KPMG

Regulatory Recap

April 2023 at a glance

Regulatory Insights: April 2023

April · May · June

- **CFPB** – Consumer Response annual report
- **FSB** – Report and recommendations to achieve greater convergence in Cyber Incident Reporting
- **CFTC** – Statement on supervision of cross-border CCPs
- **White House** – Encourages bank regulatory change
- **CFPB** – Guidance to Address Abusive Conduct in Consumer Financial Markets
- **Commerce** – AI Accountability request for comment
- **Congress** – Regulatory oversight hearing for SEC
- **FDIC** – Semiannual update on the Deposit Insurance Fund Restoration Plan
- **FDIC** – Supervisory Guidance on charging overdraft fees for APSN transactions
- **OCC** – Speech on open banking
- **NY DFS** – Final rule on virtual currency assessment
- **FSOC** – Proposes guidance for determining regulation and supervision of nonbank financial companies
- **FSOC** – Proposes an analytic framework for financial stability risks
- **FinCEN** – Renewal and expansion of Real Estate Geographic Targeting Orders

- **CFPB** – Final small business lending rule (1071)
- **FinCEN** – Trend Analysis report on BSA data
- **FRB** – Speech on Financial innovation
- **OCC** – Interest Rate Risk Statistics report
- **FRB** – Speech on considerations of a CBDC
- **White House** – Environmental Justice: New Executive Order
- **FHFA** – NPRM on Fair Lending Oversight
- **SEC** – Risk Alert on Safeguarding Customer Records at Branch Offices
- **SEC** – Speech on partnering with states and other jurisdictions on investor protection
- **Interagency** – Interagency Policy Statement on Allowances for Credit Losses
- **CFPB** – Advisory opinion on FDCPA
- **FRB** – Initial findings 2022 triennial payments study
- **Interagency** – Joint statement on enforcement/supervision of “automated systems”
- **Treasury** – 2023 AML “De-Risking” Strategy

Legend

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

Click these banners above to read more.

Regulatory Insights: April 2023

CFPB Small Business Lending Data (Section 1071)

The CFPB has issued its final small business lending rule, which amends Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by Section 1071 of the Dodd-Frank Act. Consistent with Section 1071, the rule requires covered financial institutions to collect and report to CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. Compliance to be required beginning October 2024 and will be phased-in based on numbers of covered credit transactions originated.

KPMG Insights

The final rule subjects small business lending to additional supervision under other historically “consumer” laws and regulations. Heightened risk and compliance areas include:

- Data (accuracy, privacy, security)
- Fair lending and community development
- UDAAP
- KYC/AML
- Operational procedures/training
- Disclosures
- Models and Technology (systems upgrades, constraints, reporting)

Bank Regulatory Change

The Administration issued a statement encouraging the federal banking agencies, in consultation with the Department of the Treasury, to act under their existing authorities to:

- Reinstate rules for banks with between \$100 and \$250 billion in total assets (generally referred to as Category IV institutions) that had been in place prior to rulemakings adopted in 2019 to “tailor” application of enhanced prudential standards (EPS) and capital, liquidity, and resolution planning requirements. (See KPMG Regulatory Alerts, here and here.)
- Strengthen supervisory oversight by:
  - Shortening the transition period between when institutions meet the large bank total asset threshold (e.g., \$100 billion) and when they are required to meet requirements.
  - Conducting stress testing and using other available tools.
- Proceed with efforts to expand long-term-debt (LTD) requirements to a larger number of institutions (i.e., non-global systemically important banking organizations (non-GSIBs)), preliminarily directed at institutions with total assets between \$250 and \$700 billion. (See KPMG Regulatory Alert on the relevant ANPR, here.)

Ensuring Trust in AI: Commerce Department Request for Comment

The Department of Commerce issued a request for comment (RFC) on artificial intelligence (AI) accountability measures and policies with a focus on how to provide “reliable evidence to external stakeholders—that is, to provide assurance—that AI systems are legal, effective, ethical, safe, and otherwise trustworthy.” The comments, along with other public engagement, will be used to draft and issue a report on AI accountability policy development, focusing particularly on the “AI assurance ecosystem”.

KPMG Insights

- Companies utilizing AI, including generative AI, should consider during the design, use, and deployment of AI: safety and effectiveness; protections against, and ongoing testing for, bias; data governance and privacy; transparency; and accountability and oversight.
- Regulators will use existing regulations (e.g., UDAP, data privacy/safeguards) as they enhance scrutiny over the development and use of AI across all industries, with continued heightened focus on consumer protections, false advertising, data governance, and bias.

Environmental Justice: New Executive Order

The White House issued an Environmental Justice Executive Order (EO), “Revitalizing Our Nation’s Commitment to Environmental Justice for All”, which reinforces and builds on previous EOs and “makes clear that the pursuit of environmental justice is a duty of all executive branch agencies and should be incorporated into their missions.” The White House highlighted the following key provisions of the EO that:

- Direct agencies to 1) consider measures to address and prevent “disproportionate and adverse” environmental and health impacts on communities, 2) actively facilitate “meaningful public participation” and just treatment of all people in agency decision-making, 3) identify and address gaps in science, data, and research related to environmental justice, 4) advance the analysis of cumulative impacts, and 5) make information on environmental and health concerns more publicly accessible.
- Affirm environmental justice as central to the implementation of civil rights and environmental laws.
- Establish a new environmental justice executive office and subcommittee, as well as agency assessment and reporting requirements and performance scorecards.

Regulatory Insights: April 2023

Click these banners below to read more.

Financial Stability, Nonbank Supervision: FSOC Proposals

The Financial Stability Oversight Council (FSOC) proposed:

- An analytic framework for financial stability risks, outlining how FSOC would 1) identify, 2) assess, and 3) respond to potential financial stability risks (independent of whether those risks arise from activities, firms, or otherwise), with the goal of reducing the risk of “shocks” arising from within the financial system, improving resilience against shocks that could affect the financial system, and mitigating financial vulnerabilities that may increase risks to financial stability.
- Guidance for determining (or “designating”) whether to subject nonbank financial companies to supervision and prudential standards by the Federal Reserve Board (FRB).

Enforcement/Supervision to “Automated Systems”

The CFPB, Department of Justice Civil Rights Division (DOJ), Equal Employment Opportunity Commission (EEOC), and Federal Trade Commission (FTC) jointly released a statement reiterating their “resolve to monitor the development and use of automated systems” and to “vigorously use their collective authorities to protect individuals’ rights regardless of whether legal violations occur through traditional means or advanced technologies.”

KPMG Insights

- Anticipate enforcement and supervision related to algorithms, AI, and innovative technologies (under existing laws and regulations).
- Expect a “whole of government” approach (across multiple agencies) to include consumer and employee laws and regulations.
- Strengthen risk management and governance in light of regulatory enforcement and supervisory focus on “fairness”, including potential disparate impacts/outcomes and/or model bias.

Contact

Amy Matsuo
Principal and National Leader
Regulatory Insights
amatsuo@kpmg.com

Some or all of the services described herein may not be permissible for KPMG audited entities and their affiliates or related entities.