Notice

The information presented in this presentation summarizes general guidance and is intended only to act as a quick reference and not as a substitute for the law, regulations or official commentary. There are continuing, ongoing developments in this area. Therefore, please always consult official sources of information, including the regulation text and official commentary, for a complete understanding of the law, including the regulations.
Agenda

- Legislative and Regulatory Landscape
- Fair Banking – Recent Developments and Emerging Trends
- Brief Update on CRA Regulatory Modernization
- Bank Fintech Partnerships – Understanding the Risks

Today’s Presenters

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The 2021-22 Legislative and Regulatory Landscape is Influenced by the 2020 Election Results and the Continuing Response to the Pandemic

- **2020 Election**
  - Democrats control the Executive Branch; new President and new administration
  - Democrat majority retained in House but a tighter margin
  - Senate goes from Republican control to 50-50 with VP Harris as tiebreaker

- **Elections bring new leaders**
  - Secretary of the Treasury
  - Comptroller of the Currency
  - FinCen Director
  - HUD Secretary

- SBA Administrator
- DOJ Atty. General and new Civil Rights Div. leaders
- CFPB Director
- New make-up of the FDIC, NCUA, SEC, CFTC, FTC

**GUESS WHAT?**

*THE 2022 ELECTION IS ONLY 19 MONTHS AWAY!*
Priorities: Biden Administration

Administration is moving deliberately with a more traditional approach to governance. Key appointments still needed.

**Top priorities**
- Getting control of the virus is the highest priority. American Rescue Plan ($1.9T) passed
- Address the economic effects of the pandemic and infrastructure issues: two phases -- American Family Plan ($1.8T); American Jobs Plan ($2.5T)
- Racial equality and racial equity (E.O.)
- Climate change and ESG (Environmental, Social, and Governance; investments in renewable energy

**Other high priorities**
- Invest in communities, particularly affordable housing; first-time home buyer assistance
- Boost financial inclusion and equal access to financial services – involvement and partnership with fintech firms, potential for low or no cost banking services. Postal banking?
- Creation of public credit reporting agencies to reduce racial disparities in lending
- Reinvigorate the CFPB, DOJ, HUD and SEC. Expect escalation in enforcement
- Strengthen oversight of regulators and the industry, particularly the CFPB and big banks, respectively
- Access to consumer personal data and federal standards governing data rights

Priorities: House Fin. Services and Senate Banking, Housing and Urban Affairs Committees

With both committees now under control of the same political party, we see alignment at least in principle on common themes but little bipartisan agreement, at least at the moment.

- Affordable housing/rental assistance/homelessness
- Fair lending enforcement/A.I.
- Oversight of CRA regulatory modernization
- Oversight of big banks
- Oversight of Federal financial regulatory agencies
- Push CFPB in more aggressive/active direction with rulemaking, enforcement, and supervision
- Enhanced consumer protections
- Review/reversal of Trump policies
- Student loan relief
- Flood insurance
- Diversity, inclusion, racial equity
- Cannabis banking (House=hot; Senate=not)
- ESG and climate change – disclosure and role of regulators
- Invalidate OCC “True Lender” Rule
Agency Priorities

Some common areas of emphasis but change is expected as new leaders take their seats:

- Regulatory and operational change management processes
- Pandemic-related compliance (e.g., loan accommodations, PPP, FCRA)
- Flood insurance
- UDAAP
- Military Lending Act and SCRA
- Fair lending – risk assessments, policies and procedures, redlining, appraisal bias, price discrimination
- Data governance/data accuracy/privacy/security
- Cybersecurity
- BSA/AML compliance management
- Third party risk management
- Fair servicing – focus on discretion
- CRA – “modernization” and ongoing examinations

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Where does this leave us? What do we do to prepare? Basics still matter!!

Access your CMS
- Are policies and procedures up to date? Match actual procedures?
- Are compliance, UDAAP, and fair lending risk assessments fresh, comprehensive, and adjusted for areas of increasing risk?
- When was the last time you looked at how consumer complaints are managed? What do they say about your institution?
- Are staffing levels adequate to manage expected escalated examination scrutiny? What did you learn from 2020 about resiliency? Are there any gaps?

Data
- Is your data accurate?
- Secure?
- What does your data say about your institution?

CRA
- Do you know what your performance level will be? Are you prepared for your next examination?
- For those subject to the OCC’s new rule, do you have and are you following an implementation plan?

Regulatory change management
- Is your regulatory change management program up to expected challenges across your entire enterprise?

Fair Banking
New Developments and Emerging Trends
Fair Banking – New Developments and Emerging Trends

- Presidential Executive Order - [View Fact Sheet](#)
- HUD actions:
  - Review of Disparate Impact Rule
  - Enforcement of Fair Housing Act to Prohibit Discrimination on the Basis of Gender Identity and Sexual Orientation - [View Press Release](#) Process to reinstate two Fair Housing Rules
  - Scraps Trump rule proposed in July 2020 that would have rolled back transgender protections included in HUD’s 2016 Equal Access rule, which mandated access to shelter based on a person’s self-expressed gender identity.
- Interagency Request for Information on Artificial Intelligence - [View PDF](#)
- Continuing State-level Enforcement of Fair Lending Laws and the Introduction/Passage of State CRA laws with Fair Lending Tie-ins (Illinois; Pennsylvania)

Selected CFPB Actions:
- Issuance of LEP Guidance - [View PDF](#)
- Advisory Opinion on Special Purpose Credit Programs
- Rescission of 2020 “Abusiveness” Policy Statement
- Warning on Consumer Complaint Management and Processing
- Regulation B/ECOA Interpretive Ruling – gender identity and sexual orientation - [View PDF](#)
- Rescission of 7 policy statements on supervisory/enforcement flexibility
- Mortgage Servicing Covid-19 Proposed Rule
- Blog post on Covid-19 mortgage servicing communication strategies
- Attorney recruitment initiative – signals re-emphasis on supervision, enforcement, and rulemaking
- Analysis of consumer finance barriers to racial equity to inform research and rulemaking priorities
- Progress on DF Section 1071 women/minority owned small business reporting
- Scrutiny of mortgage servicers
Fair Banking – New Developments and Emerging Trends

- Increasing fair lending risks emerging in many areas such as new types of data collected, data integrity, changes in the marketplace, enforcement, as well as from innovation by banks and partnerships with fintech firms, use of alternative data and artificial intelligence.
- Traditional Fair Lending risk still a focus of regulators
  - Redlining
  - Pricing
  - Age discrimination
  - Marketing practices
  - Discretion (across the spectrum including appraisals)
  - Underwriting
  - Third party polices, procedures, practices and monitoring
  - Servicing practices

Where does this leave us? What do we do to prepare? Basics still matter!!

Fair and Responsible Banking Program

- Are policies and procedures up to date? Match your actual procedures? Are you testing them?
- Have you looked at the scope of your program? Have you incorporated pandemic issues? Servicing? Alt data? Advertising?
- Do you have fresh, comprehensive UDAAP and fair lending risk assessments?
- Are staffing levels adequate to manage expected escalated examination scrutiny? Do you have the RIGHT people?

Risk management

- Controls and monitoring -- Identify risk indicators in HMDA data and monitor for those additional risks?
- Response and action plans -- Evaluate reasons for disparities? Document them?
- Regulatory change -- Re-assess impact as rules evolve?

Data

- Is your data accurate? Secure? Reported properly?
- Do you know what your data says about you? Does your Board? Can you explain your results to regulators? Are you getting behind identified disparities?

Examination preparation

- Have you done a self-assessment of the program against your regulator’s expected standards?
- Is documentation in order? Are exceptions to policies supported? Use of discretion? Are you ready for a deeper dive?
- Key consideration: Are you on top of current regulatory and policy developments, especially pandemic-related fair and responsible issues? New CFPB interpretive rule on sex discrimination? Hud FHA changes?
Glossary of Key Terms

- **Equity** — “The state, quality or ideal of being just, impartial and fair.” The concept of equity is synonymous with fairness and justice. To achieve and sustain equity, it needs to be thought of as a structural and systemic concept.

- **Equity vs. Equality** — Equity involves trying to understand and give people what they need to enjoy full, healthy lives. Equality aims to ensure that everyone gets the same things in order to enjoy full, healthy lives. Like equity, equality aims to promote fairness and justice, but it can only work if everyone starts from the same place and needs the same things.

- **Systemic Equity** — A complex combination of interrelated elements consciously designed to create, support and sustain social justice. It is a dynamic process that reinforces and replicates equitable ideas, power, resources, strategies, conditions, habits and outcomes.

- **Inclusion** — The action or state of including or of being included within a group or structure. More than simply diversity and numerical representation, inclusion involves authentic and empowered participation and a true sense of belonging.

- **Racial Justice** — The systematic fair treatment of people of all races that results in equitable opportunities and outcomes for everyone. All people are able to achieve their full potential in life, regardless of race, ethnicity or the community in which they live.

- **Race** — A socially constructed system of categorizing humans largely based on observable physical features (phenotypes), such as skin color, and on ancestry. There is no scientific basis for or discernible distinction between racial categories.

- **Racism** — The concept of racism is widely thought of as simply personal prejudice, but in fact, it is a complex system of racial hierarchies and inequities. At the micro level of racism, or individual level, are internalized and interpersonal racism. At the macro level of racism, we look beyond the individuals to the broader dynamics, including institutional and structural racism.

  Source: Annie E. Casey Foundation

- **Internalized Racism** — Describes the private racial beliefs held by and within individuals. The way we absorb social messages about race and adopt them as personal beliefs, biases and prejudices are all within the realm of internalized racism.

- **Interpersonal Racism** — How our private beliefs about race become public when we interact with others. When we act upon our prejudices or unconscious bias — whether intentionally, visibly, verbally or not — we engage in interpersonal racism. Interpersonal racism also can be willful and overt, taking the form of bigotry, hate speech or racial violence.

- **Institutional Racism** — Racial inequity within institutions and systems of power, such as places of employment, government agencies and social services. It can take the form of unfair policies and practices, discriminatory treatment and inequitable opportunities and outcomes.

- **Structural Racism** (or structural racialization) — The racial bias across institutions and society. It describes the cumulative and compounding effects of an array of factors that systematically privilege white people and disadvantage people of color.

- **Systemic Racialization** — Describes a dynamic system that produces and replicates racial ideologies, identities and inequities. Systemic racialization is the well-institutionalized pattern of discrimination that cuts across major political, economic and social organizations in a society.

- **Racial Privilege and Racial Oppression** — Racial privilege describes race-based advantages and preferential treatment based on skin color, while racial oppression refers to race-based disadvantages, discrimination and exploitation based on skin color.

  Source: Annie E. Casey Foundation
CRA Regulatory Modernization – quick update

- The OCC issued a final rule on May 20, 2020, effective October 1, 2020 with a phased implementation schedule extending to January 1, 2024 depending on type and size of bank. The rule applies to national banks, federal savings associations, and state savings banks.


- According to the bulletin:
  - While this reconsideration is ongoing, the OCC will not object to the suspension of the development of systems for, or other implementation of, provisions with a compliance date of January 1, 2023, or January 1, 2024.
  - At this time, the OCC also does not plan to finalize the December 4, 2020, proposed rule that requested comment on an approach to determine the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the June 2020 rule.
  - In addition, the OCC is discontinuing the CRA information collection pursuant to the Paperwork Reduction Act (PRA) notice published in the Federal Register in December 2020.
CRA Regulatory Modernization – quick update
While reconsidering its rule, the OCC will not implement or rely on the evaluation criteria in the June 2020 rule pertaining to:

- quantification of qualifying activities (12 CFR 25.07 and 25.08);
- assessment areas (12 CFR 25.09);
- general performance standards (12 CFR 25.10 through 25.13);
- data collection (12 CFR 25.21);
- recordkeeping (12 CFR 25.25); and
- reporting (12 CFR 25.26).

The OCC will continue to implement provisions with a compliance date of October 1, 2020 (see https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-99.html):

- OCC Bulletin 2021-5 providing bank type determinations, lists of distressed and underserved areas, and the median hourly compensation value for community development service activities;
- the CRA Qualifying Activities Confirmation Request process; and,
- training on provisions of the June 2020 rule with the October 1, 2020, compliance date via webinars for examiners and bankers.

Banks need to maintain appropriate documentation for CRA examination purposes required under OCC Bulletin 2020-99.

Certain banks previously subject to data collection and reporting under the 1995 CRA rule will continue to report large bank CRA data during the transition period, as specified in OCC Bulletin 2020-99.

Meanwhile:

- The FRB issued an Advance Notice of Proposed Rulemaking (ANPR) for public comment. The comment period closed on February 16. Over 600 comments were received and are being reviewed by the FRB and the other agencies.

- Leaders at the FRB and FDIC have made statements supporting and effort to modern the CRA regulations on an interagency basis.

- There is agreement between stakeholders that the regulation needs to:
  1) Encourage more lending, investment, and activity where most needed
  2) Evaluate CRA activities more consistently
  3) Provide greater clarity regarding CRA-qualifying activities

but there are also differences about how those objectives should be achieved.
CRA Regulatory Modernization – quick update, cont’d

What are stakeholders looking for as the process continues? Depends on who you ask

- Industry, community organizations, and some members of Congress wants uniform, interagency regulation
- Retention of a Qualified Activities “List”
- Resolution to the assessment area problem
- Less onerous and simpler data collection and reporting scheme
- Clear implementation and transition processes with adequate time to prepare
- Broader geographic reach/favorable consideration of activities outside assessment areas/branch networks
- Inclusion of climate-related investments
- Rigorous performance evaluation process with community input and more timely release of results
- Differentiation in rules and performance evaluations for small vs. large banks

Most important takeaway:

- CRA examinations continue and all banks supervised by the OCC, FDIC, and FRB must maintain a dynamic CRA program, monitor and assess performance, and accurately collect and report data
Technology, Financial Services and the Road Ahead

- Financial Technology
- Fintech Partnerships
- Banking as a Service

Journey to the Present
The Impact of 2020

- Many banks were resilient due to investment in digital technology prior to 2020
- Digital migration up 200% during early stage of pandemic
- Baby boomers adopted digital channels and mobile banking in record numbers
- Contactless payment expected to increase as a result of the pandemic
- Paycheck Protection Program lending has established digital lending as the new standard for small business lending

Digital Immigrants and Natives

- Digital Immigrants
  - Born before 1985
  - Grew up prior to the internet and smart devices
  - Have had to adapt and learn technologies
- Digital Natives
  - Born after 1985
  - Grew up in a world defined by the Internet and smart devices

Source: Supervision and Regulation Report, April 2021, Federal Reserve Banking with purpose: A new social contract, Matthew de Paula, American Banker, 6/23/20; and Small-business lending: Digital is the new normal, John Reed, American Banker, 6/23/20

“They are born digital”

- **Generation Baby Boomer**
  - 1946-1964
  - They care about health, wealth, quality

- **Generation X**
  - 1965-1980
  - They are anti, busy and cynical

- **Generation Y**
  - 1980-1996
  - They’ve grown up with technology

- **Generation Z**
  - 1997-2015
  - They are born digital

Source: DataDrivenInvestor.com

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**Population Projections**

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Population</th>
<th>Change from 2016 to 2060</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
<td>2020</td>
</tr>
<tr>
<td>Total population</td>
<td>323.1</td>
<td>322.6</td>
</tr>
<tr>
<td>Under 18 years</td>
<td>73.6</td>
<td>74.0</td>
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<tr>
<td>18 to 44 years</td>
<td>116.0</td>
<td>119.2</td>
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<tr>
<td>45 to 64 years</td>
<td>84.3</td>
<td>83.4</td>
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<tr>
<td>65 years and over</td>
<td>49.2</td>
<td>56.1</td>
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<tr>
<td>85 years and over</td>
<td>6.4</td>
<td>6.7</td>
</tr>
<tr>
<td>100 years and over</td>
<td>0.1</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Note: The official population estimates for the United States are shown for 2016; the projections use the Vintage 2016 population estimate for July 1, 2016, as the base population for projecting from 2017 to 2060.
Financial Technology 2021 and Beyond

- Artificial Intelligence / Machine Learning
- Autonomous Finance
- Cloud Computing
- Information Security
- Financial Health / Literacy
- Challenger Banks
- Real-time Payments
- Banking as a Service

Proliferation of Fintech

Financial Technology Startups as of February 2021

<table>
<thead>
<tr>
<th>Region</th>
<th>Startups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe, Middle East, and Africa</td>
<td>9,311</td>
</tr>
<tr>
<td>North and South America</td>
<td>10,605</td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>6,129</td>
</tr>
</tbody>
</table>

Source: https://www.statista.com
Mapping a Point of Entry

Best strategy for pursuing technology solutions?
Considerations include:

- **Build**
  - Existing internal resources/expertise
  - Ability to innovate to scale
  - Competition for talent

- **Invest**
  - Invest directly in fintech to bringing tech expertise inhouse
  - Establish centers of excellence focusing on innovation

- **Partner**
  - Talent and technology already exists
  - Lower cost / quicker solution

BaaS – Enhancing the Consumer Experience

THE RISE OF BANKING-AS-A-SERVICE

There are two key types of players:

1. BaaS PROVIDERS WITH A RETAIL BANKING ARM
   - Banks that have embraced digital will have an easier time ensuring that their infrastructure and systems are suitable for third parties

2. BAAS-FOCUSED FINTECHS
   - BaaS platforms enable fintechs to connect with banks’ systems via APIs

Source: Business Insider

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Building and Managing a Partnership

- Planning
- Due Diligence
- Contract Negotiation
- Ongoing Monitoring
- Termination

Plan, Structure, Contract

**Plan**
- Concept / Business Model
- Business, Legal, Compliance, and Operations due diligence team
  - Not an everyday third-party onboarding exercise
  - Technology partnership as LOB
- Identify Prospective Partners
- Risk Assessment
  - Identify the risk early
  - How much can the bank control?

**Structure**
- Conduct initial due diligence
- Identify management team internally and with the partner
- Establish formal accountability and define measures of success
- Document risks and develop an inventory of controls
- Establish a conforming Compliance Management System
- Monitor, track, and report issues for resolution prior to contract

**Contract**
- Contract should clearly specify rights and responsibilities of each party
- Obtain board approval where relationship involves critical activities
- Address pertinent risk controls and legal protections
- Notification requirement
- Termination
Plan, Structure, Contract

Plan

- Concept / Business Model
- Team: Business, Legal, Compliance, Credit, Operations, Technology, Servicing, Collections
  - Not an everyday third-party onboarding exercise
  - Technology partnership as LOB
- Identify Prospective Partners
- Risk Assessment
  - Identify the risk early
  - How much can the bank control?

Account for Potential Risks

- Strategic
- Operational
- Technology / Info Security
- Credit
- Liquidity / Funding
- Legal
- Compliance
- Reputation
- Go Forward?

Control Environment

- Board / Exec Oversight
- Workflow Processes
- Audit
- Compliance Program
- Training
- Complaints
- Policies
- FLOD / SLOD
- Vendor Management

Plan, Structure, Contract

Plan

- Conduct initial due diligence
- Get to know the partner management team
- Understand measures of success
- Document risks and develop an inventory of controls
- Identify components of CMS framework
- Monitor, track, and report issues for resolution prior to contract
Due Diligence

- Strategies and Goals
- Legal and Regulatory Compliance
- Financial Condition
- Significance of Proposed Contract
- Qualifications, Experience, Background and Reputation
- Fees, Compensation and Incentives
- Risk Management
- Information Security
- Management Information Systems
- Resilience
- Incident Reporting and Management
- Physical Security
- Human Resource Management
- Reliance on Subcontractors
- Insurance Coverage

Plan, Structure, Contract

- Contract should clearly specify rights and responsibilities of each party
- The level of detail in contract provisions will vary with the scope and risks associated with the third-party relationship
- What constitutes default and process of termination

Provisions

- Scope
- Right to Audit
- Ownership / License
- Performance Measures
- Compliance
- Confidentiality
- Access to Information
- Cost / Compensation
- More...
Establishing a Partnership Agreement

The scope, complexities, and the risks associated with a financial technology partnership should be analyzed, documented, and serve to inform the contracting process.

Consult counsel.

Ongoing Oversight

Ongoing oversight and monitoring of a financial technology partnership should directly correlate to the key risks inherent in the business activity.

At a minimum, ensures:

- Quality of service
- Risk management practices
- Effective controls
- Financial condition
- Regular reporting and metrics
Wolters Kluwer Resources

Compliance Solutions
- CRA
- HMDA
- Fair Lending
- UDAAP
- BSA/AML

OneSumX
- Regulatory Change Management
- Compliance and Ethics Governance
- Compliance Testing
- Complaint Management
- Regulatory Exam Management
- Compliance Risk & Controls Assessment
- Regulatory Insight

Advisory Services
- CRA Exam Prep
- Compliance Management System Review
- Fair Lending Risk Assessment
- Third Party Due Diligence

Register at CRAColloquium.com