

The Bankers' Bulletin

*Regulatory & Enforcement Insights
on Recent Bank Industry Developments*

This Month's Big Number:

53

The number of trade groups, including the American Bankers Association, that signed on to a June 30 letter to the federal banking agencies pushing them to begin indexing certain supervisory asset thresholds.

In This Issue

1. **FDIC Proposes Adjusting Thresholds for Annual Independent Audits**

- The proposal takes aim at Part 363's asset thresholds, many of which have been in place for 30 years, by increasing the levels triggering independent audits and independent-member audit committees from \$500MM to \$1B.
- The NPR and Acting Chair Hill's statement reflect a recognition that small institutions in rural areas are challenged to retain sufficiently experienced individuals to meet the existing rule's audit committee requirements.

2. **OCC Removes Disparate Impact References from Fair Lending Guidance**

- Issued following an April Executive Order barring agencies from using disparate impact liability in all contexts, the OCC guidance discloses an agency-wide instruction to stop examining for disparate impact.
- While the OCC was first out of the gate in acting on President Trump's Executive Order, the lack of coordinated timing should not be interpreted to mean that the FDIC and FRB won't eventually follow suit.

3. **Federal Agencies Issue Statement Summarizing Crypto Safekeeping Expectations**

- The joint statement from the OCC, FRB, and FDIC details the key crypto-asset safekeeping risk management considerations, covering board and management oversight, third-party risk, cybersecurity, AML, and sanctions.
- The agencies will expect institutions' audit functions to address the nuances of each crypto-asset product and service offered, and evaluate management and staff's expertise in identifying and controlling associated risks.

4. **Nontraditional Federal & State Charter Applications and Approvals Surge**

- Concurrent with the GENIUS Act's passage, the past two months saw a flurry of charter applications—mostly for OCC-supervised national trust banks—which could prompt approval guidelines from the new Comptroller.
- With united opposition, bank trade groups questioned whether these applicants would be primarily engaged in payments activities, presaging a fight over their eventual Federal Reserve master account access.

5. **Banking Reform Bills Clear Key House Committee with Bipartisan Support**

- While the House's Financial Services Committee has clashed over enforcement priorities and relaxing regulatory scrutiny, July's bills reflect bipartisan unity in relieving banks under \$6B from the existing exam procedure burdens.
- Along with other reform legislation introduced in July with bipartisan, bicameral support, these bills portend changes to the regulatory framework that could occur before the parties focus on next year's mid-term elections.



FDIC Proposes Adjusting Thresholds for Annual Independent Audits

Summary

On July 15, the FDIC approved a notice of proposed rulemaking to update certain regulatory thresholds including, most notably, Part 363's asset thresholds related to annual independent audits, audit committees, and reporting.

Key Insights

- 1) Under the proposal, the requirement for an annual report—comprised of audited financials, an independent public accountant's report, and a management report—would kick in at \$1B instead of \$500MM.
- 2) A management assessment of internal controls effectiveness would be required only for \$5B+ banks, up from \$1B, and the threshold to maintain an independent audit committee would increase from \$500MM to \$1B.
- 3) The Part 363 thresholds, as well as most of the other threshold increases in the proposal, would be subject to an indexing methodology to make automatic adjustments in the future that reflect inflation.

Takeaway

The proposal makes good on Acting FDIC Chair Travis Hill's early pledge to reevaluate the applicability of regulations to overburdened community banks. An indexing methodology will ensure the new thresholds do not immediately go stale but are instead more flexible going forward.



OCC Removes Disparate Impact References from Fair Lending Guidance

Summary

On July 14, the OCC issued Bulletin 2025-16, stating that it had removed references to supervising national banks and FSAs for disparate impact liability from the "Fair Lending" booklet of the Comptroller's Handbook.

Key Insights

- 1) The Bulletin follows an April 23 Executive Order directing federal agencies to eliminate the use of disparate impact liability, and previews that references in other OCC guidance will also be removed.
- 2) Beyond stripping references from operative agency guidance, the Bulletin noted the OCC had instructed its examiners to no longer examine for disparate impact or request related risk analyses or assessments.
- 3) With disparate impact off the table, OCC's fair lending reviews will generally be limited to searching for more recognizable, and patent, discriminatory treatment of protected classes.

Takeaway

With this change in supervisory direction, the threat of fair lending enforcement actions against national banks and FSAs, built only on statistical differences between customer populations, has been substantially diminished.



Federal Agencies Issue Statement Summarizing Crypto Safekeeping Expectations

Summary

On July 14, the OCC, FRB and FDIC issued a joint statement outlining risk management considerations and relevant risks for national and state-chartered banks and their holding companies providing crypto-asset safekeeping services.

Key Insights

- 1) Although they don't set new supervisory expectations, the agencies reinforce that institutions' directors, officers and employees should have requisite knowledge of the services to institute appropriate controls.
- 2) The statement defines the specific time when a firm can prevent another party from unilaterally transferring a crypto-asset as assumption of "control" of the asset, suggesting that line triggers potential liability exposure.
- 3) Before safekeeping any new type of asset, banks should perform a comprehensive analysis to identify vulnerabilities, and to ensure needed software and hardware are compatible with existing technology.

Takeaway

The agencies stress staying current with the rapid evolution of crypto-assets—highlighting potential shifts in technology, tax laws, and the market—and suggest an ability to demonstrate this understanding to them is key.

They Said It:

"The enactment of the GENIUS Act is a monumental and historic accomplishment that will transform the financial services industry. The OCC is prepared to work swiftly to implement this landmark legislation that expands the authority of the OCC to include nonbank payment stablecoin issuers. The OCC is poised to support the dynamic business of banking as it continues to evolve . . ."

Newly-confirmed Comptroller of the Currency Jonathan Gould,
in a statement following passage of the GENIUS Act (July 18, 2025)



Nontraditional Federal & State Charter Applications and Approvals Surge

Summary

In June and July, two stablecoin issuers (Circle, Ripple Labs), an investment and wealth advisor (Alvarez & Marsal), and a cross-border payment services company (Wise) applied to the OCC to form national trust banks.

Key Insights

- 1) While the proposed business models for the applicants differed, each entity is seeking the limited charter type that permits engagement in custodial and fiduciary services, but not deposit taking. A separate entity (Erebor) filed an application seeking a full national bank charter, with a specific focus on digital asset activities.
- 2) On July 17, a coalition of trade groups appealed to the OCC to pause review and accept public comment on them.
- 3) Charter activity at the state level continued too: the Georgia Department of Banking and Finance on June 30 approved payment processor Stripe's application for a Merchant Acquirer Limited Purpose Bank.

Takeaway

While state regulators continue to broaden the scope of charter types, the federal application surge means new Comptroller Gould will quickly need to stake out guidelines for national bank and trust bank approvals.



Banking Reform Bills Clear Key House Committee with Bipartisan Support

Summary

On July 22-23, the House Financial Services Committee passed a series of bills covering, among other things, de novo bank formation, a discount window review, and changes to the FDIC Board's composition.

Key Insights

- 1) In contrast to recent party line divisions, several notable bills, including those promoting new bank formation and updating the discount window framework, have overwhelming bipartisan support.
- 2) The TRUST Act, allowing qualifying banks under \$6B (up from \$3B) to be examined only once every 18 months, passed 48-0. The SMART Act, allowing well-managed, well-capitalized banks under \$6B to alternate full- and limited-scope exams and to combine safety and soundness and compliance exams, passed 53-1.
- 3) Later in July, a bipartisan group from both the House and Senate introduced the Unleashing AI Innovation in Financial Services Act to create "sandboxes" at the major financial institutions agencies for AI projects.

Takeaway

The bills demonstrate substantial bipartisan unity for granting supervisory relief to small banks. Despite marked differences in enforcement approaches, this Congress may meaningfully reduce community bank burden.

Other Developments You May Have Missed . . .

FRB Requests Comments on Revisions to Large Bank Rating System. On July 10, the FRB requested comment on a proposal to revise its Large Financial Institution rating system, permitting institutions to achieve the "well managed" rating if only a single component rating for capital, liquidity, and governance is rated deficient.

Bottom Line: The change, which addresses Vice Chair Bowman's often-voiced concern that nearly two-thirds of large holding companies are rated "not well managed" for a single deficient component despite sufficient capital and liquidity levels, would permit newly-designated well managed institutions to engage in a wider range of activities.

OCC Brief Sets Up Circuit Court Decision on *Jarkesy*. On July 21, the OCC filed a brief in the Federal Court of Appeals for the Eighth Circuit, seeking to defeat a former Wells Fargo officer's challenge to her industry ban and \$10MM civil money penalty order entered against her via the agency's administrative proceedings.

Bottom Line: The OCC's contention that the Supreme Court's recent opinion in *Jarkesy* does not entitle her to a jury trial relies on the "public rights" exception to the Seventh Amendment. While the Circuit Court's eventual decision will likely guide future bank agency enforcement cases involving *Jarkesy*, the holding may not extend to FDIC or FRB enforcement actions, as the OCC based its argument on the unique statutory framework creating national banks.

New Hampshire Governor Signs Bill to Facilitate De Novo Formation. On July 15, Gov. Ayotte (R) signed SB 85, which shortens the de novo period for banks chartered in New Hampshire from five to three years. Among other things, the law reduces the period covered by the business plan and pro forma financials that must be submitted.

Bottom Line: SB 85 is an example of state legislation harnessing the momentum for de novo bank formation engendered by the change in Administration, moderating a burdensome filing requirement so it aligns with the less restrictive federal standard and with neighboring states in an effort to spur new applicants in NH.

Presidential Working Group Releases Report on Digital Assets. On July 30, the President's Working Group on Digital Asset Markets released a 166-page report that includes a set of government-wide policy recommendations designed to facilitate the growth of digital assets and blockchain in the United States.

Bottom Line: Some of the report's recommendations to "modernize" bank regulation, including expanding the list of recognized permissible crypto activities, ensuring parity among charter types, and clarifying supervisory expectations, could intersect with ongoing efforts at the agencies to install a more defined framework for banks around crypto assets.

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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