Regulatory Recap

June 2023 at a glance

Regulatory Insights: June 2023

Interagency
Proposed rule on quality control standards for automated valuation models (AVMs)

FRB
Speech on financial stability and the economy

Treasury
Guidance on IRA manufacturing/ clean energy investment programs

SEC
Rules re: security-based swap transaction fraud, undue influence over CCOs; removing credit ratings references in Reg M

CFTC
Governance requirements for DCOs; proposals on DCO recovery/wind-down plans, large trader reporting

Interagency
Final guidance on third-party risk management

FTC
RFI on state collaboration on consumer protection

OCC
Semi-annual Risk Perspectives Report

FINRA
RFC on liquidity risk management rule proposal

DOJ
Speech on "promoting competition in banking"

White House
Remarks on "hidden junk fees"

FDIC
Updated supervisory guidance on multiple re-presentment NSF fees

DOJ & FTC
Proposed changes to premerger notification (HSR) form

FATF
Virtual assets and related service provider standards

FRB
Speech on "responsive and responsible" bank regulation and supervision

FRB
Annual stress test results

ISSB
Global sustainability disclosure standards

CFPB
2022 Fair Lending Report

April | May | June

CFTC
ANPR on risk management program requirements

White House
Fact Sheet on "potential racial bias in home valuations"

HUD
FHA proposed new loan modification option

CFPB
Semi-annual report

CFPB
Report on chatbots in consumer finance

OCC
RFI on bank consumer trust

SEC
Risk Alert on examinations focused on Adviser Marketing Rule

SEC
Speech on exchanges, fintechs, and crypto

SEC
Spring 2023 Regulatory Agenda

Federal Banking Regulators
Spring 2023 Regulatory Agendas

OCC
Remarks on tokenization and AI in banking

CFTC
Speech on incident response and cyber resilience

FDIC
Speech on Basel III endgame

FRB
Database re: access to FRB master accounts/services

Treasury
FIO report on insurance supervision and regulation of climate-related risks

Interagency
Policy statement on prudent commercial real estate loan accommodations and workouts

Legend

Scrutiny & Divergence	Credit & Capital
Climate & Sustainability	Fairness & Inclusion
Transparency & Reporting	Fraud & Financial Crime
Data & Cybersecurity	Payments & Crypto
Technology & Resiliency	Risk & Governance

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Automated Valuation Models: Interagency Proposal

Six federal agencies (FRB, FDIC, OCC, NCUA, CFPB, and FHFA) jointly released a rule proposal that would implement quality control standards for automated valuation models (AVMs) used by mortgage originators and secondary market issuers to determine the value of mortgage collateral securing a consumer's principal dwelling.

The proposal would require companies to adopt and maintain "policies, practices, procedures, and control systems" to ensure that AVMs adhere to quality control standards, or "factors", designed to 1) ensure a high level of confidence in the estimates produced by AVMs, 2) protect against the manipulation of data, 3) seek to avoid conflicts of interest, 4) require random sample testing and reviews, and 5) comply with applicable nondiscrimination laws.

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- Long-anticipated AVM proposal, of particular note given multiple participating agencies, and the issuance same-day of White House AVM announcement
- A growing regulatory expectation in such areas as:
  - Antidiscrimination and algorithm bias.
  - Model risk management practices.
  - Third party oversight.
  - "Automated system" risk management program and controls.

Third-Party Risk Management: Final Interagency Guidance

The FRB, FDIC, and OCC (collectively, Agencies) jointly issued final third-party risk management (TPRM) guidance. The guidance is organized into four sections:

1. Risk management.
2. Third-party relationship life cycle, including planning, due diligence and selection; contract negotiation; ongoing monitoring; and termination.
3. Governance, including oversight and accountability, independent reviews, and documentation.
4. Supervisory reviews.

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- Replaces each agency's prior guidance on third-party risk management; third-party "business arrangements" are defined to capture the full range of third-party relationships.
- Principles-based, allowing for a risk-based approach that can be adjusted to the unique circumstances of each third party; places the most comprehensive considerations on "higher-risk" activities, including "critical activities".
- Expect continued supervisory intensity, particularly to large organizations, "new or novel structures and features" such as fintech "partnerships", and services for "critical activities".
- Reiterates the importance of sound risk management regardless of bank size and varying with the degree of risk and complexity of each third-party relationship; not expressly "tailoring", but with acknowledgement of potential use of industry utilities, consortiums, and/or third-party certifications.
- TPRM expectations throughout the relationship life cycle.

Regulatory Insights: June 2023

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SEC Examinations Risk Alert: Adviser Marketing Rule

SEC's Division of Examinations issued a Risk Alert that is intended to inform investment advisers (advisers), including advisers to private funds, about areas of emphasis during examinations focused on the "Marketing Rule" (i.e., amended Rule 206(4)-1 under the Investment Advisers Act of 1940).

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- SEC staff is conducting focused examinations, as well as broad reviews, for advisers' compliance with several aspects of the Marketing Rule, in addition to previously announced areas of exam review (September 2022 Risk Alert).
- Issuance of multiple Risk Alerts on the topic in less than one year, coupled with SEC's pursuit of enforcement actions, indicate that compliance is a key SEC priority.
- Companies should continue to focus on complying with the Marketing Rule requirements around policies and procedures, substantiation, performance advertising, and books and records, as well as testimonials and endorsements, third-party ratings, and completion of amended Form ADV.

2023 Regulatory Agendas: Federal Banking Regulators

The prudential banking regulators and other agencies (including FRB, FDIC, OCC, CFPB, and FinCEN) released their Spring 2023 Regulatory Agendas.

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- Key Interagency final and proposed rules for banks (including CRA revisions, Basel III and other capital requirements, and resolution-related requirements) expected soon.
- Key CFPB final, proposed, and pre-rule agenda items show continuing focus on fees (overdrafts, insufficient funds, and credit card) and personal financial data rights (Section 1033), all expected in Fall 2023.
- Final and proposed rules from FinCEN on beneficial ownership information and customer due diligence expected in Fall 2023.
- OCC's Semiannual Risk Perspectives Report and related statement reiterate regulators' heightened expectations for robust risk management, noting that banks should be "on the balls of their feet" and guard against complacency.

SEC 2023 Regulatory Agenda

The SEC released its Spring 2023 Regulatory Agenda, indicating a continuing brisk pace and breadth of rulemaking activity.

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- Key SEC final and proposed rules (including climate change, public company cyber risk governance, and human capital) pushed to October/Fall 2023.
- Market Structure proposals (including rules covering order competition, order execution, best execution, and minimum pricing) to be finalized in April 2024.
- Re-engagement on interagency incentive-based compensation and prohibitions on conflicts of interest .

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