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CABINET NEWS

Research and commentary on regulatory and other financial services topics

Heating Up

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Changes to CFPB Actions and Interpretations

June 12, 2025

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It has been difficult to keep up with all of the changes that have been happening with Consumer Financial Protection Bureau ("CFPB") lawsuits and interpretations because the CFPB has not been sending out press releases announcing all of its actions, nor is there a Director of the CFPB that is making these announcements through other channels. Indeed, the last **press release they posted** was May 6.

While we have been keeping track of many of the CFPB changes in our newsletter, there are some that we have not mentioned yet. With respect to each of the changes discussed below, it is important to keep in mind that so far many of them have been welcomed by the financial services industry, so far. In many cases, we note that not only is the marketplace in a better position because of the certainty these changes provide (at least for the short-term), but we also think that consumers will not particularly suffer as a result because the changes were more focused upon industry players and less upon whether the rules and guidance would, in the end, help consumers.

The CFPB has conceded to two lawsuits brought by the financial services industry:

1. American Bankers Association ("ABA") **lawsuit** regarding changes to the Unfair, Deceptive or Abusive Acts and Practices ("UDAAP") examination manual that expanded the concept of UDAAP to include discrimination in advertising, pricing and other activities. In other words, if an examiner reviewed advertising data and found that such data either showed evidence of discrimination or showed merely "disproportionately adverse impacts on a discriminatory basis," then the examiner would not have to prove violations of the Equal Credit Opportunity Act or Regulation B, they could just allege a UDAAP violation. **The ABA's CEO Rob Nichols said**: "We welcome today's joint stipulation with the CFPB to dismiss its appeal in the UDAAP manual case, which reaffirms that the Bureau exceeded its statutory authority when it 'updated' its exam manual and announced an open-ended and novel power to examine banks for alleged discriminatory conduct. We strongly support the fair enforcement of nondiscrimination laws, but the Bureau's extraordinary expansion of its statutory authority crossed the line. We appreciate that the Bureau recognizes this and has agreed to dismiss its appeal with prejudice in this case."
2. In another ABA lawsuit (that was brought with the U.S. Chamber of Commerce and the Consumer Bankers Association ("CBA")), the ABA challenged the CFPB rule finalized in early 2024 that capped credit card late fees at $8. The ABA filed suit and won a preliminary injunction against the rule going into effect. On May 2 the court **granted a joint motion among the parties** to agree that the late fee rule "violated the CARD Act by failing to allow card issuers to 'charge penalty fees reasonable and proportional to violations.'"

Pursuant to the Congressional Review Act, which we described **here**, Congress voted to overturn the CFPB's limit of a $5 maximum fee for overdrafts. The **rule, which was announced as final on December 14, 2024**, was described by the CFPB at the time as intended to "close an outdated overdraft loophole that exempted overdraft loans from lending laws" and as being expected to "add up to $5 billion in annual overdraft savings to consumers." Meanwhile the industry was very concerned by this final rule, in particular, because a limit of $5 meant that some banks would not have been able to provide overdraft services going forward. In lieu of available overdraft services, many consumers would have been stuck with obtaining products like payday or vehicle title loans. See **this opinion piece** discussing how and why that happens, as well as this **discussion by the CBA regarding the value of overdraft services**.

And, finally, the CFPB had filed a "Statement of Interest" in a case brought by the New York Attorney General against Citibank that purported to interpret the Electronic Funds Transfer Act ("EFTA") as applying to wire transfers, which was a novel position. The EFTA has been around since 1978, and at no point since then had it ever been interpreted to extend to wire transfers, which are governed instead by Article 4A of the Uniform Commercial Code. On March 25, 2025 the CFPB **informed the court that it was withdrawing its Statement of Interest**, explaining that "The Statement represents an unsuitable method of advancing a novel and significant interpretation of the EFTA that could impose significant liability on regulated parties without fair notice." The motion also pointed out that by filing the Statement of Interest in a case where the CFPB was not even a party to the action, it "insulated this novel position from judicial review under the Administrative Procedure Act's arbitrary and capricious standard [which means that the] interpretation was not informed by the process for legislative rulemaking defined in the APA."

The UK's Banking Regulator Sets Out Its Expectations When Supervising Non-UK Branches

June 12, 2025

By Alix Prentice
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The UK's Prudential Regulation Authority ("PRA") has published its final rules and policies in relation to its approach to supervising branches and subsidiaries of international banks headquartered, or part of a group based, outside the UK. Branch reporting requirements and booking models are also covered. Read the full policy statement (the "PS") **here**.

1. **Branch risk appetite**

This covers the criteria the PRA considers when determining whether an international bank's UK presence should operate as a branch or a subsidiary. Those considerations include the thresholds regarding deposit balances and number of deposit customers at which a branch would be expected to become a subsidiary. The PS lowers the threshold for the amounts of deposits by retail and small company deposits, partly in relation to the failure of SVB UK, that, while a subsidiary, held small business deposits that were not covered by the Financial Services Compensation Scheme.

Other thresholds have been raised to reflect inflation.

2. **Branch reporting**

Changes to branch reports on deposits and whole firm liquidity will now be implemented in H1 2026 rather than 31 December 2025. Other modifications to the branch return are also coming into force, with the aim of reducing the operational burden of reporting. In addition, the PRA has confirmed that it will take into account the resolution regime of the home state of a branch when considering whether branches exceeding certain thresholds should be required to subsidiarise.

3. **Booking arrangements**

Currently, regulators in different jurisdictions have different expectations of firms' booking arrangements. However, the PRA still expects firms to comply with all relevant rules and asks that they contact the PRA when they consider this not to be possible.

In addition, the PRA will be applying its booking expectations to UK trading banks. Questions have arisen in that context around the interaction with Article 21c of CRD VI, which requires third-country banks to obtain a branch license from each member state in which they provide banking services. The PRA is confident that only some of the core banking activities covered by 21c will be subject to their banking book booking expectations, and activities such as loans, commitments and guarantees are not sufficiently risky to be included.

The PRA has also clarified that while it routinely accepts remote booking arrangements when risk is booked to the UK hub, it is unlikely to accept arrangements in which all traders are remote, nor is it likely to accept traders moving out of the UK simply to manage remote booking back into the UK.

The PRA has also confirmed that cross-location back-to-back trading is a legitimate method of transferring risk. It also confirms that intra-group remote risk transfers should be treated in the same way as other transfers.

Next steps

While the new policy took effect on 20 May 2025, changes to branch reporting take effect on 1 March 2026, with firms expected to use data as at 30 June 2026 for their first return. Firms are also required to conduct a self-assessment of their booking arrangements and report any gaps to the PRA.

Vice Chair Bowman Gives Outline of Her Agenda Following Senate Confirmation

June 12, 2025

By Daniel Meade
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Last Friday, following her confirmation by the Senate as Federal Reserve Board Vice Chair of Supervision, Michelle Bowman laid out some of her priorities in a speech entitled "**Taking a Fresh Look at Supervision and Regulation**."

She noted that at the core of her principles is pragmatism, and that she would bring that pragmatic view to improve supervision and regulation by "addressing: (i) enhancing supervision to more effectively and efficiently meet the Fed's safety and soundness goals; (ii) reviewing and reforming the capital framework to ensure that it is appropriately designed and calibrated; (iii) reviewing regulations and information collections to ensure that this framework remains viable; and (iv) considering approaches to ensure the applications process is transparent."

Vice Chair Bowman stated that supervision should be "focused on material financial risks that threaten a bank's safety and soundness... [rather than] becom[ing] distracted by relatively less important procedural and documentation shortcomings." She noted that near-term changes would likely include:

- better tailoring of rules so as not to have the rules appropriate for the largest banks apply to smaller community banks;
- have exam ratings better reflect the link between ratings and actual financial condition;
- prioritize core financial risks (e.g., credit risk, interest rate risk, and liquidity risk) over "supervisory box-checking";
- use regulatory guidance to better provide clarity on regulatory expectations rather than obscure them; and
- enhance the already rigorous training and commissioning process for examiners, and require more staff that is involved with supervision to actually be commissioned examiners.

Vice Chair Bowman's second broad category of discussion was updating the capital adequacy framework. She noted that too often the leverage ratio components of the capital framework become the binding constraint on an institution rather than the backstop it is intended to be. As a result, institutions are incentivized to take on more risk rather than less, and this in turn can lead to distortions in the marketplace for safe assets such as treasury securities. The first change to the capital framework is likely to come in updates to the enhanced supplementary leverage ratio ("eSLR") applicable to the largest banks.

Vice Chair Bowman's third area of focus was in reviewing existing regulations and information collections. She noted that in the 15 years since enactment of the Dodd-Frank act, the number of rules banks must comply with have increased dramatically. She noted that in some cases, the result of this increased regulatory burden on banks "resulted in pushing foundational banking activities out of the regulated banking system into the less regulated corners of the financial system." She went on to note that "[d]riving all risk out of the banking system is at odds with the fundamental nature of the business of banking. Banks must be able to earn a profit and grow while also managing their risks."

Vice Chair Bowman's fourth main theme in her speech was considering approaches to ensure the applications process is transparent, predictable, and fair. She stated that "application[s] for bank regulatory approval should reflect both (1) transparency as to the information required in the application itself, and the standards of approval being applied, and (2) clear timelines for action."

In closing, Vice Chair Bowman noted that ultimately her pragmatic approach to supervision and regulation is to "refocus supervisory and regulatory efforts on the core financial risks most critical to maintaining a healthy and resilient banking system."

OCC Defends Federal Bank Preemption

June 12, 2025

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In response to a **request** from the Conference of State Bank Supervisors ("CSBS"), Acting Comptroller of the Currency, Rodney E. Hood, decisively defended OCC regulations regarding the ability of national banks and Federal thrifts to preempt certain state laws. Taking a cue from Executive Orders from the President regarding ensuring government efficiency and reducing anti-competitive barriers, CSBS decided to formally request rescission of the preemption regulations.

In response, Acting Comptroller Hood detailed not only Supreme Court cases upholding the concept of preemption (see our articles on the most recent cases **Cantero 1** and **Cantero 2**), but also three previous reviews of the regulations by the OCC, including the review in 2004 that identified preempted and non-preempted state laws and Interpretive Letter 1173, interpreting the state of preemption after changes made in the Dodd-Frank Act.

In terms of competition, Acting Comptroller Hood explained, "Federally chartered banks, many of which operate across state lines, therefore may rely on preemption to remove barriers and achieve efficiencies associated with a uniform set of rules. Thus, federal preemption has helped to foster the development of national products and services and multi-state markets, which have benefitted individuals and businesses in every state and powered this Nation's economy."

2022 Amendments Pass Both Houses of NY Legislature

June 12, 2025

By Mercedes Kelley Tunstall
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Breaking news out of the New York legislature that **they have passed the 2022 Amendments to the Uniform Commercial Code (UCC)**.

The amendments would now go to the governor. In terms of the viability of using Article 12's provisions – addressing controllable electronic records ("CERs") for blockchain-based transactions, such as securitizations of real world asset tokens ("RWAs") – New York was a crucial state.

We will be analyzing their version of the 2022 Amendments and Article 12 to determine how New York put their own "spin" on the law.

In a speech given during the American Bar Association's Banking Law Committee this January, New York Department of Financial Services ("NYDFS") Superintendent, Adrienne Harris, commented that as soon as Article 12 was passed by the New York legislature, NYDFS would have interpretive guidance ready to go, so we will be looking for developments in that area.