025); California Bankers Association (Jan. 9, 2025)). Most recently, on March 21, 2025, Governor Bowman issued a statement in connection with the approval of a branch application by Commonwealth Business Bank. In her statement, Governor Bowman noted the need for change to the Federal Reserve's review of applications, noting that one single adverse comment resulted in a branch application normally acted upon under delegated authority being sent to the Board of Governors for review and approval, resulting in a six-month review and approval process. In the past, Governor Bowman has been an active dissenter on a board known for its desire for consensus—in the past three years and 2025, she has dissented to at least nine proposed or final rulemakings or supervisory guidance releases, including the Basel III endgame proposal, the proposal to amend the Bank Secrecy Act Compliance Program Rule, proposed revisions to interchange fees, climate-related guidance, resolution planning, CRA, the long-term debt proposal and third-party risk management guidance, often along the same lines she consistently echoes in her public statements (*e.g.*, the need for tailoring and right-sizing, reducing complexity, rationalization and the need to avoid duplicative regulations).

Regulators and Lawmakers Take Steps to Remove Reputational Risk as a Supervisory Component. Leadership of the OCC and FDIC have committed to removing reputational risk considerations from their supervisory and regulatory toolboxes. On March 20, 2025, the OCC announced that it "will no longer examine its regulated institutions for reputation risk" and is "removing references to reputation risk from its Comptroller's Handbook booklets and guidance issuances," and on March 24, 2025, FDIC Acting Chairman Travis Hill indicated that the FDIC plans to "eradicate" reputational risk from its regulations, guidance, examination manuals and other policy documents. In addition, the *Financial Integrity and Regulation Management Act (FIRM)*, co-sponsored by every Republican on the Senate Banking Committee, advanced out of committee. The FIRM Act is aimed to prohibit debanking for reputational risk concerns. The bill would require the bank regulatory agencies to report to Congress on their elimination of reputational risk as a component of supervision, as well as prohibit federal agencies from making new rules or guidance that includes reputational risk as a supervisory factor.

- *Insights*. Although the focus on reputational risk stems from the administration's efforts to curtail "debanking" of certain industries, institutions should anticipate that entry into the traditional banking sector may still be subject to hurdles because banks are not relieved of the burden on ensuring they are operating in a safe and sound manner and are not facilitating illegal or unlicensed activities. From a bank perspective, this will continue to require robust due diligence inquiries in order to address core risk assessments, like credit risk, market risk and legal and compliance risk, as banks increase their relationships in and exposure to certain markets – *e.g.*, the digital assets space.

OCC and FDIC Clarify Bank Authority to Engage in Certain Crypto-Related Activities. On March 7, 2025, the OCC announced that "a range of cryptocurrency activities are permissible in the federal banking system." OCC Interpretive Letter No. 1183 formally reaffirms interpretive letters issued during the prior Trump administration authorizing banks to provide crypto-asset custody services, hold dollar deposits serving as reserves backing stablecoins, and use digital assets to perform traditional bank-permissible activities, like payment activities. Interpretive Letter No. 1183 also rescinds OCC Interpretive Letter No. 1179, which required banks to receive supervisory nonobjection prior to engaging in crypto-related activities. Interpretive Letter No. 1183 reminds banks that any crypto-asset activities, like any other activities, must be conducted in a safe, sound, and fair manner and in compliance with applicable law. The OCC also withdrew its participation in joint statements on crypto-asset risks to banking organizations and liquidity risks resulting from crypto-asset market vulnerabilities. On March 28, 2025, the FDIC followed suit, providing new guidance to FDIC-supervised banks engaging or seeking to engage in crypto-related activities. The FDIC rescinded FIL-16-2022, providing that FDIC-supervised institutions may engage in permissible crypto-related activities without receiving prior FDIC approval.

- *Insights*. As we have previously highlighted, the federal banking agencies continue to signal increased receptivity to crypto-related activities and digital assets. Coupled with the GENIUS Act's progression out of the Senate Banking Committee, the OCC's and FDIC's actions very clearly illustrate an appetite to further develop U.S. stablecoin and other digital assets offerings. Institutions considering new activity in the digital assets space should ensure both appropriate individualized risk assessments and requisite adaptation of control programs, but the current environment presents an opportunity for leaders in this space to work collaboratively with the OCC, FDIC and other agencies to align on practical and prudent expectations.

FDIC Board Begins Implementing Acting Chairman Hill's Regulatory Priorities. Upon assuming his role, Acting Chairman Hill announced more than a dozen matters or topics that he expected the FDIC to address in short order. Since that time, the FDIC has made substantial headway in furtherance of a number of Acting Chairman Hill's priorities (see above).

- *Insights*. Given Acting Chairman Hill's speedy pursuit of a number of regulatory and supervisory priorities, we expect the FDIC to similarly swiftly act on Hill's remaining priorities. In addition to further action consistent with broad identified goals, like "[c]onduct[ing] a wholesale review of regulations, guidance, and manuals" and encouraging more *de novo* activity, the FDIC appears poised to take on some of the more specific priorities. This includes (1) modernizing implementation of the Bank Secrecy Act, consistent with Acting Chairman Hill's letter to FinCEN last month regarding CIP requirements under the PATRIOT Act; (2) reviewing the supervisory appeals process; (3) improving the bidding process related to financial institution resolutions; and (4) working with other agencies to finalize tailored capital and liquidity rules.

OTHER NOTABLE ITEMS

Federal Banking Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule. On March 28, 2025, the federal banking agencies announced, in light of pending litigation, their intent to issue a proposal to both rescind the CRA final rule issued in October 2023 and reinstate the CRA framework that existed prior to the October 2023 final rule. **Jonathan Gould Appears Before the Senate Banking Committee**. On March 27, 2025, Jonathan Gould, the nominee to lead the OCC, appeared before the Senate Banking Committee. In his remarks, he advocated for banks to be allowed "to engage in prudent risk-taking" and echoed recent sentiments that reputational risk is often used as a pretext for other, more quantifiable, risks such as BSA/AML risk. **NYDFS Hires Former CFPB Official For Top Financial Enforcement Role**. On March 13, 2025, the New York State Department of Financial Services (NYDFS) announced that Gabriel O'Malley would join the NYDFS to lead the Consumer Protection and Financial Enforcement Division, the NYDFS division that handles investigations, enforcement and consumer compliance examinations. Mr. O'Malley most recently served as the CFPB's deputy enforcement director for policy and strategy. **Senate Votes to Overturn CFPB Overdraft Rule Capping Fees at Large Banks at $5.** On March 27, 2025, the Senate passed a measure to overturn the CFPB's December 2024 final overdraft rule under the Congressional Review Act on largely party lines; the House has not yet advanced the companion bill. The rule was slated to go into effect in October 2025 and apply to banks and credit unions with at least $10 billion in assets. **District Court Case Regarding the FDIC's Use of Administrative Law Judges Advances to Tenth Circuit.** Following the FDIC's filing of a notice stating that it will not continue to defend the use of administrative law judges, the United States District Court for the District of Kansas nonetheless dismissed the action brought by CBW Bank, finding that the District Court lacked subject matter jurisdiction over the bank's claims by virtue of 12 U.S.C. § 1818(i)(1). CBW Bank filed a notice of appeal on March 28, 2025. **Speech by Governor Barr on Small Business Lending**. On March 24, 2025, Federal Reserve Board Governor Barr gave a speech titled "Helping Small Businesses Reach Their Potential." In his speech, Governor Barr highlighted the critical role small businesses play in the U.S. economy and called for enhancements to "financial transparency," citing the Truth in Lending Act and Regulation Z as examples of laws that do not extend to small businesses and highlighting state laws in California and New York as examples of statues that mandate clearer disclosures to small business owners. **Acting Comptroller Hood Discusses Financial Inclusion**. On March 24, 2025, Acting Comptroller Hood gave remarks on financial inclusion at the National Association of Hispanic Real Estate Professionals' Homeownership and Housing Policy Conference. In his remarks, Acting Comptroller Hood discussed the OCC's Project REACh, which aims to advance financial inclusion by focusing on (1) affordable homeownership, (2) small businesses, (3) technology and (4) geographic-specific efforts aimed at combatting challenges unique to specific neighborhoods. Acting Comptroller Hood gave a similar speech titled "Innovation Fosters Financial Inclusion" at the National Community Reinvestment Coalition's Just Economy Conference 2025. **FDIC Updates PPE List**. On March 31, 2025, the FDIC updated the list of companies that have submitted notices for a Primary Purpose Exception (PPE) under the 25% or Enabling Transactions test. **OCC to Host Virtual Innovation Office Hours**. The OCC announced that it would host virtual office hours with its Office of Financial Technology on May 6-8, 2025, to provide banks and fintechs the opportunity to "engage with OCC staff on matters related to bank-fintech partnerships, cryptocurrency activities, or other matters related to responsible innovation in the federal banking system." **OCC Launches Digitalization Resources for Community Banks**. The OCC launched a new Digitalization page on its website dedicated to resources to help banks meet their digitalization objectives. **FRBNY's *Liberty Street Economics* Blog Examines Payment Systems Interoperability**. On March 27, 2025, the Federal Reserve Bank of New York published a *Liberty Street Economics* blog post titled, "An

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Interoperability Framework for Payment Systems." The first post in a two-part series examines concerns whether novel payment systems based on blockchain networks can be made interoperable. **OCC Withdraws Principles for Climate-Related Financial Risk Management for Large Financial Institutions**. On March 31, 2025, the OCC announced it withdrew its participation in the interagency principles for climate-related financial risk management for large financial institutions.

The following Gibson Dunn lawyers contributed to this issue: Jason Cabral, Ro Spaziani, and Rachel Jackson.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work or any of the member of the Financial Institutions practice group:

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