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Top banking developments of 2021

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President Biden ushers in an enhanced focus on supervision of financial services.

The year 2021 saw a number of developments in the banking industry, but four areas have had a significant impact on the industry and will likely continue to affect the industry in 2022.

The Consumer Financial Protection Bureau acquired a new director when President Biden's somewhat controversial nomination of Rohit Chopra was confirmed by the Senate.

Legislative members of a task force on artificial intelligence took a closer look at its use in the industry and offered recommendations to manage the accompanying risks. The CFPB took its first steps toward regulating the payment systems of large technology companies while the banking agencies jointly sought further information on the use of financial technology, including machine learning, by financial institutions. Guidance on the specifics of due diligence as it relates to financial technology was provided by the agencies to assist community banks, and a number of agencies, including the Federal Financial Institutions Examination Council, addressed the growing use of financial technology in banking and the management of associated risks.

Finally, the banking agencies sharpened their attention on the ever-increasing interest in cryptocurrency and the impact of climate change on financial stability.

This Strategic Perspectives examines these developments and predicts what changes could be expected in the coming year.

Chopra confirmed as CFPB director

The Senate on Sept. 30, 2021 voted to confirm Federal Trade Commission Commissioner Rohit Chopra as the third CFPB director, slated to serve for a term of five years. The vote was 50 to 48 in favor of the confirmation with two senators abstaining. Chopra served with the FTC since 2018 where he supported more aggressive rulemaking and enforcement efforts. Prior to his stint with the Commission, Chopra joined the CFPB as assistant director of the agency and as the Bureau's first Student Loan Ombudsman. As ombudsman, he was considered a strong advocate for student borrowers as well as a frequent critic of private student lenders.

Legislative response. Commenting on the vote, Senate Banking Committee Chair Sherrod Brown (D-Ohio) stated that "[t]he CFPB will have a leader who is ready to stand up to the biggest banks and the most powerful corporations to protect families, service members, students, and the elderly." House Financial Services Committee Maxine Waters (D-Calif) echoed Brown's sentiments, stating

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that "[t]here is no better person to lead the Consumer Financial Protection Bureau at this time than Rohit Chopra, who helped establish the foundation for the CFPB in the aftermath of the 2008 financial crisis."

In contrast, Senator Pat Toomey (R-Pa), the Ranking Member of the Senate Banking Committee, expressed his concern that "Chopra would return the CFPB to the lawless, overreaching, highly politicized agency it was during the Obama administration." Senator Bill Hagerty (R-Tenn), meanwhile, asserted that Chopra "has dodged Senators' questions throughout the confirmation process, casting serious doubt on how accountable his agency will be to the people's elected representatives."

Industry reaction. The National Community Reinvestment Coalition applauded the Senate's confirmation of Chopra, saying that his "prior experience as an Associate Director and Student Loan Ombudsman at the CFPB and most recently as a Federal Trade Commissioner demonstrates his strong commitment to the CFPB's core mission to protect American consumers from unfair, abusive or deceptive financial practices and products." The Center for Responsible Lending remarked that Chopra "is up to the challenge of protecting people's wallets from predatory practices, ranging from lending discrimination to COVID relief scams to abusive debt collection practices."

The American Bankers Association released a statement congratulating Chopra and said that it "look[s] forward to working with him to make sure consumers continue to have access to the financial products and services they want and need with the protections they deserve." The Conference of State Bank Supervisors said state regulators are looking forward to working with the new director, adding that "[s]tate and federal coordination will be critical in helping stabilize families and communities nationwide as we find our way out of the pandemic and toward economic recovery."

What's next for the CFPB? Given the CFPB's single director structure, the new director will have significant opportunities to shape the direction of the CFPB during his tenure at the Bureau. Chopra's appointment sends a signal that the CFPB will begin to take a more aggressive stance in both its rulemaking and enforcement efforts.

Fair lending. Congress established the CFPB with a statutorily mandated Office of Fair Lending and Equal Opportunity (OFLEO). OFLEO was part of the Division of Supervision, Enforcement and Fair Lending (SEFL) and played a vital role in executing the Bureau's fair lending priorities. Former Acting Director Mick Mulvaney moved OFLEO out of SEFL and de-emphasized the CFPB's focus on fair lending. Under Chopra, who took an expansive view of disparate impact while at the FTC, the Bureau will most likely retrain its focus on fair lending examinations and enforcement actions.

Student loans. It is also expected that given Chopra's background as well as the pressing issues surrounding the marketplace, student lending will be a priority for the Bureau. As with the area of fair lending, this priority likely will include additional focus on student loan examinations for those institutions under the CFPB's supervisory jurisdiction and increased enforcement scrutiny on the full life cycle of student debt.

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Additional areas of focus. The mortgage market has always been a priority of the CFPB considering that the Bureau was created in the wake of the financial crisis. In light of the pandemic, the CFPB will likely continue to target mortgage servicing as an area of concern, examining borrowers affected by the resulting economic downturn and on how banks, mortgage servicers, and others are interacting with borrowers. Other likely priorities include rulemaking concerning consumer access to information and small business data collection.

Enforcement. It is expected that under Chopra's direction, the CFPB will see a return to the more aggressive enforcement of its earlier years. It seems likely that he will push for greater monetary remedies in enforcement actions in terms of consumer redress and civil money penalties. The CFPB will likely continue to focus on unfair, deceptive and abusive acts and practices (UDAAP) in its enforcement actions.

Banking industry continues growing involvement in financial technology

Evolving technologies have driven rapid change in the banking arena. This swift pace of change presents real risks and benefits to both consumers and institutions. In 2021, lawmakers, banking regulators, and industry stakeholders increased their attention on understanding, while promoting, financial technology and system security. Financial institutions continued to strive to improve unsafe practices regarding technology by employing effective risk management.

Lawmaker input. In April of this year, Patrick McHenry (R-NC), the Ranking Member on the House Financial Services Committee, along with current and former Republican leaders of the Committee's Task Forces on Financial Technology and on Artificial Intelligence, French Hill (R-Ark), Tom Emmer (R-Minn), and Barry Loudermilk (R-Ga), released a Republican staff report describing the work of the task forces in the 116th Congress and providing recommendations as to how innovation can be fully utilized to create a more inclusive financial system. The task forces were intended to help the Committee better understand the latest technology developments in financial services. The report included recommendations that banks use the power of data and machine learning to combat fraud, streamline compliance, and make better underwriting decisions, while ensuring transparency for American consumers and that financial services regulations, including Bank Secrecy Act/ Anti-Money Laundering regulations, be updated to reflect the shift toward digitization which would provide greater protections for consumers and their data as well as modernizing the way individuals are identified to ensure the minimal amount of data is used to authorize access to financial products.

As recently as November, Financial Services Committee Chair Maxine Waters (D-Calif) and Rep. Bill Foster (D-Ill), Chair of the Task Force on Artificial Intelligence, raised another concern, sending a letter to members of the Federal Financial Institutions Examination Council, urging them to keep up with the rapid development of financial technology and to ensure that algorithmic bias does not occur.

CFPB enters arena. In 2021, the CFPB turned its attention to the technology arena. In October, the Bureau began an inquiry into technology companies' payment platforms, ordering six technology platforms offering payment services— Google, Apple, Facebook, Amazon, Square, and PayPal—to turn over information about their products, plans, and practices when it comes to payments. The

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orders were issued to collect information on the business practices of large technology companies' operating payments systems in the United States. The Bureau plans to use the information for monitoring risks to consumers and to publish aggregated findings that are in the public interest. The CFPB stated at that time that it also plans to study the practices of the Chinese tech giants that offer payments services, such as WeChatPay and Alipay. The CFPB followed up the orders with a notice and request for comment in November. As the Bureau noted in its strategic plan, published in December, evolving technologies have driven rapid change in the consumer financial marketplace. This swift pace of change presents real risks and benefits to consumers and institutions. To meet its mission, the CFPB said that it must monitor developments in technology as they intersect with consumer financial markets. To this end, the Bureau published an update to its Supervision and Examination Manual to include information technology examination procedures.

Agency rulemaking, guidance. The banking agencies have taken further steps in 2021 to manage the growing technology field as it intersects with banking. Some of the agency actions include:

- The federal banking agencies jointly published a Request for Information on the use of artificial intelligence (AI), including machine learning, by financial institutions. The agencies said they were seeking information and comments in order to better understand: the use of AI by financial institutions; appropriate governance, risk management, and controls over AI; challenges in developing, adopting, and managing AI; and whether any clarification would be helpful for financial institutions' use of AI in a safe and sound manner and in compliance with applicable laws and regulations, including those relating to consumer protection.

- The Federal Reserve Board in June issued a proposed rule amending Regulation J —Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire (12 CFR Part 210) to govern funds transfers over the Federal Reserve Banks' FedNow Service, a new 24x7x365 real time service intended to support instant payments in the United States and is expected to be available in 2023.

- Three federal agencies—Office of the Comptroller of the Currency, Fed, and Federal Deposit Insurance Corporation—published guidance, *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks* aimed at giving community banks a resource for conducting due diligence on financial technology companies when evaluating potential partnerships.

- In a booklet issued by the FFIEC titled *Architecture, Infrastructure, and Operations*, new guidance was provided on IT architecture, infrastructure, and operations, and discusses procedures and practices for risk management and compliance.

- The FDIC, OCC, and Fed adopted a final rule on computer security incident reporting meant to give them early awareness of emerging cyber threats to individual banks and systemic cyber threats to the broader financial system. The rule requires banks to notify their primary federal regulator within 36 hours of a computer-security incident that is reasonably likely to "materially disrupt, degrade or impair" bank operation.

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Ransomware and cybercrime. The U.S. government's fight against ransomware has been labeled by Deputy Treasury Secretary Wally Adeyemo as a "top priority for the Biden Administration." Continuing its "whole-of-government effort" to counter ransomware, the U.S. Department of the Treasury in November announced a set of actions aimed at disrupting criminal ransomware actors and virtual currency exchanges that launder the proceeds of ransomware. Meanwhile, the Financial Crimes Enforcement Network (FinCEN) released an update to its 2020 Advisory on Ransomware and the Use of the Financial System to Facilitate Ransome Payments in response to the increase of ransomware attacks in recent months against critical U.S. infrastructure, the new Advisory from FinCEN reflects information released in its Financial Trend Analysis Report issued on Oct. 15, 2021. To assist financial institutions when dealing with suspicious transactions associated with ransomware attacks, the advisory identifies financial red flag indictors of ransomware and associated payments and reminds the institutions of their regulatory obligations to report suspicious activity involving ransomware.

In a related development, earlier in the year, Reps. Patrick McHenry (R-NC) and Andy Barr (R-Ky) have issued a staff report on cybersecurity in the COVID-19 era. The report, *Securing the New Normal: An Examination of Cybersecurity Issues Related to Remote Work and the Transition to a Digital Supervisory Relationship*, describes how the coronavirus pandemic and related relief programs created an environment ripe for cybercriminal activity. Financial institutions were put in a position to balance the government's interest in disbursing money quickly against their long-standing interest in implementing a robust system to prevent cyberattacks and scams.

Concerned with the threat of cyber crime, the OCC, Fed, and FDIC in April issued a proposal that would require banks to "promptly" file a Suspicious Activity Report (SAR) whenever a computer security incident could "materially disrupt, degrade or impair" operation. Further, the FFFIEC and OCC provided guidance on acceptable risk management principles in addressing cybersecurity threats, particularly involving: (1) authentication of users who access financial institution information systems; and (2) authentication of consumers and business customers accessing digital banking services.

Innovation initiatives. Congress, Treasury, and the banking agencies continued to heighten awareness and education by launching new initiatives targeting financial technology. In May, the Senate launched a new caucus, the Senate Financial Innovation Caucus to "highlight responsible innovation in the United States financial system" and to demonstrate "how financial technologies can make markets more inclusive, safe and prosperous for all Americans." The New York Federal Reserve Bank introduced its New York Innovation Center intended to validate, design, build, and launch new financial technology products and services for the central bank community. Treasury hosted is first U.S. Financial Sector Innovation Policy Roundtable. Treasury Secretary Janet Yellen delivered the forum's opening remarks. Stating that a key objective of the Treasury is "modernizing our financial system with new technologies," Yellen emphasized that the department is committed to "help scale and leverage" responsible technological innovation. Finally, the FDIC issued a notice naming its final Tech Sprint participants in its innovation intended to develop a new approach to financial reporting and analysis.

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Moving forward. The banking arena can be expected to move forward in its mission to understand, and monitor, the use of financial technology by financial institutions and continue its quest to pursue heightened technology and operational risk management. Since the pandemic, banks have sought to cut costs, meet public demand for online services, and manage teams of remote workers, goals that will certainly extend into 2022. As the use of financial technology in the banking industry continues to evolve, increased regulatory guidance and legislation is likely, leading to an increased emphasis on the development and oversight of rigorous risk management programs.

Cryptocurrency

The interest in the intersection of banking regulation and cryptocurrency has continued to garner attention Congress, the White House, and several financial regulators in 2021. This interest is underpinned by the trend of cryptocurrency firms seeking various forms of bank charters.

OCC action. This trend of cryptocurrency firms seeking various forms of bank charters began in the second half of 2020 when the OCC issued guidance—Interpretive Letter No. 1170 clarifying that nationally chartered banking institutions, including trust banks, could offer custody services for cryptographic keys associated with cryptocurrency.

The OCC also issued further guidance—Interpretive Letter No. 1172, in 2020, that national banks could issue stablecoins, a type of cryptocurrency with a value pegged to fiat currency, for payment activities. At the start of 2021, the OCC addressed in Interpretive Letter No. 1174 whether banks may act as nodes on an independent node verification network, such as a distributed ledger, to verify customer payments and banks may engage in certain stablecoin activities to facilitate payment transactions on a distributed ledger.

Finally, in the waning days of the Trump Administration, the OCC issued Interpretive Letter No. 1176 which addressed the OCC's ability to charter national banks within the scope of 12 USC 27(a) which recognizes the authority of the OCC to charter a bank that limits its operations to those of a trust company and related activities. Among other things, Interpretive Letter No. 1176 determined that a national bank chartered under Section 27(a) is not limited to fiduciary activities and may engage in any permissible activities of a trust company.

In addition to its guidance, the OCC has issued conditional approval to three cryptocurrency firms—Anchorage Digital Bank, Protego Trust Bank, and Paxos National Trust—to be national trust banks.

Following this flurry of activity by the OCC, Sen. Brown expressed his concerns, in a May 19, 2021, letter, to Acting Comptroller Michael Hsu that the conditional approval of the charter applications by Paxos, Protego, and Anchorage "suggest[ed] that the OCC's approval of their charters guarantees their business model is as safe, stable and dependable for customers as a local community bank." Brown also questioned "whether the OCC engaged in the appropriate due diligence before granting these charters." Months earlier, following the release of Interpretive Letter No. 1176, the American Bankers Association, Credit Union National Association, and Independent Community Bankers of

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America previously requested that the OCC withdraw Interpretive Letter 1176 based on the Biden administration's directive to halt all pending regulations pending review by the incoming new agency heads. The trade groups noted that these recent policy changes will have a significant change on the eligibility requirements to obtaining a trust charter and that significance of these actions deserves thorough and transparent analysis by interested stakeholders.

Going forward into 2022, the OCC has clarified and elaborated upon its earlier guidance provided in Interpretive Letters Nos. 1170, 1172, and 1174. According to Interpretive Letter No. 1179, a bank wishing to provide cryptocurrency, stablecoin, or distributed ledger services as outlined in the earlier letters should first notify its supervisory office in writing, and should not engage in the proposed activity until it receives written notice that the office does not object, according to the OCC. In addition, a bank's written notice should demonstrate "an understanding of any compliance obligations related to the specific activities the bank intends to conduct," including requirements under banking and consumer protection laws and how they may differ depending on the structure of the activity. Finally, Interpretive Letter No. 1179 also reiterated the OCC's position that Interpretive Letter No. 1176 "did not expand or otherwise change existing banks' obligations under the OCC's fiduciary activities regulation" and that the OCC "retains discretion in determining, for purposes of federal law, whether an activity is a trust activity and whether an activity is conducted in a fiduciary capacity."

Crypto-asset roadmap. Finally, in a joint statement, the OCC, along with the Fed and FDIC, said that, throughout 2022, they "plan to provide greater clarity on whether certain activities related to crypto-assets conducted by banking organizations are legally permissible, and expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations." Activities that the agencies plan to address are:

- crypto-asset safekeeping and traditional custody services;
- ancillary custody services;
- facilitation of customer purchases and sales of crypto-assets;
- loans collateralized by crypto-assets;
- issuance and distribution of stablecoins; and
- activities involving the holding of crypto-assets on balance sheet.

The agencies will also "evaluate the application of bank capital and liquidity standards to crypto-assets for activities involving U.S. banking organizations and will continue to engage with the Basel Committee on Banking Supervision on its consultative process in this area."

The OCC, Fed, and FDIC were not the only financial regulators to weigh in on cryptocurrency.

Prudential federal framework. A November 2021 report by the President's Working Group (PWG) on Financial Markets called on Congress to quickly enact legislation to ensure that payment stablecoins are subject to a prudential federal framework on a consistent and comprehensive basis. In the absence of such action, the PWG recommends that the Financial Stability Oversight Council

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consider steps it could take to address the risks of stablecoins. For example, FSOC could include the designation of certain activities conducted within a stablecoin arrangement as, or as likely to become, systemically important payment, clearing, or settlement activities. In addition, the report notes that other federal agencies, such as the Securities and Exchange Commission or the Commodity Futures Trading Commission, may be able to implement rules to address some of the risks associated with stablecoins.

At the time of the report's release, Treasury Secretary Yellen noted, "Current oversight is inconsistent and fragmented, with some stablecoins effectively falling outside the regulatory perimeter." CFPB Director Rohit Chopra added, "The United States must do more to nurture a fast, safe, and competitive payments system" and indicated that the while the CFPB was not included in preparing the report, the Bureau will "be taking several steps related to this market."

In November remarks before the 2021 Financial Stability Conference, Fed Governor Christopher Waller noted that the PWG report "lays out one path to responsible innovation, and I applaud that effort." However, Waller added, "there may be others that better promote innovation and competition while still protecting consumers and addressing risks to financial stability." Though Waller said he had no objection to the PWG's suggestion that stablecoins used for payments be narrowed for processing by insured depositories, he disagreed with the idea that stablecoin issuance "can or should" be limited only to banks. He added "mindset, would undermine stablecoins' value regarding viable competitors to traditional banking's role as payment providers."

One area not addressed in the PWG report that could require the need of federal legislation in 2022 is the disclosure of reserves that back stablecoin issuers. A December 2021 In Focus report by the Congressional Research Service. In that CRS report it was noted that "unlike securities regulation, which requires a disclosure of reserves to investors, no such disclosure to the public is required from banking regulators for trust banks that issue stablecoins or for national banks that hold stablecoin reserves." The report added, "Thus, it is unclear whether stablecoin market participants can appropriately discern whether they are holding assets backed by the claimed reserves." The report concluded, "Legislation could seek to require reserve disclosures for stablecoins, either through anti-money-laundering reporting requirements for issuers that hold reserves in U.S. banks or through banking laws for trusts and insured depository institutions that issue stablecoins or hold their reserves."

"Baby steps" towards CBDCs. As far back as four years ago, the Fed has been discussing the idea that central banks should issue their own digital currency, known as Central Bank Digital Currency or CBDC.

In late 2017, then-Fed Vice Chair for Supervision Randal Quarles cautioned that central bank digital currencies are not immune to a large range of risks and could even adversely affect financial stability. But he was "optimistic that the Federal Reserve's work with the payments industry will facilitate a future with a safe and more efficient payment system."

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In the intervening years, pronouncements by various Fed officials have vacillated on the issue of CBDCs. In May 2018, Fed Governor Lael Brainard indicated that "there is no compelling demonstrated need for a Fed-issued digital currency." Remarks by Brainard, in February 2020, noted that a Fed CBDC "was still in its nascent stages" and added that the driving interest in CBDC development in other nations were "not shared" by the U.S. Months later, in August 2020, Brainard noted "significant policy process" would have to be undertaken before the issuance of a CBDC, along with "extensive deliberations and engagement with other parts of the federal government and a broad set of other stakeholders." There would also have to be a legal examination of how the Federal Reserve Act would apply to CBDCs and whether CBDCs would have legal tender status, she said.

A year into the COVID-19 pandemic, Eric S. Rosengren, then-president of the Federal Reserve Bank of Boston, noted that further technical and policy work was needed before a Fed-issued CBDC could be introduced. Rosengren said that designing a CBDC would involve trade-offs, such as additional complexity that may slow the processing of large volumes of transactions. There is also the potential for unintended consequences, such as the rapid movement of funds, which could destabilize the financial system.

Shortly after Rosengren speech, Fed Chairman Jerome Powell, in a recorded video, said that a discussion paper, to be released in the summer of 2021, would spark a "broad discussion" by outlining the Fed's "current thinking" about how digital currency is evolving. It should be noted that the discussion paper's release was to be pushed back to November 2021.

Echoing Fed Governor Brainard's May 2018, remarks, Fed Governor Waller, in August 2021, said that he was not convinced that a CBDC would solve any problem that is not better addressed by existing initiatives. "After exploring many possible problems that a CBDC could solve, I am left with the conclusion that a CBDC remains a solution in search of a problem," Waller said.

Finally, Republicans on the House Financial Services Committee released a statement, in November 2021, saying, "The ball is in Congress' court—as the Federal Reserve cannot issue a digital currency without Congressional authority—and Republicans will continue to fully assess how a Fed-issued digital currency could impact our nation's competitiveness and our financial system." The Committee Republicans also released a set of principles to guide Congress' evaluation of potential proposals for a U.S. CBDC. The principles state that a potential Fed-issued digital currency must maintain the dollar as the world's reserve currency and the preeminence of the U.S. payment system; not impede ongoing development of stablecoins; promote private sector innovation and foster competition; and address privacy and security protections.

Given, the Fed's failure to issue its discussion paper as 2021 was coming to a close, and House Republicans setting "a line in the sand," the prospects of the Fed creating a CBDC in the upcoming year appear to not be promising.

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Climate Change

In chairing her first FSOC in March 2021, Treasury Secretary Yellen called climate change "an existential threat" and "poses a tremendous risk to our country's financial stability," making it one of her top priorities. To address this threat, the Treasury announced a coordinated climate policy strategy on domestic and international policymaking, which will focus on the broad range of its climate-related policy work connected to climate transition finance, economic and tax policy, and financial risks. As part of this strategy, Treasury also created a new Climate Hub and appointing a climate counselor to coordinate and lead many of its efforts to address climate change. These actions are intended to "position the economy for strong and sustainable growth consistent with a net-zero emissions future," according to Treasury. John E. Morton was named the department's first climate counselor. Morton was most recently a partner at Pollination, a specialist climate change advisory and investment firm. Previously Morton was a presidential appointee in the Obama Administration and served as White House senior director for energy and climate change at the National Security Council.

> *"Climate change is 'an existential threat' and the biggest emerging risk to the U.S. financial system."*

Two months later, on May 20, 2021, President Biden issued an Executive Order on Climate-Related Financial Risk that requires the National Climate Advisor and the Director of the National Economic Council to develop, a comprehensive government-wide climate-risk strategy to identify climate-related financial risk to government programs, assets, and liabilities. The Executive Order encourages the Treasury Secretary to work with FSOC members to assess climate-related financial risk to the stability of the federal government and financial system.

Commenting on the Executive Order, Treasury Secretary Yellen said that she is prioritizing the efforts to assess climate-related financial risks and risks to financial stability. She explained that assessments of climate-related financial risks may require new perspectives and new tools, and stated that FSOC will work with regulators to share perspectives, identify common impediments, and find solutions. A critical task is pulling together individual agency perspectives to assess how climate risks may impact the stability of the entire financial system. She went on to say that this coordinated approach to financial stability "is what FSOC is designed to do—and will ensure the most effective approach to improving the resilience of the financial system." On other hand, Sen. Toomey released a statement in opposition to the Executive Order, stating that it demonstrates that "the Biden administration is preparing to misuse financial regulation to further environmental policy objectives. Not only would such regulation exceed the scope of financial regulators' respective missions and authorities, but it would also distort capital allocation, raise energy costs for consumers, and slow economic growth." Toomey stated that any changes to environmental laws should be enacted through the legislative process, not by financial regulators.

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As required by the Executive Order on Climate-Related Financial Risk, FSOC released a report, in October 2021, that for the first time identified climate change as an emerging and increasing threat to financial stability.

The report included a number of concrete recommendations to U.S. financial regulators on how to identify and address climate-related risks to the financial system and promote its resilience to those risks. For example, the report recommends that member agencies: assess and mitigate climate-related risks to financial stability, especially through scenario analysis; and enhance actionable climate-related data to allow better risk management. The report also recommends that financial regulators review existing regulations, guidance, and reporting relevant to climate-related financial risks to assess whether updates or additional regulations or guidance are necessary to properly address those risks. Because adverse effects of climate change may disproportionately impact financially vulnerable populations, the report also recommends that the FSOC's members evaluate the impacts of proposed policy solutions on those populations when assessing the effects of climate change on the economy.

Prior to, and, after the release of the FSOC Climate change report, the banking agencies had begun discussing the report's recommendations to various stakeholders.

Fed Governor Brainard, speaking via webcast at the October 2021 Federal Reserve Stress Testing Research Conference, said, "It will be helpful to move ahead with the first generation of climate scenario analysis to identify risks and potential issues and to inform subsequent refinements to our models and data." According to Brainard, scenario analysis is useful to assess the links between economic outcomes and climate-related risks because it requires systematic assessment of the implications for financial stability and individual financial institutions. She added that even a rudimentary first step "down the path of climate scenario analysis" will help to identify risks and suggest subsequent improvements necessary in modeling, data, and financial disclosures.

What does 2022 portend? In the next year, the Fed may likely implement climate scenario analysis as part of its annual Comprehensive Capital Analysis and Review and Dodd-Frank Act Stress Tests.

The OCC, on the other hand, has provided the banking organizations a glimpse of what to expect in 2022.

As part of its Fiscal Year 2022 Operating Plan, the OCC stated that it is working to better understand how the financial risks associated with climate change may affect the safety and soundness of institutions including their ability to serve all parts of their communities; and that it will continue information gathering efforts and plan on conducting additional industry outreach.

At the largest banks, examiners will focus on establishing a baseline understanding of the effects of physical and transition risks including the development of climate risk management frameworks and governance processes.

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In its Semiannual Risk Perspective for Fall 2021, OCC also stressed that it is "taking a brisk but deliberate approach to advance the development of risk management frameworks and gather relevant information to understand these challenges. The agency's focus is on ensuring banks establish sound risk management frameworks to measure, monitor, and control risk presented by climate change."

Finally, in a November 2021 speech, Acting Comptroller Hsu called on the boards of banks to take the initiative in challenging bank managers on steps to "prudently manage climate risk." Hsu called for "small s" or "bottom-up" scenario testing that would balance the "top-down" look at stress testing scenarios with more granular "what if?" questions that he said were already "bread-and-butter stuff" for banks with the strongest risk management practices. Finally, banks will also need to manage transition risk. Specifically, banks would need to identify borrowers whose ability to repay under climate change's growing impact. Hsu cited examples of communities located in areas more directly impacted by weather events, or local economies that are more dependent on "carbon-intensive activities" as examples of this likely deterioration.

Companies: Amazon; American Bankers Association; Anchorage Digital Bank; Apple; Better Markets; Center for Responsible Lending; Conference of State Bank Supervisors; Credit Union National Association; Facebook; Google; Independent Community Bankers of America; National Community Reinvestment Coalition; Paxos National Trust; PayPal; Protego Trust Bank; Square

MainStory: BankSecrecyAct CFPB ChecksElectronicTransfers ConsumerCredit DirectorsOfficers Employers EnforcementActions EqualCreditOpportunity FederalReserveSystem FinancialIntermediaries FinancialStability FinTech IdentityTheft Loans Mortgages Privacy PrudentialRegulation UDAAP

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