



REGULATORY UPDATE

2023 Crowe Financial Services Conference
Guide your organization through industry volatility
As of Nov. 3, 2023



AGENDA



1

Regulatory
Landscape

2

Key Supervisory
Priorities

3

Emerging Issues

4

Consumer
Compliance / CFPB

5

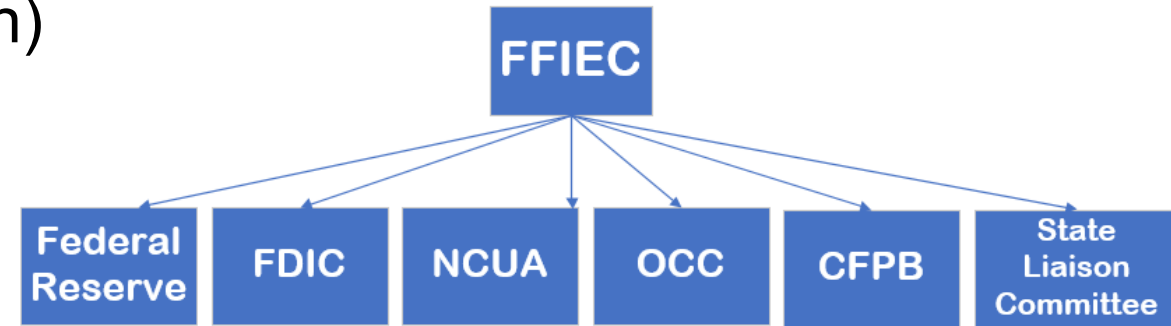
Closing Comments



REGULATORY LANDSCAPE

FINANCIAL INSTITUTION REGULATORS

- **Full 7-member Fed Board**
 - Michael Barr (VC of Supervision)
- **Full FDIC Board**
 - Chair Martin Gruenberg
 - VC Travis Hill
 - Director Jonathan McKernan
 - CFPB Director Rohit Chopra
 - OCC *Acting* Comptroller Michael Hsu
- **NCUA**
 - Chair Todd Harper
- **CSBS**
 - Jim Cooper, President / CEO





SUPERVISORY PRIORITIES

THIRD-PARTY RISK / FINTECH PARTNERSHIPS REMAIN FOCAL POINT

- **Interagency Guide for Community Banks: Conducting Due Diligence on Financial Technology Companies (August 2021)**
<https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-17.html>
- **Final Interagency Guidance (June 2023)**
<https://www.federalregister.gov/documents/2023/06/09/2023-12340/interagency-guidance-on-third-party-relationships-risk-management#>
 - Sound risk management principles for all stages of life cycle of third-party relationships
 - Ongoing monitoring enables the bank to 1.) confirm quality and sustainability of controls; 2.) escalate concerns such as material or repeat audit findings or deterioration in financial condition; and 3.) respond to such significant issues or concerns
 - Important governance principles



CYBERSECURITY RISK MANAGEMENT

- **FFIEC Cybersecurity Resource Guide (Updated October 2022)**
 - <https://www.ffiec.gov/press/pdf/FFIECCybersecurityResourceGuide2022ApprovedRev.pdf>
 - Now includes ransomware-specific resources
 - Agencies also requested comments on renewing the cybersecurity assessment tool
- **OCC Cybersecurity Supervision Work Program (June 2023)**
 - <https://occ.gov/news-issuances/bulletins/2023/bulletin-2023-22.html>
- **Regulators have cited some breaches caused by failure to have effective controls in:**
 - Strong authentication (*August 2021 Guidance*)
<https://www.ffiec.gov/press/PDF/Authentication-and-Access-to-Financial-Institution-Services-and-Systems.pdf>
 - Effective systems configurations and patch management
 - Cyber response and resilience capabilities
 - <https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-94.html>



LIQUIDITY RISK MANAGEMENT

- **July 28, 2023: Banking agencies and NCUA updated guidance on Liquidity & Contingency Funding**
 - <https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-25.html>
 - Discount window and FHLB borrowings
 - Maintaining operational readiness
 - Conduct periodic small dollar transactions and capacity testing
- **Liquidity / IRR / ALM (target exams / more frequent reporting)**
 - ALCO reporting



“A component of effective liquidity risk management includes processes that ensure sufficient committed capacity to meet contingent liquidity needs and operational readiness to monetize securities in a timely manner should liquidity needs arise.”
(OCC Semiannual Risk Perspective, Spring 2023)

BSA / AML COMPLIANCE

- **Latest update to FFIEC BSA / AML Exam manual (August 2023)**
 - Due diligence programs
- **Recurring themes in enforcement actions and civil money penalties issued by agencies / FinCEN**
 - “failure to adopt and implement a compliance program that adequately covers the required Bank Secrecy Act/anti-money laundering (BSA / AML) program elements”
 - Deficiencies in BSA / AML program caused delays and failure to file SARs
 - **Failure to correct BSA / AML internal control problems identified in prior exams**
- **FinCEN issued an alert on nationwide surge in check fraud**
<https://www.fincen.gov/sites/default/files/shared/FinCEN%20Alert%20Mail%20Heft-Related%20Check%20Fraud%20FINAL%20508.pdf>





EMERGING ISSUES



ARTIFICIAL INTELLIGENCE (AI)

- **Regulators request for information (RFI) (March 2021)**
- **Richmond Fed article on AI and Bank Supervision**
https://www.richmondfed.org/publications/research/econ_focus/2023/q2_federal_reserve
- **CFPB guidance on credit denials using AI**
 - <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/>
- **Executive Order (October 2023) ([link](#))**
 - Directs agencies to review and draft new standards for AI safety and security, privacy, etc.
 - Treasury must report on best practices for FIs to manage cybersecurity posed by AI
 - CFPB and FHFA ensure AI not promoting discrimination in appraisals and lending
 - Promoting innovation and competition



FEDERAL BANKING REGULATORS CLIMATE RISK ACTIVITIES

- **Federal Reserve two climate committees**
 - Supervision Climate Committee – individual banks
 - Financial Stability Climate Committee (FSCC) – will work from a macroprudential perspective
- **Fed’s pilot climate scenario analysis in 2023**
<https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm> (top six banks)
- **OCC, Fed, FDIC climate-related financial risk management (applies to institutions over \$100 billion in assets)**
<https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231024b.htm>
- **Network of Central Banks and Supervisors for Greening the Financial System (NGFS)**

“The principles are intended to support efforts by large financial institutions to focus on key aspects of climate-related financial risk management.”



FDIC PROPOSED GOVERNANCE STANDARDS FOR BANKS OVER \$10 BILLION

- **Approved through notational vote (passed 3-2)**
<https://www.fdic.gov/news/board-matters/2023/2023-10-03-notational-fr.pdf>
- **Only applies to FDIC supervised state non-member banks**
 - Board responsibilities / composition
 - Formal written statements on risk profile and appetite
 - Credible challenge to management on departures from strategic plan
 - Written code of ethics addressing conflicts of interests, whistleblower protection, and more.
 - Intends to align with Fed and OCC enhanced standards / those only apply to institutions over \$50 billion in assets



REGULATORY ACTIVITIES / RECENT ISSUANCES

- **Fed launches “novel activities” supervision program (*August 2023*)**
 - Crypto asset and distributed ledger technology activities as well as complex, technology-driven partnerships with nonbanks
- **Commercial real estate (CRE) lending**
 - Higher CRE concentrations prompting more scrutiny of overall credit administration, loan gradings and reviews
 - Updated guidance on CRE loan accommodations and workouts (*June 2023*)
 - <https://www.fdic.gov/news/press-releases/2023/pr23051.html>
- **Deposit Insurance reform proposed (*May 2023*)**
 - <https://www.fdic.gov/analysis/options-deposit-insurance-reforms/index.html>
- **Increased emphasis on reporting of uninsured deposits (*July 2023*)**
 - <https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html>



RECENT SUPERVISORY ACTIVITIES (LARGE BANKS \$100B+)

- **Regulatory Capital Proposals / Basel III Endgame (*July 2023*)**

- <https://www.fdic.gov/news/board-matters/2023/2023-07-27-notice-dis-a-fr.pdf>

- An expanded standardized approach would replace current Basel II advanced internal ratings-based models
 - Category 3 & 4 institutions lose AOCI opt out / unrealized g/l reflected in regulatory capital

- **Long-term debt proposal (*August 2023*)**

- <https://www.fdic.gov/news/financial-institution-letters/2023/fil23045.html>

- **Resolution plan proposal (*August 2023*)**

- <https://www.fdic.gov/news/press-releases/2023/pr23066.html>





CONSUMER COMPLIANCE / CFPB

CONSUMER COMPLIANCE / CFPB

- **Continued scrutiny of overdraft fees**

- Issued Circular in October 2022 on assessment of surprise / unanticipated fees:

- https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf

- Enforcement actions and related fines: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-regions-bank-pay-191-million-for-illegal-surprise-overdraft-fees/>

- **Proposed Section 1033 rule on open banking (Oct. 19, 2023):**

- <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-jumpstart-competition-and-accelerate-shift-to-open-banking/>

- Comment period open until Dec. 29, 2023
- If finalized, would be effective fall 2024

- **Long-awaited CRA modernization rules issued by Fed, OCC, FDIC on Oct. 24, 2023:**

- <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/frn-cra-20231024.pdf>

- 1,500 pages; reporting requirements take effect in 2027



CONSUMER COMPLIANCE / CFPB

Recent Developments

- Final 1071 Rules / Small Business Lending Data Collection and Reporting
 - <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/>
 - Phased-in implementation scheduled to begin Oct. 1, 2024

CFPB Legal Challenges

- Supreme Court began to hear arguments on constitutionality of CFPB funding case in fall 2023, decision not likely until spring 2024
- Federal District court in Texas injunction enjoined CFPB from enforcing Section 1071 until Supreme Court ruling (July 2023) – limited to plaintiff’s members
- Federal District court in Kentucky granted injunction on Sept. 14 and new Texas ruling on Oct. 26
 - Provided injunctive relief not limited to named plaintiffs and members
- Uncertainty likely to linger until further clarity from CFPB, Congress, or Supreme Court





QUESTIONS?

Dennis Hild

Principal, National Office

+1 202 552 8086

dennis.hild@crowe.com

"Crowe" is the brand name under which the member firms of Crowe Global operate and provide professional services, and those firms together form the Crowe Global network of independent audit, tax, and consulting firms. "Crowe" may be used to refer to individual firms, to several such firms, or to all firms within the Crowe Global network. The Crowe Horwath Global Risk Consulting entities, Crowe Healthcare Risk Consulting LLC, and Crowe Horwath Cayman Ltd. are subsidiaries of Crowe LLP. Crowe LLP is an Indiana limited liability partnership and the U.S. member firm of Crowe Global. Services to clients are provided by the individual member firms of Crowe Global, but Crowe Global itself is a Swiss entity that does not provide services to clients. Each member firm is a separate legal entity responsible only for its own acts and omissions and not those of any other Crowe Global network firm or other party. Visit www.crowe.com/disclosure for more information about Crowe LLP, its subsidiaries, and Crowe Global.

The information in this document is not – and is not intended to be – audit, tax, accounting, advisory, risk, performance, consulting, business, financial, investment, legal, or other professional advice. Some firm services may not be available to attest clients. The information is general in nature, based on existing authorities, and is subject to change. The information is not a substitute for professional advice or services, and you should consult a qualified professional adviser before taking any action based on the information. Crowe is not responsible for any loss incurred by any person who relies on the information discussed in this document. © 2023 Crowe LLP.

Audit2410-003A