



# Regulatory Recap

October 2023 at a glance

# Regulatory Insights: October 2023 Summary

A flurry of final and proposed rulemakings marked October 2023. Key regulatory activities from October grouped by the risk areas include:

Key Regulatory Challenge Area				
Regulatory Intensity	Governance & Risk Management	Financial Risk	Consumer / Investor Protection	Tech & Data Risks
<b>October</b>	<p><b>Interagency (FRB, FDIC, OCC):</b> <a href="#">Final Principles for Climate-Related Financial Risk Management</a></p> <p><b>FDIC:</b> <a href="#">Expanded Risk Governance and Management: Proposed Guidelines</a></p> <p><b>California:</b> <a href="#">Climate Laws: GHG Emissions and Risk Reporting</a></p> <p><b>FDIC:</b> Proposed rule to revise lifetime bans in banking for persons convicted of certain crimes</p> <p><b>DOJ:</b> “First-ever” Comprehensive Environmental Justice Enforcement Strategy Report</p> <p><b>CFTC:</b> Proposed rule amending definition of “qualified eligible person” for certain CPO and CTA compliance requirements</p>	<p><b>SEC:</b> <a href="#">Beneficial Ownership Reporting Amendments</a></p> <p><b>DOJ:</b> New Safe Harbor Policy for voluntary self-disclosures related to M&amp;A transactions</p> <p><b>Interagency (FRB, FDIC, OCC):</b> Extended comment period on Basel III capital proposal</p> <p><b>FRB:</b> Data collection effort related to Basel III capital proposal</p> <p><b>FRB:</b> Financial Stability Report</p> <p><b>Treasury (FinCEN):</b></p> <ul style="list-style-type: none"> <li>— Proposed rule on convertible virtual currency mixing</li> <li>— Renewed/expanded real estate geographic targeting orders</li> </ul>	<p><b>Interagency (FRB, FDIC, OCC):</b> <a href="#">Community Reinvestment Act: Final Rule</a></p> <p><b>CFPB:</b> <a href="#">“Open Banking” 1033 Personal Financial Data Rights Proposal</a></p> <p><b>Multi-agency &amp; State:</b> <a href="#">“Junk Fees” Actions: FTC, CFPB, FCC, HUD, DOT, State</a></p> <p><b>DOL:</b> Proposed rule to update definition of an investment advice fiduciary under ERISA</p> <p><b>SEC:</b> Final rules to require reporting on:</p> <ul style="list-style-type: none"> <li>— <a href="#">Securities loans</a></li> <li>— <a href="#">Short sales</a></li> </ul> <p><b>SEC:</b> Proposed rule on <a href="#">volume-based transaction pricing</a></p> <p><b>CFPB &amp; DOJ:</b> Joint statement on protections for non-citizens under ECOA</p>	<p><b>FRB:</b> <a href="#">Debit Interchange Fee Cap: FRB Reg II Proposed Amendments</a></p> <p><b>White House:</b> <a href="#">Executive Order on Artificial Intelligence</a></p>

## Regulatory Intensity

### Examinations: SEC 2024 Priorities

The Securities and Exchange Commission Division of Examinations (Division) issues its annual report outlining priority examination areas for various market participants in fiscal year 2024, as well as key risk areas that may impact them.

In developing their priorities, the Division considers the impacts of new regulatory requirements, which will influence examinations, compliance risks, and new focus areas. The Division notes their intention to enhance industry engagement through increased in-person fieldwork, compliance outreach events, speaking engagements, and similar efforts.

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- SEC's 2024 Examination Priorities reflect its broad regulatory scope across market participants.
- For the first time, the release aligns with the start of the SEC's fiscal year; the agency intends to increase in-person fieldwork.
- Ongoing attention to compliance with new rules and regulatory requirements (e.g., Marketing Rule, Customer Protection Rule) as well as progress on its ambitious regulatory agenda.
- Identified emerging risks including information security, operational resiliency, financial technology, and AML (e.g., sanctions, beneficial ownership).



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## Governance & Risk Management

### Expanded Risk Governance and Management: FDIC Proposed Guidelines

In concert with the banking regulators' (FRB, FDIC, OCC) focus on expanding expectations for bank risk governance and management to a larger number of banks, the FDIC proposes to establish new corporate governance and risk management guidelines (Guidelines).

The Guidelines, which would be enforceable under the FDIC's safety and soundness authority, describe expectations for a board of directors to drive effective corporate governance as well as expectations for board and management responsibilities regarding risk management and internal audit.

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- **Heightened Risk Standards:** Extending applicability to banks over \$10B
- **Cross-Agency Focus:** Aligning across FRB, FDIC, and OCC
- **Clear Accountability:** Guiding banks to set clear responsibilities, incentives, and deterrents for boards and management



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## Governance & Risk Management

### Final Principles for Climate-Related Financial Risk Management

The Federal Reserve Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency release final interagency guidance outlining principles for climate-related (physical and transition risks) financial risk management for large financial institutions.

The guidance is substantively similar to the drafts previously released by each of the federal banking agencies with some, including:

- Clarification on the applicability to large foreign banking organizations (FBOs).
- Clarification on the role of boards of directors and management.
- Removal of a reference in the FRB's proposal to compensation practices.

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- **Interagency Coordination:** Under safety and soundness authority, the FRB, OCC, and FDIC issue final climate-related financial risk management principles for banks over \$100B.
- **Risk-Based Approach:** Encourages a risk-based approach that:
  - Is related to customer relationships and financial institution management of such risks.
  - 'Neither prohibits nor discourages providing banking services to customers of any specific class or type, as permitted by law or regulation.'
  - Complements (does not replace) the risk management framework described in the agencies' existing rules and guidance.
- **Principles & Cross-Risk Areas:** Expectations that:
  - Climate risk governance and management will evolve/mature across such areas as limits, planning, measurement, and analysis.
  - Span across risk areas (including credit, liquidity, operational, legal and compliance, and other financial and nonfinancial risks).



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## Governance & Risk Management

### CA Climate Laws: GHG Emissions and Risk Reporting

California becomes "first-in-the-nation" to adopt broad climate reporting laws that will require large businesses to report on greenhouse gas (GHG) emissions and climate-related financial risk. These laws join a suite of sustainability reporting relative to GHG emissions and climate-related financial risks and may shape climate reporting in other states and/or nationally. The CA laws include:

- Climate Corporate Data Accountability Act (SB-253), which requires "reporting entities" to publicly disclose their GHG emissions on an annual basis.
- Greenhouse Gases: Climate-Related Financial Risk (SB-261), which requires "covered entities" to publicly disclose their climate-related financial risk and the measures adopted to reduce and adapt to those risks.

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- **State Activity:** Expect other states to adapt/adopt
- **Legal Action:** Anticipate legal/litigation challenges
- **Timing:** May change with final regulations
- **Move to Measure:** Companies must build measurement/reporting.



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## Financial Risk

### SEC Beneficial Ownership Reporting Amendments

The Securities and Exchange Commission adopts amendments to modernize the filing deadlines and disclosure requirements for beneficial ownership reports filed on Schedules 13D and 13G. The amendments are intended to protect market participants by increasing the timeliness and transparency of “material” beneficial ownership information, and include:

- Changes to initial Schedule 13D and 13G filing deadlines, and to Rule 13d-2 regarding filing updates.
- Clarification around disclosures of cash-settled derivatives.
- New structured data requirements.

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- Continued SEC amendments to improve market transparency and reporting timelines
- Requires an investor with more than 5 percent of a covered class of equity securities to publicly file (Schedule 13D or Schedule 13G)
- Shortens report filing deadlines



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## Consumer / Investor Protection

### Community Reinvestment Act: Interagency Final Rule

The Federal Reserve Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issue a final rule amending the regulations that implement the Community Reinvestment Act of 1977 (CRA). The final rule includes amendments that introduce new categories of qualifying community development activities, assessment area delineation requirements, and a performance evaluation framework that includes two new performance tests and evaluation options for certain banks.

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- **Unified Approach:** After nearly 30 years and 1500 pages, FRB, FDIC, and OCC adopt the long-awaited CRA final rule.
- **Continued LMI Focus:** Continuing focus on credit, investment and banking in low- and moderate-income (LMI) communities, consistent with safe and sound operations.
- **Adapted to Industry Changes:** Substantive changes reflect growth of online, mobile, and branchless banking and hybrid models.
- **Intended to introduce greater clarity and consistency:**
  - Metrics-based approaches to evaluate retail and community development financing
  - Clarification and expansion of CRA-eligible activities
- **Community development categories to include:**
  - “Place-based activities” (e.g., investment in disaster preparedness, “weather resiliency”)
  - Large focus on affordable housing and affordable rental
- **Effective Dates:** The final rule is effective April 1, 2024, but banks have until January 1, 2026, to comply with most provisions; reporting requirements will become applicable January 1, 2027, with data to be reported by April 1.



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## Consumer / Investor Protection

### “Junk Fees” Actions: FTC, CFPB, FCC, HUD, DOT, State

The Federal Trade Commission, Consumer Financial Protection Bureau, Federal Communications Commission, Department of Housing and Urban Development, Department of Transportation, and the State of California each take actions to prohibit “junk fees”:

1. FTC proposes a rule to prohibit “hidden” and “falsely advertised” fees.
2. CFPB issues an advisory opinion that large banks may not impose fees for “basic information requests.”
3. FCC, HUD, and DOT related to broadband, renters, and travel charges
4. California adopts a law to prohibit the advertising of a price that is less than the actual price a consumer will have to pay for a good or service.

- Costs to consumers:
  - **Tens of billions of dollars per year** (FTC estimate)
  - **Pay as much as 20% more** (White House National Economic Council estimate)
  - **50 million hours per year**, equaling **more than \$10 billion over the next decade** (FTC estimate)

The agency/state actions are among the more recent efforts in a larger “whole-of-government” initiative under Executive Order 14036 on “Promoting Competition in the American Economy,” which includes a focus on eliminating, across industries, consumer fees that are deemed to be unfair or deceptive.

All companies should immediately re-evaluate such areas as upfront pricing (including online/digital and in-store), cost estimation to total costs, fees charged to costs and net tangible benefit, fee processing (e.g., frequency, opt-out), fee complaints and complaints management, and consumer communications.

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## Consumer / Investor Protection

### “Open Banking” 1033 Personal Financial Data Rights: CFPB Proposal

The Consumer Financial Protection Bureau proposes a rule to implement Section 1033 of the Consumer Financial Protection Act (2010), commonly referred to as “Open Banking”. The rule would require depository and non-depository entities to share consumer financial data (relating to transactions and accounts) with both consumers and authorized third parties and would establish requirements for third parties accessing the data, including privacy protections and standards for access.

- **Controlling Your Data:** CFPB proposes to give consumers more control over their personal financial data as part of “Open Banking”.
- **Bank/Nonbank Application:** Depository and non-depository entities would be subject to the rule.
- **Current/Future Rules:** Deposit accounts and credit card accounts in current proposal; other products and services to be considered in future rulemakings.
- **Focus on Security, Privacy, Protection:** Requirement for multi-layer authorization to promote consumer awareness, express consent, data protection.
- **Data Minimization:** Requirements to limit data access, use, retention and authorization.

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## Consumer / Investor Protection

### SEC Final Rule on Securities Lending Reporting

The Securities and Exchange Commission adopts a new final rule (Rule 10c-1a) under the Securities Exchange Act that will require the reporting and publication of specific information regarding securities lending transactions.

In particular, the final rule requires “covered persons” to provide securities loan information concerning “reportable securities” to a Registered National Securities Association (RNSA) in the format and manner required by the RNSA and within specified time periods. (At present, FINRA is the only RNSA.) Major themes outlined in the rule include the scope of coverage, reporting requirements, responsibilities of covered persons and reporting agents, and compliance dates.

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- New securities loan information reporting requirements, including terms and modifications
- Daily reporting by lenders (“covered persons”) and publication by FINRA; intended to increase market transparency and fill an existing data gap.



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## Consumer / Investor Protection

### SEC Final Rules on Short Sales Disclosures

The Securities and Exchange Commission adopts a final rule introducing new Rule 13f-2, related new Form SHO, and an amendment to the national market system plan governing the consolidated audit trail (CAT NMS Plan). The rule will require institutional investment managers that reach a prescribed reporting threshold to report short position data and short activity data for certain equity securities to the SEC via Form SHO.

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- New short sale reporting requirements under new Rule 13f-2 and new Form SHO
- SEC will aggregate data and publish the data, increasing market transparency and filling an existing data gap
- Reporting requirements were called for by the Dodd-Frank Act (2010)



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## Consumer / Investor Protection

### SEC Proposed Rule on Volume-based Exchange Transaction Pricing

The Securities and Exchange Commission issues a new proposed rule (Rule 6b-1) aimed at addressing concerns surrounding volume-based exchange transaction pricing schedules. The proposed rule consists of three components:

- A prohibition on volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks (“agency-related volume”).
- A requirement that exchanges adopt rules, policies, and procedures to detect, deter, and facilitate compliance with the proposed agency-related volume prohibition (“anti-evasion mechanisms”).
- A requirement that exchanges disclose (in structured data format) on a monthly basis their volume-based transaction pricing tiers and the number of members that qualify for each.

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- SEC proposal seeks to address competition and transparency concerns related to volume-based transaction pricing by national securities exchanges.
- Proposal focuses on agency and riskless principal orders, with implications for member competition and customer conflict of interest.
- Proposed compliance and enforcement mechanisms to deter “evasive” practices and promote compliance.



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## Tech & Data Risks

### Debit Card Interchange Fee Cap: FRB Reg II Proposed Amendments

The Federal Reserve Board issues proposed amendments to the interchange fee cap in Regulation II (Debit Card Interchange Fees and Routing).

The interchange fee cap was originally introduced under the Dodd-Frank Act and is implemented by Regulation II. Under Regulation II, interchange fees received by a debit card issuer for a debit card transaction can be no more than the sum of three components: i) the “base” component, ii) the “ad valorem” component, and iii) the “fraud prevention adjustment.”

The proposed amendments are intended to reflect changes in allowable costs incurred by “covered issuers” since Regulation II was first implemented in 2011 based on the latest data reported to FRB by large debit card issuers as part of the FRB’s biennial Debit Card Issuer Survey, which covers transactions in 2021..

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- **Interchange Fee Drop:** Overall reduction in fee components, resulting in approximately 28 percent decrease in the fee cap for average transactions (\$50), according to FRB estimates.
- **More Frequent Adjustments:** Original/current fee cap was adopted in 2011. The proposal would recalibrate components on a biennial basis based on the latest issuer data.
- **Industry Response:** Expected to garner comments/concerns in such areas as potential consumer impacts, bank costs and investments, and impacts to small/community banks.



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## Tech & Data Risks

### Executive Order on Safe, Secure, and Trustworthy AI

The Administration issues an Executive Order aimed at fostering the opportunities, and managing the risks, of artificial intelligence, including Generative AI. The Order directs the establishment of new standards for AI safety and security, privacy protections, and consumer and worker protections, and is intended to promote innovation and competition and advance equity and civil rights.

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- **Broad coverage:** Covers principles of safety and security, privacy, civil rights, consumer and worker protections, innovation and competition, and national security. Emphasizes content labeling, watermarking, and transparency/reporting standards.
- **Multiple agency focus:** Pushes multiple federal agencies into regulation of AI risks affecting all industries.
- **More legislation and regulation:** Calls on Congress to pass data privacy legislation and calls for federal agencies to strengthen guidelines for data collection and privacy protections.
- **Regulatory Expectations:** Anticipate more rigorous standards/expectations from regulators around areas of data collection, testing, reporting, and outcomes. Expect needs for investments in tools and skills development for AI risk management and the use of AI to manage risk.



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## What's Coming Up?

Watch for Regulatory Insights' *Ten Key Regulatory Challenges of 2024* – set to be released on November 7!

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