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The Bankers' Bulletin

*Regulatory & Enforcement Insights on **Recent Bank Industry Developments***

This Month's Big Number:

25 The number of deregulatory bills advanced by the House Financial Services Committee on May 21, including proposals to limit merger application review timelines and ban examination of reputational risk.

In This Issue

OCC and FDIC Rescind 2024 Policy Statements on Merger Transactions

Summary

On May 8, the OCC issued an interim final rule to rescind its 2024 Policy Statement on bank mergers, and on May 20, the FDIC Board rescinded its own Statement of Policy on bank merger transactions.

Key Insights

1) The new OCC leadership's criticism of the rescinded Statement's failure to provide clarity suggests any replacement policy will avoid ambiguous "general principles" and utilize objective standards.
2) The OCC rule's restoration of an avenue to receive a time-based, automatic approval from the agency signals it will focus its resources on transactions that present novel or complex issues.
3) The FDIC formally reinstated its Bank Merger Statement of Policy as it sought to eliminate the subjective review criteria for the CRA and related to competition that were introduced by the 2024 Statement.

Takeaway

The agencies' moves effectuated a quick return to the state of play prior to 2024. The FDIC's jurisdiction has been voluntarily narrowed as it abandons the heightened review standards it established just last year.

CFPB Seeks Summary Judgment Invalidating its Open Banking Rule

Summary

On May 30, the CFPB filed a motion for summary judgment in a case initially brought by several banking trade groups, stating its new leadership's agreement with the plaintiffs that its open banking rule under Dodd-Frank Section 1033 exceeds the CFPB's statutory authority and is arbitrary and capricious.

Key Insights

1) The motion methodically identifies numerous legal flaws with the rule's structure and content.
2) Beyond the new leadership's own ambitions to neuter the agency, the motion grounds the effort in a recently-issued Executive Order's directive to review regulations for "consistency with law" and administration policy.
3) Despite agreement by the parties regarding the rule's unlawfulness, the judge earlier in the month granted fintech trade group Financial Technology Association the right to intervene and defend it.

Takeaway

Even if intervenor Financial Technology Association manages to keep the rule afloat in the litigation, the CFPB's motion makes clear that it will not enforce compliance with this version by covered entities going forward.

OCC Confirms Authority to Provide and Outsource Crypto Custody Services

Summary

On May 7, the OCC issued Interpretive Letter No. 1184 (IL 1184), confirming that national banks and federal savings associations can provide and outsource crypto custody and execution services for customers.

Key Insights

1) IL 1184 reaffirms, in the narrow sense, the continued applicability of an earlier interpretive letter on this topic issued during the first Trump term, and in the broader sense, the OCC's openness to crypto activities.
2) A range of activities related to crypto custody are specifically permitted by IL 1184, including facilitating exchanges between crypto and fiat, executing trades, tax services, and reporting.
3) In addition, each of the described services can be conducted through a third-party—a sub-custodian—although IL 1184 reaffirms that existing third-party risk management standards apply.

Takeaway

Acting Comptroller Hood has used interpretive letters as the vehicle to reshape the agency's approach to crypto activities. Additional letters should provide needed clarity regarding the scope of permissible activities.

They Said It:

"The Federal Reserve is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States."

The U.S. Supreme Court, distinguishing the Federal Reserve Board's Governors' for-cause removal protections from protections applicable to other executive officers of the federal government,

in an unsigned majority opinion that stayed a lower federal court's block of the President's removal of National Labor Relations Board and Merit Systems Protection Board members (May 22, 2025)

President Signs CRA Resolution to CFPB's Repeal Overdraft Rule

Summary *On May 9, President Trump signed a Congressional Review Act (CRA) resolution to repeal the CFPB's 2024 rule that would have capped overdraft fees for $10 billion-plus banks beginning in October.*

Key Insights

1) The passage of the rule was a gamble by former CFPB director Chopra, who issued the rule in December 2024 despite the election results, and subjected the regulation to CRA jurisdiction.
2) Because the CRA was used, the CFPB cannot pass another rule in "substantially the same form" without Congress passing new legislation, likely sealing the fate of a federal overdraft fee cap.
3) The President's signature on the resolution will likely send a strong signal to the prudential regulators to cease continued scrutiny of overdraft fee practices during their examinations.

Takeaway **While the CFPB allowed Congress to take the lead, indicating the repeal was a political victory for federal lawmakers, recent actions in several states suggest that state AGs may continue to inspect these fees.**

Federal Court Grants Order Terminating Fair Lending Consent Order

Summary *On May 21, a federal district court in Tennessee granted an unopposed motion by the DoJ and CFPB to terminate seventeen months early a 2021 consent order with Trustmark National Bank in Mississippi.*

Key Insights

1) The early lifting of the order, premised on allegations of redlining in the mid-2010s, relieves the bank of a number of ongoing evaluation, monitoring, reporting, and record retention obligations.
2) The termination of an active order is just one of several avenues that the new CFPB leadership has pursued to alter not just prospective enforcement, but deals it had already reached in the past.
3) The action suggests both a shift away from the Biden-era fair lending focus (and abandonment of the Combatting Redlining Initiative) and from multi-agency joint actions that are centered on the same conduct.

Takeaway **Despite the bank having satisfied the order's substantive requirements—including disbursing a loan subsidy fund and paying a CMP—the regulators' voluntary early release is a rarity in federal enforcement.**

Other Developments You May Have Missed . . .

CSBS Requests OCC Rescind its Preemption Regulations. On May 8, the Conference of State Bank Supervisors (CSBS) requested that the OCC rescind its 2011 preemption regulations, pinning the request to recent Presidential Executive Orders (EOs) regarding unlawful regulations and regulatory barriers.

Bottom Line: The OCC's vigorous defense of national bank preemption has transcended changing leadership in the past, and Comptroller nominee Jonathan Gould endorsed the concept of preemption during his nomination process. CSBS's attempt to exploit the newly-issued EOs to alter the preemption landscape will prove challenging.

Nevada Bill to Create Payments Bank Charter Fails. Between May 30 and June 1, the Nevada Assembly voted down multiple times A.B. 500, a bill to create a unique "payments bank" charter that could conduct merchant acquiring activities and money transmission, but not lending, and could be privately insured.

Bottom Line: The bill was voted down by a bipartisan vote, while only Democrats supported the measure. The rejection of the innovative charter concept contrasts with recent legislative developments in other states to facilitate new bank formation, such as Georgia's merchant acquirer limited purpose bank charter.

Credit Card Rate Cap Proposed in Amendment to Pending Stablecoin Bill. On May 21, Senator Hawley (R-MO), along with Senator Sanders (I-VT), introduced an amendment to the stablecoin-focused GENIUS Act, currently pending in the Senate, to cap credit card APRs at 10%.

Bottom Line: While the GENIUS Act has progressed forward in fits and starts, it has bipartisan support in the Senate, so Hawley's amendment could become law even though it lacks a tie to the stablecoin framework at the center of the bill. Early, strong trade group opposition portends a legislative fight over the measure.

DoJ Revises Voluntary Self-Disclosure Policy. On May 13, the DoJ Criminal Division revised its Corporate Enforcement and Voluntary Self-Disclosure Policy (Policy), articulating new, clearer standards to incentivize the voluntary self-disclosure of corporate misconduct, and the legal benefits for doing so.

Bottom Line: While parallel actions will likely decrease, the potential for crossover bank agency-DoJ investigations still exists. The Policy's standards for prosecution declinations, or even "near miss" efforts at full self-disclosure and remediation, may drive banks to be more forthcoming in cases with criminal exposure.

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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If you would like to be added to our distribution list for the Bankers' Bulletin, please contact Dara Liebel at dliebel@luselaw.com.

Brendan Clegg

bclegg@luselaw.com

Brendan represents banks and their officers and directors in agency agency enforcement actions, investigations, and administrative proceedings, and assists clients in responding to supervisory findings and in navigating examinations by federal and state regulators. Prior to joining the firm, he was enforcement counsel at the OCC.

Marc Levy

mlevy@luselaw.com

Marc represents financial institutions in regulatory enforcement matters and has extensive experience in corporate transactions and engaging with federal agencies. Prior to joining the firm, Mr. Levy was a Senior Attorney at the SEC.

Keeler Fina

kfina@luselaw.com

Keeler represents financial institutions in a range of transactional and regulatory matters, such as acquisitions, charter conversions, and enforcement cases, and prepares regulatory filings and assesses compliance with state and federal laws and regulations.

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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.