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Rulemaking Rundown: What's In and What's Out in Federal Financial Regulation

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Today's Agenda

- 1 | Current Regulatory Landscape
- 2 | Rulemaking Primer
- 3 | Key Rulemakings: What's In & What's Out
- 4 | What's Next?



Current Regulatory Landscape

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The White House



The WHITE HOUSE

- Presidential Actions Fuel Deregulation
 - EO 13981: Promoting the Rule of Law Through Improved Agency Guidance Documents (Oct. 9, 2019)
 - Memorandum: Regulatory Freeze Pending Review (Jan. 20, 2025)
 - EO 14912: Unleashing Prosperity Through Deregulation (Jan. 31, 2025)
 - EO 14219: Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative (Feb. 19, 2025)
 - Memorandum: Directing the Repeal of Unlawful Regulations (April 9, 2025)
 - EO 14267: Reducing Anti-Competitive Regulatory Barriers (April 9, 2025)
 - EO 14281: Restoring Equality of Opportunity and Meritocracy (April 23, 2025)

The CFPB



- Treasury Secretary Scott Bessent was originally made Acting Director of the CFPB
- Russell Vought, head of the Office of Management and Budget, is the current Acting Director of the CFPB
 - Overseeing attempted reduction in staff (90% of employees) – under litigation
 - Ordered CFPB staff to review all guidance documents issued and on May 9 CFPB announced it was withdrawing 67 guidance documents based on:
 - Compliance burdens
 - Decision to reduce enforcement activity
 - Non-binding nature of guidance
 - Shift in core priorities
 - Prioritizing: statutorily mandated processes, supervision and enforcement of banks and tangible consumer harm
 - Deprioritizing: medical debt, peer-to-peer platforms, student loans, remittances, consumer data, digital payments
- Trump nominated Jonathan McKernan as Director in February, however, on May 9 the Treasury announced that he was a nominee for the undersecretary of domestic finance

The FTC



- Andrew Ferguson is the current FTC Chairman
 - Trump fired two former commissioners in March (Democrats); firings are being challenged.
- Focusing on enforcement, rather than rule-writing
 - “The Commission under President Trump will focus primarily on our traditional role as a cop on the beat. We will vigorously and faithfully enforce the laws that Congress has passed, rather than writing them.” (Dec. 2024)
- Identifying regulations that harm competition
 - April 13, 2025: Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers
 - May 5, 2025: FTC and DOJ Joint Letter Seeking Identification of Anticompetitive Regulations Across the Federal Government
- Chris Mufarrige appointed as the FTC Director of Consumer Protection
 - Shift in core priorities:
 - Prioritizing: fraud, COPPA, TOS enforcement, advertising, small business lending
 - Deprioritizing: disparate impact, regulation that impedes growth



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS



The Prudential Bank Regulators

- Status of leadership and expected changes
 - Federal Deposit Insurance Corporation (FDIC)
 - Federal Reserve Board (FRB)
 - Office of the Comptroller of the Currency (OCC)
 - National Credit Union Administration (NCUA)
- Shift in core priorities:
 - Expect focus on AI, BaaS, and fintech platform banks
 - Reduced regulatory burden on banks
 - Debanking and digital assets
 - Traditional safety and soundness
 - AML / BSA Compliance



Prudential Regulators Rulemakings & Guidance

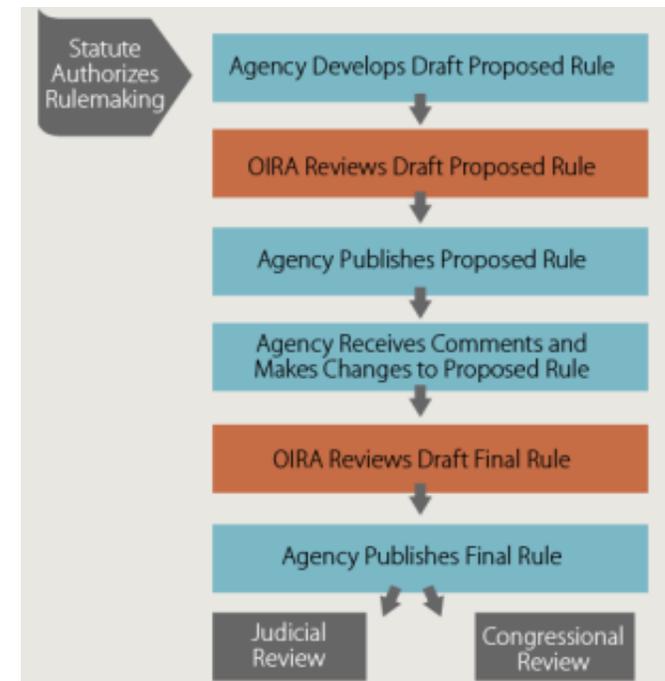
- FDIC
 - **Proposed Deposit Broker Rule – Proposal withdrawn.** Would have expanded the definition of brokered deposits and subjected more bank deposits to heightened regulation
 - **Proposed Fintech Rule – Future of the proposal remains to be seen.** Would establish new recordkeeping requirements for custodial accounts often used in bank-fintech partnerships
- FRB
 - **Cryptocurrency Guidance (SR Letters 22-6 & 23-8) – Guidance withdrawn.**
 - Outlined expectations for crypto activities, including notifying FRB prior to engaging in activity
 - FDIC and OCC withdrew similar guidance

Rulemaking Primer

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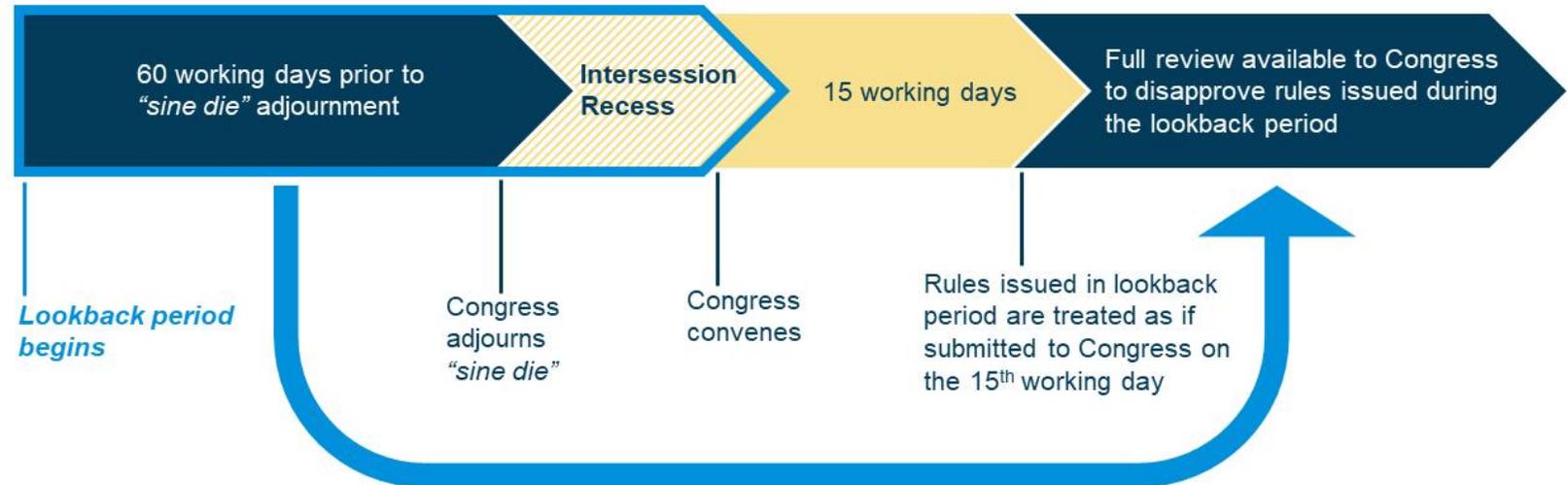
Rulemaking Process

- Congress often passes legislation giving certain regulatory agencies the authority to issue rules to implement a statute
- Final rules issued pursuant to this authority carry the force and effect of law
- Agencies are required to follow the Administrative Procedure Act, which outlines procedures for notice and comment for rulemakings
- Agencies with rulemaking authority may issue requests for information and interpretive rules



CRA Process

- The Congressional Review Act (CRA) “lookback” provision provides an opportunity for Congress to review final agency rules submitted within the last 60 legislative days of the prior session
- To initiate the review: a member of Congress introduces a joint resolution of disapproval within 60 “days-of-continuous-session” after the 15th working day of the new legislative session
- Nullification occurs if both chambers pass the resolution with a simple majority and the president signs it



Regulatory
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In this graphic, “working days” refers to legislative days in the House or session days in the Senate.

Options for Changing or Withdrawing Rules

- **Regulatory agencies may:**
 - Revise or rescind rules before they become final
 - Issue interpretive rules and informal/formal guidance to clarify or interpret rules after they become final
 - Undergo formal rulemaking process to rescind or change final rules
 - Change litigation posture (i.e., fail to defend challenges or petition for vacation of a rule)
- **Congress may rescind certain final rules issued by federal agencies under the CRA**
 - If a rule is nullified, it goes out of effect immediately
 - The agency would be prohibited from issuing a rulemaking that is “substantially the same” without further Congressional action
 - Can also be used to disapprove some agency guidance not issued through notice-and-comment (e.g., circulars, interpretive rulemakings, or advisory opinions)

Key Rulemakings: What's In and What's Out

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Key CFPB Rulemakings

Rulemaking	Summary	Litigation	Status
Small Business Lending Data Rule (Section 1071)	<p><u>Issued:</u> March 2023</p> <p><u>Summary:</u> Requires FIs to compile/submit to CFPB certain small business credit data</p>	<p><u>Plaintiffs:</u> Texas Bankers Association, ABA</p> <p><u>Status:</u> Appeal before Fifth Circuit; case stayed since 2/7/25</p>	<p>CFPB not prioritizing enforcement or supervision actions; anticipates issuing NPRM. Not eligible for CRA review but Congress introduced bill in February 2025 to repeal law; awaiting a House floor vote</p>
Registry of Nonbank Covered Persons	<p><u>Issued:</u> June 2024</p> <p><u>Summary:</u> Requires certain nonbanks to report agency orders and related info and file annual compliance reports</p>	<p>N/A</p>	<p>CFPB not prioritizing enforcement or supervision actions. Submitted filing to federal register on 5/13 to rescind</p>
Open Banking Rule (Section 1033)	<p><u>Issued:</u> October 2024</p> <p><u>Summary:</u> Requires FIs/providers to provide consumers with access to their financial data and to transfer data at consumer's request for free</p>	<p><u>Plaintiffs:</u> Bank Policy Institute, KY Bankers Assoc.</p> <p><u>Status:</u> Injunction requested in E.D. Ky.; Financial Technology Association's motion to intervene granted on 5/14/25</p>	<p>Ongoing litigation paused in February 2025 while CFPB re-assesses rule (likely to re-open and rework/vacate). Current stay ends May 26. At risk under CRA</p>

Key CFPB Rulemakings

Rulemaking	Summary	Litigation	Status
Data Broker (FCRA Proposed Rule)	<p><u>Proposed:</u> December 2024</p> <p><u>Summary:</u> Would (i) limit sale of personal identifiers and ensure that financial data is only shared for legitimate purposes; (ii) clarify that selling consumer info would make data broker a CRA under the FCRA</p>	N/A	Withdrawn by CFPB effective 5/15
Medical Debt in Consumer Reports	<p><u>Issued:</u> January 2025</p> <p><u>Summary:</u> Removes medical bills from credit reports. Prohibits inclusion of medical bills on credit reports</p>	<p><u>Plaintiffs:</u> Cornerstone Credit Union League, Consumer Data Industry Assoc.</p> <p><u>Status:</u> Complaint filed in E.D. Texas on 1/7/25; On 5/9/25, Motion to Intervene granted, effective date of the rule stayed, hearing on Joint Motion to Approve Consent Judgment set for 6/11/25</p>	Congress introduced legislation in March 2025 to overturn the rule under the CRA; resolution is still in committee. Effective date of the rule stayed until 7/1/25. Parties filed a joint motion requesting the court to enter a final judgment vacating the rule because it exceeds the CFPB's authority

Key CFPB Rulemakings

Rulemaking	Summary	Litigation	Status
Overdraft Fees Rule	<p><u>Issued:</u> December 2024</p> <p><u>Summary:</u> Requires large banks to either (i) cap overdraft fees at \$5 or an amount covering costs/losses or (ii) treat overdraft as loans subject to Regulation Z</p>	<p><u>Plaintiffs:</u> ABA, Consumer Bankers Assoc., MS Bankers Assoc.</p> <p><u>Status:</u> Injunction filed in S.D. Miss. on 12/18/24; Unopposed Motion for Dismissal Without Prejudice filed on 5/13/25</p>	Overturned through CRA process on 5/9
BNPL Interpretive Rule	<p><u>Issued:</u> May 2024</p> <p><u>Summary:</u> Confirms BNPL lenders are credit card providers subject to Regulation Z open-end credit provisions</p>	<p><u>Plaintiffs:</u> Financial Technology Assoc.</p> <p><u>Status:</u> Complaint filed in D.D.C on 10/18/24; Case stayed pending CFPB revocation of the interpretive rule (update to be provided 6/2)</p>	Withdrawn by CFPB effective 5/12

Key CFPB Rulemakings

Rulemaking	Summary	Litigation	Status
Late Fees Rule	<p><u>Issued:</u> March 2024</p> <p><u>Summary:</u> Limits amount larger credit card issuers may charge for late fees/penalty fees. Reduced safe harbor for late fees from up to \$41 to \$8</p>	<p><u>Plaintiffs:</u> Chamber of Commerce, ABA</p> <p><u>Status:</u> Case before N.D. Tex.; Rule vacated, and claims dismissed with prejudice on 4/15/25</p>	In April 2025, judge issued ruling vacating rule
Larger Participants in Consumer Payments Rule	<p><u>Issued:</u> November 2024</p> <p><u>Summary:</u> Subjects larger nonbank companies offering “general-use digital consumer payment applications” to the CFPB’s supervision</p>	<p><u>Plaintiffs:</u> TechNet, NetChoice, LLC</p> <p><u>Status:</u> Complaint filed in D.D.C on 1/16/25; Response required by 5/23/25</p>	Overtaken through CRA process on 5/9

Key FTC Rulemakings

Negative Option Rule

- “Click-to-Cancel” rule
- Creates new requirements for companies selling subscription-style goods and services
- **Compliance deadline extended to 7/14**
- **Facing legal challenges**

Junk Fee Rule

- Prohibits “bait-and-switch” pricing and hidden fees
- Requires certain entertainment and hospitality companies to display complete price info
- **Took effect 5/12**

What's Next?

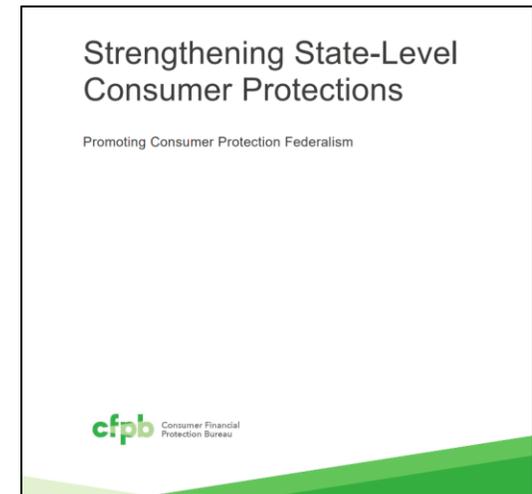
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The Federal Agencies

- Continued reductions in regulations, supervision, and enforcement
- Repeal of unnecessary and overly burdensome / restrictive regulations and guidance
- More clarity on current rules and guidance
- Focus enforcement actions on tangible consumer harm
- Deprioritizing rulemakings that hinder innovation and growth
- Less overlap with state and prudential regulator responsibilities

State Action

- CFPB under Biden encouraged states to strengthen consumer protection; anticipating deregulation
- Specifically, it issued an interpretative rule affirming states' authority under Dodd- Frank
 - CFPB has since withdrawn this interpretative rule
- It also issued a report encouraging states to:
 - Incorporate “abusive” into state law
 - Create stronger remedies and tools for investigation/enforcement
 - Create bright-line prohibitions of junk fees
 - Provide strong consumer data and privacy rights
- States take action to ensure they are ready to protect consumers
 - California passes legislation to ensure that DFPI can enforce Dodd-Frank
 - Pennsylvania creates consumer protection hotline and announces it is expanding its use of enforcement authority under Dodd-Frank
 - New York has proposed its own overdraft rule and introduced, the Fostering Affordability and Integrity through Reasonable Business Practices Act (the FAIR Business Practices Act), to expand NY’s ban on deceptive business practices to unfair and abusive practices



Financial Services Forecast: Five in Five Series

*Register using the link in
the chat.*

Session 4 – May 22, 2025

Filling the Gap! State Enforcement and Regulation Priorities

During this session we will explore issues top of mind for state attorneys general and state banking departments, including bank partnerships, payment processing, fair lending (yes, it's still a thing), and unfair and deceptive practices.

Session 5 – May 29, 2025

The 119th Congress: Investigative and Legislative Priorities

Join us for our final session, where we will provide a comprehensive analysis of the critical priorities shaping the 2025 congressional calendar and their potential impact on the financial services sector, and will share practical strategies for navigating the political risks associated with congressional investigations.

Questions?

For questions, comments, or additional information, please contact the team.



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