



FOCUS ON BUSINESS VALUE
2022 Crowe Financial Services Conference

Regulatory Hot Topics

November & December 2022

Presented by:

Crowe Industry Specialists

Regulatory Landscape

Outlook for Remainder of 2022

- Some uncertainty lingers around agency leadership:
 - **OCC:** Michael Hsu – Acting Comptroller since May 2021
 - **FDIC:** Martin Gruenberg Acting Chairman since Feb 2022; two nominations to fill vacant (R) seats on FDIC board / awaiting Senate confirmation hearings
 - **Fed:** Michael Barr sworn in as Fed vice-chair of supervision July 2022; first full Fed Board of Governors since 2013
- Results of mid-term elections: impact on HFSC and Senate Banking Committee leadership
 - Potential to influence advancement of administration's agenda around climate financial risk, crypto, cannabis, etc.



Regulatory Landscape

Regulatory focal points

- Some familiar areas but sharpened focus on:
 - **Third-party risk management**
 - Fintech partnerships
 - **Cyber security risk**
 - **BSA / AML Compliance**
 - **Consumer compliance / fair lending**



TPR / Fintech Partnerships Remain Focal Point in exams

- *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks (Aug 2021)*
<https://www.occ.gov/news-issuances/bulletins/bulletin-2021-40.html>
- *Fed Paper on Community Bank / Fintech Partnerships (Sept 2021)*
<https://www.federalreserve.gov/publications/community-bank-access-to-innovation-through-partnerships.htm>
- *Federal Reserve Supervision & Regulation Report (May 2022)*
<https://www.federalreserve.gov/publications/files/202205-supervision-and-regulation-report.pdf>
 - Emphasizes the continuing interagency efforts to review the risks and benefits associated with the increasing use of financial technology /due diligence.
- *OCC Semiannual Risk Perspective (Spring 2022)*
<https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-73.html>
 - Highlighted third-party risk management and fintech relationships as area of heightened supervisory focus; change management programs



TPR / Fintech Partnerships Remain Focal Point in exams

- *Recent Formal (Public) OCC Enforcement Action targeting BaaS / Fintech along with extensive BSA/AML deficiencies*

<https://www.occ.gov/static/enforcement-actions/ea2022-043.pdf>

- *Acting Comptroller Hsu speech - September 7, 2022*

<https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-106.pdf>

“left to its own devices, is likely to accelerate and expand until there is a severe problem or even a crisis.”

- *Proposed Interagency Guidance on Third-Party Relationships: Risk Management*

<https://www.fdic.gov/news/financial-institution-letters/2021/fil21050.html>

Awaiting final guidance



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
- Regulators have observed majority of breaches caused by failure to have effective controls in:
 - Strong authentication *(Aug 2021 Guidance)*
 - 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>



FS Regulatory Update

BSA/AML Compliance

- *Recent public enforcement actions and civil money penalties issued by OCC / FinCEN*
<https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-25.html>
<https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-41.html>
- “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**



FS Regulatory Update



Consumer Compliance / CFPB

- Continues to expand scrutiny of overdraft fees
 - Issued Circular in Oct 2022 on assessment of surprise / unanticipated fees
https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf
 - Several blogposts providing updates on their analysis of their review of overdraft practices
<https://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/>
- Expanding non-bank supervision (including fintechs)
<https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>
- Updated exam manual for UDAAP, special emphasis on discrimination
<https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/>

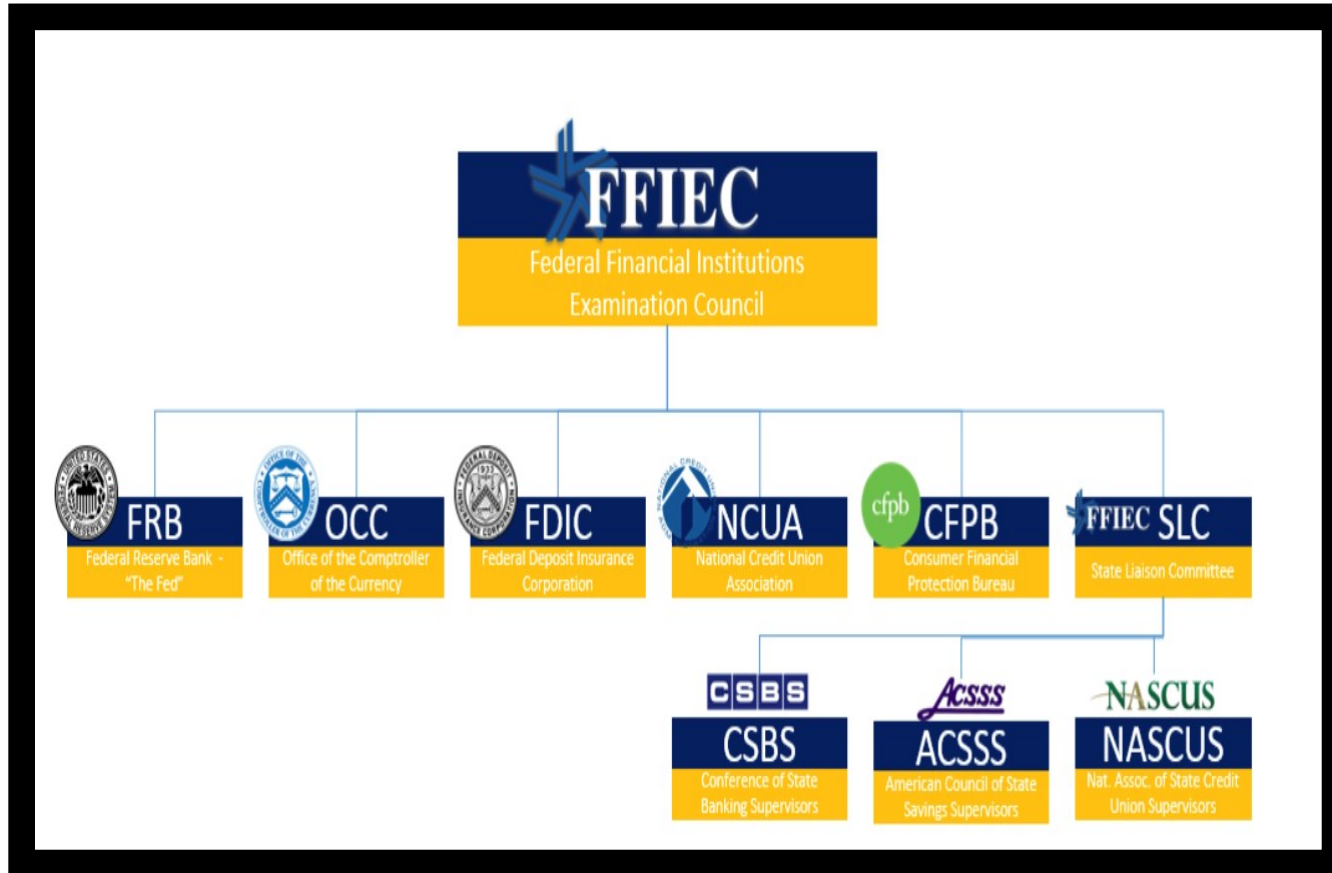
FS Regulatory Update



Recent Developments / CFPB Legal Challenges

- U.S. Fifth Circuit Court of Appeals ruled CFPB finding unconstitutional (Oct 2022)
<https://www.consumerfinancemonitor.com/2022/10/27/cfpb-responds-to-fifth-circuit-ruling-that-its-funding-mechanism-is-unconstitutional/>
- Lawsuit filed by ABA, Chamber of Commerce and other trade associations in Sept 2022
<https://news.bloomberglaw.com/banking-law/chamber-trade-groups-sue-cfpb-over-anti-discrimination-policy>
 - Suit claims Bureau is operating beyond statutory authority

Regulatory Landscape



Emerging areas of supervisory focus across all agencies

- **Digital Assets / crypto**
- **Climate Financial Risk**
- **Operational Resilience**

Digital Assets / Crypto



- OCC Letter Requiring notification prior to engaging in crypto activities, non-objection (Nov 2021)
<https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-121.html>
- Acting Comptroller Hsu Discusses Vulnerabilities, Volatility with Cryptocurrency at Blockchain Summit in DC May 2022
<https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-60.pdf>
✓“In sum, although I remain a crypto skeptic, I have come to see its potential and understand why there is excitement around it. The industry has grown too fast, however, and suffers from a hype-based, shoot, ready, aim approach to innovation and value creation”
- FDIC FIL requiring notification for crypto-related activity (April 2022) <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html>
- Fed issues SR letter requiring notification for crypto-related activities(Aug 2022)
<https://www.federalreserve.gov/supervisionreg/srletters/SR2206.htm>

Digital Assets / Crypto

- Sept 2022 Executive Order
<https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/>
- Financial Stability Oversight Council Report (Oct 3, 2022)
<https://home.treasury.gov/news/press-releases/jy0986>
120+ page report
- Federal Reserve Central Bank Digital Currency Project
<https://www.federalreserve.gov/central-bank-digital-currency>
 - Project Hamilton <https://www.bostonfed.org/publications/one-time-pubs/project-hamilton-phase-1-executive-summary.aspx>
 - Industry groups largely oppose CBDC



Federal Banking Regulators Climate Risk Activities

■ Federal Reserve

- Created two climate related committees
 - Supervision Climate Committee -senior staff from the Federal Reserve System to ensure supervised firms are resilient to climate-related financial risks
 - Financial Stability Climate Committee (FSCC) identify, assess, and address climate-related risks to financial stability. The FSCC will work from a macroprudential perspective
- *2022 Supervision and Regulation Report:* designates climate as a key supervisory initiative
- Six largest banks piloting climate scenario analysis in 2023

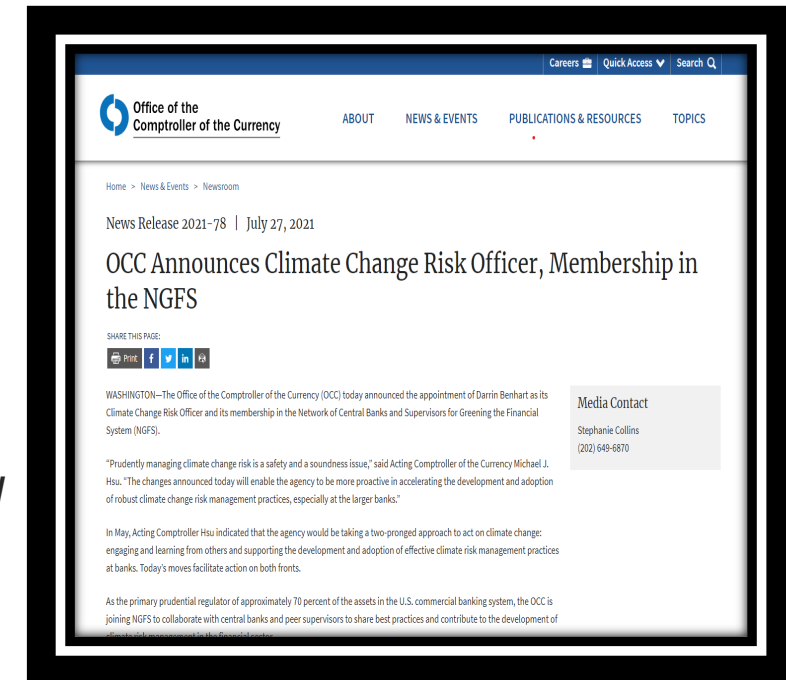
<https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm>



Federal Banking Regulators Climate Risk Activities

■ OCC

- Appointed new climate risk officer in Sept 2022
<https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-110.html>
- Issued draft principles for public comment in December 2021 (+\$100 bil in assets) <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html>
- Acting Comptroller Hsu “*smaller & mid-sized banks should expect comparable requirements within the next 18-24 months and should use the time wisely to prepare*”
- Semiannual risk perspective Fall 2021 and Spring 2022
 - ✓ Highlighted OCC’s commitment to proactive and risk-based supervision of climate-related financial risk
 - ✓ Reviewing comments received on draft principles



Federal Banking Regulators Climate Risk Activities

■ FDIC

- Issued draft principles for public comment in March 2022 (+\$100 bil in assets)

<https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html>

FDIC 2022 Risk Review (Jube 2022)

- ✓ flagged climate-related financial risk as an area of emerging risk for the banking industry, signaling that the FDIC will be increasing focus in the area during 2022 exams
- Acting Chair Gruenberg Speech (Oct 3, 2022) <https://www.fdic.gov/news/speeches/2022/spo-ct0322.html> *“FDIC will take a thoughtful and measured approach”*



Federal Banking Regulators Climate Risk Activities

Climate Risk Global Supervisors

- Basel Committee for Bank Supervision finalized 18 principles in July 2022
- Network of Central Banks and Supervisors for Greening the Financial System (NGFS)

FSOC Report on Climate-related Financial Risk

<https://home.treasury.gov/news/press-releases/jy0426>

Ceres report on U.S. Agency progress on climate initiatives

<https://www.ceres.org/news-center/press-releases/ceres-finds-us-financial-regulators-have-made-significant-progress>

Opposing views: https://treasurer.utah.gov/wp-content/uploads/04-21-22-Utah-Letter_SP-Global_ESG-Indicators.pdf

Emerging Areas of Regulatory Focus

Operational resilience

- Embedded in your institution's strategic plan
- Build into day-to-day activities
- Not traditional BCP that focused more on recovery
- Sept 2022: Basel Committee / BIS Principles for Operational Resilience

https://www.bis.org/fsi/fsisummaries/op_resilience.htm

➤ Based on principles across seven categories

✓ Including governance, ops risk management, BCP, third party risk, cybersecurity

- Nov 2020: U.S. Agencies Issued Sounds Practices to Strengthen Operational Resilience *(for large and complex institutions)*

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201030a1.pdf>

"it is important for all firms to strengthen their operational resilience"





Thank you

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. Visit www.crowe.com/disclosure for more information about Crowe LLP, its subsidiaries, and Crowe Global. © 2022 Crowe LLP.