

## Cabinet News and Views

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### Looking Back on 2022 and Looking Ahead to 2023 – U.S. Prudential Bank Regulation



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As we are coming to a close on 2022, we're taking a look back at some of the important developments of 2022 and what lies ahead for 2023.

#### Looking Back at 2022

As past readers may have seen me say before, there's a saying in Washington that personnel is policy. In 2022, we at least have more certainty on who the personnel is, and therefore some better educated guesses about what policy may be in 2023. On the personnel front, in 2022, we saw Michael Barr **confirmed** as Vice Chair of Supervision at the Federal Reserve Board ("FRB"), and Martin Gruenberg **nominated** to be permanent Chair of the Federal Deposit Insurance Corporation ("FDIC"). We also saw nominations of **Travis Hill** and **Jonathan McKernan** as the Republicans on the FDIC Board. If confirmed, the FDIC would have all five seats filled for the first time in a long while. The **Federal Reserve Board** also has its full contingent of seven members for the first time in recent memory as well, with Jerome Powell and Lael Brainard being confirmed as Chair and Vice Chair, respectively, this year as well. Presuming Acting Chair Gruenberg is confirmed as FDIC Chair, the only acting principal at the federal prudential banking agencies is Acting Comptroller of the Currency Michael Hsu. While President Biden may very well nominate someone (possibly including Mr. Hsu) to be confirmed as Comptroller, the National Bank Act permits an acting Comptroller to stay at the pleasure of the Secretary of the Treasury.

In terms of the policy we have seen in 2022, all three agencies have issued proposed guidance on the management of financial risks related to **climate** and **crypto**. The FDIC finalized its **2-basis point increase** in base deposit insurance rates. This year showed a return to a preference for interagency agreement. The climate and crypto guidance noted above demonstrate an intent to provide consistent, if not uniform guidance on those topics, and the most notable interagency action

may be the interagency release of a [Community Reinvestment Act proposed rule](#) in May.

### Looking Ahead to 2023

Looking ahead to 2023, many of the topics of proposals in 2022 likely will become the final rules of 2023. Just [last week](#), we noted Vice Chair Barr's [speech](#) at the American Enterprise Institute on Bank Capital. As 2022 turns to 2023, we will likely see the results of Vice Chair Barr's holistic review of the capital rules, and likely (hopefully?) see an interagency proposal on the U.S. version of the Basel III endgame (aka Basel IV) rules. Reading the tea leaves laid out in Mr. Barr's speech, it's likely that capital levels will be going up.

Given the continuing turmoil in the cryptocurrency market (see this week's article by my colleagues on SEC and CFTC actions with regard to FTX), it's become more likely that Congress will do something to at least clarify jurisdiction among the market regulators and possibly legislate on stable coin rules.

As noted above, we will likely see final rules or guidance from the banking agencies on rules they proposed in 2022. Look for a final rule (or possibly a re-proposal) from the three agencies on the Community Reinvestment Act. There will likely be further guidance on climate and crypto activities. If the FRB doesn't finish before the end of 2022 (which is still a possibility), we will likely see a final rule from the FRB on rules to implement the [LIBOR Act](#). Although the FRB finalized its [Guidelines](#) on access to Federal Reserve master accounts in 2022, the issue will likely continue to see developments in 2023, as [litigation](#) on the matter continues. Finally, speaking of litigation, since the Consumer Financial Protection Board ("CFPB") is a bureau of the FRB, I'll squeeze a big CFPB matter into our 2023 future gazing. It seems likely that the [Supreme Court](#) will hear an appeal of the [Fifth Circuit Decision](#) finding the way the CFPB is funded through the FRB to be unconstitutional. Any decision on the constitutionality of the CFPB could very well be the biggest banking law story of 2023.

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