Volume No. 21 | September 2025

LUSE GORMAN

The Bankers' Bulletin

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

This Month's Big Number:

32 **The number of bipartisan AGs from states and territories who signed a July 24 letter to Congress in support of the SAFER Banking Act,** which would provide a safe harbor to banks to provide financial services to cannabis businesses in states in which it is legalized.

In This Issue

1. President Trump Signs Executive Order on Debanking

- The E.O.'s requirement for the agencies to identify banks with policies that encouraged debanking signals that supervisory actions could be on the horizon, especially for those that fail to proactively change their procedures.
- Following quickly on the E.O.'s heels, the SBA required banks to conduct lookbacks to identify harmed customers, and threatened that a failure to follow through on the required actions risks losing "good standing" status.

2. FRB Ends Novel Activities Supervision Program

- By retiring the program, the FRB fulfills two key objectives: reducing overall supervisory burden and placing crypto activities (including digital ledger technologies) alongside more traditional banking activities.
- While the public focus may be on the continued effort to ease banks' engagement in crypto activities, the end of the program could also lead to a resurgence in fintech-bank partnerships and provision of services to fintechs.

3. FDIC Proposes Revisions to its Signage and Advertisement Rules

- The FDIC Board's planned revisions to the Biden-era rule relied on industry input, and generally reflect a policy choice to remove highly prescriptive requirements in favor of more general, flexible standards.
- The proposed rule is intended to provide banks clarity as to when they must use the FDIC digital sign and when non-deposit language should be used, to avoid customer confusion arising when both labels are featured.

4. Appellate Court Overturns Injunction of FDIC Enforcement Matter

- The Fifth Circuit, which has proven receptive to challenges to bank agency actions in recent years, concluded that district courts are barred by statute from issuing injunctions during ongoing enforcement proceedings.
- The appellate court cited to a string of recent district court decisions across the country concluding they lacked jurisdiction to intervene, and declined to render any decision on the defendant's constitutional claims.

5. Republican Senators Petition Federal Agencies to Revisit MRA Procedures

- Following successful lobbying of the agencies to remove reputation risk from their guidance, Republican Senators sought to push the agencies to remove another non-transparent, subjective supervisory tool: MRAs.
- Beyond identifying issues related to the imposition of MRAs—such as inconsistent application—the letter criticizes the agencies for a lack of accountability in ensuring institutions timely and fully address existing MRAs.

President Trump Signs Executive Order on Debanking

Summary

On Aug. 7, President Trump signed an Executive Order to combat perceived "politicized or unlawful debanking" practices by banks against persons or entities based on political affiliation, religious belief, or business activities.

Key Insights

1) The E.O. directs the OCC, FRB, FDIC, and CFPB to conduct reviews to identify institutions that had or have "formal or informal" policies or practices that encouraged debanking, and to take remedial action if warranted.
2) Both the OCC and the FDIC quickly confirmed they would initiate the reviews. Banks should expect upcoming exams to scrutinize policies and procedures, and management should be prepared to defend past decisions.
3) Following the E.O., on Aug. 26, the SBA ordered lenders in its loan guarantee programs to make "reasonable efforts" to reinstate prior clients and offer potential clients another chance to get previously-denied services.

Takeaway

The rapid response to the E.O. from multiple agencies indicates that "fair access" may be a fertile source for supervisory and enforcement actions in the near future. Proactive lookbacks, thorough policy reviews, and maintaining documentation for denials to new customers for services should reduce the risk of severe action.

FRB Ends Novel Activities Supervision Program

Summary

On Aug. 15, the FRB announced it will sunset its novel activities supervision program, rescind its 2023 letter creating the program, and return to monitoring novel activities through the agency's normal supervisory process.

Key Insights

1) The 2023 letter focused on a set of specifically-identified 'novel' activities, including crypto-assets and digital ledger technologies, as well as technology-driven partnerships with non-banks and providing services to fintechs.
2) While the program did not create a distinct supervisory portfolio for them, it resulted in increased supervision for banks engaging in covered activities, and created an additional unit to supplement banks' existing exam teams.
3) In sunsetting the program, the FRB explained that in the past two years, it has "strengthened" its understanding of these types of activities, their corresponding risks, and appropriate risk management practices, which prompted the program's integration back into the standard supervisory process.

Takeaway

The FRB fulfills twin goals of the Trump Administration and the agency's new leadership—reducing internal supervisory bureaucracy and mainstreaming treatment of crypto-related activities—in a move that will allow its supervised state member banks to reduce the volume of examination requests and mandates.

FDIC Proposes Revisions to its Signage and Advertisement Rules

Summary

On Aug. 19, the Board approved a proposal to amend its regulations governing the display of FDIC signage to simplify requirements for displaying it on digital deposit-taking channels and ATMs. Comments are due by Oct. 20.

Key Insights

1) The proposal is intended to reverse requirements adopted during the Biden Administration, which were supposed to be effective in May 2025 but were delayed earlier this year to allow the new FDIC leadership to make changes.
2) The new rule would remove highly prescriptive requirements related to the digital FDIC design for certain color codes, sizes, and fonts, defaulting instead to a standard mandating only that the sign is clear and conspicuous.
3) To avoid consumer confusion, the proposed rule also permits banks to only display the official digital sign on web pages where a deposit account is being opened, rather than any page where a customer "transacts" with deposits.

Takeaway

The proposed rule provides a clear example of the FDIC Board acting to strip regulation of highly technical requirements, which could be used to drive exam criticism or citations to regulatory violations, and replace it with a more flexible standard that banks can adapt to their unique circumstances and needs.

They Said It:

"The FDIC has not established program-level performance goals and metrics to measure overall [program] effectiveness and efficiency. . . . [W]e were unable to conclude on the program's effectiveness in evaluating the risk exposure and risk management performance of SSPs and determining the degree of supervisory attention needed to ensure weaknesses are addressed and risks are properly managed."

The FDIC Office of Inspector General,
in a report on the FDIC's "Significant Service Provider" (SSP) examination program
of banks' third party vendors (Aug. 12, 2025)

Appellate Court Overturns Injunction of FDIC Enforcement Matter

Summary

On Aug. 25, the Fifth Circuit Court of Appeals reversed a Texas federal district court's decision to enjoin the FDIC's enforcement proceedings against the former CEO of Herring Bank, finding the court lacked jurisdiction to intercede.

Key Insights

1) The appellate court concluded that the relevant federal statute explicitly strips district courts of jurisdiction to issue injunctive relief before a banking agency issues a final order in an administrative enforcement matter.
2) Citing a string of recent district court holdings from Missouri, Rhode Island, and D.C. reaching the same conclusion, the decision signals a clear trend towards forcing defendants to play out the entirety of the agencies' administrative process, which could take years and present financial challenges, especially for individuals.
3) Notably, the court's conclusion on the lack of jurisdiction precluded any consideration of the defendant's constitutional claims, including an argument that he was entitled to have a jury trial due to the penalties imposed.

Takeaway

The Texas district court's opinion had been somewhat of an outlier in allowing challenges to agency proceedings before those proceedings concluded with a decision by the principal. With this reversal adding to the trend, it is likely that banks or individuals will need to see actions through before going to federal court.

Republican Senators Petition Federal Agencies to Revisit MRA Procedures

Summary

On Aug. 6, a group of Republican Senators wrote a letter to the OCC, FDIC, and FRB, urging the agencies to consider making uniform changes to their MRA processes through formal rulemaking under the Administrative Procedures Act.

Key Insights

1) The Senators commended the agencies for their early actions since assuming their positions to revamp the existing supervisory framework, seeking to build on that momentum by putting into place a clear legal framework to replace the current ad hoc use of MRAs by examination teams.
2) The letter highlights the key issues to be addressed: a lack of transparency, inconsistent application, differing expectations around remediation, and the overuse of MRAs to address immaterial or non-financial risks.
3) The letter also pushed for changes to the CSI framework, noting that it both limits banks' ability to challenge MRAs, and restricts this critical information from reaching Congress and the greater public.

Takeaway

Consistent Congressional pressure, especially if the House follows the Senate's lead, could catalyze creation of a uniform interagency approach to issuing MRAs, which would go a long way in setting industry expectations and forming a backstop for use of these pre-enforcement action remedial tools.

Other Developments You May Have Missed . . .

Federal Court Strikes Down Reg. II. On Aug. 6, a federal district court in North Dakota vacated the FRB's Regulation II on debit card interchange fees, deeming it contrary to law, and concluding the FRB did not have authority to issue it. The court stayed its decision pending resolution of an expected FRB appeal to the circuit court.

Bottom Line: If upheld, the decision could upend the existing status quo for interchange fees and force the FRB back to the drawing board. The decision also notably rejects the FRB's attempt to rely on agency deference, consistent with the repudiation of *Chevron* in 2024, suggesting other longstanding federal regulations are vulnerable to challenge.

Trump Revokes Biden's E.O. on Competition. On Aug. 13, President Trump revoked Executive Order 14036, which was issued by President Biden in July 2021 and directed, among other things, the U.S. Attorney General to consult with the FRB, FDIC, and OCC in adopting a plan to revitalize bank merger oversight under both the Bank Merger Act and Bank Holding Company Act.

Bottom Line: While the actions earlier this year by the Trump Administration, Congress, the OCC and the FDIC to rescind Biden-era merger policy statements and guidelines will have more immediate effect on review and approval of proposed transactions, the Administration's revocation of E.O. 14036 provides another confirmatory signal to the industry regarding the agencies' receptiveness to bank consolidation.

House Committee Issues GLBA Feedback Request. On July 31, the House Financial Services Committee issued a request for public feedback featuring 13 questions regarding the scope of the Gramm-Leach-Bliley Act, covering issues such as preemption, the definition of non-public personal information, and effective state privacy frameworks.

Bottom Line: The request recognizes that changes in the financial services landscape since GLBA's passage in 1999 make reconsideration of some aspects of the law worthwhile. The questions suggest that changes to core statutory definitions are on the table, and Congress may consider liability for banks for a data breach at a connected third-party.

Federal Appellate Court Denies Challenge to SEC Settlement Policy. On Aug. 6, the Ninth Circuit Court of Appeals rejected a First Amendment-based request to amend a longstanding SEC policy, codified into regulation, requiring defendants to civil cases to agree as a settlement condition not to publicly deny the agency's allegations.

Bottom Line: Although the new SEC leadership has signaled a shift in enforcement priorities and posture—and one Commissioner, Hester Peirce, had previously criticized the agency's policy at issue in this litigation—the agency did not choose to abandon its defense of the practice during the suit. Future settlements with defendants may demonstrate that the agency instead opts to more subtly shift away from its use rather than invalidate the rule.

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.

Connect with us on LinkedIn

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.

LUSE GORMAN

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.