Our Take

PwC's Financial Services Update

Change remains a constant in FS risk & regulation

3.7.25 Topics: Congress I FDIC I On our radar

1. Congress seeks to overturn Biden-era rules and policies

➔ **What happened?** This week, both the House and Senate advanced Congressional Review Act (CRA) resolutions[1] and a bill to overturn Biden Administration rules and policies:

- **Overdraft limitations.** On March 5th, the House Financial Services Committee (HFSC) voted 30-19 to advance a resolution to overturn the CFPB's overdraft limitation rule, which was finalized on December 12th, 2024. The rule limits banks to charging either a $5 fee or a break-even fee for overdrafts and otherwise treating overdrafts as credit products subject to disclosure, interest rate and repayment rules. It is currently set to take effect on October 1st, 2025.
- **Digital payments.** Also on March 5th, the Senate voted 51-47 to pass a resolution to overturn the CFPB's rule to regulate large nonbank digital payment providers, which was finalized on November 21st, 2024. The rule subjects nonbank payment providers with more than 50 million annual transactions to CFPB examination and supervision.
- **Debanking.** On March 6th, Senate Banking Committee (SBC) Chairman Tim Scott (R-SC), along with all the Republican Senators on the Committee, introduced a bill to address debanking. The bill calls on the bank regulators to remove references to reputational risk from guidance, rules, and examination manuals. It would also prohibit the agencies from future actions related to reputational risk, including (1) establishing regulations, requirements or expectations; (2) conducting examinations, assessments, data collections or supervisory exercises; (3) issuing findings or criticisms; (4) making supervisory ratings decisions, and; (5) taking formal or informal enforcement actions.

➔ **What's next?** The overdraft resolution will go to the full House for a vote and then, if passed, to the Senate. The digital payments resolution will be considered by the HFSC and then, if advanced, by the full House. The debanking bill will be considered by the SBC for advancement to a vote by the full Senate.

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Another front in the war on the CFPB. While the majority of the CFPB's functions remain frozen, Congress is seeking to put a definitive end to rules finalized by former Director Rohit Chopra after the 2024 election. These rules could have also been nullified by legal action or new rulemaking, but the passage of CRA resolutions will be both the quickest and most permanent way to overturn them. Both industry groups affected, banks and nonbank payment providers, will appreciate greater certainty that the CFPB will not be able to reinstate the rules under a future administration. However, they may now need to contend with a patchwork of state level rules on these topics. Notably, a recent New York Department of Financial Services (NYDFS) proposal would prohibit a number of overdraft and non-sufficient fund fee practices, and while an eventual rule will likely face legal challenges that state limits on overdrafts are preempted by federal law, it remains clear that certain state regulators are committed to continuing the prior Administration's focus on fee practices. Aside from regulatory requirements, both groups will need to monitor and respond to consumer expectations regarding overdraft fees and the safety of digital payment applications. For example, many banks have already lowered or eliminated overdraft fees in recent years and may find it difficult to reverse these changes – or lose customers to competitors who do not.

[1] Under the CRA, Congress can pass resolutions of disapproval to overturn regulatory actions within 60 legislative days. They can pass both chambers with a simple majority and if they are signed by the President, the rule in question is immediately repealed and the agency is barred from issuing a "substantially similar" rule in the future unless Congress explicitly authorizes it to do so.

Debanking in the crosshairs. Similarly to the CRA resolutions, a law prohibiting the consideration of reputational risk by banking regulators would more permanently prevent such policies by future administrations. However, unlike the resolutions, it will require 60 votes if there is a filibuster by any Democratic Senator. Although SBC Ranking Member Elizabeth Warren (D-MA) acknowledged the existence of debanking in a recent hearing, she cited broader potential causes including discrimination and overdraft fee practices. Accordingly, if this bill is to gain Democratic support, it will likely need to expand beyond prohibitions on supervisory consideration of reputational risk. Even if this bill were to pass, it would not prohibit banks from having reputational risk management processes. Banks will still consider the risk of harm to their reputations leading to loss of customers, litigation or other adverse consequences in making decisions on whether to provide services to clients on a case-by-case basis. However, they will need to clearly document and justify decisions to decline or terminate services with policies that are applied consistently across customer segments.

2. FDIC withdraws four proposals and seeks to rescind merger policy

➔ **What happened?** On March 3rd, the FDIC withdrew four outstanding proposed rules and issued one proposal:

- **Brokered deposits.** On July 30th, 2024, the FDIC proposed changes to the definition of "deposit broker" by adding a qualification around receiving fees for or related to the placement of deposits. It would have also eliminated the exclusive deposit placement exception and revised the primary purpose exemption (PPE)[2] to limit broker-dealer sweep deposits from 25% to 10% of assets under administration.[3]
- **Corporate governance.** On October 5th, 2023, the FDIC issued a proposal to formalize governance expectations for banks with over $10 billion in assets including board independence, diversity (in both demographics and experience), oversight, ethics, and performance management standards. It would have also set expectations for a risk management program, including that firms review their risk appetite and risk profile on a quarterly basis.
- **Change in Bank Control Act (CBCA).** On July 30th, 2024, the FDIC proposed modifications to its implementation of the CBCA, which stipulates that no persons or entities may acquire control of a bank (either directly or indirectly) without providing at least 60 days prior written notice to the appropriate federal banking agency. The proposal would have removed the exemption to notify the FDIC in cases where the transaction is subject to notice to the Fed.
- **Incentive-based compensation.** On May 6th, 2024, the FDIC, OCC and FHFA re-proposed a rule on incentive-based compensation that was previously proposed in 2016 and 2011 based on a Dodd-Frank Act requirement for financial regulators to issue rules to prohibit incentive-based compensation that encourages inappropriate risks.
- **Mergers.** The FDIC issued a proposal to rescind its September 2024 Statement of Policy on Bank Merger Transactions, which made changes to the approval process, in particular a $100 billion threshold for additional scrutiny and a requirement to demonstrate how the transaction would "better meet" community needs.

➔ **What's next?** The proposal to rescind the merger policy will remain open for comment for 30 days.

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Clearing the slate. It was widely expected that new FDIC leadership would not pursue much of the unfinished business started under former Chairman Martin Gruenberg. Although it does not come as a surprise, these actions provide affected companies with certainty that the policies will not go into effect. Banks will not have to change their practices around brokered deposits, corporate governance, CBCA notifications, incentive compensation or merger applications. In the case of the brokered deposits framework, this will allow them to avoid complicated changes to their funding models, although they should continue to recognize that brokered deposits remain a potentially volatile source of funding. While small and midsize banks should not expect formal corporate governance standards to emerge under this Administration, they should maintain corporate governance practices to prevent and address issues that could cause significant harm to their customers and business. When it comes to merger approvals, the FDIC will likely further modify its policy to streamline the approval process by limiting considerations to what is statutorily required by the Bank Merger Act. With less supervisory invasiveness, banks will be less distracted and more able to focus on market-based considerations for mergers including strategy, operational efficiencies, and management succession.

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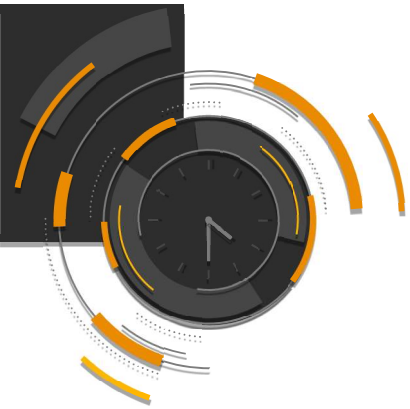
[2] The PPE currently applies "when an agent or nominee whose primary purpose in placing customer deposits at insured depository institutions (IDIs) is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance with respect to particular business lines."

[3] Currently, third parties that sweep customer funds to IDIs were eligible for the PPE if the funds are under 25% of their assets under administration.



On our radar

These notable developments hit our radar recently:

Trump established strategic Bitcoin reserve. On March 6th, President Trump signed an Executive Order to establish a strategic bitcoin reserve and a U.S. Digital Asset Stockpile. Per the order, Bitcoin will be treated as a reserve asset and the strategic reserve will be capitalized with Bitcoin owned by the Department of Treasury that was forfeited as part of criminal or civil asset forfeiture proceedings.

OCC clarifies bank authority to engage in certain crypto activities. On March 7th, the OCC published an interpretive letter to confirm the range of cryptocurrency activities that are permissible in the Federal banking system. The letter notes that crypto-asset custody, certain stablecoin activities, and participation in independent node verification networks such as distributed ledger are permissible for national banks and federal savings associations. Additionally, the letter rescinded the requirement for OCC-supervised institutions to receive supervisory nonobjection and demonstrate that they have adequate controls in place before they can engage in these cryptocurrency activities.

House Financial Services Committee to hold stablecoin hearing. On March 11th, the HFSC will hold a hearing titled "Navigating the Digital Payments Ecosystem: Examining a Federal Framework for Payment Stablecoins and Consequences of a U.S. Central Bank Digital Currency." Industry experts will serve as witnesses and testify on the potential of payment stablecoins as a cornerstone of a modern payment system and provide current use cases. The hearing will also examine the recent stablecoin issuance legislation the STABLE Act, proposed by Representative Steil.

Financial agency nominees pass Banking Committee. On March 6th, the SBC voted to advance the nominations of Stephen Miran to be Chairman of the Council of Economic Advisers, Jeffrey Kessler to be Under Secretary of Commerce for Industry and Security, William Pulte to be FHFA Director, and Jonathan McKernan to be CFPB Director. Next, the nominations will be sent to the Senate floor for a final vote.

CFPB drops bank payment app fraud lawsuit. On March 5th, the CFPB filed a notice of dismissal with prejudice in its lawsuit against several banks and their payment service. In the original complaint filed in December 2024, the agency accused the defendants of offering an unfinished product to compete with other payment apps before a fully tested and effective protective safeguard system was developed.

Treasury Secretary speaks on administration's economic agenda. On March 6th, Treasury Secretary Scott Bessent spoke at the Economic Club of New York about the Trump Administration's economic policy agenda, including deregulation of the financial sector, tariffs and the link between the economy and national security. Bessent emphasized deregulating the financial sector to accelerate the "re-privatization" of the economy, making financial regulation more efficient, effective, and tailored to current economic needs. He mentioned that he would pursue reform of the enhanced supplementary leverage ratio (eSLR) to improve Treasury market intermediation.

Additional information

For additional information on Our Take series or PwC's Cyber, Risk and Regulatory Practice please contact:

Vikas Agarwal

Financial Services Risk & Regulatory Leader
216 789 0314
vikas.k.agarwal@pwc.com

Adam Gilbert

Global Senior Regulatory Advisor
914 882 2851
adam.gilbert@pwc.com

Martha Pampel

Managing Director
312 833 3385
martha.pampel@pwc.com

Contributing authors: Tanya Pazhitnykh, Michael Horn and Julia Heydari

pwc.com

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