Monthly Bank Regulatory Report

January 31, 2025

We are pleased to provide you with the January 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.

KEY TAKEAWAYS

- The financial services regulatory agencies' leadership, agendas and regulatory priorities under the new administration have started to take shape.
    - The Senate confirmed Scott Bessent as Secretary of the Treasury in a 68-29 vote, with 16 Democrats supporting the nomination.
    - Travis Hill was named Acting Chairman of the Federal Deposit Insurance Corporation (FDIC). Acting Chairman Hill announced the FDIC's upcoming regulatory agenda, including a "wholesale review" of regulations and guidance, withdrawal of "problematic" proposals, including the brokered deposits and corporate governance proposals, improving the bank merger approval process and encouraging *de novo* activity.
    - Kyle Hauptman was designated as Chairman of the National Credit Union Administration (NCUA) board and announced his priorities as Chairman of the NCUA.
    - Mark Uyeda was named Acting Chairman of the Securities and Exchange Commission (SEC). Acting Chairman Uyeda quickly announced the formation of a new crypto task force to be led by Commissioner Hester Peirce and the SEC rescinded SAB 121.

    - Caroline Pham was named Acting Chairman of the Commodity Futures Trading Commission.

- The Federal Reserve Board announced that Vice Chair for Supervision Michael Barr will step down from his position effective February 28, 2025 (or earlier if a successor is confirmed); Barr will continue to serve as a member of the Federal Reserve Board for his unexpired term ending January 31, 2032 (Barr's four-year term as Vice Chair for Supervision was to end July 13, 2026). In its press release announcing his resignation as Vice Chair for Supervision, the Federal Reserve Board indicated it "does not intend to take up any major rulemakings until a vice chair for supervision successor is confirmed."

- Chairman Tim Scott (R-S.C.) remained consistent in his criticisms of the Consumer Financial Protection Bureau (CFPB) and announced the Senate Banking Committee's priorities which include working "to build a regulatory framework that establishes a tailored pathway for the trading and custody of digital assets" and promoting national security "through advancing sanctions and export control policies."

- The House Financial Services Committee published its authorization agenda previewing areas in which the Committee intends to conduct oversight, which includes areas such as supervision and regulation, regulatory efficiency, capital and liquidity, debanking, access to financial services, digital assets, artificial intelligence and "examining proposals affecting the operations" of Fannie and Freddie and their ongoing conservatorships.

- The New York State Department of Financial Services (NYDFS) proposed new regulations limiting overdraft and non-sufficient funds fees charged by state-chartered banks.

- The CFPB (i) issued a report offering the states several recommendations for strengthening state-level consumer protection laws and (ii) issued a proposed interpretive rule governing emerging payment mechanisms under the Electronic Fund Transfer Act and Regulation E.

DEEPER DIVES

Financial Services Leadership and Regulatory Agenda in the New Administration Have Started to Take Shape. While there has been a flurry of executive orders and other announcements from the White House during President Trump's first days in office, many executive orders have not implicated the financial services sector directly, with the exceptions of the executive orders on artificial intelligence, digital assets, blockchain technology and related technologies and the freeze or postponement of rulemakings pending review. (*For up-to-date information on executive orders and other significant announcements made by the new administration, please visit our Executive Order Tracker. For additional insights, please visit our resource center, Presidential Transition: Legal Perspectives and Industry Trends*.)

Nonetheless, messaging from leadership of the Senate Banking and House Financial Services Committees and the financial services regulatory agencies generally has aligned and clear areas of regulatory and supervisory priorities in the new administration have emerged. Further, with the confirmation of Secretary Bessent, attention in the coming weeks should turn to confirmation of nominees (*i.e.*, SEC), identifying personnel for key leadership roles (*i.e.*, Vice Chair for Supervision) and filling those leadership positions still held by agency heads appointed by President Biden (*i.e.*, OCC and CFPB).

- *Insights*. In general, areas of regulatory and supervisory priorities across the regulatory agencies and oversight committees include: regulatory efficiency; supervision; tailoring regulatory proposals; capital and liquidity requirements; bank M&A; encouraging *de novo* activity; issues surrounding debanking and access to financial services; fintech partnerships, innovation and faster payments; developing a digital assets framework; tokenization; artificial intelligence; regulatory and supervisory transparency; right-sizing obligations under the Bank Secrecy Act; sanctions and export controls; Treasury market resilience; and proposals related to Fannie and Freddie.

  Specifically worth noting, Acting Chairman Hill's regulatory agenda for the FDIC included a clear intent to withdraw "problematic proposals from the last three years," including the FDIC's brokered deposits and corporate governance proposals and replace the FDIC's 2024 policy statement on bank mergers. Acting Chairman Hill's agenda also includes "enhancements" to the FDIC's resolution activities and processes, which both Hill and Director Jonathan McKernan have been critical of. Meanwhile, Governor Michelle Bowman, who has emerged as a likely candidate for the Vice Chair for Supervision role, remained consistent discussing pragmatism in regulatory and supervisory reform efforts, a "renewed commitment to tailoring" and the need for increased transparency in the supervisory process in her January 9, 2025 remarks before the California Bankers Association.

Vice Chair for Supervision Barr to Resign as Vice Chair for Supervision; Will Remain Federal Reserve Board Governor. On January 6, 2025, Vice Chair for Supervision Michael Barr submitted his letter of resignation to President Biden resigning his position as Vice Chair for Supervision effective as of February 28, 2025 (or earlier if his successor is confirmed). Barr's four-year term as Vice Chair for Supervision would have expired July 13, 2026. According to his letter of resignation, Barr intends to continue to serve as a member of the Federal Reserve Board. Barr's term as a Governor of the Federal Reserve Board ends January 31, 2032.

- *Insights*. Since the election, media reports have indicated President Trump's team has weighed removing or demoting Barr from his role as Vice Chair for Supervision—the authority for which is unclear and could have resulted in litigation. Barr's statement in the Federal Reserve Board's press release announcing his resignation as Vice Chair for Supervision alludes to that, citing the "risk of a dispute over the position could be a distraction from our mission." Because the Federal Reserve Board indicated in its announcement it "does not intend to take up any major rulemakings until a vice chair for supervision successor is confirmed," the administration will now have greater influence over the Federal Reserve Board's supervisory and regulatory agenda by either promoting one of the remaining Republican members of the Federal Reserve Board (Governors Bowman or Waller (both President Trump appointees)) to the role of Vice Chair for Supervision or waiting for a vacancy to arise. Barring removals, retirements or resignations, the administration's first meaningful chance at a new nominee to the

Federal Reserve Board comes upon the expiration of Governor Kugler's term January 31, 2026; Chair Powell's term as Chair (appointed as Chair by President Trump) ends May 15, 2026 (though his term as Governor ends January 31, 2028 were he to stay on).

NYDFS Proposes Overdraft Regulations. On January 22, 2025, the NYDFS proposed regulations limiting overdraft, non-sufficient funds (NSF) and return deposit item fees charged by state-chartered banking institutions. The proposed rule would prohibit institutions from, among other things: (i) charging overdraft fees on overdrafts of less than $20; (ii) charging overdraft fees that exceed the overdrawn amount or NSF fees that exceed the amount of the NSF transaction; (iii) charging more than three overdraft or NSF fees per consumer account per day; (iv) charging an overdraft fee for an electronic transaction when the consumer's account indicates sufficient funds at the time the transaction was initiated; (v) processing electronic debit transactions in a manner intended to maximize the number of overdraft and NSF fees; or (vi) setting an amount of NSF fees that is greater than the amount of overdraft fees.

- *Insights*. As we highlighted in our last *Monthly Bank Regulatory Report*, we expect certain states will be more aggressive in their regulatory, supervisory and enforcement efforts in the areas of consumer protection and consumer compliance, particularly in the case of a weakened CFPB. The NYDFS' proposal is timely in that regard. It also closely follows on the heels of the CFPB's December 2024 final rule on overdraft fees applicable to banks and credit unions with more than $10 billion in assets. Under the CFPB's final rule, covered institutions would have to choose one of the following three options when charging for overdrafts: (i) capping overdraft fees at $5; (ii) capping fees at an amount that covers costs and losses; or (iii) disclosing the terms of overdraft loans like any other loans subject to Regulation Z. The CFPB's final rule is already the subject of litigation in the U.S. District Court for the Southern District of Mississippi and could be subject to rescission under the Congressional Review Act.

CFPB Issues Report/Recommendations to States to Strengthen Consumer Protection Framework. On January 14, 2025, the CFPB issued a report titled "Strengthening State-Level Consumer Protections." The report includes seven recommendations to states to strengthen state-level consumer protection: (i) incorporating "abusive" into their consumer protection laws to fill in gaps under existing prohibitions on unfair or deceptive practices; (ii) strengthening investigative tools and enforcement powers; (iii) eliminating requirements to prove monetary loss or "reliance" on a deceptive statement; (iv) extending consumer protections to businesses; (v) supplementing public enforcement resources with private enforcement; (vi) strengthening consumer data and privacy protections, including by "remov[ing] exemptions in state consumer data privacy laws for financial institutions or data covered by the Gramm-Leach-Bliley Act;" and (vii) creating "bright-line" prohibitions on junk fees.

- *Insights*. The report in title alone reinforces the notion that certain states will be more aggressive in their enforcement efforts in the areas of consumer protection and consumer compliance and seemingly encourages those states to do so. Note that Section 1042 of the Consumer Financial Protection Act of 2010 (CFPA) (Title X of the Dodd-Frank Act) generally authorizes states to enforce the CFPA's provisions. Finally, states that historically have taken an active role in the areas of consumer protection and consumer compliance enforcement will have enforcement tools at their disposal, but the recommendations are a reminder that stakeholders should be prepared to engage with those states that seek to implement changes to their enforcement framework in these areas.

CFPB Issues Proposed Interpretive Rule Governing Emerging Payment Mechanisms Under Reg E and EFTA. On January 10, 2025, the CFPB issued a proposed interpretive rule related to requirements that apply to emerging payment mechanisms, such as stablecoins and other digital assets that operate as a medium of exchange or as a means of paying for goods and services, under the Electronic Fund Transfer Act (EFTA) and Regulation E (Reg E). Among other interpretive issues raised by the proposal, the proposed interpretive rule broadly interprets key EFTA/Reg E terms such as "funds" to mean "stablecoins, as well as any other similarly-situated fungible assets that either operate as a medium of exchange or as a means of paying for goods or services" and, quoting a pre-EFTA 1960 decision, to "include not only currency but also other types of pecuniary resources which are readily converted into cash;" and "account" or "other consumer asset account" to broadly include "video game accounts used to purchase virtual items from multiple game developers or players; virtual currency wallets that can be used to buy goods and services or make person-to-person transfers; and credit card rewards points accounts that allow consumers to buy points that can be used to purchase goods from multiple merchants."

- *Insights*. Although the proposed interpretive rule is not likely to be finalized under the new administration, it demonstrates how the CFPB interprets the EFTA and Reg E. The proposal also highlights that "the application of Federal consumer financial protection laws, such as EFTA, to new methods of payments is often developed through case-by-case adjudications by courts," a reminder that both state regulators and attorneys general, as well as plaintiffs' lawyers, may leverage the CFPB's expanded interpretations in the proposed interpretive rule in their own arguments that traditional or digitally-native financial services providers are subject to and/or have violated the EFTA, Reg E or state law equivalents.

OTHER NOTABLE ITEMS

SEC Rescinds Staff Accounting Bulletin 121. On January 23, 2025, the SEC published Staff Accounting Bulletin (SAB) 122, which rescinds SAB 121. SAB 121 provided that an entity should recognize a liability and corresponding asset on its balance sheet to reflect its obligation to safeguard crypto-assets held for its users. Previously, the Senate and House voted to repeal SAB 121, though the votes did not garner the required two-thirds majority from both houses of Congress to survive a veto. And, on May 31, 2024, President Biden vetoed the resolution that would repeal SAB 121.

Agencies Announce Public Outreach Meeting on Review of Regulations. On January 31, 2025, the federal banking agencies announced they will hold a virtual public outreach meeting on March 6, 2025 as part of the agencies' required review of regulations. The outreach meeting is an opportunity for interested stakeholders to present their views on the six categories of regulations: applications and reporting; powers and activities; international operations; consumer protection; directors, officers and employees; and money laundering. Those interested in providing oral comments must register by February 14, 2025.

Federal Reserve, FDIC Announce Withdrawals from Global Regulatory Climate Change Group. On January 17, 2025, the Board of Governors of the Federal Reserve System (Federal Reserve) announced its withdrawal from the Network of Central Banks and Supervisors for Greening the Financial System (NGFS), citing the wider range of issues covered by the NGFS as "outside of the [Federal Reserve's] statutory mandate." On January 21, 2025, the FDIC also announced its withdrawal, citing the work of the NGFS as "not within the FDIC's authorities and mandate."

Vice Chairman Hill Outlines Policy and Supervisory Priorities. On January 10, 2025, then-FDIC Vice Chairman Travis Hill gave a speech titled "Charting a New Course: Preliminary Thoughts on FDIC Policy Issues" at the ABA Banking Law Committee Meeting. Hill's speech focused on five issues he anticipated "the agency to begin addressing in the coming weeks and months": supervision; innovation and technology; debanking; climate; and capital. On January 20, 2025, Hill was named Acting Chairman of the FDIC (see above).

Speech by Former Chairman Gruenberg on Bank Failures. On January 14, 2025, former Chairman of the FDIC, Martin Gruenberg, gave a speech titled "Three Financial Crises and Lessons for the Future." In his speech, Mr. Gruenberg spoke about the common causes of and lessons learned from three banking crises: the thrift and banking crisis of the late 1980s and early 1990s; the global financial crisis; and the spring 2023 regional bank failures. In his speech, Mr. Gruenberg offered that "while innovation can greatly enhance the operation of the financial system, experience suggests it be tempered by careful and prudent management and appropriate regulation and supervision."

FDIC Announces Retirement of Doreen Eberley, Director of Division of Risk Management Supervision. On January 17, 2025, the FDIC announced that Doreen Eberley, Director of Division of Risk Management Supervision, would retire following a 38-year career with the FDIC. Ms. Eberley will retire March 29, 2025.

Speech by Governor Cook on Financial Stability. On January 6, 2025, Federal Reserve Board Governor Cook gave a speech titled "An Assessment of the Economy and Financial Stability." In her speech, Governor Cook highlighted her four areas of focus in monitoring financial stability: private credit, stablecoins, cyber attacks and artificial intelligence.

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

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

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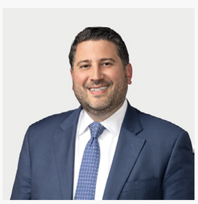

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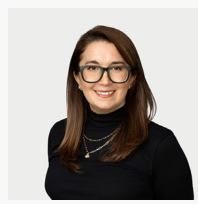

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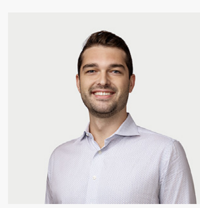

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